

Do You Have A Case For Defamation?

Why would you ever want to talk to a lawyer unless you are in an unpleasant situation? It's simple. You want an answer to a basic question: Do I have a case? Or, if you're being sued, does the other person have a case?

The reality is that you'll rarely get a clear-cut answer from an attorney. Why is that? Because the law is a reflection of society and its values and mores, which is pretty complicated to say the least. If everything were "black and white" there would be no need for lawyers, right?

Instead of a simple yes/no answer, a lawyer is more likely to advise you of the basic law relevant to the facts of your case and make general recommendations. Enter the purpose of this post.

I'm going to outline general principles of California defamation law so that you can make a preliminary assessment of your situation. I use the word "preliminary," because it is essential for an attorney to take a closer look at your particular set of facts. By no means should this post be taken to be a comprehensive treatment of defamation law in California. But at least you will have a basic understanding of the law, and as they say, knowing is half the battle.

Defamation is known by many names: libel, slander, disparagement, defamation of character, etc. Many of the terms refer to the same idea, however; a statement which results in damage to a person's reputation.

In order to prove defamation in California, a person must prove the following elements by a preponderance of the evidence, that is, it is more likely than not that each element is satisfied based on the evidence.

1) Defamatory - the statement must be defamatory. What does that mean? It has been defined as any statement that tends to lower the reputation of a person in the community, and/or subject that person to contempt, ridicule, or obloquy, or cause the person to be shunned or avoided. For example, what if a newspaper described a person as being "gay?" Would that be defamatory? Well, it depends on the community. Obviously, in most places in California and, indeed in the United States, such a statement would clearly not be defamatory. But what if that statement was written in a small town newspaper in the south, for example? In that situation, the statement may be found to be defamatory.

2) Statement of Fact - the statement must be a fact. Generally, you would not be able to prove defamation if the statement is an epithet, hyperbole, or is merely an opinion. That is not to say that all opinions are created equal. Some statements that appear to be opinions may be construed to be factual statements if the statement implies a provably false statement. This is one of the most misunderstood concepts relating to defamation law. I talk more about this here.

3) Falsity - the statement or statements must be false.

4) Of and Concerning - The average reasonable person must understand that the statement refers to the plaintiff, and not someone else, or a group of other people.

5) Publication - this element is a bit misleading. A statement can be published in a number of ways, including orally, in writing, by photograph, or other fixed means, and, it must be conveyed to a third party. So, if Mr. Jones comes up to you and claims that you've been convicted of a crime, it's not going to count as defamation unless a third party heard the statement.

6) Causing - The statement must cause the plaintiff harm to his or her reputation.

7) Damages - Damages are presumed and therefore do not need to be proved if the statement is libelous on its face. A statement is libelous if it is permanent in nature. For instance, any statement on the internet would be libelous; any photograph that is defamatory would be defamatory as well since it is fixed. See what I mean? A statement is libelous on its face if it is defamatory without reference to any other information. So if I write in a blog post that Mr. Jones robbed a bank last year, it is clear to all, without reference to any other information, that the statement negatively reflects on Mr. Jones' reputation.

Damages must be proved if the statement is slanderous (oral) unless, the statement is slanderous on its face. A statement is slanderous on its face if it falls within the following categories: (1) charges someone with a crime; (2) indicates someone has a infectious or loathsome disease; (3) hurts someone with respect to their office, trade, or business; (4) imputes to a person impotence or a lack of chastity; and (5) any statement which causes actual damage.

8) Fault - There are different standards of fault depending on whether the plaintiff is deemed to be a private person or a public figure. Private person plaintiffs must only

show negligence. Public figures must show that the statement was made with constitutional malice, that is, that the defendant knew the statement was false at the time it was made, or with a reckless disregard for the truth.

That's California defamation law in a nutshell. There are MANY issues that I simply could not cover in this post. However, this is a good starting point for any person wanting to understand this area of law.