

DISPELLING MISCONCEPTIONS ABOUT

DEFAMATION LAW



Defamation is an area of law that is difficult to summarize because the definition varies from state to state among other factors. However, the following information—though far from comprehensive—covers much of the basics.

What qualifies for libel/slander?

- Libel and slander are gateways to defamation. Anything unjustly printed or broadcast either online or through the airwaves is libelous if it damages the reputation of a business or living person or has an adverse monetary effect, such as loss of income, on the offended party. So, corporations, partnerships, trusts, nonprofit organizations and other similar entities can initiate a lawsuit based on the guidelines.
- Even though a defamatory statement must be written, spoken or broadcast, a letter also can be grounds for legal action if seen by a third person—or a duplicate copy circulated.

Who can be sued?

- Everyone who had any involvement with the story.
- Editors, content editors, reporters, sources and others.
- News outlets and institutions that published or aired defamatory content.

How does libel occur?

- Criticizing someone's character or reputation without supporting evidence.
- Accusing someone of a crime.
- Criticizing someone's professional competence.

What are the different types of plaintiffs?

- Private citizens
An individual who or business that does not hold any official or public position.
- Public officials
An individual who or agency that exercises power or influence in governmental affairs.
- Public figures
An entity that or individual who has gained a level of fame or notoriety.

Why is this important?

- Unlike private citizens, to win a libel case, public officials or public figures must prove “actual malice.”
- Based on [The New York Times v. Sullivan](#), a 1964 landmark Supreme Court decision that protects the press by limiting public officials’ ability to sue for defamation.

What is actual malice?

- The U.S. Supreme Court defines it as releasing information into the public domain with knowledge that the information is false or with reckless disregard of whether it is false. (In the Dominion Voting Systems case, Fox News was sued for this legal infraction.)

What is qualified privilege?

- Journalists can -- based on industry ethics of fairness and accuracy -- report anything said during official government proceedings without being censored and without fear of facing or losing a libel suit.

What is absolute privilege?

- Provides immunity from litigation for comments by those directly involved in judicial proceedings (*from judges, attorneys to witnesses*) and legislative matters (*from the president, governors, mayors to lawmakers on federal, state, county and city levels.*)
- This privilege does not apply to the news media.

What is an example of potentially libelous content?

e.g., CHICAGO — A 25-year-old man was arrested for animal abuse Sunday after he battered a dog with a baseball bat on a busy street in Lincoln Park.

The issues: The words “arrested for,” subconsciously and unintentionally convicts the person in the reader’s mind.

Who said he battered a dog? The police did.

The solution: Attributions are so critical in such stories to avoid potentially legal headaches. In this case, insert “*police said.*” Since a charge was filed, the reporter should also include “*on the charge/charges of.*”

On the other hand, if the person was arrested but not charged, then write “*in connection with*” or “*on the suspicion of*” as workarounds.

*e.g., CHICAGO — A 25-year man was arrested **on a charge of** animal abuse after **police said** he battered a dog with a baseball bat on a busy street in Lincoln Park.*

What exactly is hidden libel? Examples?

- Words or phrases may be harmless in themselves but become defamatory due to attached or unforeseen circumstances. Hidden libel can occur through implication or omission as the following examples, respectively, illustrate.

Problem #1: A feature story about a presidential candidate emphasizes his close ties to the Midwest church. It also states later in the article that the church allegedly discriminates against several ethnic groups, implying that the candidate shares those views.

e.g., The Republican presidential candidate said he attends services at the 105-year-old church whenever he visits the Midwest.

“I’ve always enjoyed the services,” said the senator of Texas. “I think the pastor’s sermons are doctrinally sound and quite relevant in today’s times.”

The 2,500-member congregation, which supports him, has been accused of discriminating against immigrants and several ethnic groups.

On solution: Giving the candidate an opportunity to clarify his relationship.

Problem #2: An article mentions a physician’s involvement in a malpractice suit but in reading further it fails to include that he was eventually acquitted of the charge.

e.g., The doctor, who moved to Apex, North Carolina, in 2022, received numerous awards over 25 years for practicing internal medicine in Boston.

Five years ago, he was mentioned in a malpractice lawsuit involving allegations of a botched surgery.

One solution: Thoroughly research/fact-check to ensure up-to-date status of case.

Does the First Amendment protect false statements or lies?

- [Yes, with limited exceptions.](#) The First Amendment distinguishes between falsehoods that aren’t meant or likely to be believed and false statements of fact.

What is an absolute defense to fend off libel?

- It is often referred to as “provable” truth. The truth can sometimes defame as much as a lie. Therefore, the main issue here is the burden of proof.

Do states have defamation laws?

- Yes. They vary from state to state.

Can social media platforms be sued?

- With only limited exceptions, [federal law](#) generally shields social media platforms such as Facebook, Twitter, Instagram and others from civil lawsuits, including defamation lawsuits, when disputed content is posted at their sites by third parties, aka users.

What is fair comment and criticism?

- Don't confuse opinions with statements of fact!

e.g., Hyundai's new SUVs drive terribly. (*opinion*).

e.g., Hyundai's new SUVs are made with substandard parts. (*a statement of fact, which could be libelous or slanderous, if found to be false. An attribution would provide a degree of protection and credibility to the statement.*)

Can relatives and friends sue on behalf of the aggrieved?

- Relatives of a defamed person cannot sue the publication or broadcast outlet that made or released the damaging statement.
- Modifiers such as alleged, allegedly, accused or suspected **do not** necessarily provide protection against libel.

Can deceased individuals be defamed?

- No. Only living individuals can sue for damages to their reputation.

Can an unnamed person be libeled?

- If a person is not named in a story, he or she **can** still sue for libel. Because there are other ways and means to identify the individual or organization.

Can a small group be defamed?

- Yes. When a harmful statement concerns a small group that in turn may hurt individual members. However, there are exceptions to the rule.

How do media outlets handle the names of juveniles and rape victims?

- Generally, it is not illegal for a media outlet to publish or broadcast the name of a juvenile connected with a crime. But that too can vary among jurisdictions nationwide.
- Most news organizations will not disclose the names of women or minors involved in rape and sex trafficking cases.

What happens when a defamatory statement originates from an outside publication?

- Any outlet that publishes the libelous content **can be** sued.

Does a retraction of a damaging statement absolve the media organization?

- No. The defamed person **can still sue** for libel or slander.

Can headlines, captions, graphics and other content be libelous?

- Yes. Everything accompanying the story must be libel-free.

What are the main considerations to win a defamation lawsuit?

- The statement must be false.
- The statement must be defamatory.
- The statement must be published, spoken or broadcast.
- The statement must refer to the plaintiff -- directly or indirectly.
- The statement must show fault.

What is the statute of limitations for filing a lawsuit over libel or slander?

- The time frame varies from one to three years in some states.

Can the misidentification of trademarks be defamatory?

- Yes. For example, if a sports reporter writes that knee injuries among NFL players were being blamed on AstroTurf, but it turns out to be another artificial turf manufacturer, then that would be grounds for a lawsuit by AstroTurf, which can argue its reputation and revenue were affected.
- Other common examples of registered trademarks include:
Xerox (photocopy), Frisbee (flying disk), Kleenex (tissue), Q-Tip (cotton swap) Ziploc (a zippered plastic bag), Rollerblade (in-line skate), ChapStick (lip balm), etc.
- It is wiser to use generic names—unless the story is specifically about the company or trademarked product.

What are examples of words or phrases that generally should be avoided?

- “Victim” because that implies there is a perpetrator. For instance, to refer to someone as a victim of a police shooting could be libelous, particularly if the police are not at fault.
- “Arrested for” convicts someone.
- The word “hit” implies fault by one of the parties. Instead, use “collide,” unless culpability is indisputably clear enough to use “hit” or a synonym.
- “Fired” implies fault of the individual. On the other hand, “laid off” implies that the individual didn’t necessarily do anything wrong—or isn’t at fault.

Others loaded words to watch out for include:

Liar, unprincipled, unreliable, incompetent, abortionist, Alt-Right, Communist, Nazi, atheist, socialist, unreliable, adulterer, racist, conspirator, addict, ex-convict-- and scores of others.

Can people with bad or poor reputations be libeled or slandered?

Yes. For example, an individual may be known for unscrupulous behavior, but that does not necessarily make that person a thief.

Are lawyers considered foolproof safeguards against libel?

- No. However, individuals and institutions are advised to consult a lawyer about any possible litigation arising from an article or posting.
- Don't forget that lawyers are not reporters, whose job it is to do the legwork to ensure their stories contain accurate information, which may be as simple as spelling a name correctly.

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