TORT OF DEFAMATION

LIBEL

Blasphemous
Seditious
Obscene
Defamation

DEVELOPMENT OF DEFAMATION

A statement published to another which makes a claim that calls into question the morals or gives the subject a bad reputation.

Truth?
DEFAMATION

- Libel v. Slander
- Actionable per se
- Defenses?
- The First Amendment

DEFAMATION

The tort of defamation, as it existed at common law, can be defined as the unconsented to and unprivileged intentional communication to a third person of a false statement about the plaintiff which tends to harm the reputation of the plaintiff in the eyes of the community.

Injury is assumed

Prima facie case consists of a simple allegation that the defendant intentionally communicated to a third person a statement about the plaintiff which tended to expose the plaintiff to "public hatred, shame, obloquy, contumely, odium, contempt, ridicule, aversion, ostracism, degradation or disgrace."
DEFAMATION

Prima facie case consists of a simple allegation that the defendant intentionally communicated to a third person a statement about the plaintiff which tended to expose the plaintiff to “public hatred, shame, obloquy, contumely, odium, contempt, ridicule, aversion, ostracism, degradation or disgrace.”

DEFAMATION

Libel v. Slander

• (1) committed a crime of moral turpitude; or
• (2) has venereal disease or something equally loathsome and communicable; or
• (3) is somehow unfit or not to be trusted in her occupation; or
• (4) is not chaste.

Defense: Truth and Privilege

DEFAMATION

Amendment I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.
Sullivan was a Commissioner of Montgomery, Alabama, who claimed that he was defamed in an ad taken out in the NY Times. The ad was entitled, “Heed Their Rising Voices” and it charged in part that an unprecedented wave of Terror had been directed against those who participated in the civil rights demonstrations in the South. Some of the details of the ad were false.

The advertisement did not mention the Plaintiff by name. He claimed that it referred to him indirectly because he had oversight responsibility of the police. The Defendant claimed that it authorized publication of the advertisement because it did not have any reason to believe that its contents were false. There was no independent effort to check its accuracy. The Plaintiff demanded retraction. The Defendant was puzzled as to why the Plaintiff thought the advertisement reflected adversely on him. The jury found the ad libelous per se and actionable without proof of malice. The jury awarded the Plaintiff $500,000 in damages. The Alabama Supreme Court affirmed. The Defendant appealed.
NY TIMES V SULLIVAN

Under Alabama law, a publication is libelous per se if the words tended to injure a person’s reputation or to bring him into public contempt. The jury must find that the words were published of and concerning the plaintiff. Once libel per se has been established, the defendant has no defense as to stated facts unless he can persuade the jury that they were true in all their particulars.

WALKER & BUTTS

Government critics and Citizen critics
Georgia, Alabama, Mississippi
Actual Malice and Punitive Damages

ROSENBLOOM V. METROMEDIA, INC

New York Times protection extended to defamatory falsehoods relating to private persons if the statements concerned matters of general or public interest.
Constitutional protection extended “to all discussion and communication involving matters of public or general concern, with not regard to whether the persons involved are famous or anonymous.”
Limited by Gertz v. Robert Welch, Inc
TIME, INC. V. FIRESTONE

"enough extramarital adventures on both sides to make Dr. Freud's hair curl."

Ms. Firestone did not voluntarily enter the public spotlight or freely choose to publicize issues concerning her marital life. She had to use the courts to obtain a divorce. Time's attempt to "square 'public controversy' with all controversies of intense to the public" failed.

HUSTLER V. FALWELL (1988)

Jerry Falwell talks about his first love.

HUSTLER V. FALWELL (1988)
POLICY CONSIDERATIONS

- Public vs Private
- Economic interest, Competition, Consumer Protection
- Internet
- Reputation
- Freedom of Expression
- Humour