



## Libel And Slander

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### Background

LIBEL AND SLANDER occur when a person or entity communicates false information that damages the reputation of another person or entity. Slander occurs when the false and defamatory communication is spoken and heard. Libel occurs when the false and defamatory communication is written and seen. The laws governing libel and slander, which are collectively known as [DEFAMATION](#), are identical.

A plaintiff who wishes to sue an individual or entity for libel or slander has the burden of proving four claims to a court: First, the plaintiff must show that the [DEFENDANT](#) communicated a defamatory statement. Second, the plaintiff must show that the statement was published or communicated to at least one other person besides the plaintiff. Third, the plaintiff must show that the communication was about the plaintiff and that another party receiving the communication could identify the plaintiff as the subject of the defamatory message. Fourth, the plaintiff must show that the communication injured the plaintiff's reputation.

There are four general defenses to slander and libel. Truth is an absolute defense. Consent by the plaintiff for the publication of the defamatory statement is a defense. Accidental publication of the statement is a defense. Finally, the statements of certain defendants in certain circumstances, such as lawyers, judges, jurors, and witnesses, are protected from defamation for [PUBLIC POLICY](#) reasons. This type of protection is known as privilege.

Prior to the American Revolution, the laws regarding slander and libel stemmed from the English [COMMON LAW](#) system, which permitted the publishers of [LIBELOUS](#) material to be prosecuted and jailed. James Madison saw the need for a press free from governmental restraint, and the Constitution's First Amendment reflects this value by prohibiting laws abridging [FREEDOM OF SPEECH](#) or [FREEDOM OF THE PRESS](#).

Prior to 1964, laws regarding slander and libel were made by the states. Courts at that time did not believe that libelous or slanderous communications were protected by the United States Constitution; therefore, defamation was an issue for the states rather than the federal government.

In 1964, the United States Supreme Court heard the case of *The New York Times v. Sullivan*, and the law of defamation changed drastically. For the first time, the Supreme Court recognized that the First Amendment, which protects an individual's freedom of speech and expression, protects even speech and expression that is defamatory. In *Sullivan*, the plaintiff was a public official who sued *The New York Times* for libel after the newspaper published certain unfavorable allegations about him. The Supreme Court discussed the First Amendment to the Constitution, which states in part that "Congress shall pass no law abridging freedom of speech or of the press." The First Amendment exists, according to the Court, to help protect and foster the free

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flow and exchange of ideas, particularly on public or political issues. The Founding Fathers of the United States valued open debates regarding political issues or governments, determining that citizens in a democracy need a free marketplace of ideas in order to become informed and make good decisions. Open debates often become caustic and emotional, with opponents sharply attacking one another in the effort to persuade others. Sanctioning defamatory speech or expression would put an end to such attacks, but sanctions would also jeopardize the free marketplace of ideas by effectively censoring free and open debate.

The Court saw the need for balancing an individual's right to be protected from false and defamatory accusations with the country's right to be informed via a free marketplace of ideas. It determined that in the case of a public official, such as the police official in Sullivan, the First Amendment rights of free speech and expression outweigh the public official's rights unless the public official can prove that the defendant acted with actual **MALICE**. Actual malice means that the defendant who communicates a defamatory statement does so knowing that the statement is false or very likely false. The defendant need not harbor ill will toward the plaintiff for the public official to recover in an action for slander or libel; the public official need only prove that the defendant knew that the defamatory statement was false or had serious doubts as to its truth.

The actual malice standard only applies to public officials or public figures who sue for slander or libel. Other examples of public officials include elected officials, such as governors or senators, or non-elected government employees with substantial responsibility or control over public affairs. Courts have held that candidates for public office also are public officials and must prove the actual malice standard before prevailing in libel or slander lawsuits.

The Supreme Court in 1967 expanded the actual malice standard for public officials to include public figures as well. Public figures, unlike public officials, are not government officials but instead are extremely prominent private citizens whose prominence allows them to use the mass media to influence policy. Public figures, by the Court's definition, thrust themselves into the public arena. Examples of public figures include famous movie actors, musicians, professional athletes, authors, and others who are so prominent as to be household names.

Courts also recognize limited-purpose public figures, who may not be known in all households but are known for their involvement in a limited public controversy. Examples of limited-purpose public figures may include an attorney representing a notorious criminal in a highly publicized trial or the winner of a multi-million dollar lottery. Courts do not allow the media to create public figures or limited purpose public figures merely by thrusting private citizens into the spotlight; public figures must voluntarily place themselves in the spotlight by, for example, deciding to buy a lottery ticket or by deciding to play football professionally. Public figures and limited-purpose public figures must demonstrate a defendant's actual malice before prevailing in a libel or slander lawsuit.

### **Elements of Defamation**

To prove that a written or verbal statement is defamatory, it is sufficient for a plaintiff to prove that at least one person who received the communication believed that it was detrimental to the plaintiff's reputation. A message that decreases respect for the plaintiff or confidence in the plaintiff or causes disparaging, hostile, or disagreeable opinions about the plaintiff is detrimental to the plaintiff. Even a message that is intended as a joke may be defamatory if at least one person believes it to be serious.

The plaintiff must next prove that the defamatory statement was published. In the law of defamation, the term publication merely means that the statement, either written or spoken, was communicated to someone other than the plaintiff. It is not necessary that the statement be printed or distributed for it to be considered

published slander or libel. Publication may occur when the defendant is speaking to another person or group of people. It may occur when the defendant sends an e-mail message or writes a personal letter. It may occur when the defendant speaks loudly on an elevator and other people hear. It may occur when the defendant writes a newspaper article or book or draws a cartoon and posts it on a bulletin board. However, if the defendant intends to keep communication with the plaintiff private and communicates in a way that demonstrates that intent, publication does not occur when a third party inadvertently receives the communication. For example, a defendant who faxes the plaintiff a letter critical of the plaintiff's work skills is not guilty of publishing the letter if the plaintiff's co-worker receives and reads the letter by mistake.

An entity that republishes a defamatory statement is equally liable as the original publisher. This law means that a newspaper editor who receives a letter to the editor defaming another person is just as liable as the letter's writer if the letter ends up in print in the newspaper. However, this rule applies only if the entity knew or had reason to know the defamatory nature of the statement. Therefore, libraries and bookstores usually are not liable for republishing libelous material.

A plaintiff may not recover for libel or slander without proving that the defamatory statement identified the plaintiff. A defamatory statement that names the plaintiff clearly identifies the plaintiff as the subject of the defamation. Not all defamatory remarks name the subject, however, and defamatory messages alone do not damage reputations. A damaged reputation only occurs when recipients of the message know who the message is defaming. Defamation against one unidentified member of a general group or category of people is not slanderous or libelous. For example, a false [ACCUSATION](#) that an otherwise unidentified student at the state university cheated on final exams is not slanderous or libelous because the student remains unidentifiable. The question becomes more difficult if the message offers more identifiable information. A false accusation that a red-haired female business major who lives on the second floor of her sorority house and drives a black sports car cheated on a final exam in her accounting class could be slanderous or libelous if the female business major could show that others identified her as the subject of the defamation.

The final element of slander or libel is that the defamatory statement damaged the plaintiff's reputation, and that the plaintiff suffered damages as a result. Certain defamatory messages are slanderous or libelous [PER SE](#), meaning that the plaintiff need not prove that the message damaged his or her reputation. Libel or slander per se occurs when the message accuses the plaintiff of committing a crime, of having a loathsome disease, or of being professionally incompetent. Other types of messages may damage the plaintiff's reputation, but because they are not per se slanderous or libelous, it remains the plaintiff's burden to prove that the defamation damaged his or her reputation.

## Defenses to Libel and Slander

If the defendant can show that the substance of a defamatory statement is essentially true, then the plaintiff's claim for slander or libel will fail. For example, assume that the defendant publicly [ACCUSED](#) his boss of cheating on taxes. The boss could sue for slander or libel, depending on whether the accusation was written or spoken. If the defendant could prove that the boss actually did cheat on taxes, the defendant would prevail. If the defendant had no proof of such tax cheating, the plaintiff would prevail.

If the plaintiff consents to the publication of the defamatory information, the plaintiff may not prevail in a lawsuit for slander or libel. This defense most typically arises when the plaintiff has signed a valid document releasing the defendant from liability for statements made regarding the plaintiff. For example, an employee may ask a former employer to write a letter of recommendation regarding the employee's professional and career skills to assist the employee in obtaining a new job. The former employer may, as a precaution, insist that the employee sign a release of liability to ensure that the letter of recommendation does not result in a

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libel lawsuit. If the former employer then reveals unflattering descriptions of the employee's work habits in the letter, the employee may be precluded from suing for libel even if the unflattering remarks are untrue.

Defamatory statements made during court proceedings or written in legal documents for purposes of [LITIGATION](#) generally are privileged, or protected, from slander or libel lawsuits. This privilege exists for reasons of public policy. A witness at a criminal trial, for example, would have difficulty testifying completely and truthfully about witnessing a crime if she feared that her statements could result in a slander lawsuit against her. Similarly, a lawyer who prepares a lawsuit must describe in writing the nature of the accusation against the defendant, and such court pleadings are almost always defamatory in nature. Justice would not be served if the judicial process were hampered by the constant threat of slander or libel lawsuits.

### **Additional Resources**

*West's Encyclopedia of American Law*. West Group, 1998.

### **Organizations**

***Libel Defense Resource Center, Inc***

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