Defamation:
Slander Per Se, Libel Per Quod, Libel Per Se

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Libel vs. Slander

- It’s all “defamation.”
- Why does it matter whether it is “libel” or “slander”?
  - It’s the first step in the analysis to see if there is an extra element of special damages that is required as part of the prima facie case.
Libel vs. Slander

• The distinction between libel and slander differs among jurisdictions.
• A generalization:
  - slander is an oral utterance
  - libel is a more permanent expression, such as a writing, illustration, or photo
• Another generalization:
  - sound → slander
  - sight → libel

Here’s a good question:

• A message written in sand on the beach - is that libel or slander?
Libel vs. Slander

Here’s a close question that actually matters:

- Radio or TV broadcasting - is that libel or slander?

**Jurisdictions vary.**

**Television and radio broadcasting**

- California ➔ slander if by radio
- New York ➔ libel
- Alabama ➔ libel
- Georgia ➔ “defamacast” (per se, so essentially libel)
- Texas ➔ libel if from a script, slander if ad-libbed
Libel vs. Slander

Here’s another close question that actually matters:

- Something posted on the internet - is that libel or slander?

*Largely unanswered.*

Online

California ➔ libel
New Jersey ➔ libel

Unresolved and debated in many places elsewhere
Libel vs. Slander

No distinction between the two in some states:
• Illinois
• Louisiana
• Virginia

The Per Se Categories

• Adverse to one’s profession or business
• Loathsome disease (syphilis, leprosy)
• Guilt of crime involving moral turpitude
• Lack of chastity
Some examples of crimes that have been considered to be “of moral turpitude”

- murder
- voluntary manslaughter
- theft offenses
- forgery
- kidnapping
- mayhem
- rape
- fraud
- spousal abuse
- child abuse
- driving under the influence