



Defamation 5: Publication

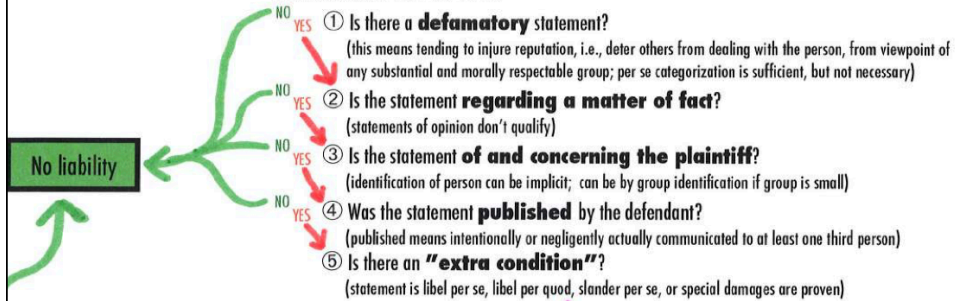
Eric E. Johnson
ericejohnson.com



Konomark
Most rights sharable

TORTS - Common Law Defamation Flow Chart

PRIMA FACIE ELEMENTS:



Is it **libel** or **slander**?

SLANDER PER SE / LIBEL PER QUOD ANALYSIS

Does the statement's defamatory information come from ... ?

- adverse to one's profession or business
- loathsome disease
- guilt of crime involving moral turpitude
- lack of chastity

If **YES** → then no special damages need be proven.

If **NO** → then **special damages** must be proven.

If **slander** ...

use slander per se analysis.

If **libel** ...

Is it **libel per se**?

(no external information is needed to understand defamatory import)

If so, go to defenses.

Publication

- Communication to one third party is all that is necessary.
- *That's all there is to the rule, you just have to believe it!*

Quick Quiz!

Is it published?

- If you make a defamatory statement in the forest and no one is around to hear it?
 - No.
- If you "self-publish" a book, using your own money, and sell one copy to a stranger on eBay?
 - Yes.
- If you communicate it only to the allegedly defamed plaintiff?
 - No.
- If you say but not write it, and people hear it?
 - Yes.