Defamation 7: Defenses

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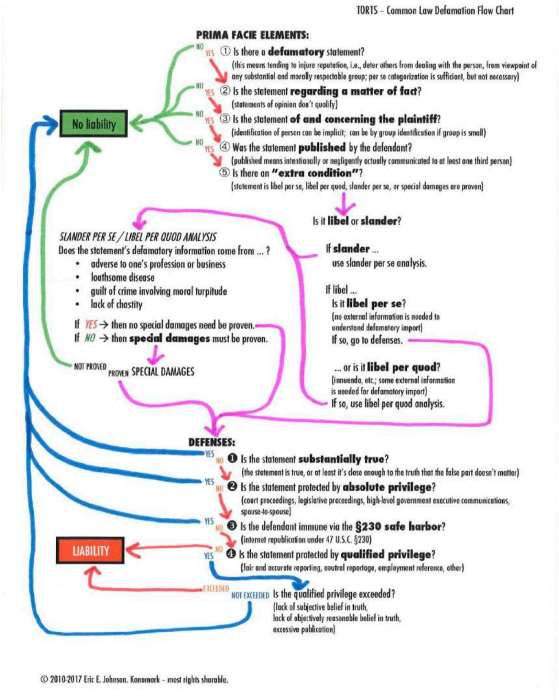

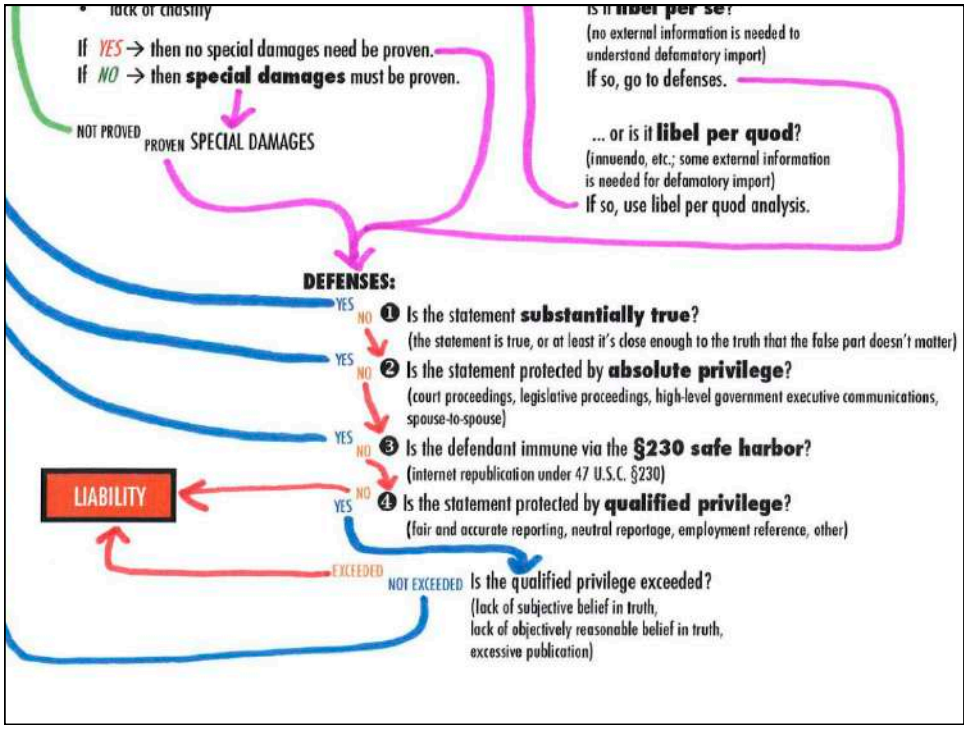

Defamation: Privileges

Republication

- Repeating a defamatory communication ("republication") ordinarily constitutes publication for defamation purposes.
- But, the fair reporting privilege and the neutral reportage privilege are defenses for republishers.

Fair reporting privilege

- Common-law based.
- The media is privileged to provide a fair and accurate report of defamatory statements made in the course of legislative, judicial, administrative and other official proceedings/records, if:
  - The proceedings or records are open to the public, and
  - Relate to a matter of public concern

Limitations on the fair reporting privilege

- Common-law malice may defeat the privilege
- Must be "fair," i.e., not distort the facts or omit important relevant facts that would change the reader/viewer's perception
  - Media report should not carry a "greater sting" than the government-generated content.

Fair reporting privilege: Examples

- A report based on FBI documents not generally available to the public
  - Found to be privileged
- A newspaper reporter's accurate account of police statements to the press expressing doubt about the plaintiff's rape allegations
  - Found to be privileged

Privilege of neutral reportage

- First Amendment based.
- Privilege to fairly and accurately report newsworthy charges made by one public figure against another.
- Does not apply if reporter espouses the charge or distorts the statements in order to make a personal attack.
- Generally moot where reporter lacks malice (since regular First Amendment doctrine requires malice).

§230

§230 Safe Harbor

Applicable to Defamation, Outrage, and Privacy Torts

47 U.S.C. §230

(c) PROTECTION FOR 'GOOD SAMARITAN' BLOCKING AND SCREENING OF OFFENSIVE MATERIAL. —

(1) TREATMENT OF PUBLISHER OR SPEAKER. — No provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider.

(2) CIVIL LIABILITY. — No provider or user of an interactive computer service shall be held liable on account of —

(A) any action voluntarily taken in good faith to restrict access to or availability of material that the provider or user considers to be obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise objectionable, whether or not such material is constitutionally protected; or

(B) any action taken to enable or make available to information content providers or others the technical means to restrict access to material described in paragraph (1).

§230 safe harbor provides broad immunity against torts against site owners:

- Includes:
  - Defamation
  - Privacy torts
  - Outrage (IIED)
  - Nuisance
  - and more …
- Even works with e-mail and other contexts outside the web.
- Does not include:
  - Intellectual property infringement
- Does not apply to the original poster!

Broad applicablility

- "interactive computer service" means any information service, system, or access software provider that provides or enables computer access by multiple users to a computer server.
- Not limited to special kinds of websites. Includes blogs, Twitter, consumer review sites, etc.

Site operators shouldn't lose immunity by:

- Exercising traditional editorial functions, such as pre-screening, selectively deleting.
- Encouraging or paying third-parties for contributions.
- Editing material (unless the editing materially alter the meaning of the content).