

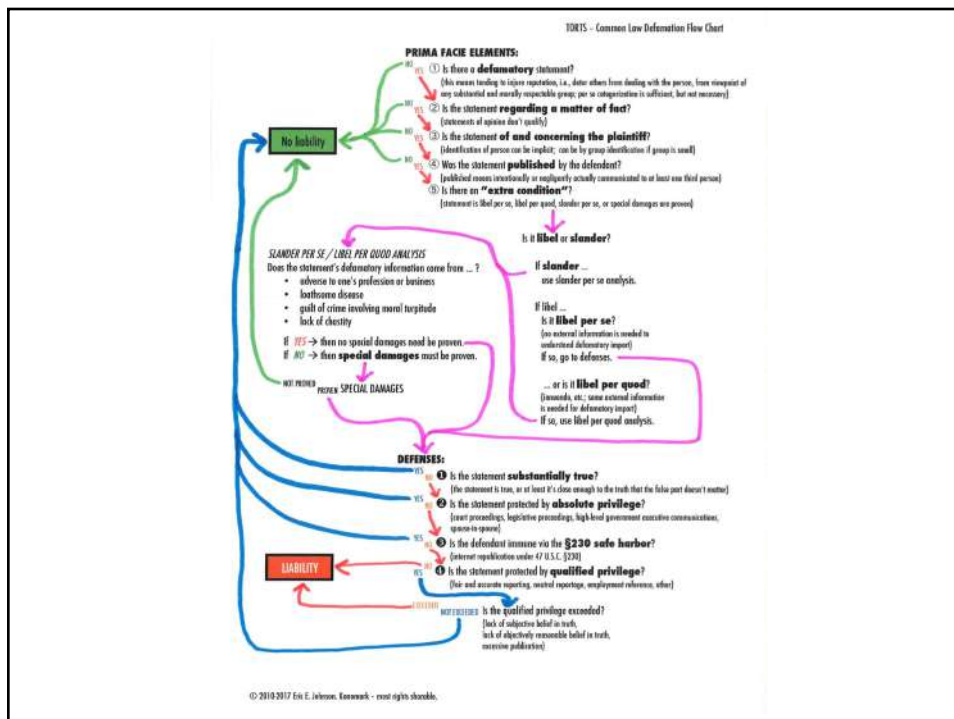


# Defamation 2: Defamatory Statement

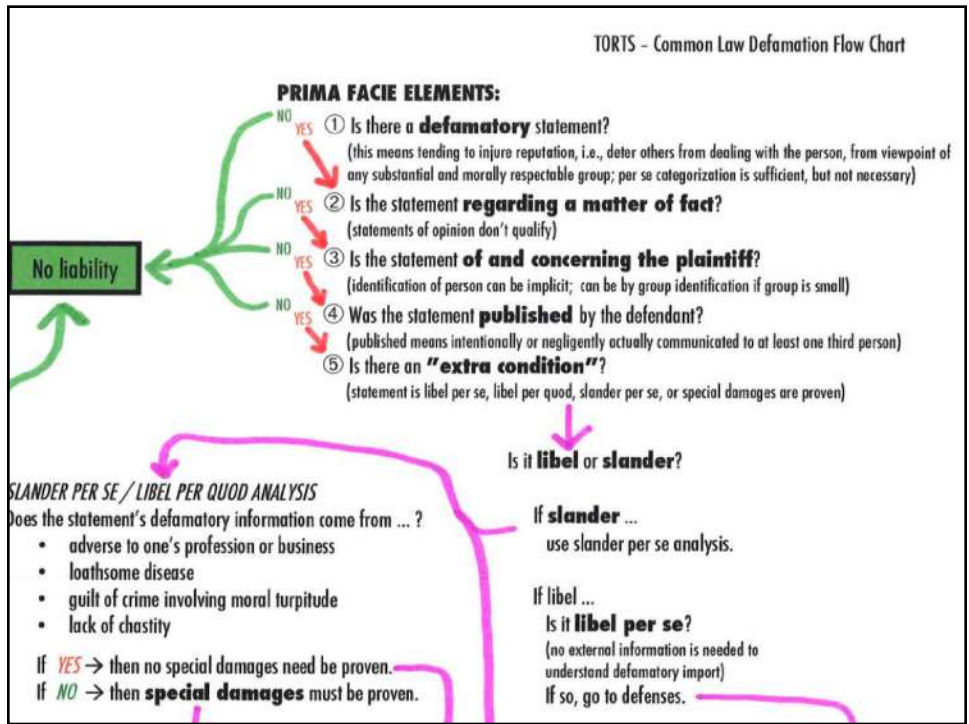
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TORTS - Common Law Defamation Flow Chart



# Defamatory Statement

## **Defamatory meaning**

- “A communication is defamatory if it tends so to harm the reputation of another as to lower him in the estimation of the community or to deter third persons from associating or dealing with him.”  
Nuyen v. Slater (Mich. 1964)

## **Per se categories**

- adverse to one’s profession or business
- loathsome disease
- 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

**Lack of Chastity**

- By statute, includes male and female plaintiffs in Michigan

## **Beyond per-se categories**

### **Held defamatory to represent**

- Mental illness
- Substance abuse
- Criminal acts
- Sexual impropriety, extra-marital affairs
- Bankruptcy, financial irresponsibility
- Dishonesty

## **Beyond per-se categories**

Courts “take the world as it is” when deciding what is defamatory, even if it might be considered wrong thinking

### **Status as a victim of rape**

- Defamatory according to some courts

### **Gay, lesbian, or bisexual orientation**

- Defamatory in most courts as of a few years ago, but the strong trend is toward finding this not reputation harming.

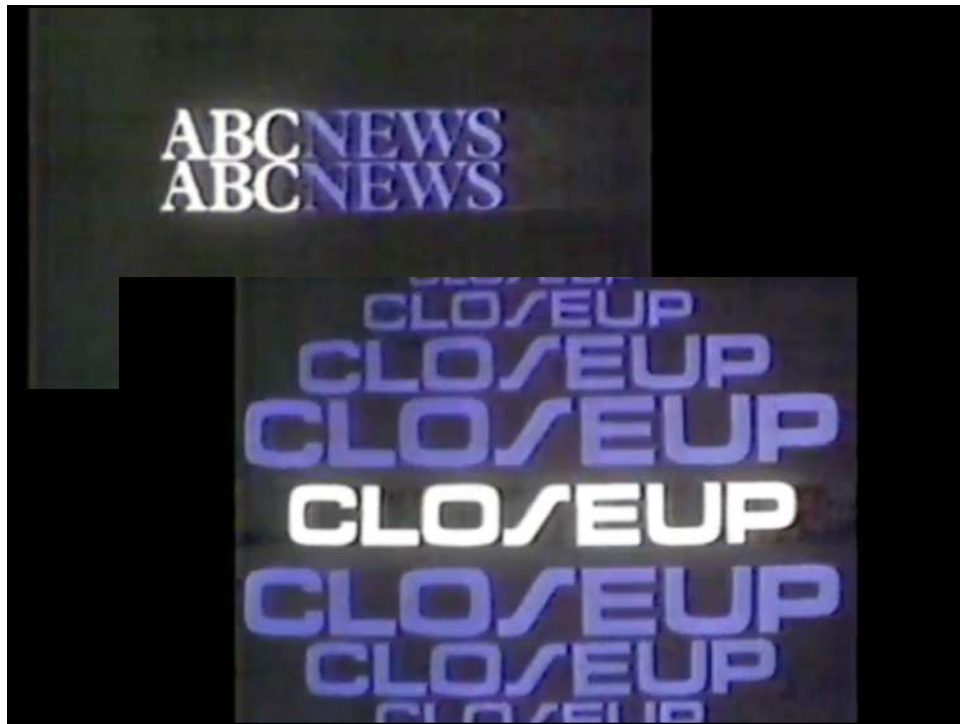
## **Beyond per-se categories**

### **Being a Communist**

- Generally not considered defamatory during World War II
- Generally considered defamatory during Cold War

## **Accident or implication**

- Defamatory statements can be made by implication. An explicit statement is not necessary.
- Defamation can happen accidentally by juxtaposition - especially of words and images - creating perceived meaning unintended by the author.

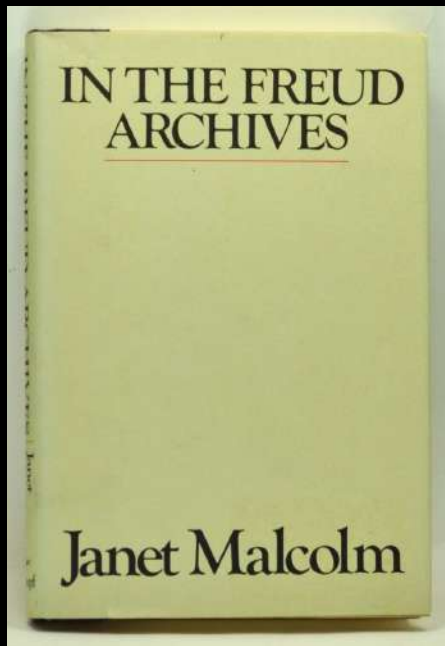


## Clark v. ABC

- “The Broadcast was reasonably capable of two meanings, one defamatory and the other non-defamatory. Consequently, it was for the jury to decide whether the Broadcast was understood as being defamatory.”







#### CONTRIBUTORS

### JANET MALCOLM



Janet Malcolm has been writing for *The New Yorker* since 1963, when the magazine published her poem "Thoughts on Living in a Shaker House."

For nearly ten years, Malcolm wrote *About the House*, a column on interiors and design. From 1975 until 1981, she wrote a photography column. Throughout her career, Malcolm has contributed a variety of pieces, including Profiles, Reporter at Large articles, and book reviews.

Malcolm is the author of eight books. "*Diana and Nikon*," (1980), her first, is a collection of essays on photography. "*Psychoanalysis: The Impossible Profession*," (1981) is an expanded version of her Profile of the psychoanalyst Aaron Green, and "*In the Freud Archives*," (1984) is based on her two-part article on the psychoanalyst Jeffrey

Moussaieff Masson. "*The Journalist and the Murderer*," (1990), about a lawsuit brought by a convicted murderer against the author of a book on his crime, examines the relationship between writer and subject; it was first published in 1989 as a two-part article in the magazine. "*The Purloined Clinic*," (1992) is a collection of essays and criticism from *The New Yorker* and *The New York Review of Books*. "*The Silent Woman: Sylvia Plath & Ted Hughes*," (1994) explores the life and work of Sylvia Plath and is based on an article that originally appeared in the August 23 & 30, 1993, issue of *The New Yorker*. In "*The Crime of Sheila McGough*," (1999), Malcolm focuses on the American legal system. "*Reading Chekhov*," (2001) weaves together close readings of Chekhov's works with scenes from the Russian writer's life and her own travels in Russia. In the fall of 2007, Malcolm published a book titled "*Two Lives: Gertrude Stein and Alice B. Toklas in War and Peace*," based on three articles she wrote about Stein and Toklas that appeared in the magazine.

Malcolm was born in Prague and emigrated with her family to the U.S. in 1939. She lives in New York.

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ANNALS OF SCHOLARSHIP about the unorthodox views on Freud held by psychoanalyst Jeffrey Masson. Writer learned of him in Aug., 1981 when 2 articles on him by Ralph Blumenthal.

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from the miseries of the outer world to the woes of the inner. Masson believes Freud had it right the first time that the seduction theory was correct & Freud's abandonment of it was a disaster for psychoanalysis. Many facts about Freud's life given, especially as revealed through letters His daughter Anna, who died in Oct. 1982, gave Masson access to a cupboard with about 1000 Freud letters in it.

Janet Malcolm, Annals of Scholarship, "I-TROUBLE IN THE ARCHIVES," *The New Yorker*, December 5, 1983, p. 52

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