

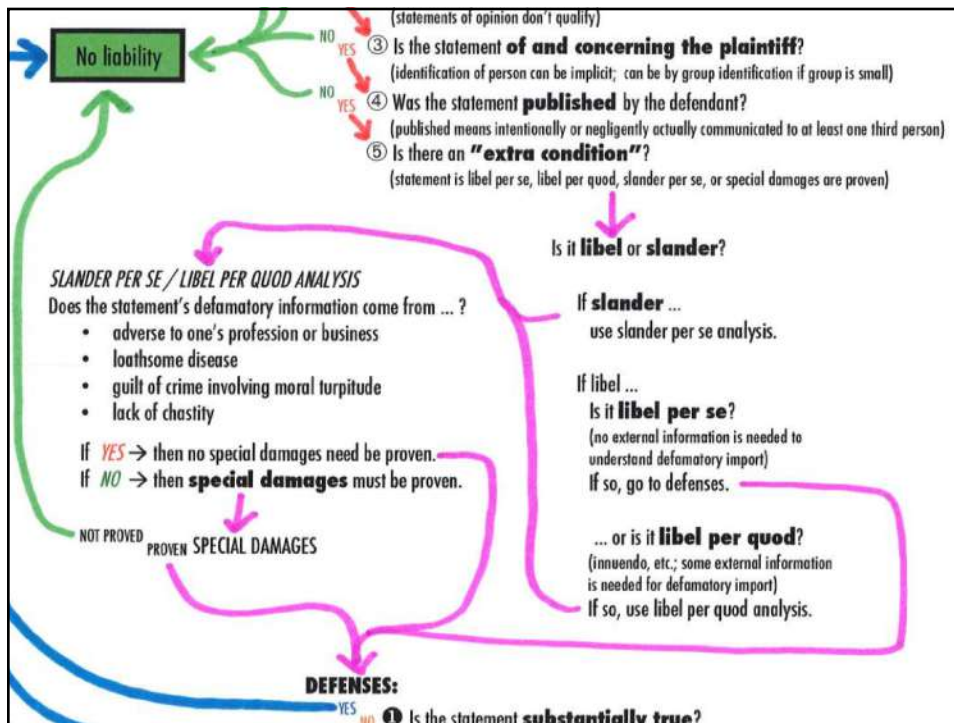


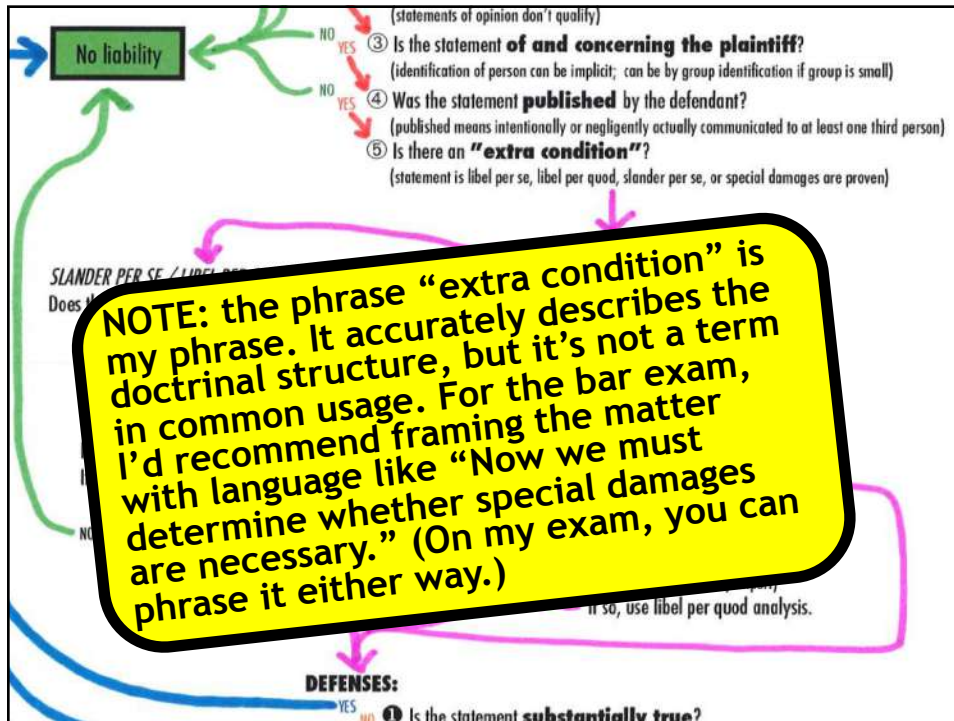
Defamation 6: Slander Per Se, Libel Per Quod, Libel Per Se (Are Special Damages Necessary?)

Torts
Eric E. Johnson
ericejohnson.com



Konomark
Most rights sharable





Slander Per Se, Libel Per Quod, Libel Per Se

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 a writing, illustration, or photo
- Another generalization:
 - sound → slander
 - sight → libel

Libel vs. Slander

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, covid)
- 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

—

**Let's do the
Check-Your-
Understanding
Questions ...**