Defamation 2: Defamatory Statement

Torts
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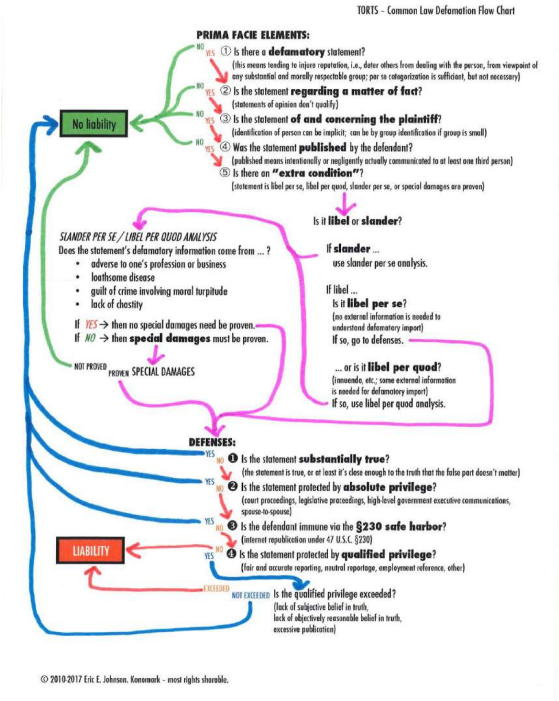

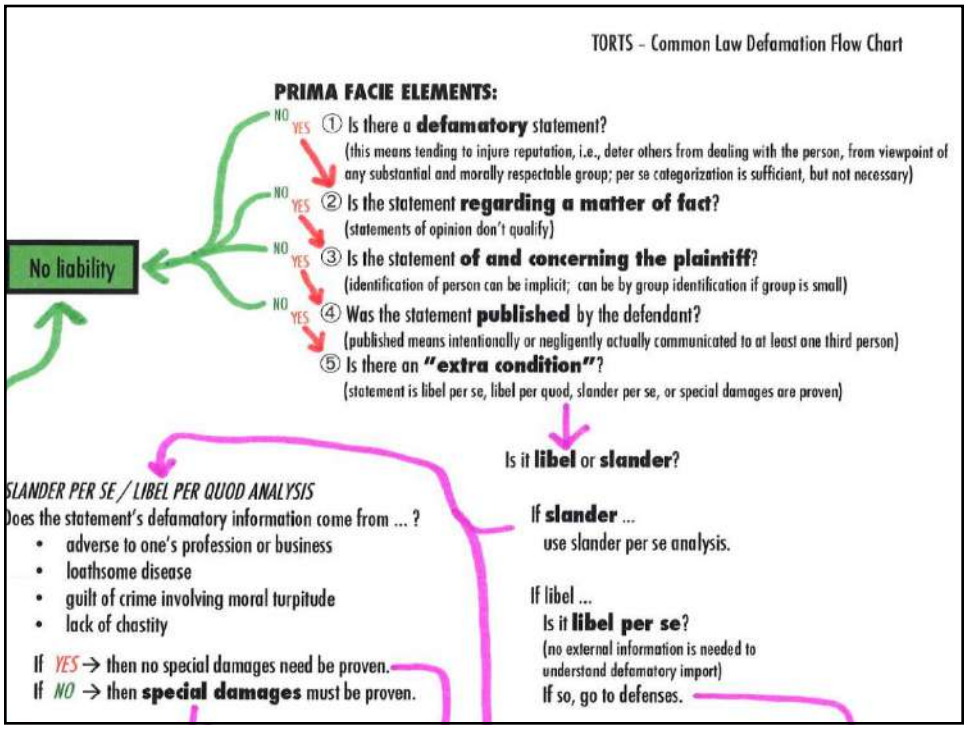

Defamatory Statement

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

- Chastity is:
  - If unmarried, abstinence from sex
  - If married, abstinence from sex outside of the marriage
- Historically, this doctrine was explicitly gender-based, grounded in societal norms about separate roles of women and men, and thus applied only to female plaintiffs.
- Modern courts have tended to include male plaintiffs.

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."