



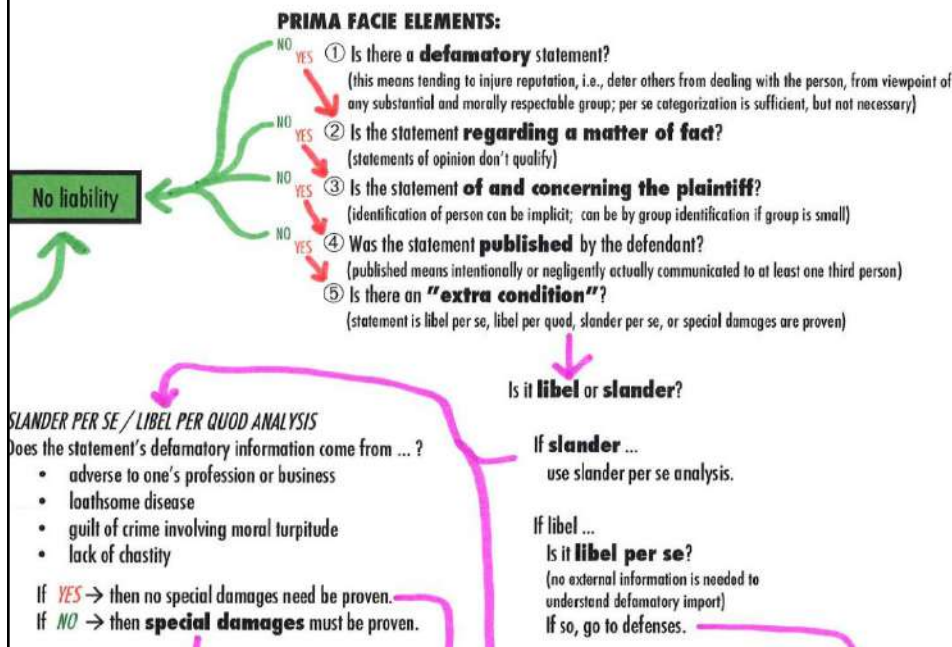
Defamation 4: Of and Concerning the Plaintiff

Torts
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TORTS - Common Law Defamation Flow Chart



Who can be a defamation plaintiff?

Who can be a defamation plaintiff?

- Any natural living person
 - If you've heard "You can't defame the dead," that's actually true.
- Non-natural persons (e.g., corporate entities) can be defamed. (This is often called "trade libel.")
 - But various doctrines make it more difficult for these entities to win defamation suits.

Has the plaintiff been identified?

Of and concerning the plaintiff

- Explicit identification suffices.
- Identification can also be implicit.
- Identification can even be accidental.

Realotheticals...

Fawcett Publications v. Morris

True magazine

Of and concerning the plaintiff?

- Magazine story implies that the University of Oklahoma football team uses stimulant drugs. More than 60 people, including plaintiff are on the team.

Of and concerning the plaintiff?

- Magazine story implies that the University of Oklahoma football team uses stimulant drugs. More than 60 people, including plaintiff are on the team.
- **Yes – every member of the Sooners football team was defamed.**
Fawcett Publications v. Morris (Okla. 1962)

Neiman-Marcus v. Lait

U.S.A. Confidential

Note: While this is a leading case, it involves language and content that is offensive and bigoted.

Of and concerning the plaintiff?

Regarding the Neiman-Marcus store in Dallas:

"The sales girls are good, too – pretty, and often much cheaper – twenty bucks on the average."

"Neiman's put in a men's store. ... [M]ost of the sales staff are fairies, too."

Neiman-Marcus v. Lait (S.D.N.Y.1952)

Of and concerning the plaintiff?

Regarding the Neiman-Marcus store in Dallas:

"The sales girls are good, too — pretty, and often much cheaper — twenty bucks on the average."

382 female sales employees

"Neiman's put in a men's store. ... [M]ost of the sales staff are fairies, too."

25 male sales employees

Neiman-Marcus v. Lait (S.D.N.Y.1952)

Of and concerning the plaintiff?

Regarding the Neiman-Marcus store in Dallas:

"The sales girls are good, too — pretty, and often much cheaper — twenty bucks on the average."

382 female sales employees

→ No. Suit dismissed.

"Neiman's put in a men's store. ... [M]ost of the sales staff are fairies, too."

25 male sales employees

→ Yes. Suit permitted.

Neiman-Marcus v. Lait (S.D.N.Y.1952)

Stanton v. Metro Corp.

Boston Magazine
“The Mating Habits of the
Suburban Teenager”

- Boston Magazine published “The Mating Habits of the Suburban Teenager,” reporting an increase in teenage casual sex.

- An accompanying photo depicted five students at a high school dance.

- A disclaimer said: “The photos on these pages are from an award-winning five-year project on teen sexuality taken by photojournalist Dan Habib. The individuals pictured are unrelated to the people or events described in this story. The names of the teenagers interviewed for this story have been changed.”

“It’s all pretty random. We just get together in small groups of kids and drink a lot and then hook up with whoever.” Christine, a curly-haired pixie in the under-90 weight range, chimes in. “Sometimes we’ll hook up for two or three months at a time with one person. But no one really ever goes steady. Dating is just really uncommon. No one wants that kind of responsibility, you know? Most of us just go out and get drunk and whatever — hook up at someone’s house.”
– from the article

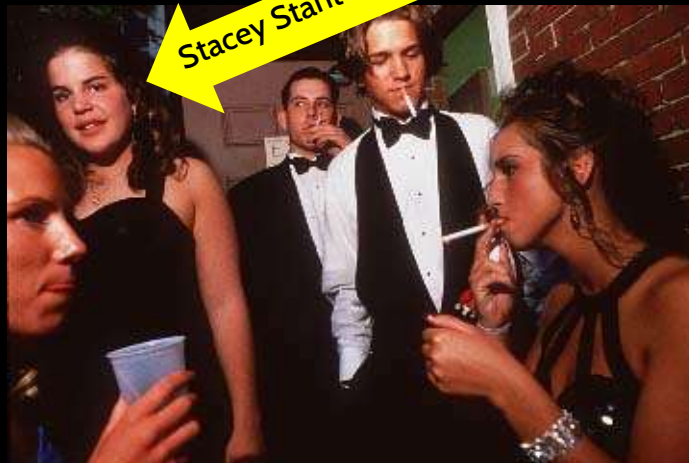


Photo used with Boston Magazine story, by Dan Habib.

Of and concerning the plaintiff?



Of and concerning the plaintiff?



- **No. The disclaimer avoids identification.
Suit dismissed.**
Stanton v. Metro Corp. (D. Mass. 2005)

Of and concerning the plaintiff?



- ~~No. The disclaimer avoids identification.
Suit dismissed.
Stanton v. Metro Corp. (D. Mass. 2005)~~
- Reversed!
- Yes. The reasonable reader might miss the second sentence of the disclaimer.
Stanton v. Metro Corp. (1st Cir. 2006)

*Why'd the
author do that?*

from your casebook ...

Why'd the author do that?

For an example of libel per se, suppose this is printed in the newspaper: "Ozella Grantham Clifton of Upper Larnwick, a noted methamphetamine addict, is a bankrupt spendthrift." This is libel per se because it is libel (as opposed to slander), it is reputation-harming, and no external information is needed to understand its defamatory meaning. Thus, it won't matter that the facts attributed to Ozella Grantham Clifton don't fall into any of the per se categories. This statement will be actionable as libel per se.

Why did the author of your casebook use "Ozella Grantham Clifton of Upper Larnwick" for the example?

from your casebook ...

Why'd the author do that?

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Why did the author of your casebook use "Ozella Grantham Clifton of Upper Larnwick" for the example?

- Because it sounds funny?
 - Nope!
- It's to avoid defaming a real person!
 - (What are the odds there's someone with that name, much less from a town that adopts that name?)



“Ozella Grantham Clifton”



“Ozella Grantham Clifton”

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