



# Trade Libel and Defamation

Trademark & Unfair Competition  
Eric E. Johnson  
ericejohnson.com



Konomark  
Most rights sharable

## Terms: “trade libel” and “defamation”

- “Trade libel” is sometimes used to refer to a corporation or business entity suing for defamation (as opposed to a natural person suing).
- “Trade libel” is used by many sources to mean a cause of action distinct from defamation: Where defamation is an injurious falsehood about a person (natural or corporate), trade libel is an injurious falsehood about a product, service, or a piece of property.
- This second sense is often called “product disparagement.”

## **Product disparagement**

**(i.e., “trade libel” in the as-opposed-to-defamation sense)**

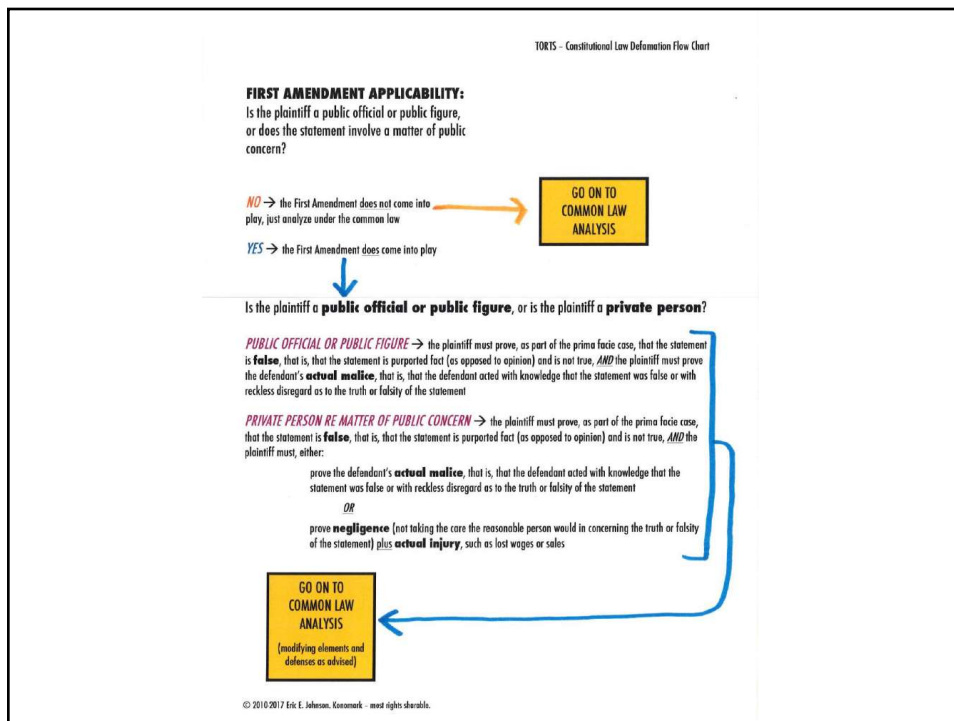
- At root, product disparagement involves much of the same doctrine as defamation, but requirements are added.
- Typical differences vs defamation:
  - Product disparagement is regarded as being a stricter, more demanding claim for a plaintiff to bring. A plaintiff has been said to have “very limited rights” to sue over falsehoods said about a product.
  - Special damages are always required (e.g., proving an itemized list of lost sales).
  - The plaintiff must prove falsity.
  - The plaintiff must prove actual malice (or even more, such as intent to dissuade sales).
  - The plaintiff may have to prove that pecuniary damages were foreseeable by or intended by the defendant.

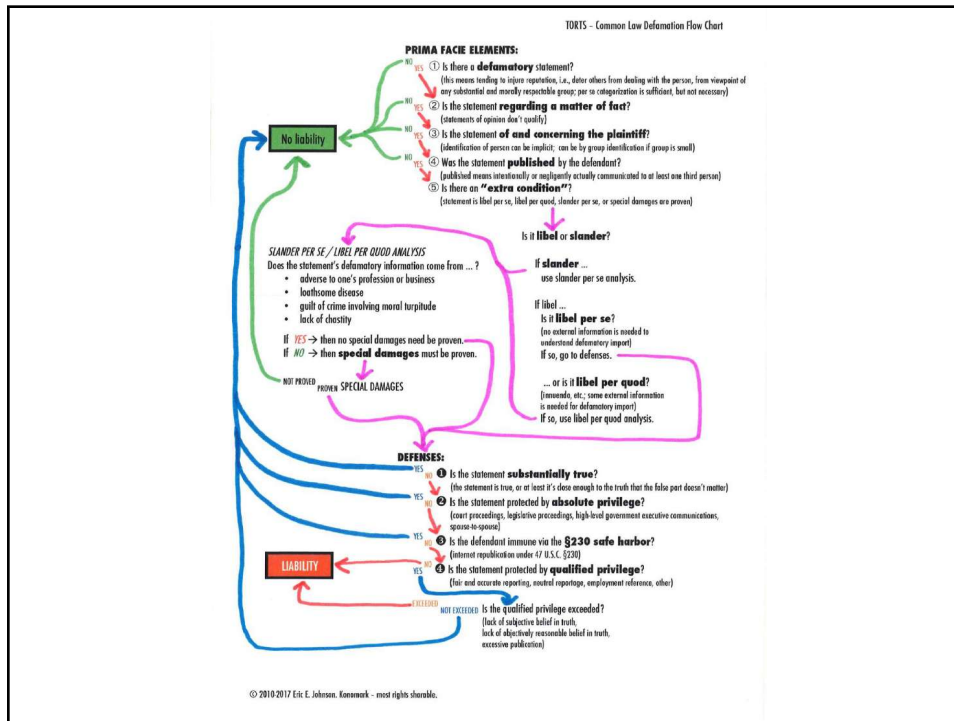
## **Product disparagement**

**(i.e., “trade libel” in the as-opposed-to-defamation sense)**

- So to learn the bulk of the doctrine regarding product disparagement, we can just proceed to talking about defamation.

# The Defamation Flowchart





Constitutional  
analysis

**FIRST AMENDMENT APPLICABILITY:**

Is the plaintiff a public official or public figure, or does the statement involve a matter of public concern?

**NO** → the First Amendment does not come into play, just analyze under the common law

GO ON TO COMMON LAW ANALYSIS

**YES** → the First Amendment does come into play

Is the plaintiff a **public official or public figure**, or is the plaintiff a **private person**?

**PUBLIC OFFICIAL OR PUBLIC FIGURE** → the plaintiff must prove, as part of the prima facie case, that the statement is **false**, that is, that the statement is purported fact (as opposed to opinion) and is not true, **AND** the plaintiff must prove the defendant's **actual malice**, that is, that the defendant acted with knowledge that the statement was false or with reckless disregard as to the truth or falsity of the statement

**PRIVATE PERSON RE MATTER OF PUBLIC CONCERN** → the plaintiff must prove, as part of the prima facie case, that the statement is **false**, that is, that the statement is purported fact (as opposed to opinion) and is not true, **AND** the plaintiff must, either:

prove the defendant's **actual malice**, that is, that the defendant acted with knowledge that the statement was false or with reckless disregard as to the truth or falsity of the statement

OR

prove **negligence** (not taking the care the reasonable person would in concerning the truth or falsity of the statement) **plus actual injury**, such as lost wages or sales

GO ON TO COMMON LAW ANALYSIS

(modifying elements and defenses as advised)

**FIRST AMENDMENT APPLICABILITY:**

Is the plaintiff a public official or public figure, or does the statement involve a matter of public concern?

**NO** → the First Amendment does not come into play, just analyze under the common law

GO ON TO COMMON LAW ANALYSIS

**YES** → the First Amendment does come into play

Is the plaintiff a **public official or public figure**, or is the plaintiff a **private person**?

**PUBLIC OFFICIAL OR PUBLIC FIGURE** → the plaintiff must prove, as part of the prima facie case, that the statement is **false**, that is, that the statement is purported fact (as opposed to opinion) and is not true, **AND** the plaintiff must prove the defendant's **actual malice**, that is, that the defendant acted with knowledge that the statement was false or with reckless disregard as to the truth or falsity of the statement

**PRIVATE PERSON RE MATTER OF PUBLIC CONCERN** → the plaintiff must prove, as part of the prima facie case,

Is the plaintiff a **public official or public figure**, or is the plaintiff a **private person**?

**PUBLIC OFFICIAL OR PUBLIC FIGURE** → the plaintiff must prove, as part of the prima facie case, that the statement is **false**, that is, that the statement is purported fact (as opposed to opinion) and is not true, **AND** the plaintiff must prove the defendant's **actual malice**, that is, that the defendant acted with knowledge that the statement was false or with reckless disregard as to the truth or falsity of the statement

**PRIVATE PERSON RE MATTER OF PUBLIC CONCERN** → the plaintiff must prove, as part of the prima facie case, that the statement is **false**, that is, that the statement is purported fact (as opposed to opinion) and is not true, **AND** the plaintiff must, either:

prove the defendant's **actual malice**, that is, that the defendant acted with knowledge that the statement was false or with reckless disregard as to the truth or falsity of the statement

*OR*

prove **negligence** (not taking the care the reasonable person would in concerning the truth or falsity of the statement) plus **actual injury**, such as lost wages or sales

GO ON TO  
COMMON LAW  
ANALYSIS  
(modifying elements and  
defenses as advised)



Public official?

*[We'll skip this.]*





## Public figure?

“Those who, by reason of the notoriety of their achievements or the vigor and success with which they seek the public's attention, are properly classed as public figures.”

Gertz v. Robert Welch, 418 U.S. 323, 342 (1974)



## Public figure?

The designation of public figure “may rest on either of two alternative bases. In some instances an individual may achieve such pervasive fame or notoriety that he becomes a public figure for all purposes and in all contexts. More commonly, an individual voluntarily injects himself or is drawn into a particular public controversy and thereby becomes a public figure for a limited range of issues. In either case such persons assume special prominence in the resolution of public questions.”

Gertz v. Robert Welch, 418 U.S. 323, 351 (1974)

## Public figure?

General-purpose public figure

figure “may rest on either of two alternative bases. In some instances an individual may achieve such pervasive fame or notoriety that he becomes a public figure for all purposes and in all contexts. More commonly, an individual voluntarily injects himself or is drawn into a particular public controversy and thereby becomes a public figure for a limited range of issues. In either case such persons assume special prominence in the resolution of public questions.”

Gertz v. Robert Welch

Limited-purpose public figure

## Public figure?

The designation of public figure:

"Generally, an individual can become a limited purpose public figure only through his own actions."

Biro v. Condé Nast (S.D.N.Y. 2013)

Individual voluntarily injects himself or is drawn into a particular public controversy and thereby becomes a public figure for a limited range of issues. In either case such persons assume special prominence in the resolution of public questions.

Gertz v. Robert Welch

Limited-purpose public figure

Realothenicals...

## Public figure?

- Bose – makers of the heavily advertised Bose Wave Radio

## Public figure?

- Bose – makers of the heavily advertised Bose Wave Radio
- Yes.  
Bose v. Consumers Union (Consumer Reports magazine) (U.S. 1984)

## Public figure?

- Government contractor that provided civilian interrogators for U.S. Army intelligence brigade

## Public figure?

- Government contractor that provided civilian interrogators for U.S. Army intelligence brigade
- Yes.  
[CACI Premier Technology, Inc. v. Rhodes](#)  
(4th Cir. 2008)

## Public figure?

- Larry Klayman, founder and former chair of Judicial Watch, a public-interest law firm; frequent guest on TV, cable, radio; and has “celebrity status within the non-profit legal/political community”

## Public figure?

- Larry Klayman, founder and former chair of Judicial Watch, a public-interest law firm; frequent guest on TV, cable, radio; and has “celebrity status within the non-profit legal/political community”
- Yes – general-purpose public figure.  
[Klayman v. Judicial Watch \(D.D.C. 2009\)](#)

## Public figure?

- Rev. Norwood Thompson, Jr., pastor of the First Zion Baptist Church in New Orleans, civically active, and the subject of some local media coverage regarding his activities

## Public figure?

- Rev. Norwood Thompson, Jr., pastor of the First Zion Baptist Church in New Orleans, civically active, and the subject of some local media coverage regarding his activities
- Yes – general-purpose public figure.  
Thompson v. Emmis Television Broadcasting  
(La. App. 2005)

## Public figure?

- Local television news reporter who broadcast more than 1,000 stories, participated in at least four public charitable events and considered herself a local celebrity.

## Public figure?

- Local television news reporter who broadcast more than 1,000 stories, participated in at least four public charitable events and considered herself a local celebrity.
- **No.**  
**Wayment v. Clear Channel Broadcasting (Utah 2005)**

## Public figure?

- Owner of business that customized jetskis who posted to internet news group rec.sports.jetski and who was interviewed by SPLASH magazine

## Public figure?

- Owner of business that customized jetskis who posted to internet news group rec.sports.jetski and who was interviewed by SPLASH magazine
- Yes – limited-purpose public figure.  
Hibdon v. Grabowski (Tenn. App. 2005)
- Court noted that rec.sport.jetski is an internet site that “is accessible worldwide.”



**IMPORTANT NOTE:**

confusing to you  
≠ you are confused

The doctrines and their application  
are themselves foggy, fluid, and  
fuzzy.

Remember: If you find it  
all confusing, it doesn't  
mean you are confused;  
it's actually a leading  
indicator that you  
understand. 😊

Is the plaintiff a **public official or public figure**, or is the plaintiff a **private person**?

**PUBLIC OFFICIAL OR PUBLIC FIGURE** → the plaintiff must prove, as part of the prima facie case, that the statement is **false**, that is, that the statement is purported fact (as opposed to opinion) and is not true, **AND** the plaintiff must prove the defendant's **actual malice**, that is, that the defendant acted with knowledge that the statement was false or with reckless disregard as to the truth or falsity of the statement

**PRIVATE PERSON RE MATTER OF PUBLIC CONCERN** → the plaintiff must prove, as part of the prima facie case, that the statement is **false**, that is, that the statement is purported fact (as opposed to opinion) and is not true, **AND** the plaintiff must, either:

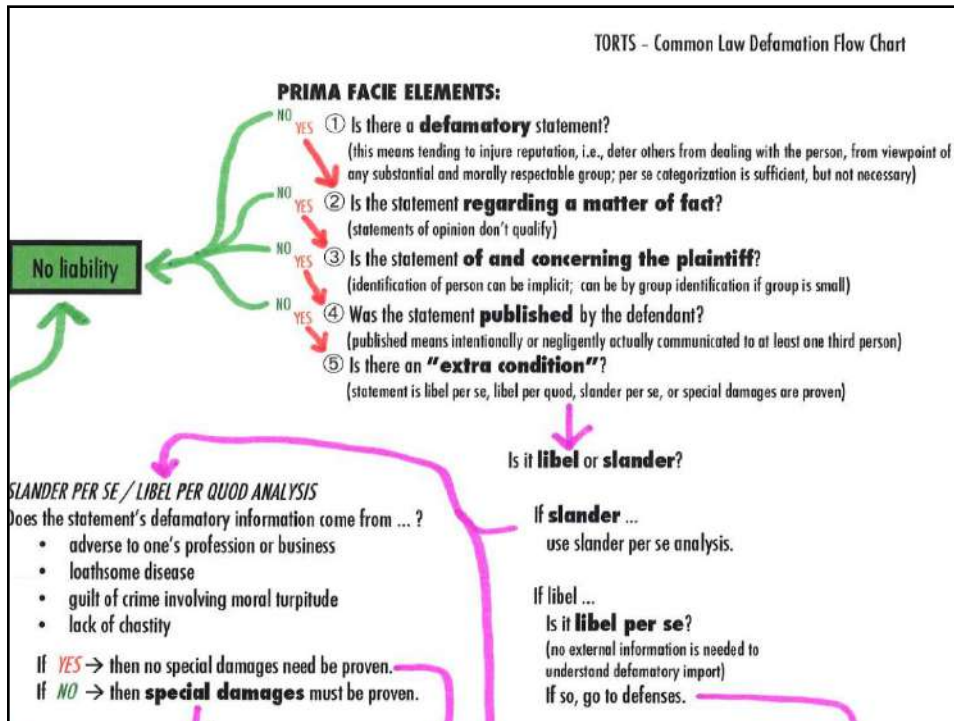
prove the defendant's **actual malice**, that is, that the defendant acted with knowledge that the statement was false or with reckless disregard as to the truth or falsity of the statement

*OR*

prove **negligence** (not taking the care the reasonable person would in concerning the truth or falsity of the statement) plus **actual injury**, such as lost wages or sales

GO ON TO  
COMMON LAW  
ANALYSIS  
(modifying elements and  
defenses as advised)

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.

**Regarding a  
Matter of  
Fact**

## Fact vs. opinion

- Only statements of purported fact can be defamatory.
- Opinion is protected.
- What counts as non-actionable opinion can be a close issue.

## Fact vs. opinion

- In considering whether a statement is a factual/actionable one, courts will consider:
  - The context
  - Whether the statement is provably false
  - Precision and specificity of language
  - Words of apparence, cautionary language
  - The medium
  - The intended audience



Realotheticals...

Fact vs. Opinion

## Snively v. Record Publishing Co.

(Cal. 1921)

Political cartoon suggested the chief of the LAPD was secretly receiving money for illegal purposes.

Factual?

## Snively v. Record Publishing Co. (Cal. 1921)

Political cartoon suggested the chief of the LAPD was secretly receiving money for illegal purposes.

Factual? **No.**

The cartoon was protected as fair comment. Political cartoons get “running room” from courts, as it is intrinsic to the genre that facts are stretched and exaggerated for the purpose of advancing a pointed commentary.

## Obsidian Finance Group v. Cox (D. Or. 2011)



## Obsidian Finance Group v. Cox

(D. Or. 2011)

Cox's blogged allegations against Padrick included money laundering, perpetrating "fraud on the courts," and engaging in various "illegal activity."

Cox blogged that Padrick was a "Thief," a "CRIMINAL," and a "Corrupt Attorney."

## Obsidian Finance Group v. Cox

(D. Or. 2011)

**Factual assertion?**

## Obsidian Finance Group v. Cox

(D. Or. 2011)

### Factual assertion?

**No.** "Defendant's ... statements contain so little actual content that they do not assert, or imply, verifiable assertions of fact. They are, instead, statements of exaggerated subjective belief such that they cannot be proven true or false. Considering all of the statements in the record under the totality of circumstances, the statements at issue are not actionable assertions of fact, but are ... expressions of opinion."

## Moldea v. New York Times

(D.C. Cir. 1994)

"But there is too much sloppy journalism to trust the bulk of this book's 512 pages — including its whopping 64 pages of notes."

– from the article

Is this a factual assertion?

**Moldea v. New York Times**  
(D.C. Cir. 1994)

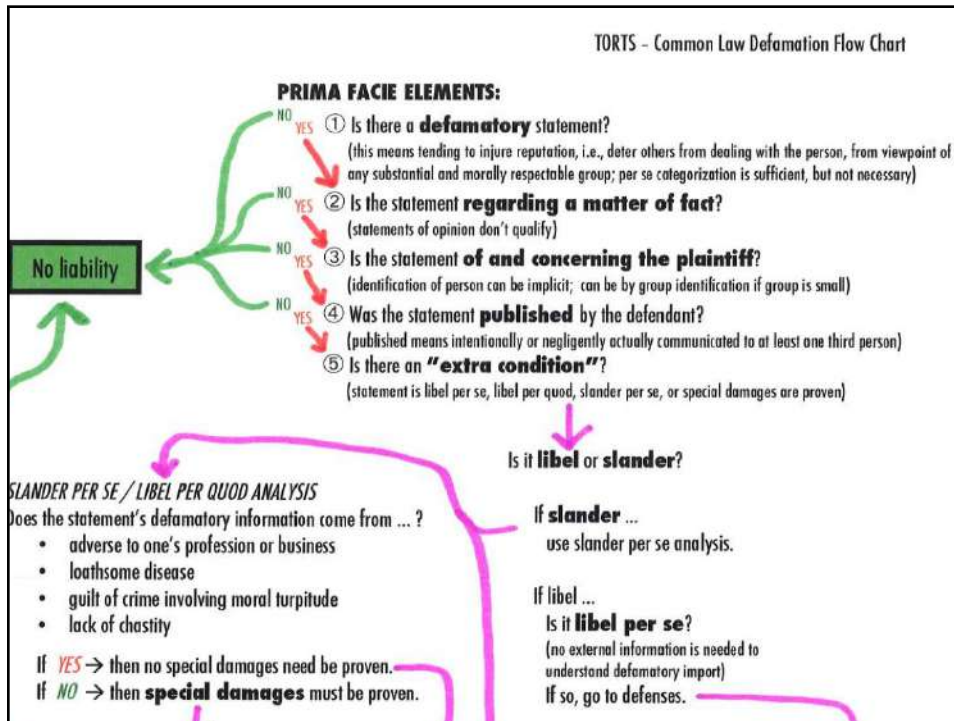
“But there is too much sloppy journalism to trust the bulk of this book's 512 pages — including its whopping 64 pages of notes.”

– from the article

Is this a factual assertion?

Yes.

**Of and  
concerning  
the 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.

Of and concerning the plaintiff

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

Realothenicals...

## 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.

## 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."

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.

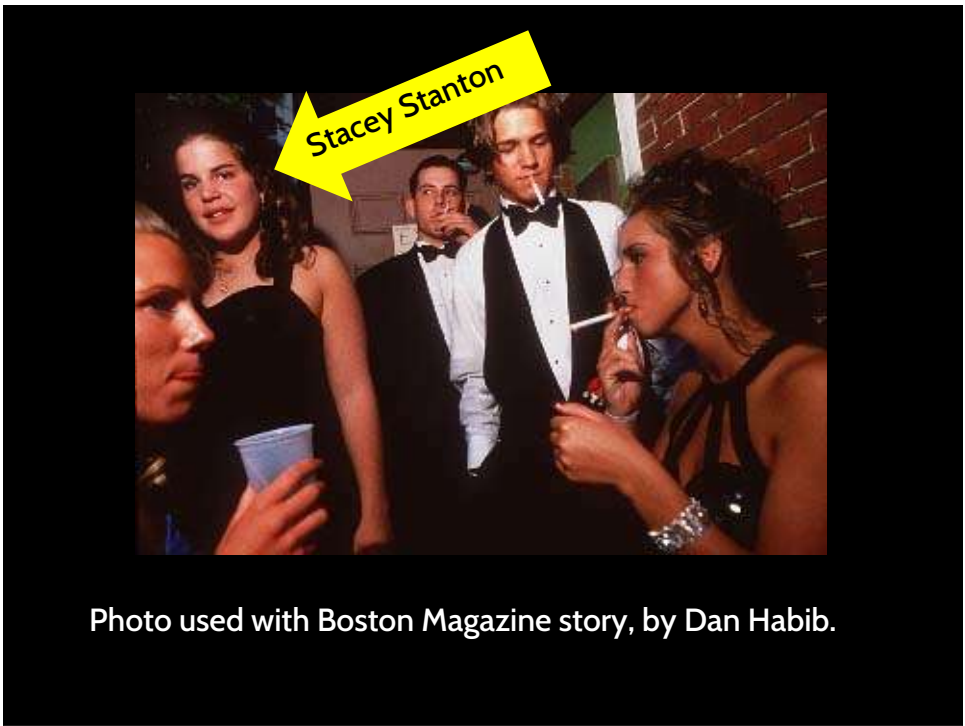
- An accompanying photo depicted five students at a high school dance.



Photo used with Boston Magazine story, by Dan Habib.

- 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



Of and concerning the plaintiff?



## Of and concerning the plaintiff?



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

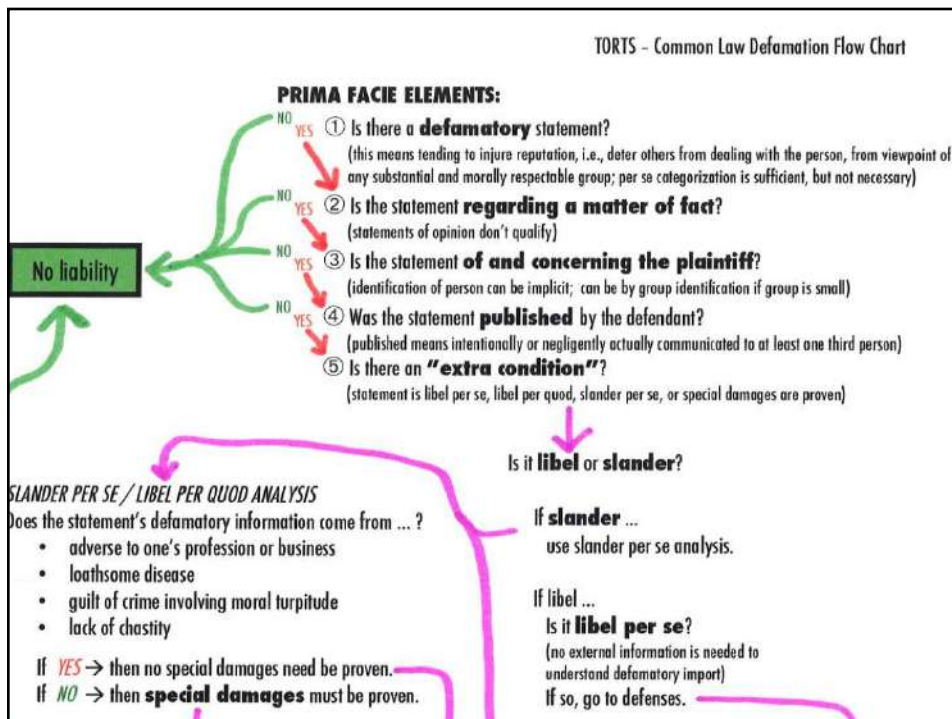
## Of and concerning the plaintiff?



- ~~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)



# Publication



## Publication

- Communication to one third party is all that is necessary.
- That's all there is to the rule, you just have to believe it!

**Quick Quiz!**

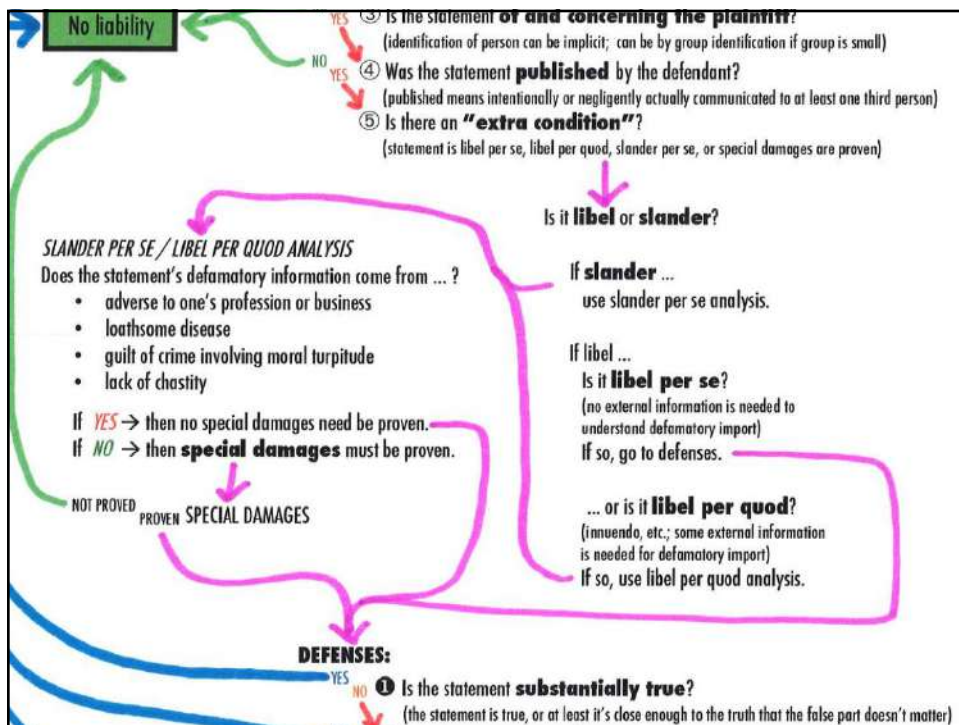
## Is it published?

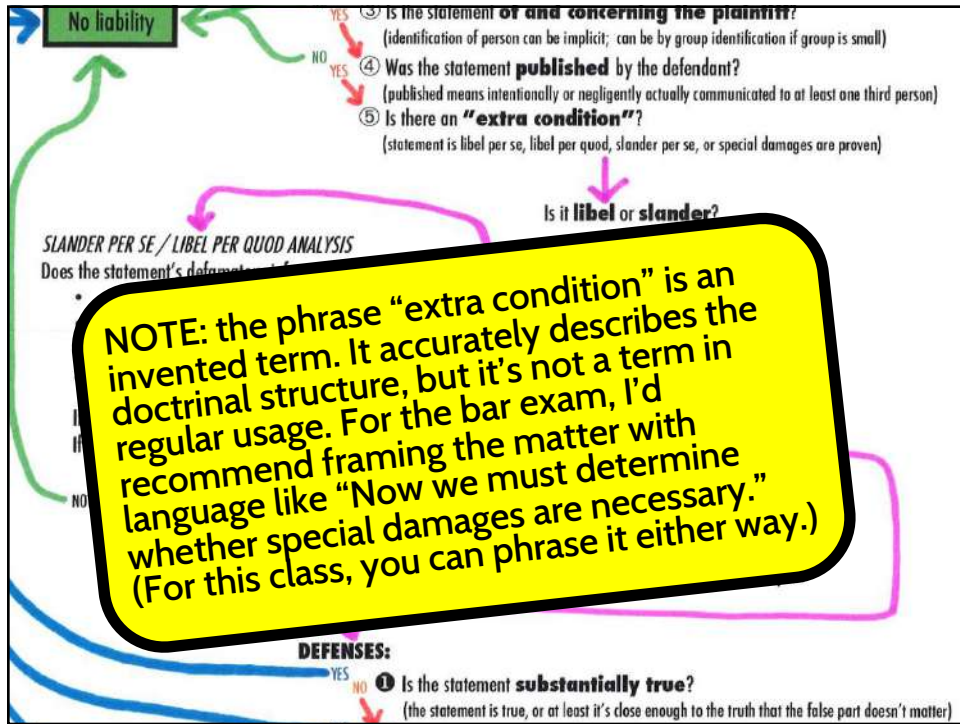
- If you make a defamatory statement in the forest and no one is around to hear it?
  - No.
- If you "self-publish" a book, using your own money, and sell one copy to a stranger on eBay?
  - Yes.
- If you communicate it only to the allegedly defamed plaintiff?
  - No.
- If you say but not write it, and people hear it?
  - Yes.

**Are special  
damages needed?  
(Slander per se, libel  
per quod, libel per se)**

## NOTE:

This slideshow contains some statements about law in particular states. These are examples meant to illustrate trends or diversity among jurisdictions. But I don't constantly cite-check this slideshow, so it's possible state-specific statements are out of date because of overruling cases, superseding statutes, or repeal.





## 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?

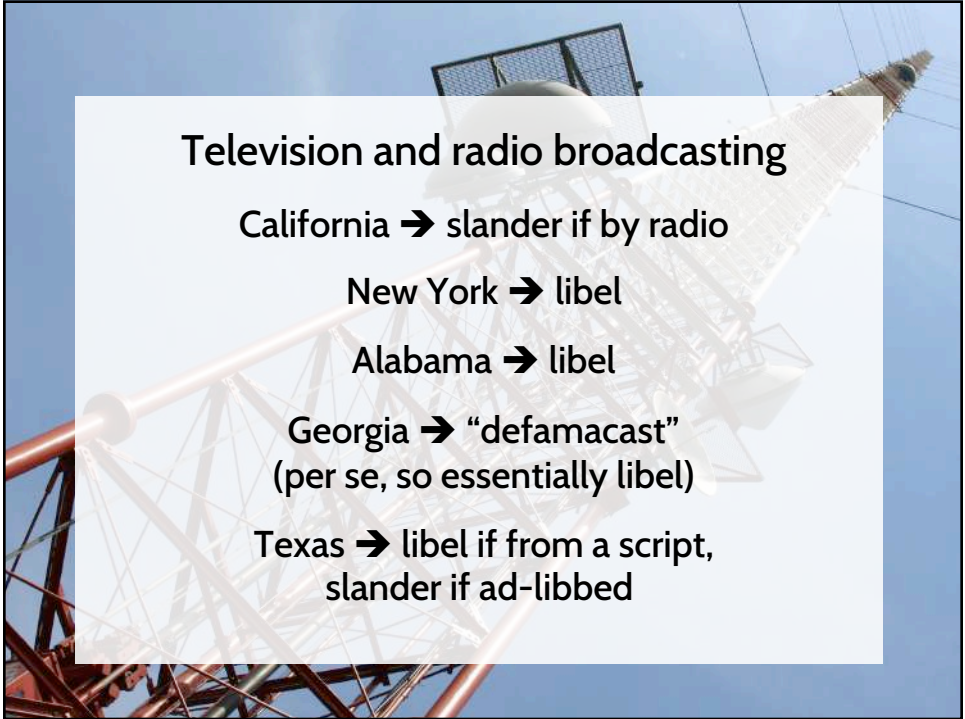


## Libel vs. Slander

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

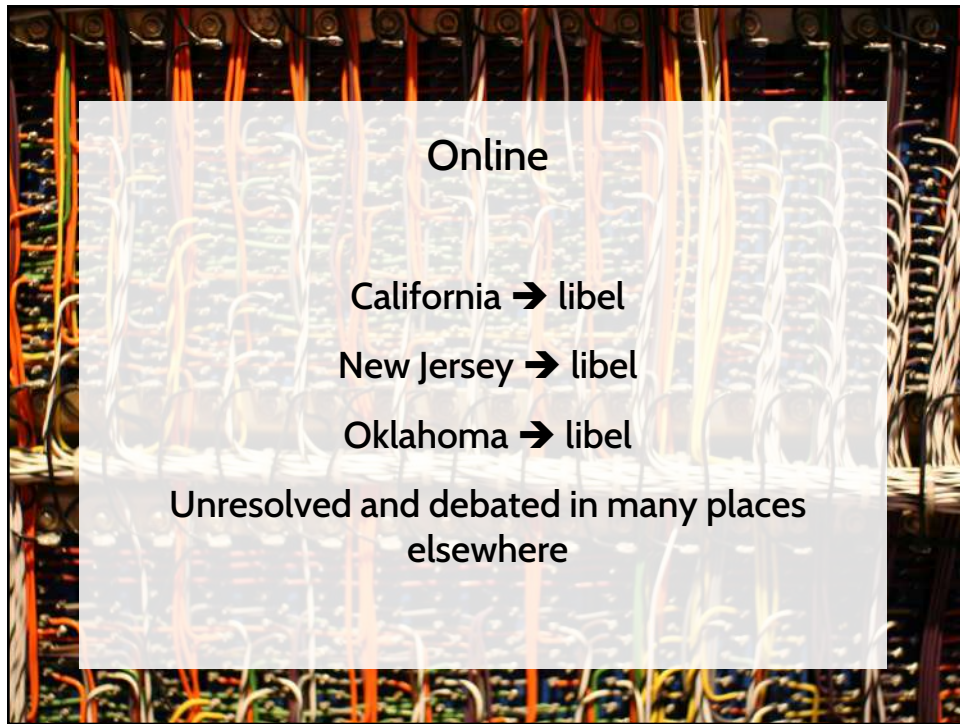
## Libel vs. Slander

Here’s another close question  
that actually matters:

- Something posted on the internet – is that libel or slander?

Libel in some places;  
unanswered other places.





## Libel vs. Slander

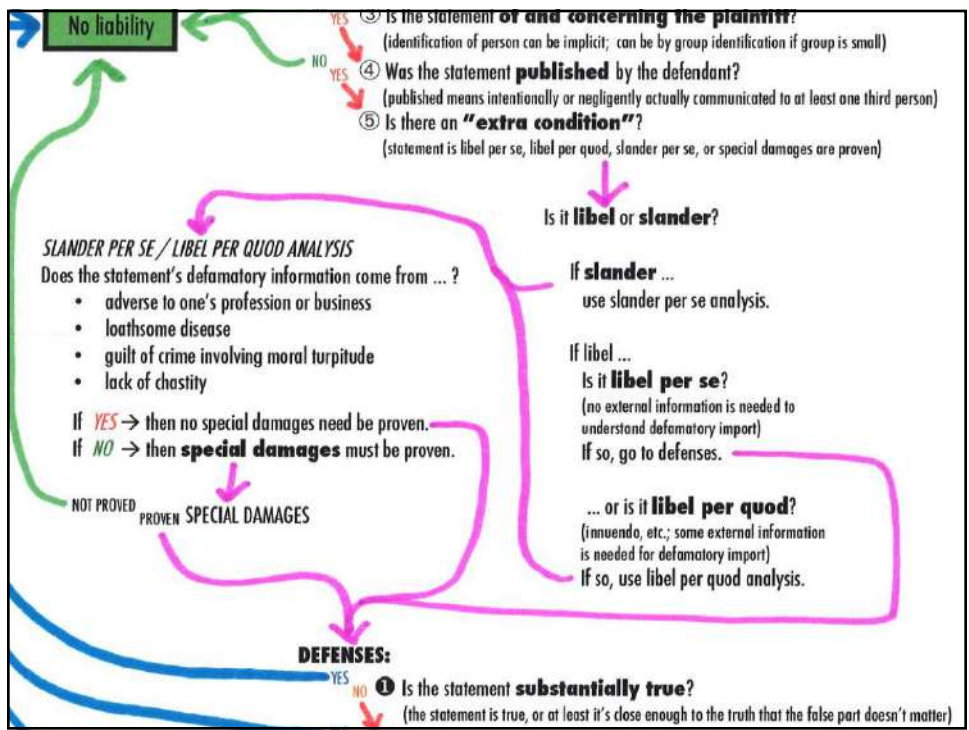
No distinction between the two in  
some states:

- Illinois
- Louisiana
- Virginia

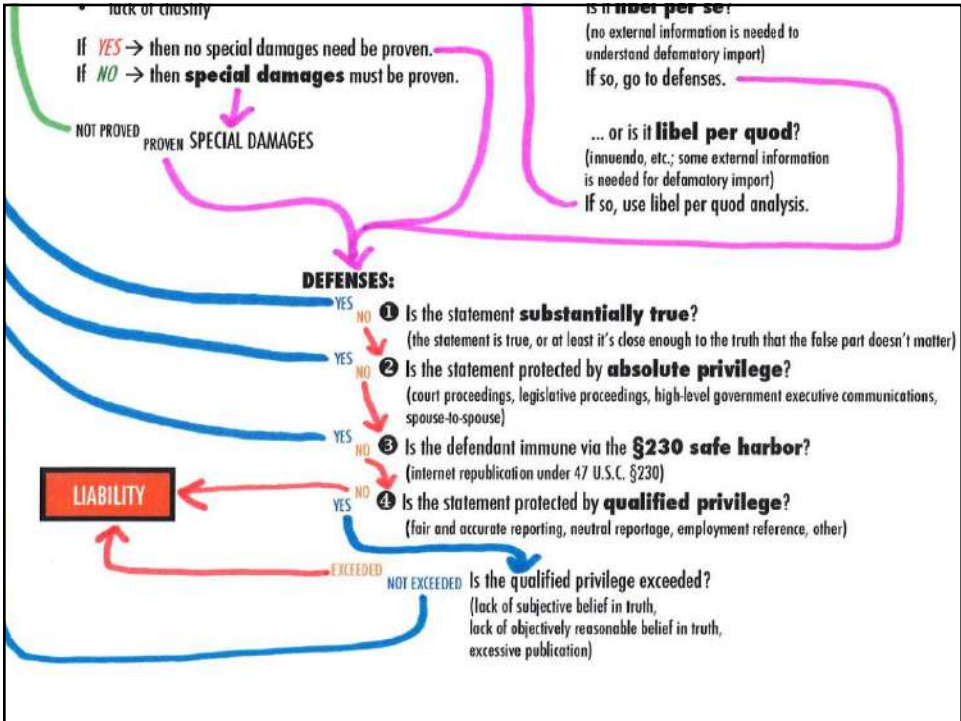
# Per se categories

Re-run

- adverse to one's profession or business
- loathsome disease
- guilt of crime involving moral turpitude
- lack of chastity



# Falsity and Substantial Truth



**FIRST AMENDMENT APPLICABILITY:**

Is the plaintiff a public official or public figure, or does the statement involve a matter of public concern?

**NO** → the First Amendment does not come into play, just analyze under the common law

GO ON TO COMMON LAW ANALYSIS

**YES** → the First Amendment does come into play

Is the plaintiff a **public official or public figure**, or is the plaintiff a **private person**?

**PUBLIC OFFICIAL OR PUBLIC FIGURE** → the plaintiff must prove, as part of the prima facie case, that the statement is **false**, that is, that the statement is purported fact (as opposed to opinion) and is not true, **AND** the plaintiff must prove the defendant's **actual malice**, that is, that the defendant acted with knowledge that the statement was false or with reckless disregard as to the truth or falsity of the statement

**PRIVATE PERSON RE MATTER OF PUBLIC CONCERN** → the plaintiff must prove, as part of the prima facie case, that the statement is **false**, that is, that the statement is purported fact (as opposed to opinion) and is not true, **AND** the plaintiff must, either:

prove the defendant's **actual malice**, that is, that the defendant acted with knowledge that the statement was false or with reckless disregard as to the truth or falsity of the statement

OR

prove **negligence** (not taking the care the reasonable person would in concerning the truth or falsity of the statement) plus **actual injury**, such as lost wages or sales

GO ON TO COMMON LAW ANALYSIS

(modifying elements and defenses as advised)

**Falsity & Substantial Truth**

- In the present-day United States, there's no defamation liability for saying something that's true—even if it is reputation harming.
  - It doesn't even have to be perfectly, literally true. It just has to be substantially true.
- In every defamation case, either falsity is a prima facie element or substantial truth is a potential affirmative defense.
- But which is it? It depends.
  - Any given jurisdiction could, of course, make falsity a prima facie element.
  - But everywhere, the First Amendment requires falsity to be the plaintiff's burden in certain circumstances.

## Element or defense—who has the burden of proof?

Falsity & Substantial Truth

- **Falsity as prima facie element:**
  - If the plaintiff is a public official or public figure, or if the defamatory statement is regarding a matter of public concern, then the First Amendment says the plaintiff has the burden of proving the statement false.
  - I/o/w, falsity is a prima facie element.
- **Substantial truth as an affirmative defense:**
  - If the case isn't constitutionalized, then the general default common-law rule is that substantial truth is a defense.
  - I/o/w, defendant must prove substantial truth.

## “substantial”

Falsity & Substantial Truth

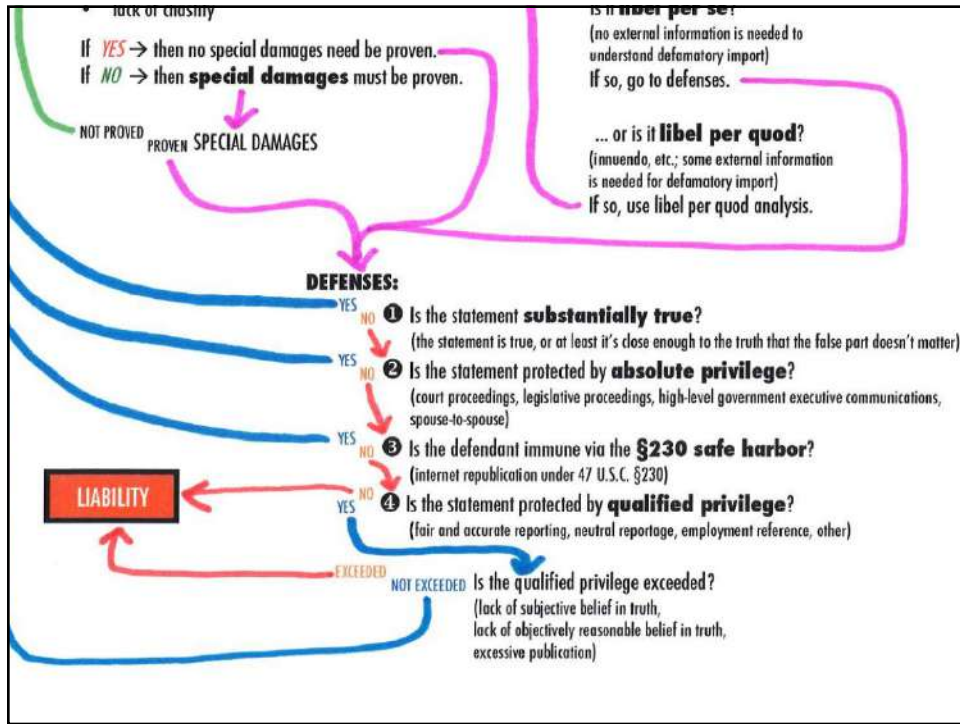
### What's not true but is “substantially true”?

- If the published statement carries the same sting as the exact truth, then, in general, it will be considered “substantially true.”
- Ex: “Priya stole a car on Tuesday” is substantially true if Priya stole the car on Monday.
- Ex: “Phineas robbed the First National Bank of Kanbraska” is substantially true if Phineas robbed the Kanbraska Farmer's Bank & Trust.
  - (Although if that makes people think Phineas robbed two banks instead of one, then maybe Phineas will succeed in arguing that the sting is greater.)

## Literal truths with embedded falsehoods

- A literally true statement that carries within it a falsehood can be actionable.
- I/o/w, wrapping a defamatory falsehood in a truth does not avoid liability.
- Ex: “Our newspaper was planning on printing a front-page story about how Paulo embezzled funds from his church, but at the last minute the editor pulled it.”
  - If Paulo didn’t embezzle, then this can be actionable, even if it is literally true that that the newspaper planned to do this.

# Defenses



# § 230

# § 230 Safe Harbor Applicable to Defamation, Outrage, and Privacy Torts

§ 230

## 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!

## Product disparagement (i.e., “trade libel” in the as-opposed-to-defamation sense)

Re-run

- At root, product disparagement involves much of the same doctrine as defamation, but requirements are added.
- Typical differences vs defamation:
  - Product disparagement is regarded as being a stricter, more demanding claim for a plaintiff to bring. A plaintiff has been said to have “very limited rights” to sue over falsehoods said about a product.
  - Special damages are always required (e.g., proving an itemized list of lost sales).
  - The plaintiff must prove falsity.
  - The plaintiff must prove actual malice (or even more, such as intent to dissuade sales).
  - The plaintiff may have to prove that pecuniary damages were foreseeable by or intended by the defendant.