

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**?

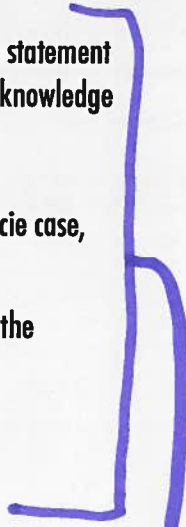
PUBLIC OFFICIAL OR PUBLIC FIGURE → the plaintiff must prove, as part of the prima facie case, that the statement is **false**, **AND** the plaintiff must prove the defendant's **actual malice**, that is, that the defendant acted with knowledge that the statement was false or with reckless disregard as 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**, **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 **plus actual injury**

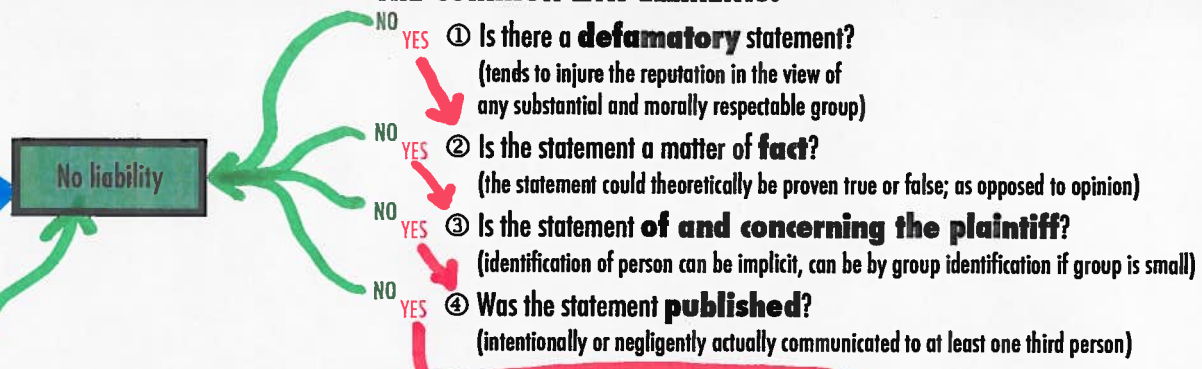


GO ON TO
COMMON LAW
ANALYSIS

(modifying elements and
defenses as advised)



THE COMMON LAW ELEMENTS:



SLANDER PER SE / LIBEL PER QUOD ANALYSIS

Does the statement's defamatory information come from ... ?

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

If **YES** → then no special damages need be proven.

If **NO** → then **special damages** must be proven.

NOT PROVED PROVEN SPECIAL DAMAGES

Is it **libel** or **slander**?

If slander ...
use **slander per se** analysis

If libel ...
Is it **libel per se**?
(no external information is needed to understand defamatory import)

... or is it **libel per quod**?
(innuendo, etc.; some external information is needed for defamatory meaning)

DEFENSES:

① Is the statement **substantially true**?
(true and not misleading, or, if inaccuracies exist, they were insignificant and the literal truth would have had the same impact on the reader)

② Is the statement protected by **absolute privilege**?
(court proceedings, legislative business, high-level government executive communications, spouse-to-spouse)

③ Is the statement protected by **qualified privilege**?
(fair comment, fair and accurate reporting, neutral reportage, wire service defense, employment reference, other)

Is the qualified privilege exceeded?
(lack of subjective belief in truth, lack of objectively reasonable belief in truth, excessive publication)

NOT EXCEEDED EXCEEDED

LIABILITY