



# Defamation O: Constitutional Analysis

Torts  
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Konomark  
Most rights sharable

TORTS - Constitutional Law Defamation Flow Chart

### 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

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(modifying elements and  
defenses as advised)

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# Heed Their Rising Voices

**Help the growing movement of parents who  
confronted by Plagues is asserting  
its right to the health, educational and emotional  
well-being of their children.**

-The New York Times  
January 20, 1988

At the 1987 World Summit for Children, leaders of the American High School League and other organizations agreed on a commitment to address the needs of the world's 1.2 billion children. In the United States, this commitment was translated into a series of resolutions and a plan of action. These resolutions were adopted by the 17th Annual Conference of the American High School League in 1988. The resolutions called for the development of a global network of high schools and for the creation of a World Summit for Children. The resolutions also called for the development of a global network of high schools and for the creation of a World Summit for Children. The resolutions also called for the development of a global network of high schools and for the creation of a World Summit for Children.

The American High School League is a non-profit organization of high schools and their parents. We are dedicated to the health, educational and emotional well-being of our children. We are committed to the development of a global network of high schools and for the creation of a World Summit for Children. We are committed to the development of a global network of high schools and for the creation of a World Summit for Children.

**Your Help Is Urgently Needed . . . NOW !!**

<p><b>Local Area:</b></p> <p>Alaska: Alaska High School League California: California High School League Colorado: Colorado High School League Connecticut: Connecticut High School League Florida: Florida High School League Georgia: Georgia High School League Illinois: Illinois High School League Indiana: Indiana High School League Iowa: Iowa High School League Kansas: Kansas High School League Kentucky: Kentucky High School League Louisiana: Louisiana High School League Maine: Maine High School League Maryland: Maryland High School League Massachusetts: Massachusetts High School League Michigan: Michigan High School League Minnesota: Minnesota High School League Mississippi: Mississippi High School League Missouri: Missouri High School League Montana: Montana High School League Nebraska: Nebraska High School League Nevada: Nevada High School League New Hampshire: New Hampshire High School League New Jersey: New Jersey High School League New Mexico: New Mexico High School League New York: New York High School League North Carolina: North Carolina High School League North Dakota: North Dakota High School League Ohio: Ohio High School League Oklahoma: Oklahoma High School League Oregon: Oregon High School League Pennsylvania: Pennsylvania High School League Rhode Island: Rhode Island High School League South Carolina: South Carolina High School League South Dakota: South Dakota High School League Tennessee: Tennessee High School League Texas: Texas High School League Utah: Utah High School League Vermont: Vermont High School League Virginia: Virginia High School League Washington: Washington High School League West Virginia: West Virginia High School League Wisconsin: Wisconsin High School League Wyoming: Wyoming High School League</p>	<p><b>Foreign Area:</b></p> <p>Australia: Australia High School League Canada: Canada High School League Europe: Europe High School League Japan: Japan High School League Latin America: Latin America High School League Middle East: Middle East High School League Africa: Africa High School League Asia: Asia High School League Oceania: Oceania High School League</p>	<p><b>Other:</b></p> <p>Academy of American High School League American High School League Association of American High Schools International High School League National High School League World High School League</p>	<p><b>Support:</b></p> <p>Alumni Business Education Government Industry Media Non-Profit Professional Religious Trade/Industry University</p>
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For the past two or three days, for nearly two weeks, several have died. This is the purpose of this request. The purpose of this request is to help the American High School League and other organizations to address the needs of the world's 1.2 billion children. We are committed to the development of a global network of high schools and for the creation of a World Summit for Children. We are committed to the development of a global network of high schools and for the creation of a World Summit for Children.

**COMMITTEE TO PROTECT MARTIN LUTHER KING AND THE STRIKE FOR FREEDOM IN THE NORTH**

115 West 45th Street, New York, N.Y. 10036-3911

Telephone: 212-562-1818, 212-562-1819, 212-562-1820, 212-562-1821, 212-562-1822, 212-562-1823, 212-562-1824, 212-562-1825, 212-562-1826, 212-562-1827, 212-562-1828, 212-562-1829, 212-562-1830, 212-562-1831, 212-562-1832, 212-562-1833, 212-562-1834, 212-562-1835, 212-562-1836, 212-562-1837, 212-562-1838, 212-562-1839, 212-562-1840, 212-562-1841, 212-562-1842, 212-562-1843, 212-562-1844, 212-562-1845, 212-562-1846, 212-562-1847, 212-562-1848, 212-562-1849, 212-562-1850, 212-562-1851, 212-562-1852, 212-562-1853, 212-562-1854, 212-562-1855, 212-562-1856, 212-562-1857, 212-562-1858, 212-562-1859, 212-562-1860, 212-562-1861, 212-562-1862, 212-562-1863, 212-562-1864, 212-562-1865, 212-562-1866, 212-562-1867, 212-562-1868, 212-562-1869, 212-562-1870, 212-562-1871, 212-562-1872, 212-562-1873, 212-562-1874, 212-562-1875, 212-562-1876, 212-562-1877, 212-562-1878, 212-562-1879, 212-562-1880, 212-562-1881, 212-562-1882, 212-562-1883, 212-562-1884, 212-562-1885, 212-562-1886, 212-562-1887, 212-562-1888, 212-562-1889, 212-562-1890, 212-562-1891, 212-562-1892, 212-562-1893, 212-562-1894, 212-562-1895, 212-562-1896, 212-562-1897, 212-562-1898, 212-562-1899, 212-562-1900, 212-562-1901, 212-562-1902, 212-562-1903, 212-562-1904, 212-562-1905, 212-562-1906, 212-562-1907, 212-562-1908, 212-562-1909, 212-562-1910, 212-562-1911, 212-562-1912, 212-562-1913, 212-562-1914, 212-562-1915, 212-562-1916, 212-562-1917, 212-562-1918, 212-562-1919, 212-562-1920, 212-562-1921, 212-562-1922, 212-562-1923, 212-562-1924, 212-562-1925, 212-562-1926, 212-562-1927, 212-562-1928, 212-562-1929, 212-562-1930, 212-562-1931, 212-562-1932, 212-562-1933, 212-562-1934, 212-562-1935, 212-562-1936, 212-562-1937, 212-562-1938, 212-562-1939, 212-562-1940, 212-562-1941, 212-562-1942, 212-562-1943, 212-562-1944, 212-562-1945, 212-562-1946, 212-562-1947, 212-562-1948, 212-562-1949, 212-562-1950, 212-562-1951, 212-562-1952, 212-562-1953, 212-562-1954, 212-562-1955, 212-562-1956, 212-562-1957, 212-562-1958, 212-562-1959, 212-562-1960, 212-562-1961, 212-562-1962, 212-562-1963, 212-562-1964, 212-562-1965, 212-562-1966, 212-562-1967, 212-562-1968, 212-562-1969, 212-562-1970, 212-562-1971, 212-562-1972, 212-562-1973, 212-562-1974, 212-562-1975, 212-562-1976, 212-562-1977, 212-562-1978, 212-562-1979, 212-562-1980, 212-562-1981, 212-562-1982, 212-562-1983, 212-562-1984, 212-562-1985, 212-562-1986, 212-562-1987, 212-562-1988, 212-562-1989, 212-562-1990, 212-562-1991, 212-562-1992, 212-562-1993, 212-562-1994, 212-562-1995, 212-562-1996, 212-562-1997, 212-562-1998, 212-562-1999, 212-562-2000



# Public Officials

Realothenicals...

## Public official?

- U.S. naval officer, rank of captain, skipper of a destroyer escort

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- Yes.  
[Arnheiter v. Random House \(9th Cir. 1978\)](#)

## Public official?

- Police officer with duties as a “normal street patrolman” of the lowest rank in a town of 30,000

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- Police officer with duties as a “normal street patrolman” of the lowest rank in a town of 30,000
- Yes.  
[Gray v. Udevitz \(10th Cir. 1981\)](#)

## Public official?

- Police informant who received no salary, but was reimbursed some expenses

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- Police informant who received no salary, but was reimbursed some expenses
- **No.**  
Jenoff v. Hearst (4th Cir. 1981)
- But noting: “We do not rely solely on Jenoff’s lack of formal government position for our conclusion that he is not a public official. It is conceivable that an individual holding no formal public position, and standing in no employment or even contractual relationship with government, nevertheless may participate in some governmental enterprise to such an extent that the policies underlying *New York Times Co. v. Sullivan* ... would demand that he or she be classified a public official.”

## Public official?

- Financial aid director at a public college

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- Yes.  
[Van Dyke v. KUTV \(Utah 1983\)](#)







## 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.”

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General-purpose public figure

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Gertz v. Robert Welch

Limited-purpose public figure

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

Biro v. Condé Nast (S.D.N.Y. 2013)

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Bose v. Consumers Union (Consumer Reports magazine) (U.S. 1984)

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[CACI Premier Technology, Inc. v. Rhodes](#)  
(4th Cir. 2008)

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*Klayman v. Judicial Watch (D.D.C. 2009)*

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Thompson v. Emmis Television Broadcasting (La. App. 2005)

## Public figure?

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*Wayment v. Clear Channel Broadcasting (Utah 2005)*

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- 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.”

"Hibdon himself knowingly and consciously sought publicity for his jet ski business by his initial postings on rec.sport.jetski. The controversy began following Hibdon's posting on the news group of the success of his jet ski modifications, prior to the publishing of the defamatory statements made by the Defendants. The controversy was “public” due to the international reach of the Internet news group rec.sport.jetski, the national circulation of SPLASH Magazine, as well as the significance of the claims being asserted by Hibdon [“builder of some of the fastest jet skis on planet Earth”].”

Hibdon v. Grabowski (Tenn. App. 2005)

**IMPORTANT NOTE:**

confusing to you  
≠ you are confused

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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. 😊

### Public figure?

- Religious sect leader who leads “an ongoing public conversation on religion, addressing Internet users on a frequent basis from her own Verified Twitter account, which has 17,221 followers,” “produced dozens of publicly accessible online video teachings which have been viewed over 143,000 times,” and “makes her public teachings available to her followers through the Buddhist KPC website which she founded.”

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- Yes – “an easily identifiable public figure.” *U.S. v. Cassidy* (D. Md. 2011) (criminal stalking context rather than defamation)