

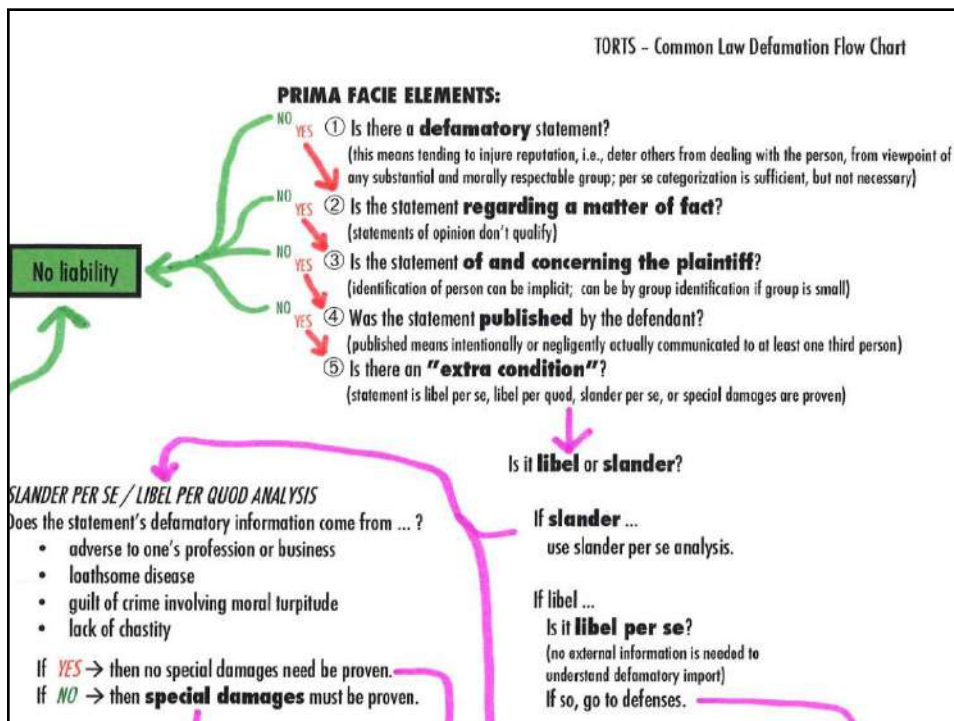


# Defamation 2: Regarding a Matter of Fact

Torts  
Eric E. Johnson  
ericejohnson.com



Konomark  
Most rights sharable



# 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 apparency, cautionary language
  - The medium
  - The intended audience

Realothenicals...

## 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)



Fact vs. Opinion

## 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)



**Fact vs. 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.