



Defamation 5: Slander Per Se, Libel Per Quod, Libel Per Se (Are Special Damages Necessary?)

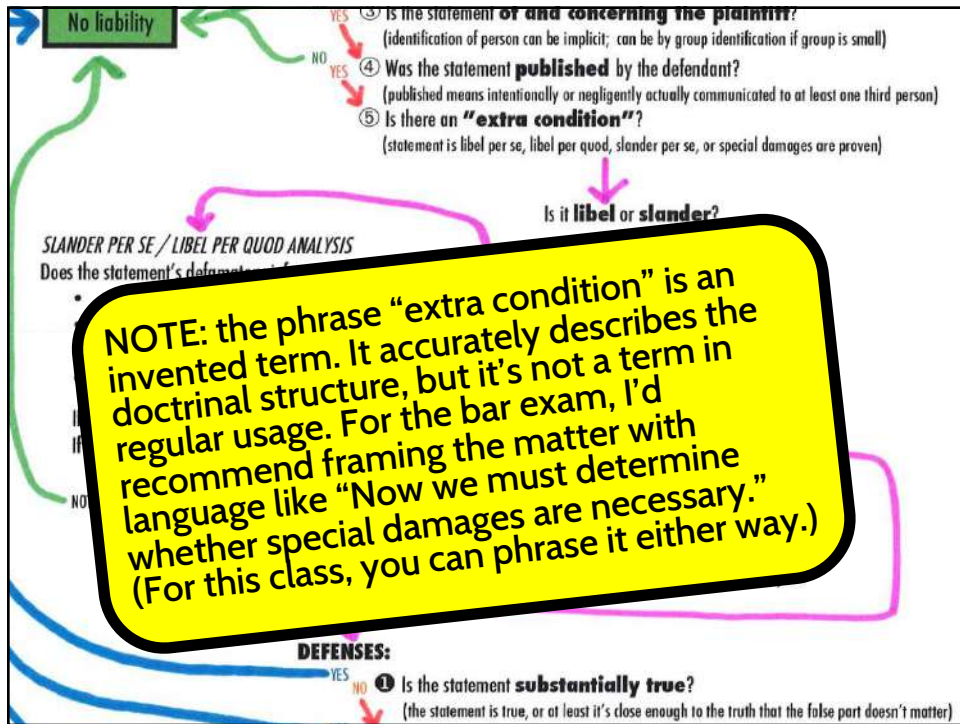
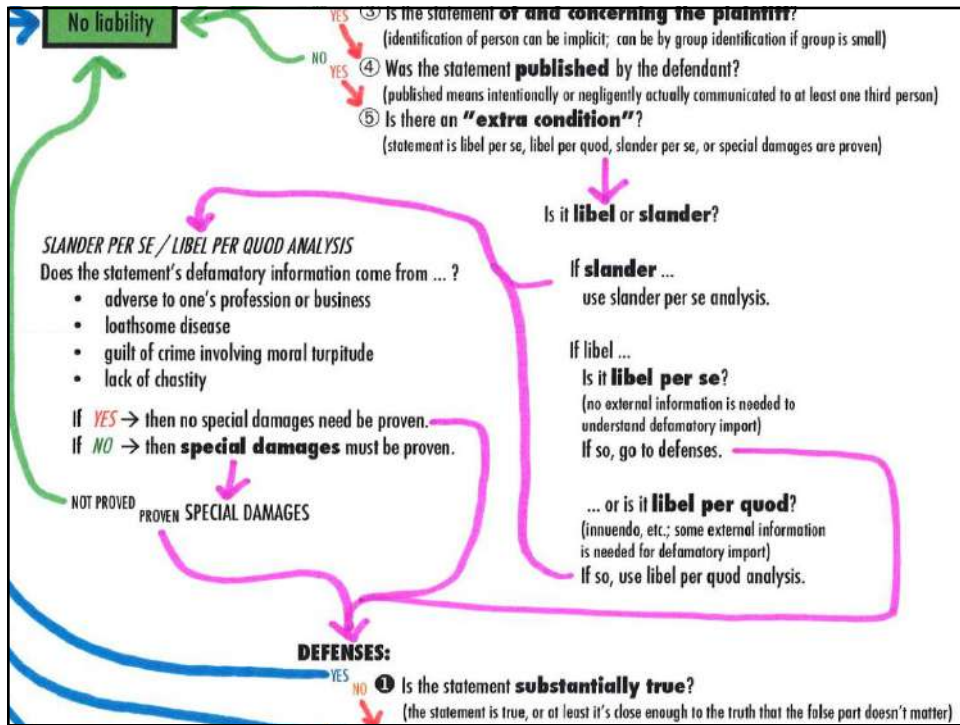
Torts
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NOTE:

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 But I don't constantly cite-check this slideshow, so it's possible state-specific statements are out of date because of overruling cases, superseding statutes, or repeal.



Slander Per Se, Libel Per Quod, Libel Per Se

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:

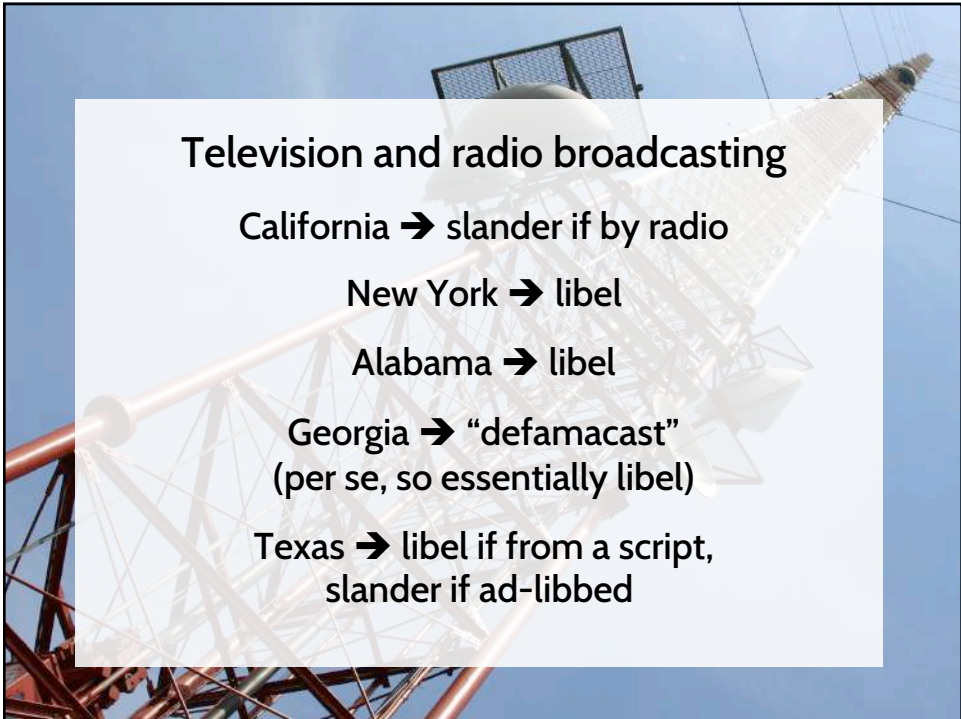
- Radio or TV broadcasting – is that libel or slander?

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:

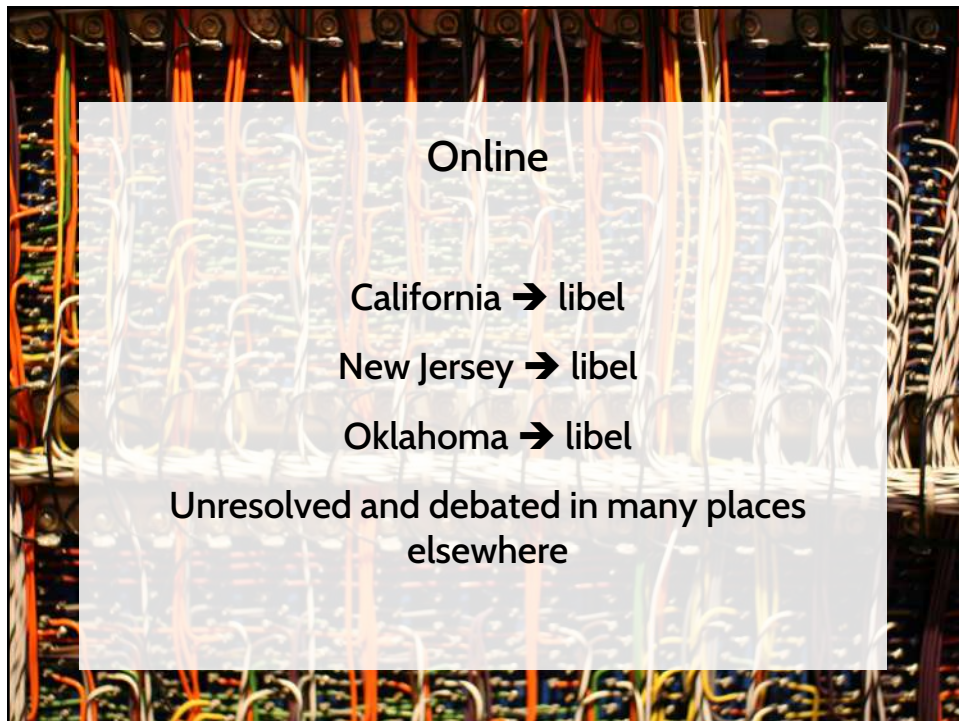
- Something posted on the internet – is that libel or slander?

Libel 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

Re-run

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

Re-run

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.

**Let's do the Check-
Your-
Understanding
Questions ...**