

## 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

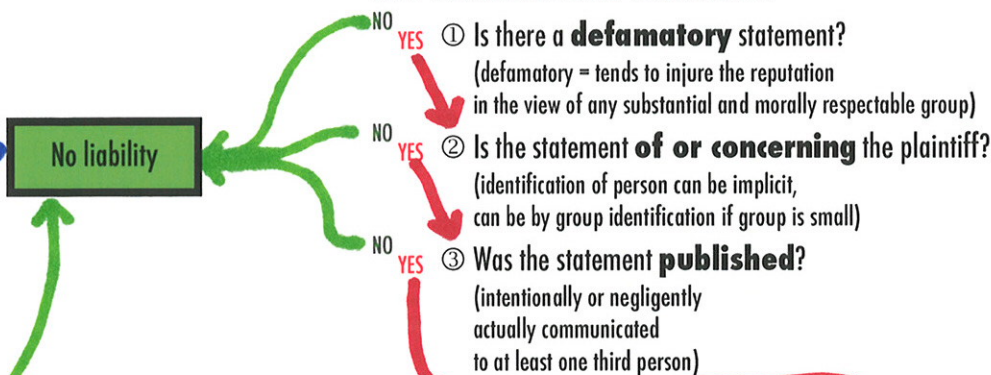
prove negligence plus **actual injury**

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:**

