

# DEFAMATION ANALYSIS



## I. WHAT ARE THE ELEMENTS OF A CLAIM FOR DEFAMATION?

To prevail on a claim for defamation you must prove the following:

- False statement of fact about you
- To a third party
- Of and concerning you
- That harms your reputation. However, actual harm to your reputation is not necessary if the statement

Imputes unchastity to a woman (and you are a woman),  
Imputes the commission of a serious crime,  
Imputes a loathsome disease, or  
Injures you in your business, trade or office.

- If you are a public official or figure, you must show “actual malice”
- If you are a private individual, you must show negligence

## II. A DEEPER DIVE INTO THE ELEMENTS

• False statement of fact. The statement must be understood as describing actual facts about you, it can't be opinion or hyperbole. What was the context of the statement? Was the statement made in writing or was it oral? Is any portion of the statement true? Substantial truth is an absolute defense - i.e., is the “gist” or “sting” of the statement in question substantially true?

• To a third party. It is not enough for someone to make a false statement about you. A third party must hear, read or see the statement.

• Of and concerning. This is the so-called “it’s me” requirement. The statement must be about you. If the statement didn't identify you by name, did it depict any of your specifically identifiable characteristics or circumstances tending to reasonably identify you? Was the statement related to more people than just you? When a group is small, and each and every member of the group is referred to, then any individual member can sue.

• That harms reputation. Has the statement negatively impacted your reputation? If so, how? Have you suffered monetary loss as a result of the statement? Have you suffered loss of any potential job opportunities?

• Public official or figure. If you are a public official or figure, you must show “actual malice” which means that the statement was made with knowledge that it was false or with reckless disregard of whether it was false or not - i.e., the defendant had serious doubts about the truthfulness of the statement

• Private individual. If you are a private individual, you must show negligence which means that a reasonable person would not have published the defamatory statement

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