Common Questions about Slander & Libel

What is the difference between slander and libel?

The words “slander” and “libel” are frequently confused and used incorrectly. Both are kinds of defamation. “Slander” is a **spoken** defamation while “libel” is **written or printed** defamation.

What is defamation?

Defamation is a false and unprivileged statement of fact that is harmful to someone’s reputation that is published negligently or maliciously. To prove a defamation claim the plaintiff must prove:

- The defendant made an unprivileged statement to someone other than the plaintiff;
- The statement was a false statement of fact;
- The statement was made about or was understood to be about the plaintiff;
- The statement was negligently made (if the plaintiff is a “public figure” then actual malice must be shown);
- Actual damage naturally arising out of the statement or that the statement was slanderous per se or libelous on its face.

Someone lied about me, how much can I make them pay?

The damages that can be awarded depend on the facts of the case. Although the insult a plaintiff feels is great, the harm done to the plaintiff’s reputation is oftentimes minimal. This is frequently the case in disputes between family members or neighbors. On the other hand, damages can sometimes be extensive, for example, in the case of a past employer making false claims to a plaintiff’s prospective employer in order to prevent the plaintiff from finding a job. Punitive damages are sometimes awarded and are based on severity of the misconduct.

What are *libel on its face* and *slander per se?*

Some statements are considered to be harmful in and of themselves, and are considered defamation without proving actual damages.

A written statement is defamatory on its face if the natural and probable (likely) effect on an average reader is to defame the plaintiff without the necessity of considering any surrounding circumstances.

An oral statement is slander per se if it falsely accuses the plaintiff of a crime, imputes the existence of an infectious, contagious, or loathsome disease (i.e. HIV or syphilis), tends to directly injure the plaintiff in respect to her office, profession, trade or business by falsely imputing disqualification, or has a natural tendency to lessen profits, or imputes impotence or lack of chastity.

Where can I look up the law for slander and libel?

Slander and libel are described in the California Civil Code §§44 – 48.9 (https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=CIV&sectionNum=44.). You can find California statutes for free at California Legislative Information (http://leginfo.legislature.ca.gov/faces/codes.xhtml) or at your local law library. Your local law library can also help you find cases that clarify the law of slander and libel.

Common defenses to defamation claims

A number of defenses exist and are commonly used to defend against defamation cases:

Truth – Truth is an absolute defense in a defamation case. If the defendant can show that the allegedly defaming statements are, in fact, true, then the plaintiff is not entitled to a judgment. Any plaintiff considering filing a defamation case in court should consider the possibility that the defendant will assert a truth defense. Any defendant should remember that winning a truth defense requires proof to the court that the statement is true.

Not a Statement of Fact/Opinion – Defamation cases only deal with statements of fact, not opinions. A fact is something that can be proven or disproven, while an opinion is the type of statement that cannot be proven true or false. In determining whether a statement is an opinion or a statement of fact, the court looks at the context of the statement. Falsely stating, “Bob

punched Joe in the nose," would likely be defaming because it accuses Bob of a crime, while the statement "Bob is a jerk," is unlikely to be defaming, since it is a subjective opinion.

Fair Comment and Criticism/Plaintiff is a Public Figure – Statements of fair criticism and comment *on matters of public interest* are protected. Plaintiffs who are public figures must prove that a defendant had actual malice rather than mere negligence in making the false statements, if those statements were in the realm of the area where he/she is a public figure.

Privilege – Some statements, for example, the testimony given under oath in a judicial proceeding, are considered privileged. Defamation only deals with unprivileged statements.

Libel-Proof Plaintiff – A person whose reputation is tarnished as to have no value, such as a convicted serial killer, cannot prove damage.

Death – Although it is not nice to speak ill of the dead, the dead cannot sue for it.

Common Misconceptions

Because there is so much confusion about the subject of defamation, a lot of misinformation is floating around. Some of these misconceptions are addressed here:

"I only told one other person!"
This is not a defense. The torts of libel or slander only require that the defendant communicate with one person other than the plaintiff.

"I was only repeating what someone else told me!"
This is also not a defense. Under the law, a person who repeats a defaming statement is also liable for defamation.

"**But I changed the name or didn't use the name of the person I was talking about!"**
The question in a defamation case is whether it was reasonably understood that the person referred to was the plaintiff. Referring to, for example, "An unnamed government executive residing at 1600 Pennsylvania Avenue," would reasonably cause a listener to understand that the President was being discussed.

"He lied about me in court; I want him to be arrested for slander!"
Slander and perjury are often confused. Perjury is making a false statement under oath, such as lying in court. Perjury is a crime that can be prosecuted by the District Attorney's office. Unfortunately, court testimony is considered "privileged," and therefore cannot be the basis of a

slander lawsuit (slander and libel only apply to non-privileged statements).

“But I added, ‘I think’ before my statement, so it was only an opinion!”
Courts look at all the circumstances surrounding a statement. While it is true that everyone is entitled to an opinion, adding “I think” before a statement doesn’t necessarily turn a statement of fact into an opinion.