

Defamation Law Made Simple

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"Defamation" is a catch-all term for any statement that hurts someone's reputation. Written defamation is called "libel," and spoken defamation is called "slander." Defamation is not a crime, but it is a "tort" (a civil wrong, rather than a criminal wrong). A person who has been defamed can sue the person who did the defaming. (For in-depth information on defamation claims, check out Nolo's Defamation, Libel & Slander section.)

Defamation law tries to balance competing interests: On the one hand, people should not ruin others' lives by telling lies about them; but on the other hand, people should be able to speak freely without fear of litigation over every insult, disagreement, or mistake. Political and social disagreement is important in a free society, and we obviously don't all share the same opinions or beliefs. For instance, political opponents often reach opposite conclusions from the same facts, and editorial cartoonists often exaggerate facts to make their point.

What the victim must prove to establish that defamation occurred

The law of defamation varies from state to state, but there are some generally accepted rules. If you believe you have been "defamed," to prove it you usually have to show there's been a statement that is all of the following:

- published
- false
- injurious
- unprivileged

Let's look at each of these elements in detail.

1. First, the "statement" can be spoken, written, pictured, or even gestured. Because written statements last longer than spoken statements, most courts, juries, and insurance companies consider libel more harmful than slander.
2. "Published" means that a third party heard or saw the statement -- that is, someone other than the person who made the statement or the person the statement was about. "Published" doesn't necessarily mean that the statement was printed in a book -- it just needs to have been made public through television, radio, speeches, gossip, or even loud conversation. Of course, it could also have been written in magazines, books, newspapers, leaflets, or on picket signs.
3. A defamatory statement must be false -- otherwise it's not considered damaging. Even terribly mean or disparaging things are not defamatory if the shoe fits. Most opinions don't count as defamation because they can't be proved to be objectively false. For instance, when a reviewer says, "That was the worst book I've read all year," she's not defaming the author, because the statement can't be proven to be false.
4. The statement must be "injurious." Since the whole point of defamation law is to take care of injuries to reputation, those suing for defamation must show how their reputations were hurt by the false statement -- for example, the person lost work; was shunned by neighbors, friends, or family members; or was harassed by the press. Someone who already had a terrible reputation most likely won't collect much in a defamation suit.
5. Finally, to qualify as a defamatory statement, the offending statement must be "unprivileged." Under some circumstances, you cannot sue someone for defamation even if they make a statement that can be proved false. For example, witnesses who testify falsely in court or at a deposition can't be sued. (Although witnesses who testify to something they *know* is false could theoretically be prosecuted for perjury.) Lawmakers have decided that in these and other situations, which are considered "privileged," free speech is so important that the speakers should not be constrained by worries that they will be sued for defamation. Lawmakers themselves also enjoy this privilege: They aren't liable for statements made in the legislative chamber or in official materials, even if they say or write things that would otherwise be defamatory.

Public officials and figures have a harder time proving defamation

The public has a right to criticize the people who govern them, so the least protection from defamation is given to public officials. When officials are accused of something that involves their behavior in office, they have to prove all of the above elements of defamation *and* they must also prove that the defendant acted with "actual malice." (For a definition of actual malice, see the "History of Defamation and the First Amendment, below.")

People who aren't elected but who are still public figures because they are influential or famous -- like movie stars -- also have to prove that defamatory statements were made with actual malice, in most cases.

History of Defamation and the First Amendment

In the landmark 1964 case of *New York Times v. Sullivan*, the U.S. Supreme Court held that certain defamatory statements were protected by the First Amendment. The case involved a newspaper article that said unflattering things about a public figure, a politician. The Court pointed to "a profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open." The Court acknowledged that in public discussions -- especially about public figures like politicians -- mistakes can be made. If those mistakes are "honestly made," the Court said, they should be protected from defamation actions. The court made a rule that public officials could sue for statements made about their public conduct only if the statements were made with "actual malice."

"Actual malice" means that the person who made the statement knew it wasn't true, or didn't care whether it was true or not and was reckless with the truth -- for example, when someone has doubts about the truth of a statement but does not bother to check further before publishing it.

Later cases have built upon the *New York Times* rule, so that now the law balances the rules of defamation law with the interests of the First Amendment. The result is that whether defamation is actionable depends on what was said, who it was about, and whether it was a subject of public interest and thus protected by the First Amendment.

Private people who are defamed have more protection than public figures -- freedom of speech isn't as important when the statements don't involve an issue of public interest. A private person who is defamed can prevail without having to prove that the defamer acted with actual malice.