DEFAMATION

Defamation requires the plaintiff to prove by a preponderance of the evidence that:

1. ∂ communicated something;

    a. If the π is a private figure and the communication is on a matter of private concern, we presume the communication is false, and the ∂ must prove it is true as an affirmative defense. No fault required on the part of the ∂, unless the ∂ is a media entity, in which case, π must prove ∂ should have known (*i.e.*, was negligent) the communication was false.

    b. If the π is a private figure and the communication is on a matter of public concern, π must prove that (i) the communication is false and (ii) that the ∂ should have known (*i.e.*, was negligent) it was false.

    c. If the π is a public official or public figure and the communication is on a matter of public concern, π must prove by clear and convincing evidence that (i) the communication is false and (ii) actual malice, *i.e.*, that ∂ knew the communication was false or had serious doubts (i.e., was reckless) about the truthfulness of it.

2. that was a statement of fact or opinion, depending on the type of case;

    a. Statement of fact=required when case involves a matter of public concern or a media defendant. Something that can be objectively proven true or false.

    b. Opinion=actionable at common law, with "name calling" excluded. Probably still actionable when case involves a private plaintiff, a matter of private concern, and a non-media defendant.

3. that was defamatory, *i.e.*, has a tendency to expose π to public hatred, contempt, ridicule, or disgrace;

4. that actually injured the π's reputation;

    a. libel on face: written or broadcast communications whose meaning is clear without resort to extrinsic information are deemed to injure per se;

i. unless the π is a private figure and the communication is a matter of public concern, and the π has failed to prove actual malice. In other words, in this scenario, π must prove actual malice (see above) or actual injury to reputation.

b. slander per se: spoken communications are deemed to injure per se if:

i. they call into question π's competence to perform in their trade or profession;

ii. indicate π has a "loathsome" disease;

iii. indicate π has committed a serious crime; or

iv. indicate π has engaged in serious sexual misconduct,

unless the π is a private figure and the communication is a matter of public concern, and the π has failed to prove actual malice. In other words, in this scenario, π must prove actual malice (see above) or actual injury to reputation.

5. ∂'s communication was to a third person, *i.e.*, someone other than the π;

6. The third person would understand, considering reasonable inferences from the circumstances, that the communication was about or concerning the π.