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Defamation

WHEN DOES GOSSIP CROSS THE LINE?

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The “horse world” is a small community where most people know one another and gossip is common. Much of this talk is harmless, but given that many people in the horse world trade on their professional reputations and personal integrity, when does gossip or idle chatter cross the line into defamation?

Consider, for instance, a trainer with a horse for sale whose potential buyer is also looking at a rival trainer’s sale prospect. The first trainer may casually state that the rival trainer’s horse was given performance enhancing drugs at its last horse show. Does this statement constitute defamation? What if this statement was made between two adult amateur competitors rather than professional trainers?

What is Defamation?

A defamatory communication is a false statement that lowers the reputation of the person in the community, imputes improper or disreputable conduct, or has the tendency to injure, prejudice, or disparage that person in the eyes of a reasonable person.

The law of defamation is a balance between the right to enjoy a good reputation unimpaired by false statements, and the freedom of expression. People are generally entitled to express their opinions without being sued for defamation.

Defamation takes two forms: Written, which is known as libel, and spoken, which is known as slander.

The following criteria must be met in order to prove defamation: (1) the words were published to a third party; (2) the words refer to the plaintiff; and (3) the words, in their natural and ordinary meaning, or in some extended meaning, are defamatory of the plaintiff.

Publication occurs each time the defamatory words are written, spoken, or reproduced.

The intention of the person in communicating the words is irrelevant. The plaintiff is not required to show that the defendant intended to do harm or even that the defendant was careless in making the statements. The question is what the words meant to the ordinary reader or listener, not what the writer or speaker intended them to mean.

The victim of a defamatory statement can sue the speaker or writer for monetary damage to reputation. The deadline to bring a claim is within two years of when the defamatory statement was made or published.

The law treats slander differently from libel. Because there is no written record of slander, the victim must prove damages in the form of financial loss to receive compensation. Because of this, slander cases are harder to prove and most do not go to court. There are a few exceptions to this rule, one being that slander is presumed to have caused damage where it is defamatory of the plaintiff in his or her office, profession, calling, trade, or business. With libel, because there is a permanent record of the defamation in writing, the law presumes damages.

Defences to Defamation

Once the plaintiff proves the required elements, the onus then shifts to the defendant to raise a defence to escape liability for a defamatory statement.

The main defences to defamation are: (1) truth or justification; (2) fair comment; (3) statutory, absolute, or qualified privilege; and (4) responsible communication on matters of public interest.

The truth is an absolute defence to defamation. A defendant can maliciously publish truthful defamatory statements. The law presumes that defamatory words are false, so the defendant must prove the words are true.

The defence of fair comment applies to statements of opinion on issues of public interest. To prove a defence of fair comment, the statement must be recognizable as opinion and not fact, it must be based on facts that can be proven, and must not be made maliciously.

The three main instances of the absolute privilege defence are statements made in parliament, as evidence at a trial or in court documents, or to a quasi-judicial body such as a professional association.

Qualified privilege is a defence where remarks that may otherwise be defamatory were conveyed to a third party non-maliciously and for an honest and well-motivated reason. For example, a former barn employee of yours gave your name to a potential employer as a reference and that employer called you. You told the employer: "I found that this employee did not show any patience with the horses." Provided you acted in good faith and without malice, and your statement was not made to more people than necessary, the defence of qualified privilege protects you if the former employee sues you for defamation. The opinion given was honest and the caller had a legitimate interest in hearing it.

The Supreme Court of Canada created a new defence to libel claims called "responsible communication on matters of public interest."

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The court said that journalists should be able to report statements and allegations, even if not true, if there is a public interest in distributing the information to a wide audience. This defence can apply if: The news was urgent, serious, and of public importance, and the journalist used reliable sources and tried to get and report the other side of the story. The court defined “journalist” widely to include bloggers and anyone else

“publishing material of public interest in any medium.”

Websites such as “Rate My Horse Pro,” chat forums, or even social media such as Facebook often contain statements about trainers, coaches, agents, or others in the horse industry. In some instances, these statements could be defamatory. If faced with a defamation claim, it is unlikely that professional equine websites would be entitled to rely upon the defence of responsible communication on matters of public interest. The comments on these sites are unlikely to qualify as being a matter in the public interest. Equine websites have an obligation to verify facts prior to publication and to remove negative threads which might constitute defamation.

Effect of an Apology

The court does not have jurisdiction to order a defendant to apologize. Whether the defendant has retracted and apologized for the defamation will be taken into account in the assessment of damages. An immediate apology can limit the amount of compensation payable to the defamed person.

What is Not Defamation

Words are not defamatory if they are reasonably understood as a “mere insult” or “vulgar abuse.” The law does not protect people from personal insults or remarks that injure pride and feelings rather than reputation.

Conclusion

Turning back to the example at the start of this article – would that comment be considered defamatory? The answer is: It depends. If the statement is true, then there is no defamation. If the statement is not true, then it may constitute defamation because the other defences to defamation are not likely applicable. Further, because this is a spoken comment, it constitutes slander, which is not presumed to have caused damage unless it relates to the victim’s profession, trade, or business. The trainer would be presumed to have suffered damage from this comment but the adult amateur would not.


The law of defamation protects a person’s reputation against false statements. If someone makes a false statement to a third party which causes damage to your reputation, you can sue the person who made the false statement for monetary compensation. However, because of other competing rights in our society, such as free speech, defamation can be very difficult and costly to prove. Often, the most effective way to deal with alleged defamation is to act immediately with a “cease and desist” letter from a lawyer requiring retraction of the defamatory statement and an apology. 



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ABOVE: If you act in good faith and without malice when giving an honest reference to your former employee’s potential new employer, the defence of qualified privilege protects you if the former employee sues you for defamation.

RIGHT: The victim of a defamatory statement can sue the writer or speaker for monetary damage to reputation. However, the law does not protect people from personal insults or remarks that injure pride and feelings rather than reputation.



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