

FIVE REQUIREMENTS FOR THE DEFAMATION TORT (Common Law):

1. Defamatory Statement: A Defendant's false statement, tending to harm the Plaintiff's reputation in a respectable segment of the community.

* In order to be defamatory, a statement **must be false**; truth is an absolute defense to defamation.

* In general, if a statement of opinion implies undisclosed facts, and stating those facts would constitute defamation, then the opinion is defamatory.

2. About the Plaintiff ('of and concerning' the Plaintiff). The defamatory matter need not refer to the Plaintiff by name, but it must be *reasonably understood* to refer to him or her.

3. Publication: The defamatory matter is required to be negligently (or intentionally) 'published' (communicated) to at least one third person capable of understanding the statement;

* Communication means communicating the defamatory matter, to a third party, who **understands the statement** and **understands its defamatory aspects**. This can be broken down to three required elements: The Defendant-

1. Intentionally or negligently communicated the defamatory statement;

2. To a third person; and

3. The third person **understands the statement**.

*If the audience is deaf or doesn't speak the same language, there is no publication, and thus no slander.

4. Fault: Some degree of fault, as to falsity, is required. The precise degree depends on the nature of the defamer, the defamed, and the issue; however, at the very least negligence is always required.

5. Special Harm: For slander (but not libel), either 'special' (i.e. pecuniary) harm, or 'slander per se' (actionability regardless of the existence of such special harm).

* For slander, except slander per se, the Plaintiff has to prove special damages in order to recover anything. Special damages are pecuniary losses, like a lost job, or gift, or business opportunity. Typically these kinds of damages are very hard to prove, so in a non-slander per se case one is not likely to recover.

Libel per se is a statement that is libelous 'on its face' - no additional facts need to be proven to establish its defamatory nature.

Slander per se is a defamatory, spoken statement which doesn't require proof of special damages because it falls into one of the following four particular categories:

1. Reflecting adversely on the Plaintiff's business or profession (e.g. calling a lawyer a shyster- or a doctor a butcher).
2. Imputing that the Plaintiff currently suffers from a foul or loathsome disease (e.g. a venereal disease).
3. Imputing to the Plaintiff a crime of moral turpitude; or
4. Imputing serious sexual misconduct to the Plaintiff

DAMAGES AVAILABLE FOR SLANDER

1. *For a non-media Defendant:* The Plaintiff can recover special damages. If slander doesn't fit into one of the four **slander per se** categories, then the Plaintiff will have to prove special damages. If the Plaintiff has either a slander per se claim or proves special damages, the Plaintiff can recover general damages- compensation for the harm to the Plaintiff's reputation. If the Plaintiff is a public figure, the Plaintiff can't recover anything without showing actual malice.

2. *Media Defendant:* The same rules apply as for libel. If the Plaintiff is a public figure or public official, and the matter is of public interest, the Plaintiff can't recover anything without showing that Defendant acted with actual malice i.e. the Defendant either knew his statement was false or acted with reckless disregard of whether it was true or false.