

Use this resource to help you understand the five elements of libel and at least one important defense.

Element	Definition	A Possible Defense
PUBLICATION	<p>The plaintiff must show that the statement was “published,” that is, communicated to someone other than the person it was about.</p> <p><i>This does not mean that the statement has to be in a newspaper or circulated; the defamatory statement's presence on a computer screen in the newsroom where it is read by other students or in a draft provided to an editor could constitute publication.</i></p>	<p>If you know something to be untrue, or even suspect it to be untrue, don't publish it. Keep in mind that PUBLISHED means COMMUNICATED to someone else, so avoid communicating any false information with social media, or on any drafts of any publication. It's always best if subject consent to being published.</p>
IDENTIFICATION	<p>The person claiming that he was libeled must show that he was identified by the statement.</p> <p><i>If the publication does not specifically refer to the individual by name, it must be shown that a sufficient number of people who read the story reasonably believed the plaintiff was the one identified. For more on treatment of anonymous sources, consult your staff guide.</i></p>	<p>Keep in mind that both individuals and groups can sometimes be identified, even when there's an attempt at concealing their identities. When disguising a person's identity, you must not only obscure the person's name but also avoid facts that might point an identifying finger.</p>
INJURY/HARM	<p>The plaintiff must prove that the statement harmed his reputation in the eyes of members of the community. Any statement that says something negative about a person, group or business is potentially libelous.</p> <p><i>Statements that shame, disgrace or ridicule an individual's reputation or that injure a person's livelihood are sufficiently harmful to meet this test.</i></p>	<p>Even small damage to one's reputation in the eyes of the community can constitute libel. If it doesn't make sense to include potentially harmful material, don't include it. Edit out irrelevant background information as long as it doesn't change the story's core message and remember: truth is the best defense against libel.</p>
FALSITY	<p>If a person cannot prove that a harmful statement made about him by the news media is false, then the person generally cannot win a libel lawsuit.</p> <p><i>Truth is an absolute defense to a charge of libel. If a statement is true – even if it ruins a person's reputation for the rest of his life – the person making the statement cannot be held liable.</i></p>	<p>Seek the truth and report it. Fortunately for media defendants, the Supreme Court has ruled that the burden of proving a statement false will usually rest with the person who claims she has been libeled. Ask yourself: Do you believe the statement is true?</p>
FAULT	<p>The plaintiff must show that the defendant was at fault in publishing the statement. There can be no liability without fault.</p> <p><i>Before you can be required to pay damages for a defamatory statement, the person suing you must prove that you did something you should not have done (for example publishing a statement even though you believed the information to be untrue).</i></p>	<p>Negligence: <i>For private individuals, this means the reporter didn't exercise a reasonable amount of care in determining the truth.</i></p> <p>Actual malice: <i>The person who claims he was libeled must prove that the challenged statement was published by people who either knew it was false or who were reckless in verifying its accuracy.</i></p> <p>Avoid relying on private vs. public figure/official status when reporting. Finally, reporter's do have some extra privilege, which varies state by state.</p>

Essential Facts:

A school administrator was recently put on administrative leave. While it's common knowledge that he is on leave, the details as to why he is on leave were not been made public by school or district officials. Rumor has it that he was intoxicated at one of the high school's football, but that was not confirmed by school or district officials, and when asked about it, officials declined to comment as did the administrator on leave. Students ran an article about the administrative leave and included information about the suspected intoxication, as reported by students who were in attendance at the football game. While nothing has been officially communicated to the newspaper staff, they have been approached by more than one administrator about the content of the article and one even said that some comments about the administrator on leave were libelous.

Essential Considerations:

1. We're all parties given a fair opportunity to consent to an interview?
 - *When evaluating consent, it is important to provide documentation that all parties involved, including school/district officials, the administrator on leave, and students in attendance at the game were given the opportunity to consent to an interview. Documentation can include emails requesting interviews, recordings of attempts to get interviews, and recordings of instances where subjects declined an interview.*
2. Are reporters confident that the students who attended the football game are reliable sources of information, enough so that their accusations will not be considered libelous when reproduced and published in the school newspaper?
 - *Although there have been accusations, reporters can't assume that attributing those accusations provides protection against libel. It may be quite difficult to verify the students' accounts if school officials are not commenting on the accusation. Reporters should proceed carefully, as they can be held liable for any libelous content they publish.*
3. Are personnel records regarding school officials privileged information that reporters should have access to or attempt to gain access to?
 - *Since school officials are refusing to comment, students can attempt to file a CORA (Colorado Open Records Act) request. A "public record" includes most writing made, maintained, or kept by the Secretary of State's office. There are, however, some exceptions concerning records made available under CORA. It can take up to seven working days to acquire records, so students should consider the timeliness of their story prior to publishing content.*
4. Are reporters confident that they are reporting the truth?
 - *The best defense against any libel claim is the truth. Even though the school administrator may be considered a public official, reporters should not rely on this status. Thus, reporters should make every effort to verify facts and exercise a reasonable amount of care when seeking the truth. Reporters should carefully avoid any appearance of negligence or actual malice.*