

Defamation: Five Key Questions for Any Potential Claim

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Defamation has been in the news lately thanks to the Depp v Heard Trial. But what is defamation exactly? Has someone ever posted an untrue statement about you or your organization online? Untrue statements are published every day but not every untrue statement rises to the level of defamation. Consider the following elements of Defamation:

What is defamation?

- A false, malicious communication of fact to a third-party causing injury to one's reputation.
- In Virginia, defamation encompasses libel (written recorded statements) and slander (oral statements).
- Watch: [Spider-Man: The Difference between slander and libel – YouTube](#)

What is required to prove defamation?

- Publication (the statement is seen or heard by a third party);
- A false statement tending to harm the reputation of another; &
- The requisite intent. (actual malice for public figures; negligence for nonpublic figures). *Gaz, Inc. v. Harris*, 325 S.E.2d 713, 725 (Va. 1985).

What is a defamatory statement?

- The statement or communication must be more than an unpleasant statement.
- The subject of the statement must appear odious, infamous or ridiculous.
- A statement will not be actionable as defamation unless it has a "sting" injuring the subject's reputation.
- However, defamation can be proven by inference, implication or insinuation.

Can opinions constitute defamation?

- No – statements of pure opinion are not defamation.
- "The First Amendment and the Constitution of Virginia protect the right of every individual to express any opinion or idea, however ill-founded." *Tharpe v. Saunders*, 737 S.E.2d 890, 893 (Va. 2013).
- Note – adding qualifiers such as "in my opinion" will not diffuse an otherwise defamatory statement.

How can a statement be published?

- Any communication by any method to one or more persons who can understand its meaning.
- Newspaper articles, statements aloud to others, books, Twitter posts, Facebook statements, and other social media mediums.

If you or your organization are the subject of a potentially defamatory statement or a defamation lawsuit is threatened against you or your organization, don't make any decisions about how to proceed before talking with a trusted attorney in your area. Offit Kurman attorneys are available to advise on defamation and other issues. Reach out to [Anders Sleight](#) today to discuss your specific situation.