

A college junior applied for membership in a college honor society. One of the current members of the society, an academic rival of the junior, sent an email to the other members of the society claiming that the junior was an alcoholic. Although some of the members believed the email, most did not. Consequently, the junior was admitted to the society. The junior subsequently sued her rival for libel. At trial, the junior established that she had never consumed alcohol and that her rival knew this. The rival offered proof that the junior was a user of illegal drugs at the time of the email.

Is the junior likely to prevail?

- A. No, because she failed to prove that a third party acted adversely toward her.
- B. No, because she was a user of illegal drugs.
- C. Yes, because of the doctrine of libel per quod.
- D. Yes, because she is entitled to general damages for reputational harm.

Explanation:

Libel is defamation in words **written, printed, or otherwise recorded** in permanent form. Most courts addressing the issue have held that **email messages** are categorized as libel. A libel claim requires proof of the following:

The defendant knowingly made a false statement about the plaintiff or negligently failed to determine its falsity.

The statement was defamatory, meaning that the statement would have a general tendency to harm the plaintiff's reputation.

The defendant intentionally or negligently **communicated** the statement to a third party.

Once proved, the plaintiff can recover **general damages**, which are any damages that compensate the plaintiff for harm to the plaintiff's reputation. **Reputational harm** can be **presumed for libel** because it is more permanent and more easily spread than slander (ie, spoken defamation).

Here, the rival's email claimed that the junior was an alcoholic even though the rival knew that the junior had never consumed alcohol. That statement would have a general tendency to harm the junior's reputation. And since the rival intentionally communicated the statement to third parties by emailing the other members of the honor society, the junior is entitled to recover general damages for reputational harm. Therefore, the junior will likely prevail.

(Choice A) Special damages are a prerequisite to recovery for *slander* and require the plaintiff to prove that a third party acted adversely to the plaintiff as a result of the defendant's defamatory statement. But since the junior sued for *libel*, the fact that she faced no adverse action because she was admitted to the honor society is irrelevant.

(Choice B) Even if the junior was a user of illegal drugs at the time of the email, she was not an alcoholic, so the rival's statement was false.

(Choice C) The doctrine of **libel per quod** applies when reference to extrinsic facts is needed to show that the statement is defamatory (not seen here).

Educational objective:

Libel is defamation by words written, printed, or otherwise recorded in permanent form (eg, emails). A libel plaintiff can recover general damages to compensate the plaintiff for the presumed harm to his/her reputation.

References

Restatement (Second) of Torts § 568 (Am. Law Inst. 1977) (distinguishing libel and slander).

Restatement (Second) of Torts § 621 (Am. Law Inst. 1977) (explaining that general damages are imposed to compensate the plaintiff for reputational harm).

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Slander

less permanent & less harmful

≠

harm presumed



Slander per se

more harmful

=

harm presumed



Libel

more permanent

=

harm presumed

