

A man lives in a small community where there is only one judge. The man recently lost a highly publicized court case that had been adjudicated by her, and he was convinced that she had issued an unfair judgment. As the man left the courthouse, he made this statement to a reporter: "Judges are crooks, and they will accept bribes if you pay them enough!" The statement was subsequently printed in the local newspaper.

The judge had never accepted a bribe, and after reading the statement in the newspaper, she filed a defamation action against the man.

Will the judge be likely to prevail?

- A. No, because the defamatory language applied to judges in general.
- B. No, because the man's statement did not cause the judge actual harm.
- C. Yes, because a reasonable person would conclude that the man's statement referred to the judge.
- D. Yes, because the statement was published in the local newspaper.

Explanation:

When a defendant's **defamatory statement** applies to a **group** of people, the general rule is that no member of the group can recover for **defamation**. This is because a reasonable person who hears or reads the statement would not conclude that it refers to a specific member of the group. However, an **individual member** can maintain a **defamation action** if:

the **group is so small** that a reasonable person would conclude that the statement refers to that member *or*

the **circumstances of publication** would cause a reasonable person to conclude that the statement **refers to the member**.

Here, the man told the reporter that "judges" are crooks who accept bribes. Although this defamatory statement did not identify the judge by name, it was made in a community with one judge as the man was leaving the courthouse after a highly publicized trial. As a result, the circumstances of publication reasonably give rise to the conclusion that the statement was a reference to this particular judge and not judges in general **(Choice A)**. For this reason, the judge will likely prevail in her defamation action.

(Choice B) Defamation generally requires proof that the statement caused the plaintiff special damage, typically monetary loss. However, harm is *presumed* when the statement is **slandorous per se**—eg, accuses the plaintiff of engaging in conduct that adversely affects the plaintiff's occupation (as seen here).

(Choice D) Publication occurs when a defamatory statement is transmitted to a third party. Therefore, publication occurred here when the man made the statement to a reporter—not when it was published in the newspaper.

Educational objective:

A defendant who makes a defamatory statement about a group of people is liable to an individual member of that group only if (1) the group is so small that a reasonable person would conclude that the statement refers to that member or (2) the circumstances of publication would cause a reasonable person to reach that same conclusion.

References

Restatement (Second) of Torts § 564A (Am. Law Inst. 1981) (defamation of a group or class).

Group defamation

Defendant published defamatory statement
about group or class



No liability to individual member



Exceptions

- Group is so small that reasonable person would conclude statement refers to that member
- Circumstances of publication would cause reasonable person to reach that conclusion



Liability to individual member