

A woman and a man, who were professional rivals, were attending a computer industry dinner where each was to receive an award for achievement in the field of data processing. The man engaged the woman in conversation and expressed the opinion that if they joined forces, they could do even better. The woman replied that she would not consider him as a business partner. When the man demanded to know why, the woman attempted to offend him by stating that he was incompetent.

The exchange was overheard by a guest who attended the dinner. The man suffered emotional distress but no pecuniary loss.

If the man asserts a claim against the woman based on defamation, will he prevail?

- A. No, because the man suffered no pecuniary loss.
- B. No, because the woman's statement was made to the man and not to the guest.
- C. Yes, because the woman intended to cause the man emotional distress.
- D. Yes, because the woman should have foreseen that her statement would be overheard by another person.

Explanation:

Intentional v. Negligent communication

Intentional communication

Knowledge or substantial certainty that statement will be communicated to third party—eg:

speaking directly to third person
sending message in group chat
screaming near crowd

Negligent communication

Foreseeable risk that statement will be communicated to third party—eg:

leaving document on desk in open area
speaking loudly in public

Defamation can be either libel (written statements) or **slander** (**spoken statements**—as seen here). To establish a defamation claim based on slander, the plaintiff must prove all of the following:

The defendant knowingly made a false statement about the plaintiff *or* should have known that the statement was false.

That type of statement would tend to harm the plaintiff's reputation.

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

That statement caused the plaintiff special harm *or* was **slanderous per se**—eg, accused the plaintiff of conduct adversely affecting the plaintiff's occupation.

Negligent communication (ie, publication) occurs when it is **reasonably foreseeable** that a **third party might hear** the defendant's statement.

Here, the woman stated that the man was incompetent in his field of data processing (slander per se) during a dinner. Since the man received an achievement award at the dinner, the woman should have known that her statement was false. And though she directed the statement at the man, it was reasonably foreseeable that another dinner guest would overhear her (negligent communication) **(Choice B)**. Therefore, the man will prevail on his defamation claim.

(Choice A) Slander generally requires proof of special harm (pecuniary/monetary loss). But since the woman accused the man of professional incompetence (slander per se), his harm is presumed and no proof of special harm is required.

(Choice C) Intent to cause emotional distress is not an element of defamation, so the fact that the woman intended to cause the man emotional distress by offending him has no

effect on the viability of his claim. However, such intent would be required had the man sued for [intentional infliction of emotional distress](#).

Educational objective:

Defamation requires proof that the defendant intentionally or negligently communicated a false statement about the plaintiff to a third party. Negligent communication occurs when it is reasonably foreseeable that a third party might hear the defendant's statement.

References

Restatement (Second) of Torts § 577 (Am. Law Inst. 1977) (intentional or negligent communication).

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