

A factory manager and one of her employees speak fluent Spanish. No other employees at the factory speak or understand Spanish. One day, the manager accused the employee, in Spanish and in front of other employees, of stealing a valuable item from the manager's office. Shortly after making this accusation, the manager discovered that she had accidentally failed to see the item on her desk and apologized to the employee.

The employee sued the manager for defamation.

Is the employee likely to prevail in his suit?

- A. No, because none of the other employees understood Spanish.
- B. No, because the manager mistakenly believed that the employee stole the item.
- C. Yes, because the manager made the defamatory statement in front of other employees.
- D. Yes, because the manager's accusation amounted to slander per se.

### Explanation:

**Defamation** can be either libel (written statements) OR **slander (spoken statements—**as seen here). For defamation based on slander, the plaintiff must prove that:

the defendant knowingly made a false statement about the plaintiff OR negligently failed to determine its falsity

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

the defendant intentionally or negligently **communicated** (ie, published) that statement to a **third party who understood** the statement's message *and*

that statement caused the plaintiff special damage (monetary loss) OR constituted **slander per se** (eg, accused the plaintiff of theft or other serious crime).

Here, the manager falsely stated that the employee stole a valuable item from her office in front of other employees. But since that statement was made in Spanish, none of the other employees understood. Therefore, the employee will likely not prevail on his defamation claim **(Choice C)**.

**(Choice B)** A plaintiff who is a **public figure or official** must prove that the defendant made the defamatory statement with actual malice—ie, knowledge or reckless disregard of the statement's falsity. But since the employee is a private individual, he need only prove that the manager *negligently* failed to determine falsity.

**(Choice D)** Although the manager's accusation that the employee committed theft (a serious crime) constituted slander per se, the employee will not prevail because none of the other employees understood the accusation.

### Educational objective:

Defamation requires proof that the defendant intentionally or negligently communicated a false statement about the plaintiff to a third party who understood its meaning.

### References

Restatement (Second) of Torts §§ 558–59, 568, 570, 577, 580B (Am. Law Inst. 1977) (elements of defamation).

Restatement (Second) of Torts §§ 570–74 (Am. Law Inst. 1977) (slander per se).

Restatement (Second) of Torts § 577 (Am. Law Inst. 1977) (communication/publication requirement).

## Publication of defamatory statement



statement understood  
=  
publication



statement not understood  
=  
no publication

