

A man sued his neighbor for defamation based on the following facts: The neighbor told a friend that the man had set fire to a house in the neighborhood. The friend, who knew the man well, did not believe the neighbor's allegation, and the neighbor in fact knew that it was false. The friend told the man about the neighbor's allegation. The man was very upset by the allegation, but neither the man nor the neighbor nor the friend communicated the allegation to anyone else.

Should the man prevail in his lawsuit?

- A. No, because the friend did not believe what the neighbor had said.
- B. No, because the man cannot prove that he suffered pecuniary loss.
- C. Yes, because the man was very upset at hearing what the neighbor had said.
- D. Yes, because the neighbor communicated to the friend the false accusation that the man had committed a serious crime.

Explanation:

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 negligently failed to determine its falsity).

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 damage** (ie, pecuniary/monetary loss).

However, some spoken statements are **slanderous per se** because they are so harmful to the plaintiff's reputation that **damages are presumed**. Therefore, proof of special damage is unnecessary when a statement falsely accused the plaintiff of any of the following:

committing a serious crime (eg, arson, murder, rape, theft)

engaging in conduct that adversely affects the plaintiff's occupation (eg, butcher sells rotten meats)

committing serious sexual misconduct (eg, adultery)

having a loathsome disease (eg, sexually transmitted infection)

Here, the neighbor falsely told the friend that the man had set fire to a house in the neighborhood (serious crime). Since that type of statement constitutes slander per se, the man's harm is presumed. Therefore, the man should prevail in his defamation lawsuit even if he cannot prove pecuniary loss (**Choice B**).

(Choice A) Defamation requires proof that the defendant's false statement was *communicated* to a third party—not that the third party *believed* it. Therefore, the man can prevail even if the friend did not believe the neighbor's allegation.

(Choice C) Defamation does not require proof of emotional distress, so the fact that the man was very upset after hearing the neighbor's allegation has no effect on the viability of the man's claim. However, proof of emotional distress would be required in an *intentional* or *negligent* infliction of emotional distress claim.

Educational objective:

Slander generally requires proof of special damage. However, damage is presumed when the statement was slanderous per se—ie, it accused the plaintiff of (1) a serious crime, (2) conduct that adversely affects his/her occupation, (3) serious sexual misconduct, or (4) having a loathsome disease.

References

Restatement (Second) of Torts § 558 (Am. Law Inst. 1977) (defamation elements).

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

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

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Slander per se

Committing a
serious crime



Conduct adverse
to occupation



Serious sexual
misconduct



Loathsome
disease



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