

The owner of a truck leasing company asked one of his employees to deliver \$1,000 to the dealership's main office. The following week, as a result of the owner's belief that the money had not been delivered, the owner instructed the employee to come to the office to submit to a lie detector test.

When the employee reported to the owner's office for the test, it was not administered. Instead, without hearing the employee's story, the owner shouted at him, "You're a thief!" and fired him. The owner's shout was overheard by several other employees who were in another office, which was separated from the owner's office by a thin partition. The next day, the employee accepted another job at a higher salary. Several weeks later, upon discovering that the money had not been stolen, the owner offered to rehire the employee.

In a suit for slander by the employee against the owner, will the employee prevail?

- A. No, because the statement was made to the employee alone and intended for his ears only.
- B. No, because the owner made the charge in good faith, believing it to be true.
- C. Yes, because the employee was fraudulently induced to go to the office for a lie detector test, which was not, in fact, given.
- D. Yes, because the owner should have foreseen that the statement would be overheard by other employees.

Explanation:

Slander is defamation through **speech**, gesture, or any other form that is not libel. To prevail in a suit for 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 (ie, **should have foreseen** that it would be heard by a third party).

That statement caused the plaintiff special harm (ie, pecuniary/monetary loss).

However, **no proof of harm** is required when the defamatory statement constitutes **slander per se**—ie, the statement accused the plaintiff of any of the following:

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

conduct that adversely affects the plaintiff's occupation (eg, performing surgeries while intoxicated)

serious sexual misconduct (eg, infidelity)

having a loathsome disease (eg, sexually transmitted infection).

Here, the owner falsely accused the employee of theft (slander per se). Since the owner made that statement without listening to the employee's story, the owner was likely negligent in failing to determine that his statement was false. Additionally, though the accusation may have been intended for the employee's ears only, the owner should have foreseen that other employees would overhear him shouting through the thin partition (negligent communication) **(Choice A)**. Therefore, the employee will likely prevail on his slander claim.

(Choice B) Slander requires proof that the defendant knew *or* negligently failed to determine that his/her statement was false. Here, although the owner believed in good faith that his accusation was true (no knowledge of falsity), he could still be liable for slander if he negligently failed to determine that his accusation was false.

(Choice C) Fraudulent inducement is an element of **intentional misrepresentation**, which requires proof that the defendant knowingly or recklessly misrepresented a material fact to induce the plaintiff's reliance. But since the employee only sued for slander, his fraudulent inducement is irrelevant.

Educational objective:

Slander (ie, spoken defamation) requires proof that the defendant intentionally or negligently communicated a false statement about the plaintiff to a third party. Negligent

communication occurs when the defendant should have foreseen that his/her statement would be heard by a third party.

References

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

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Defamation

(intentional or negligent communication requirement)



Intentional
communication



Negligent
communication



Unforeseeable
communication