

A man and a woman were law school classmates who had competed for the position of editor of the law review. The man had the higher grade point average, but the woman was elected editor, largely in recognition of a long and important note that had appeared in the review with the woman credited as the author.

During the following placement interview season, the man was interviewed by a representative of a nationally prominent law firm. In response to the interviewer's request for information about the authorship of the law review note, the man said that he believed that the note attributed to the woman was largely the work of another student.

The firm told the woman that it would not interview her because of doubts about the authorship of the note. This greatly distressed the woman. In fact, the note had been prepared by the woman without assistance from anyone else.

If the woman asserts a claim against the man based on defamation, will she recover?

- A. No, because the statement was made by the man only after the interviewer inquired about the authorship of the note.
- B. No, unless the woman proves pecuniary loss.
- C. Yes, because the man's statement was false.
- D. Yes, if the man had substantial doubts about the accuracy of the information he gave the interviewer.

## Explanation:

**Defamation** (libel or slander) occurs when a defendant communicates (ie, publishes) a false statement about the plaintiff to a third party and harms the plaintiff's reputation. But the defendant is not liable for defamation if that communication is **privileged**. One such privilege arises when the defendant **reasonably believes** that:

the statement affects an **important interest** of the third party *and*

communicating that statement to the third party is **socially acceptable**—eg, the statement is made in response to a request rather than volunteered.

However, this is a conditional privilege that is **lost when abused**. Abuse occurs when the defendant knows that the statement is false or recklessly disregards that possibility (ie, has **substantial doubts** about the statement's accuracy).

Here, the man falsely told the interviewer that the woman's law review note was largely the work of another student (defamation). This communication was privileged since (1) the man could reasonably believe that his statement would affect the interviewer's hiring decision (important interest) and (2) the statement was made in response to the interviewer's inquiry about the note (socially acceptable) **(Choice A)**. But if the man had *substantial doubts* about the accuracy of his statement, then the privilege will be lost and the woman will recover for defamation.

**(Choice B)** **Slander** (spoken defamation) ordinarily requires proof of special harm (pecuniary loss). But such proof is *not* required when the defendant's statement constitutes slander per se—eg, a statement accusing the plaintiff of conduct that adversely affects his/her occupation. Here, since an accusation of plagiarism would harm a law student's job prospects (slander per se), the woman can recover without proving pecuniary loss.

**(Choice C)** Since defamation requires proof of falsity, the fact that the man's statement was false supports the woman's claim. But since the man's statement was privileged, the woman will only recover if this privilege was abused—ie, the man knew or recklessly disregarded the possibility that his statement was false.

## Educational objective:

A defamatory statement communicated to a third party is privileged when the defendant reasonably believes that (1) the statement affects an important interest of the third party and (2) the communication is socially acceptable. This privilege is lost if the defendant knows that the statement is false or recklessly disregards that possibility.

## References

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

Restatement (Second) of Torts § 595 (Am. Law Inst. 1977) (statements made to protect third party's interest).

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