Ahtera Dixon

Dr. Baker

Media Law & Regulation, MWF, 11:00

29 November 2014

Term Project: Defamation

The primary focus of this project is the subject of defamation discovered in various media platforms. This subject interests me because this concept has been detected in films, magazines, radio, and many other media platforms. Defamation has been defined as “an invasion of the interest in reputation and good name, by communication to others, which tends to diminish the esteem in which [an individual] is held (Prosser, 1971)”. As an aspiring filmmaker, it is possible that I could make a film based on events that have actually occurred, and therefore, could involve basing my characters on people who witnessed these events. But in the event that this could happen, I would like to see to it that these characters are portrayed accurately according to the real people on whom the characters are based on. I have read news of people taking drastic action any person or company that has defamed the name or image of person in their works. For example, the person who has been defamed could be hold a libel per se against the defamer. This refers to the type of person the defamer has claimed to be (adulterer, slanderer, etc.), people wouldn’t want to be close to the defamer.

Defamation has been major issue in the country for years throughout history. But the handle on the concept has changed in the last century. This has been noticed in the matter of many court cases that have occurred over the years. Through the reading of these cases, I have noticed how the effect of the trial can go in any direction, depending on the CLASS of the person who is the plaintiff in the case. The class of a person can be described as a public official, a public figure, a private individual involved in a matter of public interest, and solely a private individual. These classifications became established in the whereabouts of the cases in the 1960s. Before this time, defamation was handled under common law. A few years into the decade in 1963, constitutional law became applied in handling the matter whenever it came up in any issue.

Throughout history, common law was applied to any defamation case by the Court. However, the State has had an interest in protecting the reputation of certain people, and often the State would get some sort of benefit from it. Later, in 1963, constitutional law became applied by a certain type of defamatory speech could be protected by Constitutional forms of speech. In today’s society, slander and libel are being combined. As libel is printed, and slander is spoken, film would be treated as libel because it’s originated as print, even though it’s spoken later, and is considered a publication. In film, libel can be misinterpreted as either defamation or privacy. The law of libel refers primarily protecting a person’s character and reputation. Or it can go the other way into the law of privacy. This law primarily protects a person’s peace of mind, his/her sensibilities, spirits, and feelings.

Under the concept of defamation, there are two primary categories of defamation. Most libel actions involve civil law, which refers to action by individuals to recover compensation of damages. Therefore, defamation involves torts, which refers to the intent to defame someone on diminish of civil law instead of criminal law. Because of these categories, criminal libel actions are brought by states and are virtually non-existent in the United States. Since film is categorized under libel, libel has three elements to it. The first element is defamation itself. This means that the statement being made by the defamed must defame, that is, it must be a false statement, written or broadcast, which tends to: bring any person into public hatred, contempt, or ridicule or; lower him in the esteems of his fellows, or; cause him to be shunned or avoided, or; injure him in his business or profession. The second element is publication. This means that the statement must be communicated to a third party (a statement is “published” when transmitted over the airwaves. This often leads to the Liability of Network Affiliates, which refers to those who have only a secondary role in the publication of a defamation by another, as in the case of station affiliates carrying a network program, may be accountable only if they knew or should have known the defamatory character of the broadcast. The third element of libel is identification, which refers to the third party must be able to recognize that the libel is against the person who claims to have been libeled.

In order to come against the claims of libel, there are three primary defenses against libel. The first defense is truth, which is an absolute defense in many jurisdictions, although some require “truth accompanied by good motives for justifiable ends.” However, the truth can be difficult to sustain. The second defense is privilege, which has two categories under the concept. The first category is absolute privilege, which has six settings: judicial proceedings, legislative proceedings, executive communications, publications made with consent of the plaintiff, privileged communications (e.g., husband/wife, priest/parishioner, etc.), and political broadcasts. The second category is qualified privilege, which means that persons are immune from liability if certain conditions are met. For the media, the most important qualified privilege is fair and accurate reporting of official government proceedings where there is absolute protection. Finally, the third defense against is “fair comment”, which is generally available in regard to people and their words offered for public acceptance or approval, also available for statements of opinion.

One year later, in 1964, the constitutionalization of libel came into play. Until this year, libel was a State matter. This meant that the Supreme Court refused to impose the First Amendment on private actions. From then on, the new concept of “actual malice” came into dealing with libel in trials. Actual malice was defined as knowledge that the information is false and publishing with reckless disregard for truth. Because of this, the application of actual malice to a trial became relevant depending on the class of the plaintiff. This concept came into play from the trial of *New York Times v Sullivan (1964).* This case dealt with the class of public officials and the context of public duties. This case resulted in the overturning of state criminal libel laws.

Another case called *Kassel v. Gannett Co. (1980), Inc.* occurred that caused the determination of a “public official”. This meant if someone is identified as a public official, then they must prove actual malice. If they’re not a public official, then the court must refer to common law. A frank recognition that the First Amendment requires maximum latitude for uninhibited, robust, and wide-open discourse on issues of public importance. Those who hold public office have access to the media to defend themselves, and is tantamount to the ability to engage in self-help. People seek positions of influence in public life do so with the knowledge that, if successful in attaining their goas, diminished privacy will result. Application of the philosophy results in a three-part test on whether or not a person should be classified as a public official for the purposes of a libel suit: character of employment, access to means of self-help, and assumed risk.

Next, there’s the case of *Curtis Publishing v. Butts (1967)* dealt with the class of public figures. The case posited the “extreme departure” rule, then later actual malice is applied. This case is the second primary defamation case since *New York Times v. Sullivan.* This caused the expansion of public figures. Based on the decision from the New York Times case, news organizations were protected from liability when printing allegations about public officials. Therefore, the organizations may still be liable to public figures if the information they disseminate is recklessly gathered and unchecked.

After this case, the new case of *Rosenbloom v. Metromedia (1971)* dealt with the class of private individuals involved in a matter of public interest. This led to the expansion to “private individuals”, which made this the “high water mark” of the Supreme Court constitutionalized libel. Because of this case, the issue isn’t the type of person, but the kind of issue being discussed. Next, there is the case of *Gertz v. Robert Welch (1974)* dealt with the class of private individuals.

This case was the reversal of the trend (the case involved a high-profile criminal case) from *Rosenbloom.* Due to this case, a private individual wouldn’t be required to prove “actual malice”. The Supreme Court said that states could set their own standard as long as it wasn’t “liability without fault”. But the Court also clarified if the state standard is lower than actual malice, the standard applying to public figures, then only actual damages may be awarded. Another case that focuses on defamation is *Time, Inc. v. Firestone (1974).* This case concerns defamation suits against public figures. In this case, the Court ruled that because the defendant wasn’t a public figure, they were able to collect libel damages from the plaintiff. The defendant had no special prominence in societal affairs, nor did they thrust themselves into a controversy to influence its resolution. The laws applied here were Amendment XIV and Amendment I of the U.S. Constitution, and references back to the New York Times case.

Years later, the case that was change everything from the standards of *New York Times* was *Milkovich v. Lorain Journal Co. (1990*). This case was the case that rejected the argument that a separate opinion privilege existed against libel. This ended the era of the *New York Times* case and began the *Gertz* case. Because of this, the Court clarified and expanded the range and scope of what could be said in the press without fear of litigation. The First Amendment doesn’t require a separate “opinion” privilege limiting the application of state defamation laws.

In conclusion, defamation has proven to be a major problem for different classes of people throughout history. The result of a defamation case varies depending on the class of the person suing. The result will either damage the plaintiff or the defendant, but the plaintiff is the person who was the defamed, so they claim to receive more damage than the defendant will ever receive if convicted. Defamation has been an issue throughout history, so it’s not a recent issue. No matter what the result of the case will be, both sides will receive some form of damage in the eye of the public, no matter what class of person they are.

Bibliography

*Gertz v. Robert Welch, Inc.* 418 U.S. 323, 1974 LEXIS 88, 1 Med. L. Rep. 1633 (1974)

*Kassel v. Gannett Co.,* 875 F.2d 935, 1989 U.S. App. LEXIS 7453, 16 Media L. Rep. 1814

(1st Cir. 1989)

*Milkovich v. Lorain Journal Co.,* 497 U.S. 1, 1990 U.S. LEXIS 3296, 17 Media L. Rep. 2009 (1990)

*New York Times v. Sullivan* 376 U.S. 254, 1964 LEXIS 1655, 1 Med. L. Rep. 1527 (1964)

Prosser, W. (1971) *Handbook of the Law of Torts.* West Pub. Co; 4th Edition

*Rosenbloom v. Metromedia*, 403 U.S. 29, 1971 U.S. LEXIS 124, 1 Media L. Rep. 1597 (1971)

2014-15