

Newsgathering in Pennsylvania

Defamation, Invasion of Privacy and
other causes of action

Defamation

- False, Defamatory statement
- About an identifiable person
- Published to a third party
- Causing injury to the person's reputation

What is Defamatory?

- Any communication that tends to harm a person's reputation or injure the person in his or her business or profession.

Things to Consider

- Defamation by implication, innuendo
- Potential innocent interpretation vs. alternate defamatory interpretation - CASE WILL GO TO JURY
- TEST: What would the average reader understand this article to be saying?
- Headline or photograph alone can be defamatory
- Letters to the Editor

Falsity

- Statement must be false to be actionable
- Substantial truth is sufficient
- Whose burden to prove truth or falsity?
 - Public officials/public figures
 - Private individuals

Identifiable Plaintiff

- Individual Plaintiffs
- Large groups (25 more more)

Fault

- Public Figures and Public Officials
 - Actual Malice – published with knowledge of falsity or reckless disregard for the truth
 - Reporting procedures
- Limited Purpose Public Figures
- Private Figures
 - Negligence

Defenses

- Fair Report Privilege
 - Official proceedings
 - Conditional privilege
- Opinion
 - Is statement capable of being proven true or false?
 - Is statement based on or does it presume underlying false/defamatory facts?
- Consent
- Statute of Limitations

Not a Defense

- Neutral Reportage Privilege
- Statements made by others and merely “quoted” or repeated in newspaper

Avoiding Libel Suits

- Check sources
- Get independent corroboration
- Attempt to verify accuracy
- Be careful with details
- Getting the “other side of the story”
- Be cautious when editing story/crafting headline
- Photographs
- “Red alert” words
- Retractions

What to do about Complaints

- Be polite
- Do not admit error or fault
- Talk to editor, supervisor or attorney
- **FOLLOW NEWSPAPER'S PROCEDURE**

Invasion of Privacy

- Public Disclosure of Private Facts
 - Publicity given to
 - Private Facts
 - Which would be highly offensive to a reasonable person, and
 - Are not of legitimate concern to the public

Invasion of Privacy (cont.)

- False light in the public eye
 - Publicity which
 - Places the plaintiff
 - In a false light before the public
 - In a manner that is “highly offensive”
- Similar, but not the same as, defamation
- Newsworthiness/Matters of Legitimate Public Interest
- Often brought where facts published are literally true, but are selectively disclosed in a manner creating a false impression

Invasion of Privacy (cont.)

- Right of Publicity
 - Misappropriation of
 - Plaintiff's name or likeness
 - Without consent
- Common law
- Pennsylvania Statute

Invasion of Privacy (cont.)

- Intrusion upon seclusion
 - Highly offensive
 - Intrusion
 - On the plaintiff's solitude or seclusion
- Must have reasonable expectation of privacy
- Public places
- Accident scenes

Invasion of Privacy Checklist

- Consent from the Subject
 - Adults vs. Children
 - Public vs. private figures
- Method of Obtaining Information
 - Public places vs. private places
 - Information in public records
- Content
 - Would publication offense community standards of decency?
 - Is information of public interest?
 - Is information true?
 - Is information vital to story?

Taping of Conversations

- Two-party consent required in Pennsylvania

Trespass/Entry into private property