

# THE LAW OF DEFAMATION

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JAROUDI LAW, PC

# WHAT IS DEFAMATION?

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- Defamation can be defined as “the act of making or publishing, or communicating a false statement to a third-party, resulting in damage to another party’s reputation.
- Libel vs. Slander
  - Libel is the written or published communication of a false statement to a third-party, resulting in damage to another’s reputation
  - Slander is the spoken communication of a false statement to a third-party, resulting in damage to another’s reputation

# TEXAS LAW DEFINITION OF DEFAMATION

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- Texas defines libel as
  - “defamation expressed in written or other graphic form that tends to blacken the memory of the dead or that tends to injure a living person’s reputation and thereby expose the person to public hatred, contempt or ridicule, or financial injury, or to impeach a person’s honesty, integrity, virtue, or reputation or to publish the natural deficits of anyone and thereby expose the person to public hatred, ridicule, or financial injury.” Tex. Civ. Prac. & Rem. Code § 73.001

# HISTORY OF DEFAMATION

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- First appeared in English Common Law in the 1500's
  - Words accusing someone of a crime
  - Words accusing someone of being incompetent at their job
  - Words discussing someone having a disease or sickness

Became the most common cause of action in the King's Court for many years, still very popular



# ELEMENTS OF DEFAMATION UNDER TEXAS LAW

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- There was a published statement
- Statement was defamatory and concerning the plaintiff, &
- The defendant acted with “actual malice” if the plaintiff was a public official or public figure – or “negligence” if the plaintiff was a private figure – regarding the truth of the statement
- One year statute of limitations to file after defamatory statement is published to third party



# WHAT IS AND WHAT IS NOT DEFAMATORY?

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- Physical descriptions: a physical description of an individual based on one's own impression is not considered defamatory. Describing a person as "pudgy and balding, with a face resembling an egg" was not considered defamatory in Texas. *Raymer vs. Doubleday & Co.*, 615 F.2d 241, 243 (5<sup>th</sup> Cir. Tex. 1980).
- Humorous & Intentionally False Advertising: satirical advertisements do not amount to defamation in Texas because no one would understand the postings to be true. *Gumpert v. ABF Freigh Sys.*, 293 S.W.3d 256, 267 (Tex. App. Dallas 2009).
- Illegal event: a website and emails describing an event at a ranch as illegal and unethical without disclosing real identities constituted defamation. *Cullum v. White*, 399 S.W.3d 173, 182-83 (Tex. App. San Antonio 2011).

# DEFAMATION PER SE

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- Texas considers 4 types of statements so injurious that the plaintiff does not need to prove they suffered harm
  - 1.) Statements imputing the plaintiff committed a crime
  - 2.) Statements imputing the plaintiff possesses a loathsome disease
  - 3.) Statements imputing injury to the plaintiff's office, business, profession, or calling; &
  - 4.) Statements imputing the plaintiff has engaged in sexual misconduct. *Downing v. Burns*, 348 S.W.3d 415, 424 (Tex. App. Houston 14<sup>th</sup> Dist. 2011)

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# DEFENSES TO DEFAMATION

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- Opinion
- Truth/Falsity
- Privilege (Absolute, Qualified, Fair Report, Neutral Report)
- Communications Decency Act
- Libel-Proof Plaintiff Doctrine, &
- Incremental Harm Doctrine

# TEXAS DEFAMATION DAMAGES

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- Special damages
- Presumed damages
- Actual damages
- Punitive damages

# TYPES EXPLAINED

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- Special damages are damages that are special and unique to the situation at hand.
- Damages will be presumed in cases where the plaintiff need not prove actual injury. For example, defamation per se recognizes some statements are so inherently defamatory and damaging that plaintiffs need not actually prove harm or injury.
- Also known as “compensatory damages,” actual damages are real and tangible damages suffered by a plaintiff.
- Punitive damages are commonly known as “exemplary damages” and sought after to punish defendants who have often acted maliciously when publishing defamatory statements.

# Texas Damages Comparison Table

	Special Damages	Presumed Damages	Actual Damages	Punitive Damages
Definition	Unique or particular damages typically associated with defamation per quod actions.	Damages which need not be proved by the plaintiff, and commonly associated with defamation per se claims.	Real or tangible damage, injury, or loss to a plaintiff.	Damages meant to punish defendants who acted maliciously when publishing certain statements.
How to Prove	Plaintiffs must "specifically" state the damage caused to them and their reputation.	Because damages are presumed, plaintiffs need not prove damages.	Plaintiffs must prove damage to their reputation. However, in defamation per se actions, plaintiffs need not prove injury to reputation in order to recover for mental anguish.	Plaintiffs must prove by clear and convincing evidence that a defendant acted with actual malice. Plaintiffs must also prove they suffered substantial injury or loss, and damages other than nominal ones.