

# Newsroom Law Basics

# What is a defamatory statement?

- False
- Statement of fact (not opinion)
- About an identifiable person or entity
- Tends to injure reputation

# Is the statement false?

- It must express or imply a verifiably false fact about the subject.
- However, a statement is not an opinion just because you preface it by saying “IMHO...”
- A statement is not “false” if it is substantially true. In other words, the falsity must be material or significant.

# Examples from libel cases

- Considered a statement of fact and defamatory (when false):
  - Calling an attorney a “crook”
  - Charging that a politician has ties to the mafia
  - Alleging someone has turned a blind eye to child abuse
- Not a statement of fact but instead opinion:
  - Calling a TV show participant a “local loser”
  - Describing someone as a “menace to society”

Bottom Line: Can the statement be proved true or false?

# What is the fault standard?

- Negligence Standard
  - Private Figures (most people)
- Actual Malice Standard
  - Public Officials
  - All-Purpose Public Figures
  - Limited Purpose Public Figures

Bottom Line: Lesser protection for most potential plaintiffs.

# Can you find a privilege to publish?

The “Fair Report” Privilege might protect you if:

- Your source is an official public document or statement by a public official on a matter of public concern;
- You properly attribute the information to that source; and
- You fairly and accurately portray the information from the document or statement, including any denial

Why it matters: Journalists have more leeway to report upon court proceedings, crime and local government.

# Common Libel Myths

- Social media comments are opinion by definition.  
No, the same rules apply in cyberspace. If we republish comments made on Twitter or Facebook, we could be liable.
- If we attribute a defamatory statement to the speaker, we cannot be held responsible.  
No, we often get sued for defamation where the actual source of the statement is not sued. (example – Letter to the Editor)
- A confidential source provides as much legal protection as any other source.  
No, there are limits to relying upon these sources if sued.

# Common Libel Myths Continued...

- If a person is not actually named, than that person cannot sue.  
No, the issue is whether the person was identifiable by the description in the article.
- If a lawyer says something about a pending case, it is subject to the fair report privilege.  
No, the privilege attaches to statements made in court, but not always outside of the courthouse.

# Tips for Minimizing Libel Claims

- Accuracy matters most. Good journalistic practices are good legal practices.
- Get comment from your subject and define that subject broadly. Frame inquiries as questions, not facts.
- Handle complaints objectively and correct mistakes.
- Watch the difference between criminal and civil in legal matters (e.g., use of “fraud” or “guilty”).

# Tips for Minimizing Libel Claims Continued...

- Pay particular care to stories on specialized subjects such as malpractice or scientific research.
- If a subject threatens a lawsuit, make your editor aware. Ask whether a lawyer should know too.
- Watch the social media on investigative stories.
- Internal communications matter. Don't use pejorative descriptions such as "house scam" etc.

# Privacy Basics

# Elements of “Disclosure of Private Facts”

- A public disclosure;
- Of facts about an individual that have been kept private;
- The disclosure would offend a reasonable person; and
- The facts disclosed are not newsworthy or a matter of legitimate public concern.

# Elements of “Intrusion on Seclusion”

- An intentional intrusion into a place or zone where the individual had a reasonable expectation of privacy; and
- A reasonable person would consider the intrusion to be “highly offensive”

# Copyright

# Copyright and Fair Use

- Any creative work “fixed in a tangible form” is subject to copyright protection
- Permission is Best
  - But, from whom?
- Fair use is a fact specific test which looks at the purpose of the use and the quantity – and quality – of the work taken

# Copyright and Photos

- Many claims from photographers
  - New tools allow photographers to search web every day to find uses of photos in their portfolio
  - Lots of photographers have lost employment and rely on license fees for income
  - Photographers' associations are educating photographers on their rights

# Copyright and the Internet Myths

- Materials on the Internet are in the “public domain.”  
No, the Internet is simply another medium for distribution
- Materials without a copyright symbol are not protected.  
No, the law does not require a © symbol
- If everyone else is taking it, it must be okay (or at least safe or acceptable).  
No
- We have little exposure even if the material copyrighted.  
No – statutory damages and attorneys’ fees