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Paul's Claims

Defamation

Defamation requires: (1) defamatory statement; (2) of or concerning the Plaintiff (P); (3) published to a third party; (4) is harmful to P; and (5) causing damages. If the plaintiff is a public figure or the matter is one of public concern then P must also prove fault and falsity.

Defamatory statement, of or concerning the Plaintiff

A defamatory statement concerning the plaintiff are statements that are offensive to a reasonable person in the plaintiff's shoes. A defamatory statement may be libel (written) or slander (oral).

Here, Dan, Paul's legal writing professor told Jack and Paul's Legal Research and Writing class that *"I hope no other student has copied his footnotes from another student's paper like that two-bit actor Paul."* This statement is slander. Any reasonable person in Paul's position would be offended by the statement.

Therefore, there is a defamatory statement concerning the Plaintiff, Paul.

Published to a third party

The statement was published to a third party.

Here, the statement was published by Dan to Paul's Legal writing class.

Therefore, it was published to third parties.

Harmful to Plaintiff

The statement is harmful to the plaintiff.

Here, the statement was harmful to Paul because Dan called Paul a "two-bit actor" and Paul is an actor who had small but memorable roles in two recent Hollywood blockbusters.

Paul would argue that he is a public figure based on his two roles and would have to prove that Dan is at fault and made false statements.

Additionally, Paul, deeply humiliated, suffered a severe panic attack.

Therefore, Paul can likely prove that the statement was harmful to him.

Public Figure

A public figure includes celebrities, actors, governmental officials, entrepreneurs, professional athletes, etc. Paul would argue that he is a public figure because of his two Hollywood blockbusters; although his role was small, they were memorable and thus he is considered an

actor who is a public figure. D would argue that he is not a public figure because he only had two small roles and is not generally known and famous as other actors are.

Paul will likely be found to be a public figure and would have to prove fault and falsity.

If the court finds that Paul is only an ordinary citizen/person, and not a public figure, then Paul does not have to prove fault or falsity.

Fault

P would have to prove that D was at fault for making the statement and that D acted with actual malice when making the statement.

Here, Paul would argue that Dan acted with actual malice because he knew that Paul was increasingly anxious and had doubts about his ability to timely complete the research paper. Knowing this fact, and after speaking with Jack and Jack communicating to Dan that Paul might have stolen Jack's paper on the day it seemed to be missing, Dan made the statement to the class. Dan did not check whether the paper was in fact Paul's. Therefore, Paul would likely be able to argue that D was at fault.

Falsity

P would also have to prove that the statement D made was false to recover any damages. Here, the statement that Dan made was false because Dan later discovered that he had inadvertently shown Jack's own paper and not Paul's paper and that Paul had not copied Jack's or any other person's materials.

Damages

An oral statement is slander per se if the statement made by D is related to P's employment, a loathsome disease, or related to adultery, then P can recover damages under Slander Per se. Here, Paul would argue that Dan's statement is Slander Per Se because Dan's statement that Paul was a "two-bit actor" is related to his employment and thus entitled to damages. Dan would find it hard to counter this argument.

Therefore, Paul would likely succeed on a claim against Dan for Slander Per Se.

Paul will likely succeed on a claim of defamation, especially if the court finds him to be a public figure. If the court finds that Paul is not a public figure, then Paul also would likely succeed on the defamation elements and be able to recover damages.

Intentional Infliction of Emotional Distress (IIED)

IIED requires the Defendant (D) act with intentionally, with extreme and outrageous conduct,

causing damages to the plaintiff. IIED is an intentional tort. Physical injuries do not have to occur, so long as D acted intentionally with extreme and outrageous conduct, then P can recover.

Here, Paul would argue that Dan acted intentionally with extreme and outrageous conduct to cause Paul to suffer a severe Panic attack. Paul would argue that Dan was aware of Paul's anxiety and doubts about his ability to complete the research paper on time. Paul would further argue that after Jack went to Dan's office and told him about his suspicions, Dan pulled a stack of submitted papers of what he thought was Paul's paper and when Jack saw the paper, he recognized the footnotes and Jack said Paul "had copied all of the footnotes from my paper." Knowing all of this information, Dan chose to tell the entire class "*I hope no other student has copied his footnotes from another student's paper like that two-bit actor Paul.*" Dan's conduct is extreme and outrageous; he should have asked to speak with Paul before or after class to avoid any humiliation and false accusations, like any reasonable professor would have, and kept his comments about Paul's acting to himself.

Paul suffered harm because he had a severe panic attack.

Therefore, Paul will be able to recover for any consequences as a result of the panic attack.

Negligent Infliction of Emotional Distress (NIED)

NIED has the same elements as IIED except the defendant acted negligently rather than intentionally.

Here, Paul would argue that Dan acted negligently when, after learning about all the facts from Jack, he chose to make the statement without regard for his emotional wellbeing.

Paul will likely succeed on this argument as well.

Negligence

Negligence requires, duty, breach, causation, and damages.

Duty

A defendant (D) owes a duty to all foreseeable P's. Under the Majority Cardozo Rule, D owes a duty to all foreseeable P's in the zone of danger. Under the minority Andrews Theory, D owes a duty to all P's.

Here, P would argue that D owed him a duty because he was a student in his legal research and writing class had a duty to treat him with respect as he would with other students in the class. P would argue that he was in the zone of danger because he was in his class under the majority rule.

Breach

A duty is breach if D's duty falls below the level of care/standard a reasonable person would have taken.

Here, P would argue that D breached his duty to him when he negligently made the statement to his class rather than ask to speak with him before or after class. Dan relied on Jack's suspicions and simply made the statement without checking to see whether the paper he pulled from the stack was actually Paul's.

Causation

Causation may be actual or proximate. Actual causation refers to the but-for cause - but for the defendant's conduct, the injury would not have occurred. Proximate Causation is the foreseeable results of D's conduct; and D is liable for the foreseeable results.

Here, P would argue that but-for D's comments, he would not have suffered a severe panic attack, and that Dan is liable for all the foreseeable injuries Paul suffers as a result of the panic attack. Paul would further argue that it was foreseeable that because of Dan's defamatory statement to the class, he suffered a severe panic attack.

Therefore, Dan is both the actual and proximate cause of P's injuries.

Damages

(See below for contributory negligence discussion).

Dan's Defenses

Truth

Truth is a defense to Defamation. If the statement the defendant made was in fact true, then defendant likely has a defense to the claim.

Here, D would argue that he though the statement he made "I hope no other student has copied his footnotes from another student's paper like that two-bit actor Paul" was true at the time he said it; however, this statement is in fact false and therefore Dan does not have a defense because he later discovered that he inadvertently showed jack his own paper and not Paul's paper and that Paul did not in fact copy any of Jack or anyone else's materials.

Therefore, Dan will fail this argument.

Contributory Negligence

Contributory Negligence is a defense to Negligence. The Plaintiff would only recover what he/she is not negligent for; in other words, if P contributed to the negligence, P would only recover what P was not negligent for.

Dan would argue that P is contributorily negligent to the panic attack he suffered because he did not seek any medical treatment. Dan would further argue that when Paul came to him about his anxiety and doubts about his ability to timely complete a research paper that Dan assigned, he noticed Paul appeared unusually anxious and suggested he go see the school counselor.

The facts are silent as to whether Paul actually when to see the school counselor; Dan could further argue that if Paul chose to see the school counselor, that he likely would not have suffered a panic attack.

Dan would likely succeed in arguing that Paul was contributorily negligent in failing to seek medical treatment and a failure to see the school counselor (if the court does find Paul fail to do so). However, Dan would not likely succeed in his claim that Paul would likely not have suffered a panic attack from his defamatory statements.

Therefore, Paul is partially contributorily negligent.

Intentional Tort Defenses

Intentional Tort defenses include self-defense, defense of others, defense of property, necessity.

Here, none of the defenses to intentional tort applies to Dan. He could argue necessity, but there was no private or public necessity available here.

Paul's Recovery

Aside from the defamation and negligence recoveries, Paul may also have other tort remedies. Tort damages include legal remedies, legal restitutionary remedies, and equitable remedies. Legal remedies include compensatory, punitive, and nominal damages.

Tort damages requires foreseeability, unavailability, certainty, and causation (actual and proximate).

P would argue that he should recover tort damages because his injuries were foreseeable, unavoidable, certainly occurred, and Dan was the actual and proximate cause of his injuries.

Therefore, Paul would likely be able to recover some form of compensatory and/or nominal damages.

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