



## **POINT 1 - MEANING OF STATEMENTS**

It is your duty to determine whether the intended audience of the pocket part would conclude that the plaintiffs authored an inaccurate and out-of-date supplement to the treatise.

In making this determination, you should consider the message the communication would send to the intended audience of the pocket part. This means you should consider the innuendoes and implications of what was said, as well as inferences the intended audience of the pocket part would have drawn from what may not have been said. You should also consider the context in which the statement was made.

It is not necessary that the defamatory statement be the primary focus of the communication in order for the plaintiffs to succeed on their claim. The plaintiffs may recover on the basis of even a small portion of a communication, if it is defamatory. It is not a defense that that portion is not the primary focus of the communication or that other portions may be sympathetic to the plaintiffs.

Source: Court's Order of December 8, 2010; Pa. SSJI (Civ.), § 13.08 (2009)

## **POINT 2 - DEFAMATION – FALSITY**

A communication may be false either because it contains untrue or incomplete statements of fact or because its implication is untrue. The burden is on the plaintiff to prove that the communication was false. The test for determining the truth or falsity of a defamatory statement is whether the alleged statement as published would have a different effect on the mind of the reader from that which the truth would have produced. A defamatory statement is not true unless the truth is as broad as the defamatory imputation or sting of the statement.

Source: Pa. SSJI (Civ.), § 13.12 (2009); *Dunlap v. Philadelphia Newspapers, Inc.*, 448 A.2d 6, 15 (Pa. Super. 1982); *Schiavone Constr. Co. v. Time, Inc.*, 847 F.2d 1069, 1084 (3d Cir. 1988); Robert D. Sack, I Sack on Defamation § 3.7 (3d Cir. 1999)

### **POINT NO. 3 DEFAMATION – DAMAGES**

A person liable for publishing a communication that is defamatory of another is responsible for all harm suffered by the person defamed as a result of that publication.

The plaintiffs are entitled to be fairly and adequately compensated for all harm they suffered as a result of the false and defamatory communication published by the defendants.

The injuries for which you may compensate the plaintiffs by an award of damages against the defendants include:

First, the actual harm to the plaintiffs' reputation that you find resulted from the defendants' conduct;

Second, the emotional distress, mental anguish, and humiliation that you find the plaintiffs suffered as a result of the defendants' conduct;

Third, any other special injuries that you find the plaintiffs suffered as a result of the defendants' act.

The motive and purpose of the defendants, their belief or knowledge of the falsity of the publication, and the conduct of the plaintiffs are not to be considered by you in determining the amount of the damages to which the plaintiffs are entitled for the above-stated items. Such factors are only important to the question of whether you will award punitive damages against the defendants and, if you choose to make such an award, the amount of the award.

Source: Pa. SSJI (Civ.), §§ 13.08, 13.16 (2009)

#### **POINT 4 - DEFAMATION – PRESUMED DAMAGES**

If you find that the intended audience of the pocket part would conclude that the plaintiffs authored an inaccurate and out-of-date supplement to the treatise, you may presume that the plaintiffs suffered both injury to their reputations and the emotional distress, mental anguish, and humiliation that would result from such a communication. This means you need not have proof that the plaintiffs suffered emotional distress, mental anguish, and humiliation in order to award them damages for such harm because such harm is presumed by the law.

In determining the amount of an award for such presumed injury to the plaintiffs' reputation and suffering of emotional distress, mental anguish, and humiliation by the plaintiffs, you may consider the character and previous general standing and reputation of the plaintiffs in their community. You may also consider the character of the defamatory communication that the defendants published, its area of dissemination, and the extent and duration of the publication. You may also take into account the defendants' unsuccessful assertion of the substantial truth of the defamatory communications as a matter likely to affect the plaintiffs' reputation. You may also consider what probable effect the defendants' conduct had on the plaintiffs' trade, business, or profession, and the harm that may have been sustained by the plaintiffs as a result of that conduct.

Source: Court's Order of December 8, 2010; Pa. SSJI (Civ.), § 13.16 (2009); *Corabi v. Curtis Publishing Co.*, 441 Pa. 432, 473, 273 A.2d 899, 919-20 (1971); *Frisk v. News Co.*, 361 Pa. Super. 536, 550, 523 A.2d 347, 354 (1986), *appeal denied*, 515 Pa. 614, 530 A.2d 867 (1987); *Sprague v. American Bar Ass'n*, 2001 WL 1450606, at \* 2 n.6 (E.D. Pa. Nov. 14, 2001)

## **POINT 5 - DEFAMATION – PLAINTIFFS NOT REQUIRED TO PROVE SPECIAL DAMAGES**

Plaintiffs are not required to prove that they suffered any actual out-of-pocket loss to recover damages for defamation. Instead, plaintiffs may recover damages for harm to reputation and standing in the community, personal humiliation, and mental pain and suffering. Such harm may be temporary in nature.

Source: *Joseph v. Scranton Times L.P.*, 959 A.2d 322, 334 (Pa. Super. 2008), *appeal dismissed*, 603 Pa. 146, 982 A.2d 1223 (2009); *Brinich v. Jencka*, 757 A.2d 388, 398 (Pa. Super. 2000), *appeal denied*, 565 Pa. 634, 771 A.2d 1276 (2001); *Walker v. Grand Central Sanitation, Inc.*, 430 Pa. Super. 236, 242, 634 A.2d 237, 246 (1993), *appeal denied*, 539 Pa. 652, 651 A.2d 539 (1993); *Curran v. Philadelphia Newspapers, Inc.*, 376 Pa. Super. 508, 512 n.3, 546 A.2d 639, 640 n.3 (1988), *appeal denied*, 522 Pa. 576, 559 A.2d 37 (1989); *Dougherty v. Boyertown Times*, 377 Pa. Super. 462, 471, 547 A.2d 778, 782 (1988); *Agriss v. Roadway Express, Inc.*, 334 Pa. Super. 295, 324, 483 A.2d 456, 472 (1984); *Altoona Clay Prods., Inc. v. Dun & Bradstreet, Inc.*, 367 F.2d 625, 628 (3d Cir. 1996); *Marcone v. Penthouse Int'l Magazine for Men*, 754 F.2d 1072, 1080 (3d Cir.), *cert. denied*, 474 U.S. 864 (1985); *Sprague v. American Bar Association*, 276 F. Supp. 2d 365, 369-72 (E.D. Pa. 2003); *Clemente v. Espinosa*, 749 F. Supp. 672, 680-81 (E.D. Pa. 1990); *Caplan v. Fairchild Publications Corp.*, 1985 WL 4464, at \* 2 (E.D. Pa. Dec. 13, 1985); Restatement (Second) of Torts §§ 569, 570, 621, 623 (1977); 4 Standard Pennsylvania Practice 2d § 23:132

## **POINT NO. 6 DEFAMATION – PUNITIVE DAMAGES – ACTUAL MALICE**

If you do so find in favor of the plaintiffs and against the defendants, you must also determine, for the purpose of punitive damages of which I will later speak, whether the defendants acted intentionally or recklessly.

A person intentionally makes a defamatory communication when he or she knows that it is false.

A person recklessly publishes a defamatory communication when he or she does so with disregard for whether it is true or false, i.e., when he or she does so despite serious doubts about the truth of the communication or when he or she possesses a high degree of awareness of its probable falsity but publishes it anyway. Serious doubt and/or the possession of a high degree of awareness of probable falsity may be inferred from relevant circumstantial evidence of the state of mind of the person who published the defamation. Testimony by that person denying serious doubt and/or a high awareness of its probable falsity does not automatically defeat proof of recklessness, but rather is to be weighed with all the other evidence of that person's state of mind.

You may consider evidence that the defendant was put on notice that the communication was false, but refused to retract it, in deciding whether the defendant published the communication with knowledge of its falsity or with a reckless disregard for the truth.

You may consider evidence that the defendant republished the defamatory statement, after being notified of its falsity, in deciding whether the defendant published the communication with knowledge of its falsity or with a reckless disregard for the truth.

Source: Pa. SSJI (Civ.), §§ 13.08A, 1315 (2009)

**POINT 7 - UNAUTHORIZED USE OF NAME UNDER 42 PA. C.S. § 8316**

A person whose name has commercial value and is used for any commercial or advertising purpose without the written consent of such person may recover damages for any loss or injury sustained by such use.

Source: 42 Pa. C.S. § 8316



**POINT 8 - UNAUTHORIZED USE OF NAME UNDER 42 PA. C.S. § 8316 –  
DEFINITION OF COMMERCIAL VALUE**

“Commercial value” is defined as a valuable interest that is developed through the investment of time, effort and money.

Source: 42 Pa. C.S. § 8316(e)

**POINT 9 - INVASION OF PRIVACY – APPROPRIATION OF NAME**

One who appropriates the name or likeness of another person for his or her own use or benefit is responsible to that person for all harm suffered as a result of this invasion of privacy.

Source: Pa. SSJI (Civ.), § 13.20 (2009); *Curran v. Children’s Service Center of Wyoming County, Inc.*, 396 Pa. Super. 29, 38, 39, 578 A.2d 8, 12 (1990), *appeal denied*, 526 Pa. 648, 585 A.2d 468 (1991)

## **POINT 10 - INVASION OF PRIVACY – FALSE LIGHT**

One who gives publicity to a matter concerning another person that places that other person before the public in a false light is responsible to that person for all harm suffered as a result of this publicity if

a. publicizing matter of this kind about a reasonable person would be highly offensive to that reasonable person.

b. the person giving the publicity acted with knowledge of the falsity of the matter or in reckless disregard of whether it was true or false.

Conduct that is highly offensive to a reasonable person is conduct that a reasonable person, in similar circumstances, would find very objectionable or that a reasonable person in similar circumstances could be expected to take with serious offense.

Publicity means that the matter is communicated to the public at large or to so many persons that the matter must be regarded as substantially certain to become public knowledge.

Source: Pa. SSJI (Civ.), § 13.20 (2009); *Larsen v. Phila. Newspapers, Inc.*, 375 Pa. Super. 66, 81-82, 543 A.2d 1181, 1189, *appeal denied*, 520 Pa. 597, 552 A.2d 251 (1988); *Rush v. Phila. Newspapers, Inc.*, 732 A.2d 648, 654 (Pa. Super. 1999)

## **POINT 11 - INVASION OF PRIVACY – DAMAGES**

Giving publicity to a matter concerning another person that places that other person before the public in a false light, as described in the preceding instruction, is deemed to be an invasion of privacy.

The plaintiffs are entitled to be fairly and adequately compensated for any injuries you believe they suffered as a result of the defendants' invasion of their privacy. The plaintiffs may recover damages for the following injuries:

1. the harm to their interest in privacy;
2. the mental distress suffered as a result of the invasion of their privacy;
3. any other injuries the plaintiffs have suffered as a result of the invasion of their privacy.

Source: *Tagouma v. Investigative Consultant Services, Inc.*, 4 A.3d 170, 174 (Pa. Super. 2010); Pa. SSJI (Civ.), § 13.21 (2009)

## **POINT 12 - PUNITIVE DAMAGES**

If you find that the conduct of the defendants was outrageous, you may award punitive damages, as well as any compensatory damages, in order to punish the defendants for their conduct and to deter the defendants and others from committing similar acts.

A person's conduct is outrageous when it is malicious, wanton, willful, or oppressive, or shows reckless indifference to the interests of others.

Source: Pa. SSJI (Civ.), § 14.00 (2009)

### **POINT 13 - PUNITIVE DAMAGES – AMOUNT OF AWARD**

If you decide that the plaintiffs are entitled to an award of punitive damages, it is your job to fix the amount of such damages. In doing so, you may consider any or all of the following factors:

1. the character of the defendants' act,
2. the nature and extent of the harm to the plaintiffs that the defendants caused or intended to cause; in this regard you may include the plaintiffs' trouble and expense in seeking to protect their interests in legal proceedings and in this suit,
3. the wealth of the defendants insofar as it is relevant in fixing an amount that will punish them and deter them and others from like conduct in the future.

It is not necessary that you award compensatory damages to the plaintiffs in order to assess punitive damages against the defendants, as long as you find in favor of the plaintiffs and against the defendants on the question of liability.

You must determine whether punitive damages are to be assessed against each defendant by that defendant's conduct alone, and the amount of any punitive damages assessed must be measured by your consideration of the factors I have listed as they apply to each particular defendant. While you will return your award of compensatory damages, if any, in one lump sum amount as to all defendants, you must return a separate verdict as to punitive damages, if any, against each of the defendants.

The amount of punitive damages awarded must not be the result of passion or prejudice against the defendants on the part of the jury. The sole purpose of punitive damages is to punish the defendants' outrageous conduct and to deter the defendants and others from similar acts.

Source: Pa. SSJI (Civ.), § 14.02 (2009); *Kirkbride v. Lisbon Contractors, Inc.*, 521 Pa. 97, 101-02, 555 A.2d 800, 802-03 (1989); *Rhoads v. Heberling*, 306 Pa. Super. 35, 44, 451 A.2d 1378, 1383 (1982); *Laniecki v. Polish Army Veterans Ass'n of Lucyan Chwalkowski*, 331 Pa. Super. 413, 480 A.2d 1101 (1984); *Daley v. John Wanamaker, Inc.*, 317 Pa. Super. 348, 464 A.2d 355 (1983)

**POINT 14 - CORPORATE LIABILITY FOR PUNITIVE DAMAGES BASED ON ACTS OF AN EMPLOYEE**

A corporation may be held liable for punitive damages based entirely on the acts of its employee, even without any direct evidence of misconduct by the employer. You may award punitive damages against the employer even if the employer did not direct the employee to commit the tortious acts, and even if the employer did not ratify the tortious acts of the employee.

Source: *Shiner v. Moriarty*, 706 A.2d 1228, 1240 (Pa. Super.), *appeal denied*, 729 A.2d 1130 (Pa. 1998); *Dean Witter Reynolds, Inc. v. Genteel*, 499 A.2d 637, 643 (Pa. Super. 1985); *Dillow v. Myers*, 916 A.2d 698, 703 (Pa. Super. 2007)



***CERTIFICATE OF SERVICE***

I hereby certify that on this 14<sup>th</sup> day of December, 2010, I served a true and correct copy of the foregoing Plaintiffs' Proposed Jury Instructions upon the following counsel for defendants, as follows:

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