

**June 2016 Baby Bar
Question 4 – Torts**

What is the likely outcome of Cindy’s defamation claim against Debbie? Discuss .

Cindy v Debbie

Defamation

A false and defamatory statement which is published intentionally or negligently to a third party who knew or understood the statement as defamatory causing damages to plaintiff’s reputation.

Debbie, a high school classmate of Cindy disliked Cindy. She did not want Cindy to win the election to the State Senate; Debbie obtained an old photograph of Shelly, Cindy’s twin sister. The picture portrayed Shelly snorting a line of cocaine and she sent it to the Newspaper anonymously. The picture was of Shelly, the Newspaper did not know, as many, that Cindy had a twin sister, thus, the statement Ms. Smith is a cokehead is false and defamatory which lowered Cindy’s reputation in the community.

Debbie sent the photograph and an anonymous note stating “Ms. Smith is a cokehead.” Debbie sent the photograph and the note because she did not want Cindy to win the election. Thus, her publication was intentional and published to a third party, i.e. the newspaper and their readers

Debbie’s photograph and the comment that Ms’ Smith was a cokehead was published in the Newspaper with a caption stating “Cokehead for State Senate.” The statement with the photograph portraying Cindy snorting coke, and the fact Cindy lost the election shows the readers of the paper understood the statement as defamatory.

The statement Ms. Smith is a cokehead goes to Cindy’s moral character as an official which caused damage to her reputation.

Debbie’s statement concerning Cindy is in written form, i.e. the photograph and the anonymous note, and would constitute libel.

Debbie will be liable for Defamation.

Actual Cause

But for the negligent acts of one or more, Plaintiff would not have been injured resulting in Defendant being the cause in fact of the injury.

But for Debbie sending the photograph and anonymous note to the newspaper stating Ms. Smith is a cokehead Cindy’s reputation would not have been harmed.

Thus, Debbie is the actual cause of Cindy’s injury.

Proximate Cause

A Defendant's negligent act is the proximate cause of Plaintiffs' injuries and damages if the results of Defendant's acts are foreseeable.

It is foreseeable when Debbie sent the photograph and anonymous note to the newspaper about Cindy being a cokehead, that Cindy would suffer injury to her reputation.

Thus, Debbie is the proximate cause of Cindy's reputation being lowered in the community.

General Damages

Since greater harm results from published defamation, general damages are presumed.

Since Debbie's statement is libel, as discussed supra, general damages will be presumed.

Special Damages

Plaintiff may recover for any medical damages or lost of income if specifically plead.

Cindy will be able to recover for any medical expenses incurred. However, she will have a hard time showing that she would have won the election based on the defamatory statement.

Therefore, Cindy only upon proof may recover special damages.

Punitive Damages

Punitive damages may be awarded where there is willful intent to injure or harm the plaintiff.

Debbie sent in an old photograph and an anonymous note stating "Ms. Smith is a cokehead." Debbie sent the photograph and the note because she did not want Cindy to win the election. This information is largely false. In fact the picture was of Shelly, her twin sister, and Debbie knew it was Shelly and not Cindy. Thus, the statement that Ms. Smith is a cokehead is false and defamatory and was made by Debbie in order to cause Cindy to lose the election. Debbie's conduct was willful, intentional and aimed to injure Cindy directly.

Therefore, Cindy will be entitled to punitive damages from Debbie

Truth

Debbie's statement was true about Cindy's twin sister, Shelly.

Thus, truth is not a defense.

Qualified Privilege

A person for the protection of the public interest is qualified to make statements when reasonably believed necessary to protect a legitimate public interest.

Debbie will argue that her statement about Cindy, “Ms. Smith is a cokehead” was made for the benefit of the public interest. Debbie wanted to protect the public and not have Cindy becoming part of the State Senate, since she did coke. Thus, the statement was made in reasonable belief that she was protecting the Senate’s image, a legitimate public interest.

However, Debbie knew that the photograph was of Shelly, Cindy’s twin sister. Thus, the statement was not made in reasonable belief that she was protecting the Senate’s image, a legitimate public interest. Further, Debbie made the statement because she wanted Cindy to lose the election, making the statement for her own benefit and not the benefit of the public.

Debbie’s disclosure was not reasonable.

The qualified privilege will not apply.

Cindy v Newspaper

Defamation

Defined and discussed supra.

Actual Cause

Defined and discussed supra.

Proximate Cause

Defined and discussed supra.

Damages

Defined and discussed supra.

Republisher

Anyone that takes part in the re-publication of a defamatory statement is a republisher and will be liable for defamation.

The Newspaper published in its newspaper the photograph of Shelly, who was the twin sister of Cindy, with the caption that read “Cokehead for State Senate?” Since Newspaper took part in the re-publication of the defamatory statement, Newspaper is a republisher.

Newspaper will be liable for Defamation.

Constitutional Privilege

A private person must prove negligence as to the statement’s truth or falsity when dealing with a matter of public concern.

Cindy is campaigning for election to the State Senate, thus she is a public person. Newspaper published a picture of Shelly, which the readers of the article thought the photograph was Cindy, snorting a line of coke, especially with the caption "Cokehead for State Senate?" Only Cindy was running for State Senate. The Newspaper published the photograph without ever checking into the truth or falsity of the photograph or the anonymous note. Since Newspaper never checked into the truth of the photograph it fell below the standard of care owed and acted negligently. Further, the statement deals with Shelly, her twin sister, and not Cindy who is the one running for election, thus this is a matter of public concern. In order to prevail in her suit Cindy will need to show that the Newspaper acted with malice

The Constitutional privilege will apply.