

**October 2009 Baby Bar  
Question 1 Torts**

**Model Answer**

**Patty v. Darby**

1. Under what theory, or theories, if any, might Patty bring an action against Darby? Discuss.

**Defamation**

Defamation is the false defamatory statement made intentionally or negligently to a third party who knew or understood the defamatory statement which lowered the plaintiff's self esteem.

Darby said at a public rally that Patty is a snob. This is an opinion and does not relate to a factual matter.

However, Darby further said that Patty is so cutthroat and that she said very nasty things about her closest friend when that friend applied for membership to an exclusive private women's club. The information is largely false and Patty actually was one of her staunchest supporters for membership in the women's club. Therefore, that statement was false and defamatory.

Patty was the wife of the current Mayor. Darby made this statement at a political rally to support the challenging incumbent position and to make the current Mayor look bad. Thus, the publication was intentional. Further Darby heard this information from a notorious local gossip. Darby should have checked the reliability of this information before making his statement. Hence, Darby knew or should have known that the statement was false. Therefore the publication was also done negligently.

The political rally was attended by approximately 1,000 people. The words used by Darby stating Patty was a cutthroat, and says nasty things about her closest friend, caused her friend to cancel an upcoming lunch. Further a reasonable person would understand these statements as harsh and harmful lowering Patty's esteem in the community. Hence, the statement was published to a third party who knew or understood the defamatory statement.

Darby will argue that since the statements were oral this would be classified as slander. General damages will need to be proven.

However, when a publication is by television or by printed media the statement is considered libel. Since Darby organized the political rally and knew the media would attend the rally, and made the statement knowing that the rally was being televised, his statements made should be classified as libel due to their permanency. General damages will not need to be proven as they will be presumed.

**General damages**

General damages are those damages that flow from the tort.

Based on the facts Patty lost a lunch date with her friend Sheila. This would be gratuitous since Patty will not be able to show that Darby's statement was the reason for the cancelled lunch.

However, if the court finds that the statement is libel general damages will not need to be proven.

### **Special Damages**

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

Patty will be able to recover for any medical expenses incurred and any lost wages.

Therefore, Patty may recover special damages.

### **Punitive Damages**

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

Darby said that Patty is a cutthroat and that she said very nasty things about her closest friend when that friend applied for membership to an exclusive private women's club. This information is largely false. In fact Darby made the statement knowing that the attendees at the rally would not like Patty and would not vote for her mayor husband who was running in the up and coming election. If the public did not like Patty then they would not vote for her husband for Mayor based on their dislike for Patty. Darby's conduct was willful, intentional and aimed to injure Patty indirectly.

Therefore, Patty will be entitled to punitive damages from Darby.

### **False Light**

False light is established when the plaintiff is portrayed falsely in the public's eye.

Based on the facts Darby said at a public rally that Patty is a snob, who is so cutthroat and that she said very nasty things about her closest friend when that friend applied for membership to an exclusive private women's club. The information is largely false. Darby has portrayed Patty as not being a nice person, a snob and she had prevented her friend Patty from becoming a member of an exclusive women's club. He made the statements at a political rally where over 1000 people attended. Therefore Darby portrayed Patty falsely in the public's eye.

Patty will be able to recover for false light.

### **General Damaged**

Defined discussed supra

### **Special Damaged**

Defined discussed supra

### **Punitive Damages**

Defined discussed supra

### **Intentional Infliction of Emotional Distress**

Intentional infliction of emotional distress is the intentional outrageous conduct by the defendant which is calculated to cause and which does cause severe emotional distress.

Darby's statement about Patty being a snob and a cutthroat was made in order to portray the challenging opponent for the Mayors position to look better than the opposition and thus Darby's conduct was intentional.

Further, Darby's statement about Patty being a snob and a cutthroat was made in front of over 1000 people at a political rally. Such conduct was calculated to cause and did cause severe emotional distress.

Assuming that Patty did suffer emotional distress from the incident, given that the facts are silent on this element, Darby will be liable to Patty for intentional infliction of emotional distress.

### **General Damaged**

Defined discussed supra

### **Special Damaged**

Defined discussed supra

### **Punitive Damages**

Defined discussed supra

### **Interference with prospective advantage**

Darby made the statements about Patty at a local political campaign. The purpose behind making these statements was to prevent local voters from voting for Patty's husband who was also in the election. Thus, his actions were intentional.

Because Patty's husband was the current Mayor, and the statements were said about his wife, Patty, this would reflect on his image as a Mayor. Therefore, Darby interfered with Patty's prospective advantage.

Darby will argue that the statements were about Patty and not the Mayor. Since Patty was effected and not her husband it did not interfere with his prospective advantage.

Therefore, there is no interference with prospective advantage.

2. What defense or defenses, if any, might Darby assert, and what is the likely result? Discuss.

### **Constitutional Privilege**

If a defamatory statement relates to a public figure or to a matter of public concern, pursuant to *New York Times Co.*, the plaintiff must prove actual malice. For private figures, a mere showing of negligence is required in order to find liability for defamation.

Darby will argue that Patty was a public figure since she was the Mayor's wife. Since Patty is a public figure she will have to prove that the statements made by Darby were made with actual malice.

Patty will argue that her husband handled the mayoral duties without her. She has led a quiet life unrelated to her husband's employment. She has not aided in, nor endorsed her husband's Mayor campaign. Further, she has joined her husband at any political rally until currently. Therefore, she is a private person.

However, the court may determine that Patty's status as the mayor's wife is one of a public figure and therefore she must prove malice.

Further, if the court finds that Patty is a private figure in a public matter, Darby will state his statements relating to Patty's alleged treatment to her friend is within the scope of the public interest in the election of a mayor. Patty will argue that Darby exceeded the limits of *Gertz* because Darby's information came from a "notorious gossip," and he should have known that the information was false.

Therefore, there is no Constitutional defense.

### **Absolute privilege**

Absolute privilege is a complete defense to any defamation action. One who makes a defamatory statement during the course of a political campaign is privileged as long as they did not act with actual malice.

Darby's statement about Patty being a snob and a cutthroat was made in order to portray the challenging opponent for the Mayor's position to look better than the opposition and thus Darby's conduct was intentional. Darby acted with intent, and therefore would not avail to the privilege.

Therefore, no absolute privilege.