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Question One: Can Steele show publication, identification, defamation and falsity?

It is trite law that for one to successfully sue another in tort for defamation, he or she is required to prove that the statement or statements alleged to be defamatory made by that person or entity was; published; false and that person or entity making it knew it to be false; refers to him or her or it; and has the effect of lowering him, her or it in the estimation of the right thinking members of the society. Before instituting a defamation law suit therefore, one has to ensure all the four prerequisites are established on the balance of probabilities. It follows that the statement need not be written or spoken to be considered as published; gestures or any other recognizable body movements also constitute statements.

Further, it is an established law that if a person to whom an alleged defamatory statement is made communicates the same to another party other than the Plaintiff, he, it or she shall also be deemed liable for defamation. In effect therefore, media houses, libraries and video shops can be sued for defamation should it be found that the news broadcasted or contents thereof be found to be defamatory. It matters not whether the said defamatory statement was made by the news source or the video script writer or book writer. It is notable however, as an exception to the general rule as set in *New York Times v Sullivan*, that the knowledge of falsity of the alleged defamatory statement by the party to whom it was made and communicated to another is, immaterial in determination of liability for the same. Further, the social standing or reputation of a person, as was proved in *Rosenbloom v. Metromedia*, is very critical in defamation cases as the

damages payable is hinged on it. The more reputable a person or entity is or is considered to be, the larger the impact of defamation and thus the higher the damages awardable and vice versa.

Back to the Fraternity fight case. I believe Steele's defamation case is prima facie iron-clad. It indeed is factual that statements of fact were made about him; the same were published despite the fact that they were indeed false and they had a negative effect of lowering him in the estimation of the right thinking members of the society. The statements depicted as a violent person by alleging that he started the fight and which statement had the effect of him (Steele) rendering him incapable of securing good interviews or a job. It is indeed admittedly factual that Steele was a person of great repute and was held in high regard by his peers not only by virtue of having been their President under the umbrella of Interfraternity Council but also in discouraging under-age drinking and promoting partnerships among fraternities-contrary to the indication by the statements made by the media to the effect that he fired-up the feud among them.

Question two: What kind of Plaintiff is he? What level of fault must he prove?

Though the definition of slander and libel, both which constitute defamation, differ from state to state in the United States of America, particularly in terms of the damages payable, the elements requisite in the proof of each remain relatively and predictably uniform. It is notable however, that for many years the American courts have not been plaintiff-friendly in defamation cases unlike their commonwealth counterparts. This is partly attributable to the unfortunately rigid application and interpretation of the

First Amendment by the courts and in particular, the Supreme Court. In *New York v Sullivan* for instance, the Supreme Court, in interpreting the First Amendment that was designed to protect and promote press freedom, made an exception to the general rule the burden of proof on the Plaintiff more so in cases where the Plaintiff is a person of high social standing or repute in the society. It held that such person must prove beyond any reasonable doubt that a statement published by a media house or a newspaper is defamatory and in effect making the threshold similar to that required in criminal cases and despite defamation cases being civil in nature. The effect of this determination is a more vibrant and authoritative media which could take advantage of the empowerment to be rogue. They can openly smear the name of someone with the safe knowledge of the burden of proof that befalls the Plaintiff.

As was held in the *Sullivan* case, the Plaintiff in a defamation case must prove that the medial published the information and that the same was published " with reckless disregard of whether it was false or not." Steele can prove fault on the part of the *Campus Voice*. He can successfully prove that it (*Campus Voice*), in reporting facts that were foreseeable defamatory without verifying the truth or falsity of the same, acted in a manner that can only be described as reckless, negligent and careless.

In *Gertz v Robert Welch Inc* the Court held that a statement can only be said to be defamatory if it is one of fact and not opinion. It stated thus " under the First Amendment, there is no such thing as a false idea". The party suing must prove that the statement was indeed a fact and not mere opinion. Steele can successfully prove liability in defamation on the part of *Campus*

Voice. The reporting of his alleged arrest and instigation of a fight are statements of facts.

In a rather tricky move, the Supreme Court in *Milkovich v Lorain Journal Co.* held that a party suing in tort for defamation against a media house or news must establish beyond any reasonable doubt, the mens rea and culpability on the part of the said media house or news and thus further making it difficult to prove defamation against them.

The case of *Stratton Oakmont, Inc. v. Prodigy Services Co* further complicates things for Steele. The Court held that a third party is not liable in defamation even if they publish the information such information. This is contrary to the general rule established by the Common law explained in the introduction herein above. The holding in effect absolves media houses of liability since most of the information they publish is reported to them and not given first hand. Further, and on a positive note, this holding serves to cement media freedom and the freedom of expression. It however, infringes the right of a person or entity not to be defamed or brought into disrepute by estopping such person from suing the media.

Question three: Will Steele Win his case? Why?

Chances of Steele winning his case despite the rather negative feedback immediately hereinabove are still high; American courts have since adopted the principles of equity in the manner vides which they handle the cases before them. As explained and indepthly discussed hereinbefore Steele has a strong a strong case against Campus Voice. The reasons are also as per the above explanations.

References

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