

KERN COUNTY COLLEGE OF LAW

TORTS II

FINAL EXAMINATION

SPRING 2023

PROF. J. VLAHOS

General Instructions:

Answer Three (3) Essay Questions

Total Time Allotted: Three (3) Hours

KCCL  
TORTS II  
Spring 2023  
Prof. J. Vlahos

### Question 1

Antonia is running for a seat on the school board of her small, remote community school district. One evening, while Antonia is attending a local football game, Antonia has to excuse herself to go to the bathroom. Suffering from severe allergies, Antonia spends some time in the bathroom clearing her nose. She remains in one of the bathroom stalls, though she leaves the door open, where Antonia keeps sniffing and wiping her nose with the back of her hand over and over again.

Karen, a mother of a student who attends school in the same community in which Antonia is campaigning for a school board seat, is in the bathroom at the same time as Antonia, and watches Antonia intently for a long moment, before eventually exiting the bathroom.

The next day, Antonia receives a call from a local news reporter, who informs Antonia that Karen reported to the news, as well as the mayor of the small town and the current president of the school board, that she observed Antonia snorting cocaine in the bathroom at the football game the previous evening.

Antonia vehemently denies the allegation, stating she is a devout Jehovah's witness and doesn't even consume caffeine, let alone drugs. Antonia immediately offers to undergo drug testing to clear her name. She requests that the news not report on the false allegation before she can get the results of her drug tests, but that evening, a news story is nonetheless broadcast locally.

As promised, Antonia takes a drug tests, which comes back negative, and the local news runs a follow-up piece noting that Antonia was not in fact taking drugs as alleged.

Four months later, Antonia loses the school board election, at which point she is seeking your advice about what claims, if any, she can bring against Karen and the local news station. Discuss.

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## Torts II

### Question II

Heidi is a successful comedienne from Germany who recently moved to the United States where she is hoping to cross over into the international spotlight.

Josh, who owns and operates an improv theater, has heard great things about Heidi's German humor and is aware of her fame in Germany. Knowing that bringing Heidi on as a regular act would be exceedingly profitable for his improv theater, Josh negotiates a twelve-month contract with Heidi, who, in turn for getting paid \$200,000, would agree to perform exclusively at Josh's improv theater and forego all other performances for the duration of the contract. After weeks of back-and-forth negotiations, Heidi and Josh agreed on the contract terms and signed the documents. Performance was set to begin approximately a month later.

Prior to the commencement of the contract term, Nick, the owner and operator of a rivaling comedy club, hears about Josh and Heidi's negotiations and, after doing some research about Heidi, approaches her and asks her to come perform exclusively in his club instead. Heidi is unsure of whether to renege on her contract with Josh and tells Nick so. Nick, eager to have Heidi perform at his club, tells Heidi that his club is better known than Josh's, averages about 3,000 more guests per month than Josh's theater, and that four very famous TV comedians were discovered and picked up by talent agencies while performing at Josh's theater. Nick tells Heidi that her chances of being discovered are much greater performing at his club than at Josh's theater. Nick also tells Heidi that he will pay her \$50,000 more for a twelve-month commitment than Josh.

Heidi, excited by the seemingly superior opportunity, agrees to break her contract with Josh and instead agrees to perform at Josh's club exclusively for the next year. However, it turns out that none of Josh's statements were true and Heidi finds herself performing only for small audiences. She is not discovered by a talent agent.

Discuss what claims, if any, both Josh and Heidi can bring against Nick, and the likelihood that they will succeed.

TORTS II  
QUESTION 3

Paula is a stout environmentalist who has her sights set on American Drillers, a large oil drilling company that, in her opinion, engages in political, and sometimes fraudulent, schemes, to circumvent the Environmental Protection Act and obtain drilling permits in locations that should be kept pristine and unharmed. Paula is very vocal in her disdain for American Drillers, regularly organizes protests to block American Drillers from drilling for oil in certain areas, and frequently publishes online blog posts that, truthfully, lay out American Drillers' plans and schemes.

American Drillers considers Paula to be a significant thorn in the company's side, especially as American Drillers seeks permission to begin drilling in an area known to be home to several rare and endangered bird species. In an effort to intimidate Paula and, perhaps, force her to discontinue her efforts, American Drillers engages in the following tactics:

1. American Drillers hires a private investigator who follows Paula as she engages in activities of daily living around town, including grocery shopping, going to the gym, dropping her kids off at school, and going to the bank. The investigator always remains in his vehicle and never follows Paula into any buildings. He does, however, take pictures of Paula with a wide-lens camera while Paula is out and about and through the windows of Paula's home, which sits on private property.
2. American Drillers hacks Paula's e-mail account to be able to monitor her e-mail correspondence and surreptitiously delete e-mails that relate to American Drillers.
3. American Drillers interviews a handful of Paula's close friends and family to obtain insider information about Paula which they may be able to use against Paula.
4. American Drillers also does a public records search that reveals that Paula has been married and divorced nine times and that Paula was adopted by a family in California when she was only two. Paula had never told anyone that she had been adopted and has kept that information close to the vest.

After several months of this, American Drillers compiles the information collected and publishes its own expose about Paula. In its expose, American Drillers includes photographs taken of Paula while in public and in her home; includes truthful, but damaging statements Paula's close friends and family made about her; and discloses the fact that Paula was married and divorced three times and that she had been adopted when she was only two years old.

Paula, incensed about the perceived violation of her privacy rights, comes to you to determine what actions, if any, she could take against American Drillers in court and what her chances are of prevailing.

Discuss.

## TORTS II

### Question 1

*Antonia is running for a seat on the school board of her small, remote community school district. One evening, while Antonia is attending a local football game, Antonia has to excuse herself to go to the bathroom. Suffering from severe allergies, Antonia spends some time in the bathroom clearing her nose. She remains in one of the bathroom stalls, though she leaves the door open, where Antonia keeps sniffing and wiping her nose with the back of her hand over and over again.*

*Karen, a mother of a student who attends school in the same community in which Antonia is campaigning for a school board seat, is in the bathroom at the same time as Antonia, and watches Antonia intently for a long moment, before eventually exiting the bathroom.*

*The next day, Antonia receives a call from a local news reporter, who informs Antonia that Karen reported to the news, as well as the mayor of the small town and the current president of the school board, that she observed Antonia snorting cocaine in the bathroom at the football game the previous evening.*

*Antonia vehemently denies the allegation, stating she is a devout Jehovah's witness and doesn't even consume caffeine, let alone drugs. Antonia immediately offers to undergo drug testing to clear her name. She requests that the news not report on the false allegation before she can get the results of her drug tests, but that evening, a news story is nonetheless broadcast locally.*

*As promised, Antonia takes a drug tests, which comes back negative, and the local news runs a follow-up piece noting that Antonia was not in fact taking drugs as alleged.*

*Four months later, Antonia loses the school board election, at which point she is seeking your advice about what claims, if any, she can bring against Karen and the local news station. Discuss.*

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Q1

Issue	Rule	Analysis	Conclusion	Points
Antonia v. Karen				
Defamation (1)	<p>Publication of defamatory material concerning the plaintiff that caused reputational damage</p> <p>Slander or libel depending on form of communication</p> <p>Constitutional analysis – matter of public concern/public figure – malice required</p>	Written: libel		
Defamatory statement (1)	Statement is defamatory if it lowers a plaintiff in the esteem of the community or discourages third persons from associating with him; one that holds plaintiff up to hatred, ridicule, contempt, or scorn	Statement that plaintiff-devout Jehovah's witness used cocaine would be defamatory because it lowers the plaintiff in esteem of the community; holds plaintiff up to scorn		
Of and concerning the plaintiff (1)	The defamatory statement must have been about the plaintiff	Plaintiff specifically identified	(1)	
Publication (1)	Defamatory statement must be published to a third party	Defendant communicated to news and mayor		
Libel vs. Slander (1)	Historically, libel was written form of defamation, but today defamatory message embodied	Here, the defamatory statement would constitute slander		

	in any relatively permanent form is libel, whereas slander is spoken or a message not preserved in permanent form.	because it was published verbally		
Per se defamation	Categories: <ul style="list-style-type: none"> <li>- Loathsome disease</li> <li>- Business or profession</li> <li>- Crime/moral turpitude</li> <li>- unchastity</li> </ul>	May fall into per se category: use of illicit drugs—moral turpitude? Probably not business-related because doesn't directly relate to ability to perform profession		
Damages (1)	If per se: general damages presumed, no need to proof specials If not per se, must prove must prove special damages	No indication here that plaintiff suffered actual special damages		
Constitutional Analysis	First amendment imposes fault requirement in cases involving public figures or matters of public concern			
Public Figure/Public Official	Where person has achieved pervasive fame or notoriety that he becomes a public figure for all purposes and contexts, or where he voluntarily assumes a central role in a particular public controversy; or public officials. Private persons need not prove actual malice,	Plaintiff is running for public office; also superintendent of school in small community—will have to prove, by clear and convincing evidence, that statement was made with actual malice		

	however, where matter is of public concerns, at least negligence is required			
Actual malice	Knowledge that the statement was false, or reckless disregard for the truth	Argument that Karen knew plaintiff wasn't snorting cocaine and therefore acted with actual knowledge		
Defenses	consent truth absolute privileges qualified privileges	Neither would apply		
False Light	Publication of facts about plaintiff by defendant placing plaintiff in a false light in the public eye; highly offensive to plaintiff; actual malice where matter is in public interest			
Publicity	Need more than publication; needs to be more widespread			
False light	Attribute plaintiff with views she doesn't hold or actions she didn't take Falsity required			
Highly offensive to reasonable person	Must be something that would be highly offensive to a reasonable person under the circumstances	Being accused of illegal drug use would arguably be highly offensive to a reasonable person		
Matter of public interest	Where matter is of public interest, plaintiff must prove actual malice	Plaintiff running for public office (school board seat) and she		

		thrust herself in public spotlight; drug use is matter of public interest here		
Actual malice	Knowledge or reckless disregard of falsity	Karen arguably knew plaintiff wasn't snorting cocaine, acted at least recklessly		
Antonia v. New Station				
Defamation (1)	<p>Publication of defamatory material concerning the plaintiff that caused reputational damage</p> <p>Slander or libel depending on form of communication</p> <p>Constitutional analysis – matter of public concern/public figure – malice required</p>	Written: libel		
Defamatory statement (1)	Statement is defamatory if it lowers a plaintiff in the esteem of the community or discourages third persons from associating with him; one that holds plaintiff up to hatred, ridicule, contempt, or scorn	Statement that plaintiff-devout Jehovah's witness used cocaine would be defamatory because it lowers the plaintiff in esteem of the community; holds plaintiff up to scorn		
Of and concerning the plaintiff (1)	The defamatory statement must have been about the plaintiff	Plaintiff specifically identified	(1)	

Publication (1)	Republisher will be held liable on the same general basis as a primary publisher	Defendant communicated to news and mayor		
Libel vs. Slander (1)	Historically, libel was written form of defamation, but today defamatory message embodied in any relatively permanent form is libel, whereas slander is spoken or a message not preserved in permanent form.	Here, the defamatory statement would constitute slander because it was published verbally		
Per se defamation	Categories: <ul style="list-style-type: none"> <li>- Loathsome disease</li> <li>- Business or profession</li> <li>- Crime/moral turpitude</li> <li>- unchastity</li> </ul>	May fall into per se category: use of illicit drugs—moral turpitude? Probably not business-related because doesn't directly relate to ability to perform profession		
Damages (1)	If per se: general damages presumed, no need to proof specials If not per se, must prove must prove special damages	No indication here that plaintiff suffered actual special damages		
Constitutional Analysis	First amendment imposes fault requirement in cases involving public figures or matters of public concern			
Public Figure/Public Official	Where person has achieved pervasive fame or notoriety that he becomes a public figure for all	Plaintiff is running for public office; also superintendent of school in small		

	<p>purposes and contexts, or where he voluntarily assumes a central role in a particular public controversy; or public officials. Private persons need not prove actual malice, however, where matter is of public concerns, at least negligence is required</p>	<p>community—will have to prove, by clear and convincing evidence, that statement was made with actual malice</p>		
Actual malice	<p>Knowledge that the statement was false, or reckless disregard for the truth</p>	<p>Argument that Karen knew plaintiff wasn't snorting cocaine and therefore acted with actual knowledge</p>		
Defenses	<p>consent truth absolute privileges qualified privileges retraction of story</p>	<p>Neither would apply; probably no reduction in damages Retraction may be considered to show lack of actual malice in mitigation of damages</p>		
False Light	<p>Publication of facts about plaintiff by defendant placing plaintiff in a false light in the public eye; highly offensive to plaintiff; actual malice where matter is in public interest</p>			
Publicity	<p>Need more than publication; needs to be more widespread</p>			

False light	Attribute plaintiff with views she doesn't hold or actions she didn't take Falsity required			
Highly offensive to reasonable person	Must be something that would be highly offensive to a reasonable person under the circumstances	Being accused of illegal drug use would arguably be highly offensive to a reasonable person		
Matter of public interest	Where matter is of public interest, plaintiff must prove actual malice	Plaintiff running for public office (school board seat) and she thrust herself in public spotlight; drug use is matter of public interest here		
Actual malice	Knowledge or reckless disregard of falsity	Karen arguably knew plaintiff wasn't snorting cocaine, acted at least recklessly		

*Torts II*

*Question II*

*Heidi is a successful comedienne from Germany who recently moved to the United States where she is hoping to cross over into the international spotlight.*

*Josh, who owns and operates an improv theater, has heard great things about Heidi's German humor and is aware of her fame in Germany. Knowing that bringing Heidi on as a regular act would be exceedingly profitable for his improv theater, Josh negotiates a twelve-month contract with Heidi, who, in turn for getting paid \$200,000, would agree to perform exclusively at Josh's improv theater and forego all other performances for the duration of the contract. After weeks of back-and-forth negotiations, Heidi and Josh agreed on the contract terms and signed the documents. Performance was set to begin approximately a month later.*

*Prior to the commencement of the contract term, Nick, the owner and operator of a rivaling comedy club, hears about Josh and Heidi's negotiations and, after doing some research about Heidi, approaches her and asks her to come perform exclusively in his club instead. Heidi is unsure of whether to renege on her contract with Josh and tells Nick so. Nick, eager to have Heidi perform at his club, tells Heidi that his club is better known than Josh's, averages about 3,000 more guests per month than Josh's theater, and that four very famous TV comedians were discovered*

and picked up by talent agencies while performing at Josh's theater. Nick tells Heidi that her chances of being discovered are much greater performing at his club than at Josh's theater. Nick also tells Heidi that he will pay her \$50,000 more for a twelve-month commitment than Josh.

Heidi, excited by the seemingly superior opportunity, agrees to break her contract with Josh and instead agrees to perform at Josh's club exclusively for the next year. However, it turns out that none of Josh's statements were true and Heidi finds herself performing only for small audiences. She is not discovered by a talent agent.

Discuss what claims, if any, both Josh and Heidi can bring against Nick, and the likelihood that they will succeed.

Issue	Rule	Analysis	Conclusion	Points
Josh v. Nick				
Interference with Business Relations	-Existence of valid contractual relationship or valid business expectancy -Defendant's knowledge of relationship or expectancy -Intentional interference -Damage to plaintiff			
Valid contract	Not limited to existing contracts	Josh and Heidi had entered into valid agreement		
Defendant's knowledge	Defendant must have been aware of business relationship or expectancy	Nick was aware of Josh's and Heidi's business relationship; heard about negotiations, convinces her to renege on Josh's contract	(1)	
Intent	Defendant must have intended to interfere with the existing or prospective contractual relationship; cannot have been negligent in absence of independent tort	Defendant knew about negotiations, was eager to have Heidi perform for his Club because he had heard about her before		
Damages	Plaintiff must prove actual damage from the interference; can	Josh would have lost profits		

	also recover mental distress and punitive damages where appropriate	from Heidi's performance		
Heidi v. Nick				
Intentional Misrepresentation	-misrepresentation by defendant -scienter -intent to induce reliance by plaintiff -causation -justifiable reliance -damages			
Misrepresentation	Material past or present fact -generally no duty to disclose except: fiduciary duty; real property instances; deceitful utterances (when you speak, have to speak truthfully) -active concealment actionable			
Scienter	Knowledge the statement was false or was made with reckless disregard as to truth or falsity			
Intent to induce reliance	Defendant must have intended to induce plaintiff to act or refrain from acting in reliance on the misrepresentation			
Causation	Misrepresentation played substantial part in inducing plaintiff to act as she did>>actual reliance			
Justifiable reliance	Reliance on fact almost always justified, except where facts are			

	obviously false; no duty to investigate; reliance on opinion typically not justifiable			
Damages	Must prove actual economic losses			
Negligent Misrepresentation	-misrepresentation by defendant -breach of duty to plaintiff -causation -justifiable reliance -damages			
Misrepresentation	Made by defendant in a business or professional capacity; Liability confined to commercial transactions			
Breach of duty owed to plaintiff	Duty owed only to particular plaintiff whose reliance is contemplated			
Causation	Misrepresentation played substantial part in inducing plaintiff to act as she did>>actual reliance			
Justifiable reliance	Reliance on fact almost always justified, except where facts are obviously false; no duty to investigate; reliance on opinion typically not justifiable			
Damages	Must prove actual economic losses			

TORTS II

QUESTION 3

Paula is a stout environmentalist who has her sights set on American Drillers, a large oil drilling company that, in her opinion, engages in political, and sometimes fraudulent, schemes, to circumvent the Environmental Protection Act and obtain drilling permits in locations that should be kept pristine and unharmed. Paula is very vocal in her disdain for American Drillers, regularly organizes protests to block American Drillers from drilling for oil in certain areas, and frequently publishes online blog posts that, truthfully, lay out American Drillers' plans and schemes.

American Drillers considers Paula to be a significant thorn in the company's side, especially as American Drillers seeks permission to begin drilling in an area known to be home to several rare and endangered bird species. In an effort to intimidate Paula and, perhaps, force her to discontinue her efforts, American Drillers engages in the following tactics:

1. American Drillers hires a private investigator who follows Paula as she engages in activities of daily living around town, including grocery shopping, going to the gym, dropping her kids off at school, and going to the bank. The investigator always remains in his vehicle and never follows Paula into any buildings. He does, however, take pictures of Paula with a wide-lens camera while Paula is out and about and through the windows of Paula's home, which sits on private property.
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3. American Drillers interviews a handful of Paula's close friends and family to obtain insider information about Paula which they may be able to use against Paula.
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After several months of this, American Drillers compiles the information collected and publishes its own expose about Paula. In its expose, American Drillers includes photographs taken of Paula while in public and in her home; includes truthful, but damaging statements Paula's close friends and family made about her; and discloses the fact that Paula was married and divorced three times and that she had been adopted when she was only two years old.

Paula, incensed about the perceived violation of her privacy rights, comes to you to determine what actions, if any, she could take against American Drillers in court and what her chances are of prevailing.

Discuss.

Issue	Rule	Analysis	Conclusion	Points
Intrusion Upon Seclusion	-act of prying or intruding -highly offensive to reasonable person -private			
Act of prying or intruding on the affairs or seclusion of the plaintiff by defendant	There must be an invasion of the plaintiff's private affairs or seclusion where there is a reasonable expectation of privacy by the plaintiff			

Highly offensive to reasonable person	Intrusion by defendant must be something that would be highly offensive to a reasonable person	Taking pictures while plaintiff out in public = no reasonable expectation of privacy, not highly offensive to reasonable person; BUT taking pictures while plaintiff is inside her home through windows		
Into something private	Intrusion by defendant must be into something within plaintiff's own private domain	Taking pictures of person in public place generally not actionable, but inside her home=private; Emails: private Interviewing friends/family= probably not Search of public records not actionable		
Public Disclosure of Private Facts	Publication or public disclosure of private information about plaintiff; Highly offensive to a reasonable person; Causation; damages			
Publication or public disclosure	Publicity concerning private fact; private disclosure not actionable			
Facts must be private	No liability for matters of public record			
Disclosure highly offensive to reasonable person	Disclosure of private facts must be such that reasonable			

	person would find it highly offensive			
Facts may be true	Liability may attach even where facts may be true			
causation	Invasion of plaintiff's interest in privacy must have been proximately caused by defendant's conduct			
Damages	Proof of special damages unnecessary; emotional distress and mental anguish are sufficient damages			
Defenses	Consent; Absolute privileges Qualified privileges			

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**Antonia v. Karen**

Defamation

Defamation is a (1) false, defamatory statement (2) of or concerning the Plaintiff (3) published to a 3rd person or party (4) and is damaging to her reputation. In cases concerning public officials or public figures there are additional constitutional considerations that must be made, including: (5) Fault and (6) falsity. Here, Antonia is arguably a public figure, as she voluntarily placed herself in the purview of the public by running for a position on the school board, and therefore will need to prove the additional elements.

(1) Defamatory Statement

A defamatory statement contains a falsehood regarding the Plaintiff. A defamatory statement can be made either slanderously or libelously.

*Analysis? Do we have such a statement here?*

Slander v. Libel

Slander is a spoken defamatory statement published to a third party or person, while Libel is a written defamatory statement published to a third party or person.

Here, because Karen made the defamatory remarks via voice, the statement is considered slanderous. Karen vocally published the statements to multiple agencies, including the local news station, mayor of the town, and the president of the school board.

Therefore, these statements will be analyzed under Slander.

Slander per se

The following subject matter is considered defamatory and injurious on its face: (1) adverse comments about a plaintiff's business or professional capacity, (2) crimes of moral turpitude, (3) loathsome diseases, and (4) statements regarding a woman's chastity.

Here, Karen stated that she witnessed Antonia "snorting cocaine in the bathroom." Antonia will argue that this statement is slander per se, as using illegal drugs would likely be considered a crime of moral turpitude. Therefore, Antonia will likely be able to prove that Karen's defamatory statement is slander per se and will not need to prove any type of special damages.

(2) Of or concerning the Plaintiff

Any defamatory statement that directly or indirectly attaches or alludes to the plaintiff fulfills this element.

Here, Karen directly referenced Antonia when she contacted the News Station, the mayor, and the president of the school board. Therefore, defense will be able to prove the statement was made with in direct reference to Antonia.

(3) Published to a third person or party

Publication is any method used to communicate to a third party or person. In slander cases, publication is usually done via voice by either a phone call or in-person meeting. Defamatory statements published via radio and television broadcasts are considered libel.

Here, it is not entirely clear if Karen published the statements by making a phone call or writing an email. However, we can use the word "reported" and interpret it as a phone call or in-person conversation. In any case, Antonia will argue there was sufficient publication, as Karen reported her defamatory observation to three separate entities.

(4) Damages the Plaintiff's Reputation

In slander per se cases, damages are presumed to the plaintiff's reputation in the form of general damages (emotional distress, pain and suffering).

Here, Antonia is running for a position on the school board, and while Karen's statements are untrue, can significantly impact her reputation. Antonia can additionally argue that running for school board also requires someone to have an upstanding moral character, and by publishing defamatory statements alleging drug use will undoubtedly harm her election chances. Even if Antonia still manages to win the election she still suffered great emotional distress as the defamatory statements were slander per se and, therefore, presumed.

Public Official vs. Public Figure

A public official is a government official. A public figure is either involved in a matter of public interest or voluntarily assumes a public role. As Antonia is still running for school board election she assumes a public role in a matter of public interest. Therefore, she will be considered a public figure. A public figure needs to prove (5) fault and (6) falsity to succeed in a claim of defamation.

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(5) Fault

A defendant is at fault when they publish defamatory statements with actual malice. Actual malice requires a defendant to know of the statement's falsity or recklessly disregard the truth.

Here, Antonia can argue that Karen acted with actual malice because, even if she believed her observations were accurate, she did not do her due diligence in actually checking to see if there was any substance on her hand or asked Antonia any questions about her actions. Karen can argue that she did not act with malice, because from her point of view she believed Antonia was snorting cocaine. Antonia will argue that publishing those statements without any follow-up or fact checking is reckless.

Therefore, Antonia will likely succeed in proving fault.

(6) Falsity

For a public figure or official, they have the burden of proving the falsity of the statements made against them.

Here, Antonia took a drug test shortly after the incident and the test came back negative.

Therefore, Antonia will likely succeed in proving the falsity of the allegation.

Defenses to Defamation

There are three defenses to defamation: (1) consent, (2) absolute or qualified privilege, and (3) truth. In this case, neither consent nor truth apply.

Absolute vs. Qualified Privilege

Absolute privilege protects government officials operating under their official government capacity. Qualified privilege protects individuals against defamation if they invite a response from the plaintiff or it is a matter of public concern.

Here, Karen will argue that she has qualified privilege to report her observations as it relates to a matter of public concern. She will argue that it is in the public interest to know if a person running for public office uses drugs. Antonia will argue that qualified privilege narrows the scope of actions of defamation, but here Karen was too willfully reckless in her publication even if it was for a matter of public interest.

### Conclusion

Antonia will likely succeed in her defamation claim.

### False Light

False light is a falsehood or misrepresented fact that is published to a third person that damages their reputation. A majority of jurisdictions do not allow claims of false light and defamation.

Here, Antonia will argue that because Karen misrepresenting her observations, Antonia was significantly mischaracterized as a drug user and her reputation was adversely affected because of it. Karen will argue, that despite her being incorrect with her claim, she had a newsworthiness exception in that the scope of false light is limited in matters that would be of public interest. Karen will argue that while she was incorrect, her perceived observation was made with the intent that it would be of public interest since Antonia was running for a school board position.

Therefore, because of the newsworthiness exception Antonia will not likely succeed in her false light claim.

### Antonia v. News Station

#### Defamation

Defamation is a (1) false, defamatory statement (2) of or concerning the Plaintiff (3) published to a 3rd person or party (4) and is damaging to her reputation. In cases concerning public officials or public figures there are additional constitutional considerations, including: (5) Fault and (6) falsity. Here, Antonia is arguably a public figure, as she voluntarily placed herself in the purview of the public by running for a position on the school board, and therefore will need to prove the additional elements.

#### (1) Defamatory Statement

A defamatory statement contains a falsehood regarding the Plaintiff. A defamatory statement can be made either slanderously or libelously. Parties or persons that republish or publish information received from a third party also open themselves up to defamation claims.

#### Slander v. Libel

Slander is a spoken defamatory statement published to a third party or person, while Libel is a written defamatory statement published to a third party or person. Radio and television broadcasts are considered libel under case law.

Here, because the News Station republished the defamatory remarks via a television broadcast, the statement is considered libelous. The News Station visually published the statements to their viewers, likely including those that vote in the school board elections.

Therefore, these statements will be analyzed under libel.

Libel per se vs. Libel per quod

In a majority of jurisdictions, causes of action for libel presumes damages, as libel is often more permanent. In a minority of jurisdictions, special damages need to be proved, unless the defamatory statements are libel per se. Libel per se involves statements that are defamatory on their face. This following subject matters are considered defamatory and injurious on its face: (1) adverse comments about a plaintiff's business or professional capacity, (2) crimes of moral turpitude, (3) loathsome diseases, and (4) statements regarding a woman's chastity. Libel per quod is any defamatory statement that does not fall under the previous categories and special damages must be proven to establish harm.

Here, the News Station reported that Antonia was witnessed "snorting cocaine in the bathroom." Antonia will argue that this statement is libel per se, as using illegal drugs would likely be considered a crime of moral turpitude.

Therefore, Antonia will likely be able to prove that the News Station's defamatory statement is libel per se.

(2) Of or concerning the Plaintiff

Any defamatory statement that directly or indirectly attaches or alludes to the plaintiff fulfills this element.

Here, the News Station directly referenced Antonia during their TV broadcast.

Therefore, defense will be able to prove the statement was made with in direct reference to Antonia.

(3) Published to a third person or party

Publication is any method used to communicate to a third party or person. In slander cases, publication is usually done via voice by either a phone call or in-person meeting. Defamatory statements published via radio and television broadcasts are considered libel.

Here, it is clear the News Station published the statements via television broadcast. Antonia will argue there was sufficient publication, as the News Station republished the defamatory statements to their viewers.

#### (4) Damages the Plaintiff's Reputation

In slander per se cases, damages are presumed to the plaintiff's reputation in the form of general damages (emotional distress, pain and suffering).

Here, Antonia is running for a position on the school board and, while the News Station's report was untrue, it can significantly impact her reputation. Antonia can additionally argue that running for school board also requires someone to have an upstanding moral character, and by publishing defamatory statements alleging drug use will undoubtedly harm her election chances. Even if Antonia still manages to win the election she still suffered great emotional distress as the defamatory statements were libel per se and, therefore, presumed.

If Antonia is successful in her defamation claim, she likely will be able to win pecuniary damages, as well as any general damages that may be awarded.

#### Public Official vs. Public Figure

A public official is a government official. A public figure is either involved in a matter of public interest or voluntarily assumes a public role. As Antonia is still running for school board election she assumes a public role in a matter of public interest. Therefore, she will be considered a public figure. A public figure needs to prove (5) fault and (6) falsity to succeed in a claim of defamation.

#### (5) Fault

A defendant is at fault when they publish defamatory statements with actual malice. Actual malice requires a defendant to know of the statement's falsity or recklessly disregard the truth.

Here, Antonia can argue that the News Station acted with actual malice because, even if they believed a third party's observations were accurate, they did not do her due diligence in fact checking or made any attempt to contact Antonia to verify the rumor. Antonia will argue that

publishing those statements without any follow-up or fact checking is reckless and constitutes actual malice.

Therefore, Antonia will likely succeed in proving fault.

#### (6) Falsity

For a public figure or official, they have the burden of proving the falsity of the statements made against them.

Here, Antonia took a drug test shortly after the incident and the test came back negative.

Therefore, Antonia will likely succeed in proving the falsity of the allegation.

#### Defenses to Defamation

There are three defenses to defamation: (1) consent, (2) absolute or qualified privilege, and (3) truth. In this case, neither consent nor truth apply.

#### Absolute vs. Qualified Privilege

Absolute privilege protects government officials operating under their official government capacity. Qualified privilege protects individuals against defamation if they invite a response from the plaintiff or it is a matter of public concern.

Here, the News Station will argue that they have qualified privilege to report incidents and allegations as it relates to a matter of public concern. The News Station will argue that it is in the public interest to know if a person running for public office uses drugs. The defendant will also argue they ran a follow-up report clearing Antonia of any drug-related allegations. Additionally, they will argue if Antonia really did receive any harm because they ran the follow-up report shortly after learning the drug test was negative.

#### Conclusion

Antonia will likely succeed in her defamation claim.

#### Negligent Misrepresentation

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**Josh v. Nick**

**Intentional Interference with Business Relations**

A claim for intentional interference with business relations requires the following elements: (1) valid contract or expectancy between the Plaintiff and third party, (2) Defendant's knowledge of the contract or expectancy, (3) intentional interference with the contract or expectancy, (4) interference causes a breach in Plaintiff's contract, (5) economic damages.

**(1) Valid Contract between Plaintiff and 3rd Party**

A valid contract exists between two parties once there is an offer, acceptance, and consideration.

Here, Josh and Heidi negotiated for weeks and both parties signed and agreed that Heidi would perform at Josh's improv theater exclusively for 12 months for \$200,000.

The terms were clear and mutually agreed upon, and following Heidi's signature created a valid contract.

**(2) Defendant's Knowledge of Contract**

A defendant does not need to be knowledgeable about all of the material terms, but need only be aware of its existence and the parties' involved.

Here, Nick heard about the contract negotiations and approached Heidi to perform at his club instead.

Therefore, even if Nick was unaware the contract was signed, the tort includes knowledge of business expectancy, which would include knowledge of the negotiations.

**(3) Intentional Interference with the Contract**

Intentional interference is usually the inducement to break or renege on a contract or business expectancy.

Here, Nick, a rival comedy club owner, met with Heidi and enticed to break the contract with Josh by telling her that Josh's club is less popular and that she will have a greater opportunity at being discovered. Additionally, Nick also offers to pay Heidi \$50,000 extra for the same contract she made

with Josh. Josh will argue that all these instances prove that Nick intentionally tried to induce Heidi to breach her contract.

Therefore, Josh will likely prove this element.

#### (4) Interference Causes Breach to Plaintiff's Contract

The interference caused by the defendant must cause an actual breach of contract or extinguish any expectancy.

Here, Josh will argue there was a clear breach of contract as Heidi agreed to the "superior opportunity," and she broke her contract with Josh.

Therefore, Josh will be able to prove the interference clearly caused a breach of contract.

#### (5) Damages

Damages in an intentional interference with business relations claim is limited to economic damages. Economic damages include loss of wages or profit, additional expenses, etc.

Here, it is unclear if Josh will be able to prove damages, as there was no mention of ticket sales or advertising. However, Nick will argue that signing a popular talent such as Heidi would have surely increased his potential profits. Nick will argue that since no actual advertising or ticket sales occurred, since her first show is not for another month, there were no real economic damages done to Josh.

Therefore, Josh will unlikely be able to prove sufficient damages.

#### Nick's Defense

Nick will argue that as a fellow business owner in the same industry as Josh, he is allowed to make decisions that further his business since they compete for the same customer base. However, Josh will argue that Nick is only allowed privilege to compete for customers as long as it is done in good faith and consistent with the industry standard.

Therefore, Nick will not likely have a defense against the claim.

#### Conclusion

Because Josh may not be able to prove sufficient damages, he likely will not succeed in his claim against Nick.

### Heidi v. Nick

#### Intentional Misrepresentation (Fraud, deceit)

A claim of intentional misrepresentation requires the following elements: (1) misrepresentation about a present or past material fact, (2) Defendant knows or should know the fact is misrepresented (scienter), (3) Plaintiff acts in justifiable reliance of the misrepresentation, (4) economic damages.

##### (1) Misrepresentation about a Present or Past Material Fact

*causation  
(actual  
reliance)*

A misrepresentation regarding a material fact is a falsehood that could potentially influence a person's decision making.

Here, Nick tells Heidi to break her contract with Josh and sign with him for the following benefits: Nick's club averages about 3,000 more guests a month than Josh, and four now-famous comedians were discovered while performing at Josh's theatre. The facts explicitly state none of Josh's comments were true, and Heidi only performed for small audiences without being discovered by a talent agency. Nick will argue that Heidi was never guaranteed to be picked up by a talent agency, but only had a higher chance of being discovered. Heidi will argue that it is still unlikely and a misrepresentation of the facts considering she only performed in front of small audiences.

Therefore, Heidi will likely prove a clear misrepresentation of two facts.

*opinion vs.  
fact.*

##### (2) Defendant knows or should know the fact is Misrepresented (Scienter)

Scienter requires the Defendant knew or should have known about the facts he was misrepresenting.

Here, Heidi will argue that even if Nick was not aware he was misrepresenting the facts, as owner and operator of the comedy club it is reasonable that he be aware of his comedy's clubs typical crowd size.

Therefore, Heidi will likely prove scienter.

##### (3) Plaintiff acts in justifiable reliance of the misrepresentation

A plaintiff must act in a justifiable reliance based on the misrepresentations made by the defendant. It must be justifiable to a reasonably prudent person.

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Here, Heidi will argue that she was justified in relying on Nick because he was able to pay more money, and she was unfamiliar with the area or customs as she only recently moved from Germany. Nick can argue that overstating a crowd size is part of the industry, and that Heidi should have done more research for the reliance to be justifiable.

Therefore, because Heidi only recently moved from Germany and may not be aware of the area of customs, she will likely prove a justifiable reliance.

#### (4) Economic Damages

Damages in an intentional misrepresentation claim is limited to economic damages. Economic damages include loss of wages or profit, additional expenses, etc.

Here, Heidi will argue that because she had to play at a smaller theater her chances of being discovered by a talent agency was significantly diminished. Heidi can argue that because of the diminished opportunity it affected her chance to make larger profit.

Therefore, Heidi may be able to prove economic damages.

#### Nick's Defenses

Here, Nick can argue that he was not significantly misrepresenting the facts at all. In fact, he can argue that he may have embellished a little regarding his usual crowd size, but that Heidi was not actually damaged in any way, as he paid her an additional \$50,000. Nick can also argue that the chances of being discovered by a talent agency are slim, and that Heidi was not justifiable in relying on that misrepresentation.

#### Conclusion

Because Heidi will have issues proving if she was justifiable in her reliance and if she actually suffered economic harm, she will likely not be able to succeed in her claim of intentional misrepresentation.

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**Paula v. American Drillers**

**Invasion of Privacy Claims**

There are four standard invasion of privacy claims: (1) intrusion upon seclusion, (2) false light, (3) appropriation, (4) disclosure of embarrassing or private information. Here, only two invasion of privacy claims are relevant: intrusion upon seclusion and disclosure of embarrassing or private information. Defenses to invasion of privacy claims is limited to consent and absolute/qualified privilege (newsworthiness exception).

Intrusion upon seclusion

Intrusion upon seclusion is intrusion into a person's private life using methods that are highly offensive to the reasonable person.

Here, Paula will argue that a private investigator following her and taking pictures while she is walking into these various institutions is intrusive. American Drillers ("AD") will argue that it is not intrusive or highly offensive to take pictures of an individual while they are walking around in a public space. To intrude upon someone requires that the person has a reasonable expectation of privacy. AD will argue that Paula has no expectation of privacy while walking outside and in public, as the private investigator never followed her inside the buildings. Paula will argue that the pictures the private investigator took while she was inside her home intrude upon her expectation of privacy. AD will argue that, while she does have a reasonable expectation of privacy in her home, the pictures were taken while she was stood next to her windows, which face outward to the public and therefore does not qualify as intrusion upon her privacy.

Here, Paula will argue that hacking into her e-mail account to monitor and delete emails relating to AD are highly intrusive and unreasonable, as a reasonable person would be offended if an entity hacked into and monitored their private online information.

Therefore, Paula will likely succeed in her intrusion upon seclusion claim for AD hacking into her email, but will unlikely succeed for the photographs taken by the private investigator.

Disclosure of embarrassing or private information

Public

Publicity.

A claim of disclosure is the disclosure of private or embarrassing information that would be highly offensive to the reasonable person. The information cannot be widely or easily accessible through public record.

Here, Paula will claim that information relating to her adoption and divorce is both private and embarrassing and therefore susceptible to a disclosure claim. AD will argue that they retrieved the information by speaking with her friends and family members, and by using a public record search. Paula will argue that despite AD securing the information through legitimate channels, they still disclosed personal information that would be offensive to the reasonable person, as a reasonable person would not want information relating to their marriage of adoption -- especially if no one else knew about it -- to be published online for everyone to see.

*this could use deeper analysis.*  
Therefore, Paula will likely succeed with her disclosure claim.

**END OF EXAM**