5 Free Speech, Defamation & Obscenity

Objectives

After completing this chapter, the student should be able to:

- Understand the limitations of free speech on the Internet;
- Describe the definitions of obscenity as defined by the *Roth* and *Miller* cases;
- Define and apply the elements of defamation; and
- Distinguish between the torts of slander, libel, and libel per se.

5.1 Introduction

This chapter discusses "**free speech**" on the Internet. Because the Internet is used so often as a communication tool, free speech is a common theme in legal challenges involving the Internet.

The ability for U.S. citizens to share information on the Internet is based on the First Amendment of the U.S. Constitution, which states:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

This right is not absolute. People cannot always speak or write what they think and there are many situations in which free speech does not apply. For example, Justice Holmes, writing for the U.S. Supreme Court in *Schenck v. United States,* 249 U.S. 47 (1919)[267] stated that free speech did not apply to someone falsely shouting fire in a crowded theater. He indicated that this type of speech had no value, other than causing confusion and panic. Later cases have supported this proposition and stated that speech is not protected when such speech may "incite imminent lawless action."[268]

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WHAT DOES FREE SPEECH MEAN?

Among other cherished values, the First Amendment protects freedom of speech. The U.S. Supreme Court often has struggled to determine what exactly constitutes protected speech. The following are examples of speech, both direct (words) and symbolic (actions), that the Court has decided are either entitled to First Amendment protections, or not.

The First Amendment states, in relevant part, that:

"Congress shall make no law...abridging freedom of speech."

Figure 5-1[269]

Similarly, obscene speech does enjoy unfettered protection under the law. For example, the emailing of obscene material is not protected under the First Amendment.[270] Along similar lines and as will be discussed later, speech that is **defamatory** *is also unprotected.*[271]

5.2 Obscenity

Obscenity is a type of unprotected speech. Obscenity includes not only words, but also photographs and pictures. There is a long history of federal cases that have reviewed the question of speech in relation to obscenity. The results of such decisions have molded the criteria for determining whether material is classified as obscene or protected as free speech under the U.S. Constitution.

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5.3 *Roth v. United States*[272]

The first key case that looked at the obscenity question was decided in 1957 by the U.S. Supreme Court in *Roth v. United States*. The case consisted of two criminal defendants by the name of Roth and Alberts.

Roth conducted a business in New York in the publication and sale of books, photographs, and magazines. He used circulars and advertising matter to solicit sales."[273] He was convicted violating a federal obscenity law that prohibited the mailing of "obscene, lewd, or lascivious book, pamphlet, picture, or other publication of an indecent character…"[274]

Roth's case was combined with the *Alberts v. California* case. Defendant Alberts also conducted a mail-order business, but he was based in Los Angeles, California. Alberts was charged with a misdemeanor complaint "with lewdly keeping for sale obscene and indecent books, and with writing, composing, and publishing an obscene advertisement of them, in violation of the California Penal Code."[275]

The *Court* in Roth reviewed two questions: 1) if the federal and California state laws that prohibited the sale or transfer of obscene materials through the mail were constitutional, and 2) whether the restrictions of these laws violated the federal constitutional right to free speech.

In its decision, the Court held that obscenity was not "within the area of constitutionally protected speech or press."[276] The Court also used *Roth* to establish the criteria to determine obscenity. The test is to ask the question "whether to the average person, applying contemporary community standards, the dominant theme of the material taken as a whole appeals to prurient interest."[277]

In other words, the rule in Roth was that the First Amendment does not protect obscenity because it is utterly without social value and it is not within the area of constitutionally protected speech or press. However, this rule creates other questions: some materials may have social value to one person, but may be offensive to another.

5.4 *Miller v. California*[278]

In 1973, the U.S. Supreme Court again reviewed the questions of free speech and obscenity, and revised the law through the *Miller v. California* case.

In Miller, the defendant mailed unsolicited and unrequested obscene materials to a restaurant owner and his mother, resulting in the defendant's conviction under a state law. The U.S. Supreme Court reversed Miller's conviction and sent the case back to the trial court for retrial. The Court suggested the trial court use a *refined* three-prong test to determine whether the materials were obscene and without First Amendment protection. The new standard included asking two additional questions:

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1. whether "the average person, applying contemporary community standards" would find that the work, taken as a whole, appeals to the prurient interest,"[279]
2. whether the work depicts or describes, in a patently offensive way, sexual conduct specifically defined by the applicable state law, and
3. whether the work, taken as a whole, lacks serious literary, artistic, political, or scientific value. If a state obscenity law is thus limited, First Amendment values are adequately protected by ultimate independent appellate review of constitutional claims when necessary.[280]

Note the first two questions are based on the community. In contrast, the third question "whether a work has serious literary, artistic, political, or scientific value," is to be judged by a national standard. A national standard is difficult to apply to the Internet, as the community standard crosses borders.

Below is the case of *FCC v. Pacifica Foundation* decided five years after *Miller* and involving the late comic George Carlin's use of the "seven filthy words."[281] To this day, these seven words cannot be spoken on television or on the radio. As you read this case, think of its application to the Internet, and whether it would be realistic to apply the *Pacific Foundation* rules to online speech.

The Court Speaks

FCC v. Pacifica Foundation, 438 U.S. 726 (1978)[282]

(ADVISORY: The *Pacifica* case contains Carlin's entire monologue, *uncensored*. The text of the case may be offensive to certain readers.)[283]

Facts:

A radio station belonging to Pacifica Foundation made an afternoon broadcast of a satiric monologue, entitled "Filthy Words," which listed and repeated a variety of colloquial uses of "words you couldn't say on the public airwaves." A father who heard the broadcast while driving with his young son complained to the Federal Communications Commission (FCC). While not imposing formal sanctions, the FCC issued an order "associated with the station's license file, and in the event subsequent complaints are received, the Commission will then decide whether it should utilize any of the available sanctions it has been granted by Congress." The FCC characterized the language of the monologue as "patently offensive," though not necessarily obscene, and expressed the opinion that it should be regulated by principles analogous to the law of nuisance where the "law generally speaks to channeling behavior rather than actually prohibiting it." The FCC found that certain words in the monologue depicted sexual and excretory activities in a particularly offensive manner, noted that they were broadcast in the early afternoon "when children are undoubtedly in the audience," and concluded that the language as broadcast was indecent and prohibited. The U.S. Supreme Court agreed with the FTC. (p. 726–727)

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Pacifica argued that the broadcast was not indecent within the meaning of the statute because of the absence of prurient appeal and the judgment was reversed.

Discussion:

The only other statutory question presented by this case is whether the afternoon broadcast of the "Filthy Words" monologue was indecent within the meaning of § 1464. Even that question is narrowly confined by the arguments of the parties. (p. 738–739)

The Commission identified several words that referred to excretory or sexual activities or organs, stated that the repetitive, deliberate use of those words in an afternoon broadcast when children are in the audience was patently offensive, and held that the broadcast was indecent. Pacifica takes issue with the Commission's definition of indecency, but does not dispute the Commission's preliminary determination that each of the components of its definition was present. Specifically, Pacifica does not quarrel with the conclusion that this afternoon broadcast was patently offensive. Pacifica's claim that the broadcast was not indecent within the meaning of the statute rests entirely on the absence of prurient appeal. (p. 739)

The plain language of the statute does not support Pacifica's argument. The words "obscene, indecent, or profane" are written in the disjunctive, implying that each has a separate meaning. Prurient appeal is an element of the obscene, but the normal definition of "indecent" merely refers to nonconformance with accepted standards of morality… (p. 740)

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…It is true that the Commission's order may lead some broadcasters to censor themselves. At most, however, the Commission's definition of indecency will deter only the broadcasting of patently offensive references to excretory and sexual organs and activities. While some of these references may be protected, they surely lie at the periphery of First Amendment concern. (p. 744)

Questions:

1. Does this case apply to the Internet? Why or why not? If not, should it apply?
2. If this case were decided today, would the court's ruling be the same?
3. How do television and radio differ as entertainment and communication tools from the Internet?

5.5 Communications Decency Act of 1996[284]

As access to the Internet expanded in the mid 1990's, Congress determined it was necessary to pass legislation to deal with the growing availability of pornography and obscenity to children. The **Communication Decency Act** (CDA) of 1996, 47 U.S.C. §§ 223 and 230, was the first law designed to protect minors from pornography on the Internet. Section 223 of the law made it a crime to transmit materials over the Internet to those known to be under the age of 18 that were "obscene or indecent."[285] After passage, the law was immediately challenged as censorship (see *Reno v. ACLU 1* below). The key challenge to the law was its definition of the word "indecent."

Another noteworthy element of the law was Section 230[286] that distinguished an "access provider" from a "content provider." This was significant because the law stated that Internet operators were not publishers and therefore, not liable for posts made by third parties. What exactly does this mean? Assume two parties A and B are involved in a sexual relationship and break off the relationship. Person A in the relationship is angry with the other, and posts embarrassing sexual photographs of Party B online. Under Section 230 of the CDA, the Internet service provider (ISP) would not be responsible for financial damages caused by Party A's posting of the pornographic images.

5.6 *Reno v. ACLU 1*[287]

As noted above, the American Civil Liberties Association (ACLU) filed suit against the U.S. Attorney General, Janet Reno, challenging the constitutionality and enforcement of Section 223.

In 1997, the Supreme Court in a 9-0 decision determined that the "CDA restrictions violated the First Amendment" because the terms "indecent and" patently offensive" were too broad.[288] In other words the Court held "the CDA's "indecent transmission" and "patently offensive display" provisions abridge "the freedom of speech" protected by the First Amendment."[289] It stated that it agreed with the District Court that the "CDA places an unacceptably heavy burden on protected speech… (and that it) cast(s) a far darker shadow over free speech, (and) threatens to torch a large segment of the Internet community."[290]

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Free Speech Includes the Following Free Speech Rights[291]
Freedom of speech includes the right: • **Not to speak (specifically, the right not to salute the flag).** *West Virginia Board of Education v. Barnette*, 319 U.S. 624 (1943). • **Of students to wear black armbands to school to protest a war ("Students do not shed their constitutional rights at the schoolhouse gate.").** *Tinker v. Des Moines*, 393 U.S. 503 (1969). • **To use certain offensive words and phrases to convey political messages.** *Cohen v. California*, 403 U.S. 15 (1971). • **To contribute money (under certain circumstances) to political campaigns.** *Buckley v. Valeo*, 424 U.S. 1 (1976). • **To advertise commercial products and professional services (with some restrictions).** *Virginia Board of Pharmacy v. Virginia Consumer Council*, 425 U.S. 748 (1976); *Bates v. State Bar of Arizona*, 433 U.S. 350 (1977). • **To engage in symbolic speech, (e.g., burning the flag in protest).** *Texas v. Johnson*, 491 U.S. 397 (1989); *United States v. Eichman*, 496 U.S. 310 (1990). **Freedom of speech does not include the right:** • **To incite actions that would harm others (e.g., "[S]hout[ing] 'fire' in a crowded theater.").** *Schenck v. United States*, 249 U.S. 47 (1919). • **To make or distribute obscene materials.** *Roth v. United States*, 354 U.S. 476 (1957). • **To burn draft cards as an anti-war protest.** *United States v. O'Brien*, 391 U.S. 367 (1968). • **To permit students to print articles in a school newspaper over the objections of the school administration.** *Hazelwood School District v. Kuhlmeier*, 484 U.S. 260 (1988). • **Of students to make an obscene speech at a school-sponsored event.** *Bethel School District #43 v. Fraser*, 478 U.S. 675 (1986). • **Of students to advocate illegal drug use at a school-sponsored event.** *Morse v. Frederick*, __ U.S. __ (2007).

Figure 5-2

5.7 Child Pornography Prevention Act of 1996[292]

Passed the same year as the CDA, the **Child Pornography Prevention Act of 1996** (CPPA) prohibited and criminalized the use of computers to knowingly produce child pornography. Two sections of the law characterized child pornography as illegal speech.[293] The first section prohibited "any visual depiction, including any photograph, film, video, picture, or computer or computer generated image or picture" that "is, or appears to be, or a minor engaging in sexually explicit conduct."[294] Another key section prohibited "any sexually explicit image that was advertised, promoted, presented, described, or distributed in such a manner than conveys the impression it depicts a minor engaging in sexually explicit conduct."[295]

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Litigation was also filed challenging the constitutionality of this law. In *Ashcroft v. Free Speech Coalition,* 535 U.S. 234 (2002),[296] the U.S. Supreme Court struck down the aforementioned two provisions of the law because they were overbroad and they abridged "the freedom to engage in a substantial amount of lawful speech."[297] The Court viewed the CPPA definition of child pornography as too vague and too broad under the First Amendment, because the CPPA applied to both depictions of real and fictitious children.[298]

5.8 Child Online Protection Act of 1998[299]

The Child Online Protection Act (COPA) was passed in reaction to the striking down of Section 223 of the Communications Decency Act by the U.S. Supreme Court. COPA made it a crime to publish "any communication for commercial purposes that included sexual material that was harmful to minors, without restricting access to such material by minors." "Harmful to minors" in the Act was defined as lacking "any scientific, literary, artistic, or political value" and offensive to "community standards."[300]

Why Was COPA Held Unconstitutional?
1. The case challenged Congress's power to regulate interstate commerce while limiting the First Amendment free speech rights of adults. In addition, the statute was vague (for example, what are materials harmful to children) and overbroad, because adults were denied access to these materials. 2. Children could access pornographic materials on foreign and non-commercial websites since COPA only applied to commercial U.S. websites, and there were other resources besides the web to access these materials.

Figure 5-3

The Act never took effect and after several court appeals, the law was ruled unconstitutional.[291]

5.9 The Children's Internet Protection Act of 2000[302]

The Children's Internet Protection Act of 2000 (CIPA) was a Congressional attempt to regulate computer access to adult-oriented Web sites in public schools and libraries. This law denied federal funds to libraries who refused to place filters on the Internet accessible computers.[303] It also required libraries to block visual depictions of obscenity, child pornography, or "materials harmful to minors." (Note: this law defined minors as children under age 17, and not 18).[304] The law also required libraries to disable filtering software on the request of an adult. In early 2001, the Federal Trade Commission (FTC) issued rules implementing CIPA, and updated the rules most recently in 2011.[305]

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Additionally, the FCC requires schools and libraries subject to CIPA to adopt and implement an Internet safety policy addressing these factors:

a) access by minors to inappropriate matter on the Internet;
b) the safety and security of minors when using electronic mail, chat rooms and other forms of direct electronic communications;
c) unauthorized access, including so-called "hacking," and other unlawful activities by minors online;
d) unauthorized disclosure, use, and dissemination of personal information regarding minors; and
e) measures restricting minors' access to materials harmful to them.[306]

5.10 Child Protection and Obscenity Enforcement Act of 1988[307]

This 1988 law (18 U.S.C. § 2251), required producers of actual, sexually explicit materials (magazines and videos) to maintain onsite records to verify that all models, or actors are of legal age.[308] The main purpose of the law was to prevent minors from being involved in producing pornography. Late in 2005, the law was extended to websites, but NOT ISP's.[309] In 2007, the Sixth Circuit Court of Appeals in Cincinnati ruled that the federal anti-child pornography law, the Child Protection and Obscenity Enforcement Act, violated the First Amendment.[310]

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The Court felt that the record keeping requirements of the law were invalid because they "imposed an overbroad burden on legitimate, constitutionally protected speech."[311] However, the U.S. Department of Justice requested a review of the case by the entire Sixth Circuit (called an **en banc hearing**), which issued an opinion in 2009 upholding the constitutionality of the record-keeping requirements. The United States Supreme Court refused review of the case.[312]

5.11 Defamation

Another aspect of free speech involves the tort of **defamation.** Defamation involves the publication (sharing) of false statements that harm another's reputation. These statements can be written or spoken. Written defamation is **libel**. Spoken defamation is **slander**. Lawsuits on the Internet are based on libel.

Defamation is a state action. Most states have defamation statutes used as the basis for a defamation lawsuit.

Sample Libel and Slander State Statute[313]
Ohio Revised Code Chapter 2739: SLANDER; LIBEL **2739.01 Libel and slander.** In an action for a libel or slander, it is sufficient to state, generally, that the defamatory matter was published or spoken of the plaintiff. If the allegation is denied, the plaintiff must prove the facts, showing that the defamatory matter was published or spoken of him. In such action it is not necessary to set out an obscene word, but it is sufficient to state its import. Effective Date: 10-01-1953 **2739.02 Defenses in actions for libel or slander.** In an action for libel or a slander, the defendant may allege and prove the truth of the matter charged as defamatory. Proof of the truth thereof shall be a complete defense. In all such actions any mitigating circumstances may be proved to reduce damages. Effective Date: 10-01-1953

Figure 5-4

5.12 Elements

There are four elements involved in common law defamation. First, the statement must harm a person or a business's reputation. The assertion can be made through direct evidence, innuendo, insinuation, or by reference to the person. It must be understood that the statement refers to the person.

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Second, the statement must be false, and not simply represent someone's opinion. Third, it must be communicated (called published) to a third party. With Internet libel, the threshold to prove injury is very low due to ease of sharing and the permanent nature of online communications.

Fourth, the person must be injured or damaged by the statement (such as a person being terminated from a job, or a business losing profits). To prove defamation, it must also be shown that there was some degree of fault or negligence on the part of the defendant. If the libel involves a public figure, the plaintiff must demonstrate the defendant acted with actual malice (reckless disregard of the truth).

5.13 Libel Per Se

Libel per se is written statement that society has determined is so outrageous *that a plaintiff does not have to prove injury*. There are four kinds of libel per se: accusing a person of committing a serious crime, saying someone has a sexually transmitted disease, alleging incompetence in a person's profession, or claiming a woman is unchaste. Again, as long as the statement is proven false, a person does not have to prove damages. There are similar rules for slander per se.

5.14 Defenses

An opinion is generally a valid defense in a defamation lawsuit. Opinion is covered by the First Amendment of the U.S. Constitution.[314] It must be clear to a third party that the comment is an opinion.

Other defenses to a libel claim include truth, absolute privilege, and qualified privilege.

1. Truth is an **absolute defense**. This means if Party A sues Party B for libel and the statement made by the Party B is true, Party A will lose the case.
2. **Absolute privilege** applies to statements made by individuals in government positions. Absolute privilege makes a person immune from a lawsuit. Members of the three branches of government enjoy protection from liability for whatever they say so long as the statement relates to their function as a government official.
3. **Qualified privilege** attaches to individuals who possess a common interest in sharing information about another, such as a prospective employer asking a prior employer about a job applicant's past job performance.

Remember under Section 230 of the CDA, an Internet service provider is not responsible as a publisher of any defamatory material published on their Web site unless they exercised a sufficient degree of editorial control over the contents of what was published.

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5.14 Free Speech and Social Media

Facebook, Instagram®, YouTube®, Twitter®, and Google+® are just a few of the most popular social networking sites on the Internet. If someone makes a derogatory post about another person on one of these sites, defamation law applies. If the information is false and harms another's reputation, there is potential for a libel lawsuit.

For example, assume that Sam is angry with her partner Charlie and Tweets that Charlie stole $250 from petty cash at work, and that he gave her a sexually transmitted disease. The post is a lie, but Charlie loses his job based on Sam's allegations. Charlie has the option to sue Sam for libel. Anonymous posts or posts using an alias are also subject to defamation laws, which may include the ordering of a monetary award by a court.

5.15 Free Speech and Work

Speech at work is governed by company policy. This means that the employer regulates any electronic or verbal communications. In other words, there is no First Amendment right to free speech in the private workforce. Employees should closely read their company policies as they relate to social media.

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Employees not on company time, in general, may legally engage in personal communications on the Internet without intervention from an employer. However, it simply may be imprudent to criticize publically an employer on social media.

Free Speech Standards for Public Employees
Pickering v. Board of Education, 391 U.S. 563 (1968) "used a balancing test to determine whether the First Amendment protects a public employee's speech. These three questions need to be asked: 1. Did the individual demonstrate that his or her speech address a matter or matters of public interest and concern? 2. Did the individual demonstrate that his or her speech was a significant or motivating factor in the employer's decision? 3. Did the court balance the interests of the individual commenting on matters of public concern as a citizen and the public employer's interest in "promoting the efficiency of public service?"

Figure 5-5

What about the standards for public employees? In 2014, the U.S. Supreme Court case of *Lane v. Franks*,[316] reiterated the standards of *Pickering v. Board of Education* requiring balancing "the interests of the [employee], as a citizen, in commenting upon matters of public concern and the interest of the State, as an employer, in promoting the efficiency of the public services it performs through its employees." (p. 2)

5.16 Summary

Free speech is an area of the law that will continue to change with technology. The conflict between obscenity and First Amendment free speech will be ongoing. As changes in the U.S. Supreme Court's view of free speech change, you will see continued expansion and restriction of free speech.

Remember, the Constitution does not protect obscene speech, and pornography is entitled to First Amendment protection unless it is obscene or contains child pornography. Courts have attempted to define obscenity using the three-prong *Miller* test, which uses community standards. Because the Internet does not have borders, however, applying a community standard is very difficult.

Defamation via e-mail, chat rooms, blogs, Facebook posts *etc.*, is likely to be termed libel, because of its permanent nature. Defamation must cause harm, be false, be communicated, and cause injury. Defenses include truth, absolute privilege, and qualified privilege.

The liability issues of service providers for online defamation are covered by Section 230 of the Communications Decency Act of 1996, which protects service providers from liability in defamation.

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5.17 Key Terms

Absolute defense	Communications Decency Act of 1966	Libel per se
Absolute privilege	Defamation	*Miller v California*
Child Protection and Obscenity Enforcement Act of 1988	Children's Internet Protection Act of 2000	Obscenity
Child Online Protection Act of 1998	Communications Decency Act of 1996	Prurience
Child Pornography Prevention Act of 1996	Defamation	Qualified privilege
Children's Internet Protection Act of 2000	Free speech	*Reno v ACLU 1*
	Libel	*Roth v United States*
		Serious literary, artistic, political, or scientific value
		Slander

5.18 Chapter Discussion Questions

1. What speech protections does the First Amendment provide?
2. What is the difference between libel and slander?
3. What are the obscenity standards as described by *Miller*?
4. What are the obscenity standards as described by *Roth*?
5. What is the difference between absolute defense, absolute privilege, and qualified privilege?
6. What are the requirements of the Children's Internet Protection Act?
7. What does Section 320 of the Communications Decency Act provide?
8. What did the Court determine in *Reno v. ACLU 1*?
9. Define "serious literary, artistic, political, or scientific value."
10. Give an example of libel per se.

5.19 Additional Learning Opportunities

The Electronic Frontier Foundation https://www.eff.org/issues/free-speech has an excellent website that discusses emerging free speech issues.

5.20 Test Your Knowledge

1. "Publication" in a defamation case means
   A. The defamatory statement must be false.
   B. The defamatory statement must be made known to a third party.
   C. Electronic statements cannot be defamatory.
   D. The defamatory statement must be made in writing.

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2. Under the Communications Decency Act of 1996, an online service provider
   A. can be held liable for material posted by another on its service if it takes no action to screen the material.
   B. can be held liable for material posted by another on its service if it acts as a "common carrier."
   C. can be held liable for material posted by another on its service if it voluntarily agrees to monitor that material for truthfulness.
   D. cannot be held liable for material posted by another.

3. Which of the following is the best definition of defamation?
   A. Defamation is a written or oral statement that harms another's reputation.
   B. Defamation is a written false statement that wrongfully harms another's reputation.
   C. Defamation is a written or oral statement wrongfully made directly to the individual defamed.

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D. Defamation is a written or oral false statement that wrongfully harms another's reputation.

4. Defenses to defamation include
   A. absolute privilege
   B. incapacity of the speaker
   C. qualified privilege
   D. A and C
   E. A and B
   F. B and C

5. The difference between libel and libel per se is that
   A. In a libel case, the plaintiff must prove damages, whereas in a "libel per se" case damages are assumed.
   B. Libel contains written words, and libel per se consists of spoken words.
   C. Libel must be published, while libel per se need not be published.
   D. In a libel per se case, plaintiff must prove actual malice, whereas in a slander case, proof of actual malice is unnecessary.

6. As a defense to defamation, truth is
   A. always a defense
   B. sometimes a defense depending on the intent of the speaker
   C. a defense only if it can be proved beyond a reasonable doubt
   D. none of the above

7. Obscenity is more than pornography as it must pass the legal test of
   A. prurient interests
   B. sexual arousal
   C. lewd conduct
   D. lustful desires

8. Jamie makes a post on LinkedIn that Taylor is a crooked and unethical attorney. The statement is not true. Taylor's actions are an example of
   A. free speech
   B. slander

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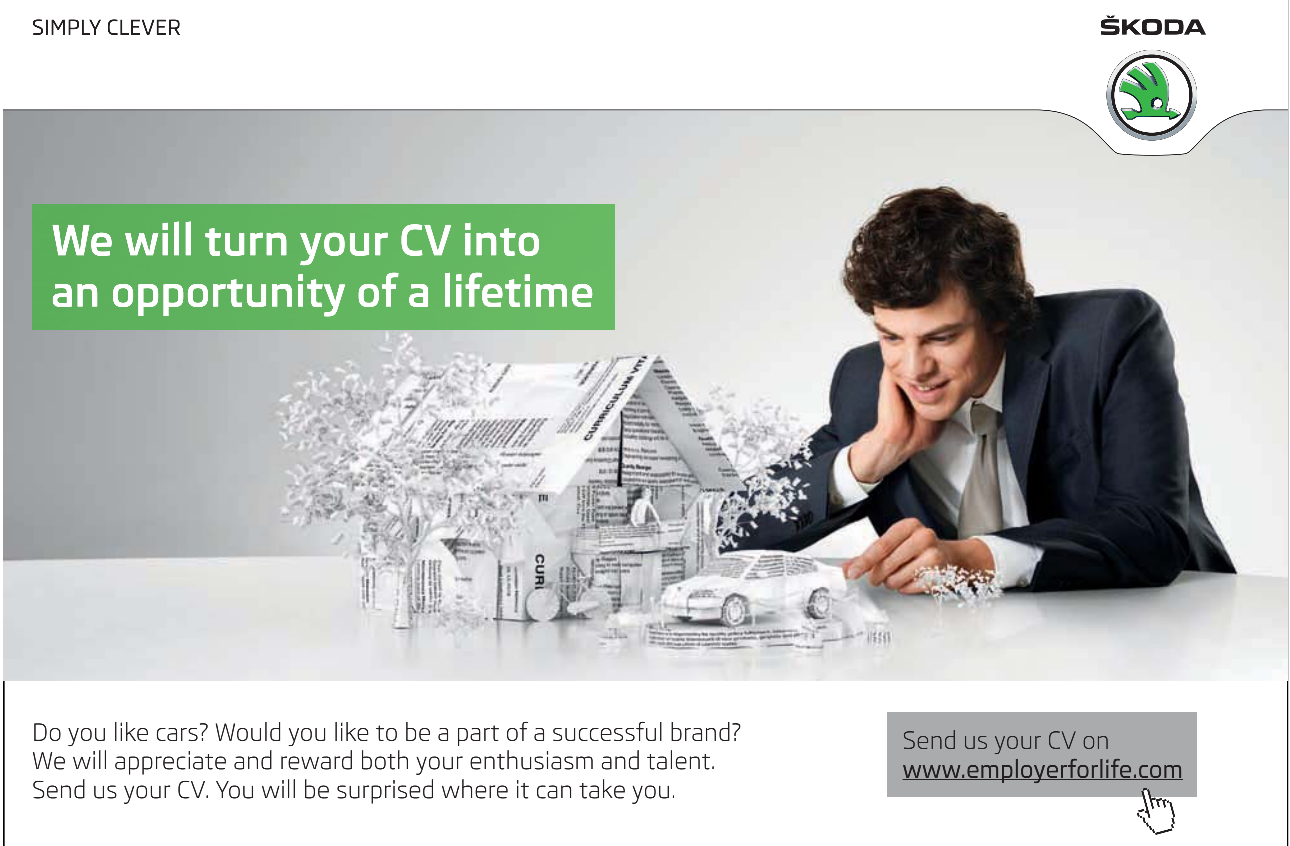
C. libel
D. libel per se
E. slander per se

9. Congressman Smith criticizes the President of the United States and refers to him by a vulgar term. The President can sue the Congressman for
A. libel
B. libel per se
C. slander
D. slander per se
E. He cannot sue as the Congressman has an absolute privilege.

10. Which of the following is NOT an example of libel per se?
A. accusing a person of committing a serious crime
B. saying someone has a sexually transmitted disease
C. alleging incompetence in a person's profession
D. alleging a woman is unchaste
E. none of the above

Test Your Learning answers are located in the Appendix.



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