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The Batting Average (TBA)

I. Sam's suit: Defamation regarding matters of public concern

The issue here is whether Andy's conduct amounts to Defamation in the form of libel, and if so, what Andy would be likely to recover by way of remedy. 

1. Defamation and Libel



Defamation is established by the use of defamatory language, of or concerning the plaintiff which is communicated to a third party, and causes damage to the Plaintiff. I will consider each element in turn in relation to Sam's suit.

i. Defamatory language




Defamatory language is language which harmfully affects the reputation of the Plaintiff, such as suggesting immoral or illegal conduct, or a disease, or sexual immorality of a woman.

Here, Andy's story suggested that Sam was guilty of taking "illegal performance-enhancing drugs". This is without question a statement which will adversely affect Andy's reputation, particularly given his profession as a major league baseball player, where his performance is key. The consequences of this statement could cost Andy's career, given that baseball players are forbidden from taking performance enhancing drugs. It would also certainly lose him the support of many fans, leading to damage to his public reputation (and sponsorship deals etc).


Thus, for the reasons stated above, the language communicated in Andy's story is defamatory.

ii. Of and concerning the plaintiff

The language must be about the Plaintiff and must clearly identify the Plaintiff as its subject.


This element is satisfied as Andy's story clearly identifies Sam as the person taking the illegal drugs. 

iii. Communicated to a third person

For defamation to apply, the defamatory language must have been communicated to a third person. It is not enough to simply tell the Plaintiff. For the defamation of libel, the statement must actually have been in written form  and published to third parties. Here, we are told that Andy published the story in the monthly newsletter issued by his company TBA. Thus, the defamatory language has been communicated and the publishing element required for libel has been satisfied.



2. Matters of public concern

The above described elements establish Common Law Defamation. In addition to this, there are additional elements which apply in the case of Constitutional Defamation. Constitutional Defamation applies where the Defamation involved a matter of public concern. This is presumed when the statement concerns the public, and/or if the Plaintiff is a public official. For constitutional defamation  requires that the Plaintiff must prove the Fault and Falsity of the statement. If these elements are established, then damages are presumed.



Because Andy is a person in the public eye (a major league baseball player), and the newsletter was published to the general public, the Defamation is a

matter of public concern.



i. Fault



To establish fault, Andy will need to show that Sam intentionally published the article knowing it was untrue, or did so with reckless disregard as to the truth of the statement.



Here, we are told that Sam knew the story was not true but wrote it because he disliked Sam. This suggests that he was at fault and behaved with malicious intent. Thus, this element of the constitutional test is satisfied.

ii. Falsity

For constitutional defamation, the Plaintiff must show that the statement is false.



From the facts given it would appear that the statement was false, as we are also told that Sam knew the story was not true. This should therefore be easy for Sam to prove, by taking a drug test, for example.

iii. Presumed Damages



Where a Plaintiff is able to establish the fault and falsity elements, and the Plaintiff is a public official, damage are presumed and they are not required to show actual damages. Where the Plaintiff is a private individual and the defamation is constitutional (of public concern), if they show malicious intent, then damages are also presumed.



Here, regardless of whether Sam is classed as a public official or a private person (most likely the former due to his profesisonal sportsman role in the public eye), fault, falsity and malicious intent can be demonstrated, so damages



will likely be presumed and Sam will not need to establish actual damages with certainty.

3. Remedies

Actual damages: loss of major league contract

As noted above, actual damages are presumed where constitutional defamation has been established. The Plaintiff is entitled to all actual and foreseeable loss flowing from the Defendant's breach.



Here, we are told that Sam lost his major league contract. We are not told the monetary value of the contract, but the court will likely take this sum into account in determining the appropriate level of damages, in particular the loss of earnings that will result from loss of the contract.

Foreseeable damages: future earnings

Sam may also argue that he has lost future earnings due to the defamatory statement. The court will consider all foreseeable damages which Sam would have or should have anticipated when he made the defamatory statements. For example, the court may award loss of sponsorship if negotiations were in the pipeline. The key element will be to demonstrate that the damages were ascertainable and foreseeable.




Punitive Damages: wanton or willful misconduct



The Court may also award Sam punitive damages due to the wanton and willful misconduct of Andy. Punitive damages are imposed where the court wishes to punish the Defendant for their conduct. Here, given that Andy knew the statements were untrue and made them due to his "dislike" of Sam, the court is


likely to find his conduct willful and malicious. Punitive damages are awarded when actual/foreseeable damages have been established. They are normally awarded in proportion to the actual damages awarded, such as at a 9-1 ratio.


Liability: who must pay?

We are told that Sam has sued Andy Ruth Molly TBA and Baseball Stories Inc. for libel.

 As established above, Andy prepared the libellous article. He is certainly culpable in his own personal capacity. He is also culpable as a partner in TBA (it was Andy's responsibility to write the stories for TBA), and as the sole owner of Baseball Stories.

We are told that Andy conducted all of his business activities out of Baseball Stories, so his preparation of the newsletter article was carried out for TBA by Baseball Stories as a contractor. Baseball stories is therefore liable as a primary publisher as it was responsible for producing the article. Andy's company, Baseball Stories is a  close corporation, and Andy is the sole owner, which means that he will be personally liable for any judgment debts brought against Baseball Stories. 

 As TBA was responsible for publishing the article in its newsletter, it is also a primary publisher. A primary publisher is the party responsible for publishing the libellous statement to third parties, whereas a secondary publisher is a party who subsequently sells the statement, or makes it available to the public. So, if a news stand sold the newsletter and knew that it contained libellous material it could be deemed a secondary publisher, by furthering the publication.

 As TBA appears to be a partnership, all of the partners are personally liable for any judgments brought against the company in proportion to their ownership. As

we are told that TBA's net profits are shared equally between Andy Ruth and Molly, each of them will be liable for any judgment rendered against TBA for the libel suit brought by Sam.

II. The Computer Store's suit: unpaid computer costs

1. Breach of Contract

The Computer store has a claim against Andy, Ruth, Molly and TBA for breach of contract, for the unpaid purchase price of the \$300 computer which Andy bought for the company.



The issue is whether Andy had the authority to purchase the computer on behalf of TBA, and whether TBA is therefore liable to pay for the purchase. Another issue concerns whether the Andy Ruth and Molly are personally liable for the purchase, as they are also each named defendants in the suit.

i. TBA's liability: Molly's Exclusive authority

We are told that Molly has the exclusive authority in TBA for providing all equipment necessary. By purchasing the computer, Andy arguably acted outside the scope of his authority as a partner of TBA. TBA would argue that Andy was not authorized to buy the computer and therefore he should be the one to pay for it.



If the Computer Store is successful against TBA, TBA may seek to recover the cost of the computer from Andy.

ii. Andy, Ruth and Molly's liability

As noted above, the suit includes Andy Molly and Ruth as named defendants, in



their personal capacity. It is arguable they are not personally liable as they did not enter into the contract, TBA did. This is apparent as we are told that Andy purchased the computer for TBA. However, as joint partners in TBA, they will be held jointly liable for any judgment brought against TBA. If TBA is unable to pay the debt, the Computer Store could seek to recover against any of the partners, so in essence they may all be personally liable.

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