

1)

Claims Paul may reasonably raise against Dan

Defamation

A claim for defamation requires (1) a defamatory statement be made (2) of or concerning plaintiff (3) publication to a third party and (4) damages. There are two type of defamation: libel, which is written defamation, and slander, which is spoken defamation.

Here, Dan's statement regarding Paul was spoken, not written. Thus, Dan may be liable for slander.

Defamatory Statement of or concerning Plaintiff

Here, Dan, Paul's Legal Research and Writing professor, made a defamatory statement of or concerning Paul. Dan's statement "I hope no other student has copied his footnotes from another student's paper like that two-bit actor Paul." was defamatory because he is alleging that Paul has plagiarized his paper from another student. It is of or concerning Paul, because Dan has identified Paul in his statement as "that two bit actor" and it was known that Paul had small but memorable roles in two recent Hollywood movies.

Thus, Dan made a defamatory statement of or concerning Paul, because he alleged that Paul plagiarized another student's paper and specifically referred to Paul.

Publication to Third Party

There is publication of a defamatory statement if the defendant communicates the defamatory statement to another third party. Here, Dan made his statement about Paul in Paul's Legal Research and Writing class, in front of Jack and the other students. Because the defamatory statement was communicated to third parties, the other students, there was publication of the statement.

Thus, Dan published the statement because he communicated it to Jack and the other students.

Damages

For slander, the plaintiff must prove that he suffered special, economic damages. The plaintiff does not need to prove general damages, which are physical damages, because they are presumed. For slander per se, however, plaintiff does not have to prove special damages to

recover. Slander per se arises when the defamatory statement is regarding the plaintiff's conduct in a professional, business setting, acts of moral turpitude, unchaste behavior and having a loathsome disease.

Here, Dan will argue that Paul only suffered a severe panic attack, which he did not seek treatment for. Dan will also argue that the facts do not support that Paul suffer economic harm, such as losing movie roles. However, Paul will argue that Dan is liable for slander per se, because his statement about Paul's alleged plagiarism pertains to his conduct in a professional setting, as a future lawyer. Paul will also argue that allegations of plagiarism in an academic setting amounts to moral turpitude, so he does not need to prove special damages to recover. It is likely that the court will find that Dan may be liable for slander per se, because the statement pertained to Paul's conduct in a professional setting (law school) and act of moral turpitude (act of dishonesty).

Thus, Paul will not have to prove special damages, because the facts support that Dan may be liable for slander per se.

First Amendment

When the plaintiff is a government official or a public figure, he must prove two additional elements of defamation: falsity and fault. A person is a public figure if he has achieved fame and notoriety in society, such as being a movie star, professional athlete or a celebrity. A person is also a public figure for 1st Amendment purposes, if he becomes involved or inserts himself into a public controversy or matter of public concern.

Here, it may be argued that Paul may be a public figure, because he works as an actor and had two memorable roles in two recent Hollywood blockbusters. However, it also may be argued that having a few roles in mainstream movies would not make an actor into a public figure, because, he would not have achieved the same kind of fame in society, such as a well known actor. Even if his roles may have been memorable, this does not render Paul as being a well known public figure. It is likely that the courts may find that Paul does not qualify as a public figure for 1st Amendment defamation purposes.

However, if it may be argued that Paul may qualify as a public figure, then he must prove the following elements.

Falsity

Paul must prove that Dan's statement was false. Here, Paul may be able to prove this, because the facts indicate that Dan had shown Jack his own paper, mistaking it for Paul's, and that Paul had not copied Jack's or anyone else's papers.

Thus, Paul may prove that Dan's statement was false, because Dan based his statement on a mistake he made, when he showed Jack his own paper, believing it was Paul's.

Fault

A plaintiff must show that the defendant acted with actual malice or recklessness. Actual malice requires that the defendant knew that the statement about the plaintiff was false but made the statement anyway. Recklessness requires that the defendant make the statement with reckless disregard as to the truth.

Here, Paul may not be able to prove that Dan acted with actual malice or recklessness. Dan did not act with actual malice because he based his statement on what Jack told him, regarding his suspicions that Paul copied his footnotes, as well as inadvertently showing Paul's paper to Jack. Dan did not know that the statement was false, he honestly but mistakenly believed that Paul did plagiarize Dan's paper. The facts also do not support recklessness, because it was based on an honest mistake, not based on reckless disregard of the truth of the statement.

Thus, Paul may not prove that Dan acted with malice or recklessness, because Dan based his statement on an honest mistake and believed that Paul did plagiarize Jack's footnotes.

Therefore, Paul will not be successful in a 1st Amendment defamation claim against Dan because he cannot prove that Dan had actual malice when he made the statement.

Therefore, Paul may reasonably raise defamation based on slander per se against Dan. However, Paul may not raise 1st Amendment defamation against Dan, because it is likely that he is not a public figure and even if he were, he would not be able to prove fault (actual malice).

Defenses

Dan may raise the following defenses against Paul: truth and privilege.

Truth

A defendant may prevail against defamation if he proves that the statement was based on truth. Here, Dan may argue that his statement was based on truth, because, he showed the paper to Jack, who claimed that Paul had "copied all the footnotes from my paper." Paul will argue that even if he inadvertently shown Jack his own paper, instead of Paul's, as he believed, his statement was based on what he believed was the truth at the time. However, it is likely that this defense will fail, because Paul should have further inquired about this matter. All he did was rely on Jack's suspicions that Paul copied his paper. Nothing in the facts indicate that Dan even attempted to contact Paul and privately ask about this matter. Also, Dan was Paul's law school

professor, so he had the obligation of checking if the allegations were true. Thus, this defense of truth will fail because Dan was careless in failing to verify the truth of Jack's statements regarding Paul.

Thus, Dan may not raise truth as a defense.

Privilege

A defendant may raise privilege as a defense to defamation. There are two types of privilege: absolute privilege and qualified privilege. Absolute privilege arises when government officials make statements during course of their official duties. Qualified privilege arises in cases involving public reviews, reviews of employees by employers, or professor recommendations.

Because Dan is not a government official acting in course of official duties, absolute privilege does not apply. However, Dan may raise qualified privilege as a defense, because he may argue that he had a right to be concerned as a law school professor, to ensure that his students did not cheat or plagiarize their school work. However, this will likely fail because Dan was not asked to review Paul's work or conduct as a student. Another student of his, Jack, had went to Dan's office and told him he was suspicious that Paul may have copied his paper. Here, Dan was not officially asked to give a recommendation of Paul. Dan acted only after Jack accused Paul of plagiarizing his footnotes, and Paul's statement was mostly based on Jack's accusations. Paul may argue that it was qualified privilege because he based his suspicions after Jack saw the paper Paul had shown him. However, the court will likely hold that there is no qualified privilege because Dan was not basing his statements on any recommendations requests. Thus, Dan was not privileged to make the statement about Paul, because it was not based on requested recommendations or reviews.

Thus, Dan may not raise qualified privilege as a defense.

Therefore, Paul will be successful in his defamation claim based on slander per se against Dan. In addition, Dan will not be successful in raising truth or privilege as defenses.

Damages

For slander per se, the plaintiff is not required to prove special damages (see above). Thus, Paul is entitled to recover special damages (economic loss) and general damages (physical injury). For damages to be recoverable, the plaintiff must prove they are foreseeable, certain, causal and unavoidable.

Thus, Paul will likely recover any economic loss he would have sustained, such as loss of job

opportunities. However, it may be difficult for Paul to recover general damages, because he did not seek medical treatment after suffering a severe panic attack, so damages there would likely be uncertain.

Question #1 Final Word Count = 1603

END OF EXAM