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1. HARDY'S ALLEGEDLY DEFAMATORY STATEMENTS

In Columbia , defamation consists of the publication of a false statement to a third part. To be false, a statement must be one of fact and cannot be solely of opinion. To be susceptible to an interpretation as either fact or opinion, the proper characterization is determined by asking whether under the totality of the circumstance, a reasonable trier of fact would conclude that the statement communicates fact rather than expresses opinion. (Anderson).

Internet forums provide a looser forum for communication styles that criticize others (Insky). Thus, statements calling company executives "liars," "losers," and crooks." express opinion and while offensive and demeaning, the statement is more emotional catharsis (Insky).

In this case, there were two categories of statements referred to in the Complaint. The first relates to Hardy's statements accusing Niesi of cable theft. The second set of statements relate to Hardy's speculation that Niesi is a cheating spouse.

Under the totality of the circumstances test, the first group of statements seem more like facts under the totality of circumstances test. In Anderson, the court found defamation where the alleged defamatory statements recited elements of perjury and fraud. Similarly, in this case, the statements allege the details of cable theft - the name, the address, the use of unauthorized devices. It is likely that these statements will be found to be defamatory.

In contrast, the alleged defamatory statements concerning Niesi's alleged affair are more akin to those in in Insky where the court found that they were not defamatory but merely opinion.

2. GOSLING'S IMMUNITY WITH RESPECT TO HARDY'S STATEMENTS

It is unlikely that Gosling will be found to have immunity for any of the alleged defamatory statements if proven

Section 230 no immunity for inducing third parties to express illegal preferences

Question #3 Final Word Count = 300

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