Steps in a Libel or Slander Case

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1. **Publication**: Statement communicated to a third party.
   - No → Media wins
   - Yes

2. **Identification**: Statement refers to the plaintiff.
   - No → Media wins
   - Yes

3. **Falsity**: Statement is false, not just in details but in its “gist” or “sting.”
   - No → Media wins
   - Yes

4. **Defamatory meaning**: Statement accuses plaintiff of serious criminal conduct; inability or incompetence in a business, profession or office; sexual misconduct; a loathsome disease; or other similarly serious and damaging allegations.
   - Yes
   - Yes (Illinois only)
   - No → Media wins

4a. **Innocent construction**: Statement, though defamatory when read one way, could be reasonably construed another way as not defamatory.
   - Yes
   - No

5. **Fact/Opinion**: Statements in issue are factual assertions, not clearly exaggerated or hyperbolic statements of opinion.
   - No → Media wins
   - Yes

6. **Common law privilege**: A privilege protects the communication. Examples:
   - official government report privilege
   - neutral reportage privilege
   - right to reply privilege
   - personal interest privilege
   - common interest privilege
   - public interest privilege
   - Yes (absolute privileges)
   - Yes (qualified privileges)
   - No → Media wins

6a. **Defeasance**: Statement was made with knowing falsity or reckless disregard of truth, or was published to persons with no legitimate interest.
   - Yes
   - No

7. **Fault (Constitutional Privilege)**: Plaintiff was a government official or employee who had substantial responsibility for the conduct of governmental affairs (“public official”), or played a significant role in a public controversy in the interest community or locale where the statements were made (“public figure”).
   - No
   - Yes

7a. **Fault for public officials or public figures**: Clear and convincing evidence show that media published statements with knowledge of their falsity, or reckless disregard of their truth or falsity.
   - Yes
   - No → Media wins

7b. **Private figure fault**: Media published statements negligently. (Note: Some states use different standards.)
   - Yes
   - No → Media wins

8. **Injury**: Actual injury to plaintiff’s reputation.
   - Yes → Plaintiff wins and is entitled to actual damages.
   - No → Media wins

9. **Fault prerequisite for punitive damages**: (Same standard as 7a.) Clear and convincing evidence shows that media published statements with knowledge of their falsity or with reckless disregard of their truth or falsity.
   - Yes → Plaintiff is entitled to punitive damages.
   - No → No punitive damages

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