

2505A DEFAMATION: TRUTH OF STATEMENT (FIRST AMENDMENT CASES)

(Defendant) claims that the statements (made) (published) are (true) (substantially true). Truth of a statement is a defense in a defamation action. In fact, it is enough if the statement (made) (published) is substantially true.

The burden of proof is upon (plaintiff) to establish that the statement is false¹. If you find that the statement was substantially true, then the statement is not false. Slight inaccuracies of expression do not mean that the statement is false if it is true in substance.

NOTES

1. “By definition, a defamatory statement must be false.” Anderson v. Hebert, 2011 WI App 56, ¶14, 332 Wis. 2d 432, 798 N.W.2d 275. Therefore, the truth of a communication is an absolute defense to a defamation claim. Id. Further, the communication need not “be true in every particular. All that is required is that the statement be substantially true.” Id. It is the defendant’s burden in these circumstances to establish that the statement was substantially true. See, e.g., Laughland v. Beckett, 2015 WI App 70, 365 Wis. 2d 148, ¶¶23, 26, 870 N.W.2d 466.

COMMENT

This instruction and comment were approved in 1988. This revision was approved by the Committee in September 2022; it added to the notes and comment.

See Comment, Wis JI-Civil 2505.

In 1986, the United States Supreme Court held that a private-figure plaintiff who is suing a media defendant for publishing a defamatory statement of public concern cannot recover damages without showing that the statement at issue is false. Philadelphia Newspapers, Inc. v. Hepps, 475 U.S. 767 (1986). The holding in Philadelphia Newspapers, Inc. appeared to be in contrast, at least in cases involving a media defendant, to Wisconsin common law, which placed the burden of proving that the statement was true on the defendant as an affirmative defense. Denny v. Mertz, *supra*. The resulting uncertainty as to whether Denny v. Mertz applied to defamation actions involving non-media defendants was resolved in Laughland v. Beckett, 2015 WI App 70, 365 Wis. 2d 148, ¶¶23, 26. There, the Court held that when the defendant is not a media defendant, it is the defendant’s burden to establish that the allegedly defamatory statement was substantially true. Id. at ¶¶23, 26. Philadelphia Newspapers, Inc. v. Hepps, *supra*, involved a constitutional conditional privilege.