

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 false. 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.

COMMENT

This instruction and comment were approved in 1988.

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). This holding changes Wisconsin common law which had placed the burden that the statement was true on the defendant as an affirmative defense. Denny v. Mertz, 106 Wis.2d 636, 661n.35, 318 N.W.2d 141 (1982). Philadelphia Newspapers, Inc. v. Hepps involved a constitutional conditional privilege. It is uncertain whether the holding by the Court applies to all defamation claims or only to those where the defendant asserts a constitutional conditional privilege. In fact, the Court reserved this question. In this regard, special attention should be given to footnote 4 of the decision and the concurrence of Justices Brennan and Blackmun. The footnote indicates that the majority reserved the question whether its ruling applies also to defamation actions involving nonmedia defendants.