

2513 DEFAMATION: EXPRESS MALICE

Express malice exists when a defamatory statement is made (published) concerning a person from motives of ill will, bad intent, envy, spite, hatred, revenge, or other bad motives against the person defamed.

Express malice cannot be inferred solely from the fact that the statement was false and injurious to (plaintiff). In determining whether (defendant) acted with express malice in making (publishing) the statement, you will take into consideration the words used and all other facts and circumstances existing at the time the statement was made (published).

COMMENT

This instruction and comment were approved by the Committee in 1985. Nonsubstantive editorial changes were made to the instruction in 1993.

The definition of express malice as here used was adopted by the Wisconsin Supreme Court in Polzin v. Helmbrecht, 54 Wis.2d 578, 587-88, 196 N.W.2d 685 (1972), and approved in Calero v. Del Chemical Corp., 68 Wis.2d 487, 499-500, 228 N.W.2d 737 (1975).

In Reed v. Keith, 99 Wis. 672, 675, 75 N.W. 392 (1898), the supreme court held that the malice which must be proved to support an award of punitive damages could not be inferred solely from the fact that the words were false and injurious to the plaintiff. Express malice could be implied from that fact along with all other facts and circumstances, including inferences drawn from the utterance of slanderous words.