

44 N.Y. Jur. 2d Defamation and Privacy § 229

New York Jurisprudence, Second Edition | November 2023 Update

Defamation and Privacy

Christine M. G. Davis, J.D., LL.M.; Thomas M. Fleming, J.D.; Tammy E. Hinshaw, J.D.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Caralyn M. Ross J.D.; Mark T. Roohk, J.D.; Kimberly C. Simmons, J.D.; and Stephanie Zeller, J.D.

Part One. Defamation of Persons

XI. Damages

A. In General

§ 229. Compensatory or actual damages; special damages

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Libel and Slander](#) 115 to 119

Trial Strategy

[Litigating Defamation Claims](#), 128 Am. Jur. Trials 1

Forms

[Am. Jur. Pleading and Practice Forms, Libel and Slander § 8](#) (Complaint—Allegation—General damages)

[Am. Jur. Pleading and Practice Forms, Libel and Slander § 9](#) (Complaint—Allegation—Special damages)

[Am. Jur. Pleading and Practice Forms, Libel and Slander § 37](#) (Complaint, petition, or declaration—Allegation—General damages—Libel by newspaper)

[Am. Jur. Pleading and Practice Forms, Libel and Slander § 38](#) (Complaint, petition, or declaration—Allegation—Special damages—Loss of employment—Loss of prospects)

[Am. Jur. Pleading and Practice Forms, Libel and Slander § 67](#) (Complaint, petition, or declaration—Allegation—Special damages where statement not libelous per se)

[Am. Jur. Pleading and Practice Forms, Libel and Slander § 109](#) (Complaint, petition, or declaration—Allegation—Special damages—Refusal of bank to continue to extend credit to plaintiff)

Am. Jur. Pleading and Practice Forms, Libel and Slander §§ 130 to 136.30 (Complaint, petition, or declaration—Allegation—Special damages—Loss of goodwill and business)

Am. Jur. Pleading and Practice Forms, Libel and Slander §§ 285 to 296 (Jury instructions as to general or compensatory damages for defamation)

Am. Jur. Pleading and Practice Forms, Libel and Slander § 297 (Jury instruction—Special damages)

There are two general classes of compensatory damages for defamation: (1) general damages which the law presumes to be the natural, proximate, and necessary result of the publication; and (2) special damages which, although the natural and probable consequences of the publication, are not assumed to be necessary and inevitable, and must be shown by allegation and proof.¹

While the term "special damages" is so defined as to be included in the term "actual damages," actual damages are not limited to out-of-pocket or pecuniary damage.² Indeed, the more customary types of actual harm inflicted by defamatory falsehood include,³ and prevailing plaintiffs in libel trials are entitled to compensation for,⁴ impairment of reputation and standing in the community, personal humiliation, and mental anguish and suffering. Such injury is every bit as "actual" as the loss of employment opportunities or the costs of trying to mitigate the sting of a defendant's libel.⁵

The term "special damages" in a libel suit based upon an article not libelous per se is ordinarily applicable to cases where, as the result of a libel, occurrences have followed to the detriment of the plaintiff resulting in loss of a pecuniary nature.⁶ For example, lost income did not qualify as special damages where the remark about an officer's failure to cooperate was not defamatory per se.⁷ Moreover, a bank employee who found a job at another bank after the bank executives published a letter containing defamatory statements about her was not entitled to an award of compensatory damages representing the difference in salary she received in her new job and the salary she received at the bank, absent evidence that she had a written or oral, beyond at will, employment contract or that she suffered loss of standing in the banking community as a result of the letter.⁸ The repetition of defamatory language by someone other than the first publisher does not ordinarily constitute special damages, for it is not a natural consequence of the first publication and so is not attributable to the first publisher.⁹ However, further damaging publicity resulting from the plaintiff's prosecution of a lawsuit, brought in connection with the unauthorized publication of a book by the defendant, may be considered on the question of compensatory damages.¹⁰

Where a statement is actionable per se, the law presumes general damages to have been sustained, and it is not necessary, in order to justify a recovery on that ground, that the damages be specially pleaded or proved.¹¹ Although it is not necessary to aver special damages in such cases, they may be pleaded and proved, and thus become recoverable in addition to the general damages.¹² However, when words not libelous per se have once become actionable through proof of special damage they may not then support an award of general damages.¹³

Juries must be limited by appropriate instructions, and all awards in defamation cases must be supported by competent evidence concerning the injury, although there need be no evidence which assigns an actual dollar value to the injury.¹⁴

A corporation cannot suffer personal humiliation or mental anguish, but it can be actually damaged by a defamatory statement through injury to its reputation in the community regardless of whether it can also demonstrate special damages. Actual damage to reputation may be inferred from proof of special damage.¹⁵

Footnotes

- 1 Wachs v. Winter, 569 F. Supp. 1438 (E.D. N.Y. 1983); Cortright v. Anderson, 208 A.D. 1, 202 N.Y.S. 729 (4th Dep't 1924); Segel v. Barnett, 34 Misc. 2d 591, 226 N.Y.S.2d 141 (Sup 1962).
- As to requirements as to pleading special damages, see § 263.
- 2 Wachs v. Winter, 569 F. Supp. 1438 (E.D. N.Y. 1983); Wolf Street Supermarkets, Inc. v. McPartland, 108 A.D.2d 25, 487 N.Y.S.2d 442 (4th Dep't 1985); Blumenstein v. Chase, 100 A.D.2d 243, 473 N.Y.S.2d 996 (2d Dep't 1984).
- 3 Wolf Street Supermarkets, Inc. v. McPartland, 108 A.D.2d 25, 487 N.Y.S.2d 442 (4th Dep't 1985).
- 4 Sharon v. Time, Inc., 599 F. Supp. 538 (S.D. N.Y. 1984).
- 5 Sharon v. Time, Inc., 599 F. Supp. 538 (S.D. N.Y. 1984).
- As to the recovery of damages for impairment of reputation, generally, see § 230.
- As to the recovery of damages for mental anguish and suffering, see § 231.
- 6 Bishop v. New York Times Co., 233 N.Y. 446, 135 N.E. 845 (1922).
- 7 Vasarhelyi v. New School for Social Research, 230 A.D.2d 658, 646 N.Y.S.2d 795 (1st Dep't 1996).
- 8 Zaidi v. United Bank Ltd., 194 Misc. 2d 1, 747 N.Y.S.2d 268 (Sup 2002).
- 9 Bassell v. Elmore, 48 N.Y. 561, 1872 WL 9838 (1872).
- 10 Doe v. Roe, 93 Misc. 2d 201, 400 N.Y.S.2d 668 (Sup 1977).
- 11 Segel v. Barnett, 34 Misc. 2d 591, 226 N.Y.S.2d 141 (Sup 1962).
- 12 Cruikshank v. Bennett, 30 Misc. 232, 62 N.Y.S. 118 (Sup 1900).
- 13 Schweikert v. New York Evening Journal, 132 Misc. 169, 229 N.Y.S. 662 (Sup 1928).
- 14 Wolf Street Supermarkets, Inc. v. McPartland, 108 A.D.2d 25, 487 N.Y.S.2d 442 (4th Dep't 1985).
- 15 Wolf Street Supermarkets, Inc. v. McPartland, 108 A.D.2d 25, 487 N.Y.S.2d 442 (4th Dep't 1985).