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## DEFAMATION TORTS QUIZ

Prof. Bell

**NOTE:** Choose the one best answer to each question, applying the Restatement of Torts (2d) and relevant case law. As on the MBE, you have 1.8 minutes/answer.

### Question 1

Bob, while attending a meeting of the Bridge Engineering Association, got wrapped up in reading his email on his Blackberry. He thus did not notice when the emcee introduced a panel of speakers on bridge liability, including, "Laura Nimmer, the only lawyer in the room and one of the few we've ever had at one of our events." During the Q&A that followed the presentation, Bob stood and asked, "What can engineers do to keep lawyers—liars and crooks to a one—from interfering with our work?"

- (a) Bob did not defame Laura because he did not intend to insult her.
- (b) Bob did not defame Laura because she is only one of many, many lawyers.
- (c) Bob defamed Laura because she is one of the class of people he called liars and crooks.
- (d) Bob defamed Laura because those who heard his comment reasonably took him to refer to her, specifically.

### Question 2

Senator Bloviate was speaking at a public rally when Sandra Diehard stood and shouted, "You are a tool of the oppressive capitalist infrastructure, a puppet in the hands of the *real* ruling class, a running dog for the WTO—the World Totalitarian Oligarchy!" Although security personnel quickly put an end to Sandra's rant, Bloviate took offense and sued her for defamation.

- (a) Diehard did not defame Bloviate.
- (b) Diehard did not defame Bloviate because he cannot carry the burden of proving the falsity of her statements.
- (c) Diehard defamed Bloviate because her statements wrongfully harmed his reputation.
- (d) Diehard defamed Bloviate because, not being a media defendant, she bears the burden of proving the truth of her claims.

## DEFAMATION TORTS QUIZ--ANSWER KEY

1. This problem illustrates the rule in R. (2d) Torts § 564A(b), and discussed in Comment d to that rule.
  - (a) is wrong because, defamation is generally (apart from distinctions arising from constitutional considerations not relevant, here) a strict liability offense. It thus does not matter what Bob intended; it matters only what his audience interpreted him to say.
  - (b) is wrong because, as the rule and comment cited above indicate, even a statement about a class of potential plaintiffs too large to support a defamation claim can, under the right circumstances, be taken to refer to only one or a few of them.
  - (c) is close, but not the best answer because it suggests that any lawyer might have a claim against Bob. Lawyers as a group are too large to be defamed by his comment alone, however; it takes reference to the context of his comment to make it appear he referred to Laura.
  - (d) is the best answer for reasons made clear by the text of R. (2d) Torts § 564A(b) and Comment d thereto.
  
2. This problem deals with the interplay of R. (2d) Torts § 566 and various constitutional doctrines relating to defamation law.
  - (a) is the best answer because Diehard is engaged in fair commentary about a matter of public interest. Judge-imposed constitutional limits on defamation law do not appear to rendered that defense entirely redundant.
  - (b) is not the best answer because it is not clear that the holding of *Milkovich v. Lorain Journal Co.* applies to non-media defendants, such as Diehard.
  - (c) could never suffice as a justification of a defamation claim, given that true statements of fact, even if made "wrongfully" in some sense, may harm another and yet not constitute defamation.
  - (d) is not the best answer because, even if *Milkovich* does not apply to non-media defendants such as Diehard, she need not address the truth of falsity of her statements, as they are not statements of fact but rather of opinion.