

**CV1607 Definition: Defamatory.**

To support a defamation claim, [name of plaintiff] must prove the statement at issue is defamatory. A statement may be false but not necessarily defamatory. A statement is defamatory if it calls into question a person's honesty, integrity, virtue, or reputation and thereby exposes that person to public hatred, contempt, or ridicule in the eyes of the person to whom it is published or, if published to more than one person, to at least a substantial and respectable minority of its audience. A statement is not necessarily defamatory if it reports only that a person did things that you would not have done, or things of which you or other people might disapprove. A publication that is merely unpleasant, embarrassing, or uncomplimentary is not necessarily defamatory.

I already determined that the following statement(s) is/are capable of conveying a meaning that is defamatory: [insert statements].

Some statements may convey more than one meaning. For example, a statement may have one meaning that is defamatory and another meaning that is not. To support a defamation claim, [name of plaintiff] must prove, for each of these statements, that one or more of the recipients of the statement actually understood it in its defamatory sense—the sense that would expose [name of plaintiff] to public hatred, contempt, or ridicule. If a recipient did not actually understand a particular statement in its defamatory sense, then that statement cannot support a defamation claim.

You must determine whether the recipient actually understood the statement(s) in [its/their] defamatory sense.

**References**

Jacob v. Bezzant, 2009 UT 37, 212 P.3d 535  
O'Connor v. Burningham, 2007 UT 58, 165 P.3d 1214  
West v. Thomson Newspapers, 872 P.2d 999 (Utah 1994)  
Allred v. Cook, 590 P.2d 318 (Utah 1979)  
Mast v. Overson, 971 P.2d 928 (Utah Ct. App. 1998)  
Hogan v. Winder, 762 F.3d 1096 (10th Cir. 2014)  
Restatement (Second) of Torts §§ 559, 614 (1977)

**MUJI 1st Instruction**

10.5

**Committee Notes**

The jury has a very limited role in the determination of whether a plaintiff has satisfied the "defamatory" element of a defamation claim, often referred to as "defamatory meaning." It is the court's role to decide, as a matter of law, whether a statement is capable of bearing a particular meaning and, if so, if that meaning is defamatory. See Jacob v. Bezzant, 2009 UT 37, ¶ 26, 212 P.3d 535; West v. Thomson Newspapers, 872 P.2d 999, 1008 (Utah 1994); Restatement (Second) of Torts § 614 (1977). "If the court decides against the plaintiff upon either of these questions, there is no further question for the jury to determine and the case is ended." Restatement (Second) of Torts § 614 cmt. b (1977). Thus, even though this instruction includes a description of what it means to be defamatory—i.e., that a statement exposes the plaintiff to public hatred, contempt, or ridicule—the

determination of whether a statement satisfies that standard is for the court. The description is included in the instruction so the jury can differentiate between a defamatory meaning and a non-defamatory one if a statement is capable of more than one meaning.

The only role for the jury, assuming the court decides for the plaintiff on both threshold questions, is “whether a communication, capable of a defamatory meaning, was so understood by its recipient.” Restatement (Second) of Torts § 614 (1977). This issue would generally arise only “[i]f the court determines that the statement is capable of two or more meanings, of which at least one is capable of a defamatory meaning[.]” 1 Robert D. Sack, Sack on Defamation: Libel, Slander, and Related Problems § 2:4.16 (4th ed. 2013). In that circumstance, it is for the jury to decide which meaning was in fact understood by the recipients of the communication.” Id.; see also Restatement (Second) of Torts § 614 cmt. b (1977) (jury must decide “whether the communication was in fact understood by its recipient in the defamatory sense”).

In cases involving mass communication (e.g., publication by television, newspaper, etc.), the parties may wish to consider adding the following sentence: “When determining how a statement was ‘actually understood,’ you should determine if that understanding is reasonable.”