

# U.S. Law on Slander and Defamation and Its Ukrainian Counterpart



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## Definition of Slander

The general definition of slander in the U.S. and in Ukraine is the same: the conscious spreading of harmful, false, or purposely twisted information about a person, group of people, or organization. However, in the U.S. this definition is broader than in our country. The law in America defines two forms of slander: “slander” and “libel.” “Libel” is specifically written or printed slander. “Slander” is defined to be the spreading of “slandorous” information verbally. It should be noted that in most U.S. states written materials of this type which are broadcast with the help of TV or radio are treated as printed text from the legal perspective.

Why differentiate between printed and verbal slander? There’s a reason for making this distinction. By specifically defining verbal slander a person can be held responsible for spreading slanderous information about another person or institution. For example, a person makes rude comments about a neighbor or co-worker while making up events that didn’t happen. In Ukraine it’s almost impossible to take this person to court. In the U.S., on the other hand, if there are witnesses who confirm specific events this person can be taken to court and appropriately fined or even jailed.

## “From good girl to call girl. Host Pat Montanden”

Unlike Ukraine law, U.S. law also differentiates slander from “defamation.” Defamation is considered to be the spreading of information (not necessarily false or twisted) which can damage the good name or reputation of a person or institution. An American newspaper will never print the name of a suspect detained by police at the scene of a crime. Giving out such information could bring the publisher to court. U.S. case history includes numerous instances in which a guilty party won a defamation case because the person was called guilty before the court made its verdict. For this reason, newspapers, radio and TV studios, as a rule refer to suspects

detained at the scene of the crime using the word “alleged.”

The term “defamation” also includes the spreading of information which, although it may be true, reflects negatively on a person and which is intended to discredit or injure the good standing of the person or a particular institution. The law is especially strict concerning those who bring to the attention of the public private or intimate information. These include, for example, illnesses which are considered to be of a personal nature such as childhood inconstance or early psychological disorders. Such cases are not considered to be criminal in Ukraine and in fact there is no clearly defined category for “defamation.” You can imagine how many people would have to be fined or jailed for making comments related to Ukrainian election campaigns and other events!

Without exception, U.S. government agencies cannot sue for slanderous comments made against them. This restriction exists so that people could freely express their opinions about the government without fear of consequences. For example, it’s perfectly legal to criticize the prosecutor’s office even if the statements are false or inaccurate. In this case, the only thing the prosecutor can do in his/her own defense is to offer explanations through the mass media. Private organizations (firms, companies, bank, etc.) can sue for libel and defamation but only if the comments damage the authority or reputation of the firm and not any individuals in the firm. A bank employee, however, can sue for libel on an individual basis.

Non-profit institutions (churches, charities, clubs, etc.) can take a case to court for libel and defamation if, for example, they can prove that they were prevented from collecting voluntary membership dues or donations as allowed by their statute. However, any other critical statements even if they contain elements of libel or defamation are not considered to be damaging. The case is similar with professional organizations. A professional organization can sue only if it can

prove that it was prevented from attracting new members, continuing its activities, or from collecting membership fees or dues. No other statements (including suggestions that organizational leadership is dishonest) are considered to be damaging.

In the end, these legal provisions support freedom of speech and expression. The latter concept does not exist in Ukrainian law. Freedom of expression covers how criticism is expressed. Some may feel that because certain phrases were rude or slanderous the speaker should be punished. But U.S. law does not consider this to be court-worthy. Freedom of expression also includes the freedom to protest march, freedom to gather, demonstrations and events with any kind of slogans and demands. Freedom of expression, as is freedom of speech, is protected by the United States Constitution and is one of the fundamental rights of every citizen.

#### What is Punishable by Law

U.S. law clearly defines what can be considered slander and what is defamation. The law covers not only cases involving intentional falsehood or misrepresentation of facts but also obviously true statements which can't be proven or defended. "Libel" includes references to a person's unprofessionalism or incompetence. Try to prove in court that a person is totally inept. Publicly accusing an organization of corruption can be considered slander or defamation if the accusations are not based on solid evidence. This also includes statements which question the financial stability of an organization, for example a bank. If you've claimed that something is true then you need to prove your statement in court. If you can't prove it then you'll be prosecuted for libel or slander even though the bank may actually be in serious trouble.

## Try to prove in court that a person is totally inept

It's especially dangerous to accuse a factory, manufacturer, or even a small shop of producing poor quality products. These claims need to be justified with expert testimonies, doctors, or by witness testimonies of the injured parties. In other words, this is taking on an exacting and thankless job. For this reason the mass media is very careful about making claims of this sort. Can anybody be sure that in the event of a court case

you can prove beyond a doubt that a particular product does not meet certain quality standards? Furthermore, according to U.S. law the costs of legal defense against libel or defamation are borne by the defendant. These sums are not small, the national average being approximately \$150,000. Editors will automatically stop to consider the risks before going to print. Even if the publication eventually wins the case, the publisher is still left with legal fees which are not reimbursed.

American journalists and especially the mass media need to be well aware of the law regarding their activities. A few careless words can lead to serious consequences — high fines, prison or even both. For this reason editors try to avoid making these kinds of mistakes. Some publications, TV and radio stations even take out libel insurance, opting to pay insurance premiums than risk serious fines and court fees. Large publishers keep in-house legal experts whose job it is to monitor the factual quality of their statements for potential accusations of libel and defamation.

## The magazine paid \$250,000 to the plaintiff for this unfortunate combination of words

«Libel" also includes statements made about family arguments or conflicts. Such statements also need to be proven. "Defamation" includes suggestions of sexual misconduct or perversion as well as rumors made about an individual's psychological condition. Senator Barry Goldwater once received a \$75,000 settlement for moral compensation from "Fact" magazine which in one of their publications called him "paranoid, sadistic, anti-semitic and sexually impotent." Part of these statements the magazine's lawyers were not able to prove in court.

Exaggeration can also be considered defamation and is punishable by law. "The National Enquirer" informed its readers that actress Carol Burnett was drunk in a restaurant and passed out. During the trial the plaintiff admitted that she had had some drinks but was not drunk. The lawyer for the magazine could not prove otherwise and there were no witnesses. Restaurant waiters gave evidence that Carol had behaved properly.

As a result the actress was awarded \$200,000 compensation from the magazine and the publication was required to print an apology.

Even when a publication doesn't carry obvious derisive commentary a case can be made against unintentional suggestions or circumstantial "unfortunate" wording. TV broadcaster Pat Montanden was once hosting a talk-show about female behavior. "TV Guide" magazine introduced the show with the following phrase: "From good girl to call girl. Host Pat Montanden." Some television viewers understood this as a reference to the talk-show hostess although the theme had to do with the studio audience of that particular show. A furious talk-show host sued and the court ruled that the show title had a double meaning. The magazine paid \$250,000 to the plaintiff for this unfortunate combination of words.

Single words can also be ruled as libel in certain contexts. "Loaded" word forms include: debauchery, liar, communist, thief, crazy, taking bribes, corrupt, collusion, embezzler, fraud, swindler, robber,

traitor, mercenary, deserter, maniac, pervert. An article or story title taken on its own and which contains one or more of these "high risk" words could be enough for a court case even if the story contents don't justify libel.

Accusations of insufficient patriotism can also be considered defamation. It's very hard to prove in court that a person isn't patriotic enough. What exactly is appropriately patriotic and who defined this? Even humorous remarks could be taken as defamation if they put down personal dignity. Employee George Powers was nicely compensated for a joke made in a publication at his expense: "He's so cheap that he'll probably dig his own grave." The court ruled that this was not only a bad joke but clearly defamation as well. In the end, the thrifty Mr. Powers significantly improved his material standing. However, verbal comments and jokes made at the expense of elected officials such as politicians, congressmen, senators, and party activists, including the incumbent president, are not considered slander. American citizens have the right to express themselves freely regarding their leaders without fear of conse-

quences. The danger is in making fun of tax-paying citizens.

This doesn't mean, however, that government officials and public servants don't have any rights to sue for slander and defamation. They have the right to defend their good name and standing. But they must prove beyond a doubt that remarks made at their expense are false and are done intentionally to discredit them. This is very difficult to do. On the other hand, for private individuals it's enough to contest even careless or negligent remarks directed at them. Furthermore, public organizations and political activists can not be held for libel if they act within the limits of carrying out their official responsibilities. For example, a congressman can not be taken to court if his Capitol address contains slanderous remarks. The law defends the right of politicians and government officials to freely express their thoughts.

In general, U.S. laws are very tolerant of court rulings made on behalf of certain issues which are prominent in the public mind and which are important at the time. In most cases an individual's opinion regarding these issues is protected.

## Verbal comments and jokes made at the expense of elected officials are not considered slander

The law does not consider slanderous (or defamatory) critical comments made against a group whose membership is 100 or more individuals. This allows citizens and journalists to freely voice their opinions about political parties, large organizations, various associations, interest groups, etc. If the mass media (a publisher, TV or radio station) quotes a slanderous or defamatory statement made verbally or published by someone other than their own member or employee, the statement can not be a reason to sue the mass media.

In the U.S. as in Ukraine there is no maximum fine for slander. Of course the mass media in these countries work in very different economic circumstances. Most publishers and TV and radio stations in the U.S. would not be bankrupted if they were sued or fined what would be considered very high fines in Ukraine. The average U.S. compensation for slander is \$100,000 but there are cases with astronomical fees. For example, the NBC

television channel was forced to pay singer Wayne Newton \$19 million for stating in one of its programs that the singer had criminal connections. The accusation could not be proven in court but the multi-million dollar fine didn't ruin the TV giant. Newspapers claimed that NBC's settlement would have been less if the case had been tried in a different state. Unlike Ukraine, the U.S. doesn't have a uniform law regarding slander. It varies state by state but without principle differences. Differences are mostly in the amount of compensation, wording and size of legal fees.

Finally, U.S. law on slander and defamation was drafted over a period of time which spanned over two centuries. Most Ukrainian law is less than 10 years old, so it's no surprise that it's less detailed, less developed and not as precise in comparison. It's important for Ukrainian lawmakers to learn more from the American experience and from other western countries with developed democracies. A lot can be learned from others' experience and used to develop that appropriate system which suites the circumstances, mentality and life style here in Ukraine.



Assumption Monastery, Crimea