

Injurious Falsehood

Element 1: A false statement is made about the plaintiff's goods, business or profession or property

Option 1: A false statement is made

The defendant stated that [STATEMENT]. In injurious falsehood actions the onus is on the plaintiff to establish that the statement is false. This statement is false because [REASON]. Furthermore, the statement injures [PLAINTIFF S] business/trade/professional reputation because [JUSTIFY], which is necessary to establish the tort: *Dye v Commonwealth Securities Ltd* [2012] FCA 242.

Option 2: A puff is made

The defendant stated that [STATEMENT]. This is clearly a puff and is not an injurious falsehood.

Option 3: The defendant said their products were better than the plaintiffs

The defendant stated that [GOODS] were better than [PLAINTIFFS GOODS]. This type of statement is generally not held to be an injurious falsehood: *Hubbuck & Sons v Wilkinson, Heywood & Clark Ltd* [1899] 1 QB 86.

Option 4: Puff + statements intended to be taken seriously

The defendant stated that [STATEMENT]. In injurious falsehood actions the onus is on the plaintiff to establish that the statement is false. This statement is false because [REASON]. This statement could arguably be regarded as a puff however it contains claims that are intended to be taken seriously and therefore it is an injurious falsehood. Furthermore, the statement injures [PLAINTIFF S] business/trade/professional reputation because [JUSTIFY], which is necessary to establish the tort: *Dye v Commonwealth Securities Ltd* [2012] FCA 242.

Element 2: Publication of the false statement to a third party

Option 1: The statements were published to a third party

Option 2: The statements were not published to a third party

Element 3: Malice by the defendant

Option 1: The defendant knew the statement was false

It is clear that [DEFENDANT] knew that the statements were false because [JUSTIFY]. Where the defendant knows that the statement is false but publishes it anyway, malice will be established: *Roberts v Bass* [2002] 212 CLR 1.

Option 2: The defendant was reckless as to whether the statement was false

The defendant was reckless as to whether the statements were false. Recklessness may be inferred where the defendant failed to make simple enquiries regarding the truthfulness of the statements: *Seafolly Pty Ltd v Madden* [2012] FCA 1346. The defendant could have easily [POSSIBLE STEPS TAKEN] to confirm whether the statement was true. Recklessness as to the truth of the statements is sufficient to establish malice: *Seafolly Pty Ltd v Madden*.

Option 3: The defendant was careless as to whether the statement was false but honestly believed they were true

[DEFENDANT] was careless as to whether the statement was indeed true however it is clear that [DEFENDANT] honestly believed the statement to be true because [JUSTIFY]. Where the defendant holds an honest belief in the truth of the statements but is careless as to whether they are indeed true, this does not suffice as proof of malice: *Orion Pet Products v Royal Society of the Prevention of Cruelty to Animals* (2002) 120 FCR 191.

Option 4: Defendant made extravagant assertions

The statement made by the defendant could be considered extravagant and aggressive because [JUSTIFY]. Malice may be inferred from the extravagance of the assertions and the cavalier way in which they are expressed: *Beachwood Homes (nsw) Pty Ltd v Camenzuli* (2010) NSWSC 521.

Element 4: Proof by the plaintiff of actual damage to the plaintiff's business or profession caused by the malicious statement

- **Damage**

Option 1: There is actual damage to the plaintiff's business

From the facts it is clear that [PLAINTIFF'S] business suffered actual damage, which is a necessary requirement for the tort: *Swimsure (Laboratories) Pty Ltd v McDonald* [1979] 2 NSWLR 796.

Option 2: There is no actual damage to the plaintiff's business.

There is no evidence that [PLAINTIFF'S] business suffered actual damage, which is a necessary requirement for the tort: *Parlmer Bruyn & Parker Pty Ltd v Parson* 92001) 218 CLR 366.

- **Causal Link**

Option 1: The defendant intended the harm and it materialised

[DEFENDANT] intended that [PLAINTIFF'S BUSINESS] suffered harm because [JUSTIFY]. This harm materialized, which is evident because [JUSTIFY]. This is sufficient to prove a causal link between the damage suffered and the falsehood: *Palmer Bryyn & Parker Pty Ltd v Parson* 92001) 218 CLR 366.

Option 2: Then harm was a natural and probable consequence of the falsehood. It is arguable that the damage suffered by [PLAINTIFF] was a natural and probable consequence of the falsehood because [JUSTIFY]. This is sufficient to prove a causal link between the damage suffered and the falsehood: *Palmer Bryyn & Parker Pty Ltd v Parson* 92001) 218 CLR 366.

Remedies

- Compensatory damages for causally related losses
- Aggravated and exemplary damages in appropriate circumstances
- Interlocutory injunction to prevent the publication or repetition of the statements