

13-1007. Defamatory communication: Defined.

To support a claim for defamation, a communication must be defamatory.

Defamatory communications are those which tend to expose a person to contempt, to harm the person's reputation, or to discourage others from associating or dealing with [him] [her].

In deciding whether the communication was defamatory, you must consider its plain and obvious meaning.

[In determining whether the communication was defamatory, you may consider whether there are other facts in evidence known to the person to whom the communication was published which, when taken into consideration with the communication, gave it a defamatory meaning.]

USE NOTES

Sometimes a communication is so obviously defamatory that the court may declare it to be so as a matter of law. See *Marchiondo v. New Mexico State Tribune Co.*, 98 N.M. 282, 287, 648 P.2d 321, 326 (Ct. App. 1981), cert. quashed, 98 N.M. 336, 648 P.2d 794 (1982). This instruction is to be used when the court determines that the communication, while not defamatory as a matter of law, is capable of a defamatory meaning. In such cases it is for the jury to determine whether the communication is defamatory.

The bracketed fourth paragraph applies both to spoken and written defamation. It addresses the situation where the defamatory meaning is not apparent on the face of the written or oral pronouncement. Nonetheless, if the plaintiff is able to establish that the person receiving the communication was aware of additional facts and circumstances which would render the communication defamatory, the plaintiff can still recover.

[As amended, effective November 1, 1991.]