**16.03 DEFAMATION — ELEMENTS OF DEFAMATION PER QUOD WHERE PLAINTIFF IS NOT PUBLIC FIGURE AND STATEMENT DOES NOT RELATE TO ISSUE OF PUBLIC INTEREST OR CONCERN**

In this case, the plaintiff claims that the defendant harmed the plaintiff's reputation by making a false statement about the plaintiff. To establish this claim, the plaintiff must prove that each of the following elements is more likely true than not true:

(1) the defendant communicated a statement to a person other than the plaintiff;

(2) the statement was reasonably understood by this person to be about the plaintiff;

(3) the statement tended to harm the plaintiff’s reputation or to discourage others from associating with the plaintiff;

(4) the statement was false;

(5) the defendant knew the statement was false or failed to use reasonable care to determine whether the statement was true or false;

(6) the plaintiff suffered a specific monetary loss; and

(7) the statement was a substantial factor in causing that loss.

If the plaintiff fails to prove any one of these elements, you must find for the defendant on this claim.

If the plaintiff proves all seven elements, [you must find for the plaintiff on this claim] [you must then decide whether the law allows the defendant to make the statement].

Use Note

This instruction should only be used when the plaintiff alleges defamation per quod and the case does not involve a public figure or a matter of public concern. If the defendant claims that the statement was privileged, the second bracketed phrase in the last paragraph should be used and Instruction 16.10 (Privileges and Abuse of Privilege) should be given.

In a case where it is undisputed that the defendant published the statement to one or more persons other than the plaintiff, Element 1 can be eliminated.

If the plaintiff alleges both defamation per quod and defamation per se, Instruction 16.01 should also be given, and the first sentence of this instruction should be revised to read:

In this case, the plaintiff claims that the defendant harmed the plaintiff’s reputation by making the following statements about the plaintiff: [list all claimed per quod defamatory statements].

This instruction should be followed by Instruction 3.07 (Substantial Factor) and Instruction 16.07 (Defamation – Damages).

Comment

According to the Alaska Supreme Court, the elements of defamation are:

‘(1) a false and defamatory statement; (2) an unprivileged publication to a third party; (3) fault amounting at least to negligence on the part of the publisher; and (4) the existence of either ‘per se’ actionability or special harm.’ It is also ‘necessary that the recipient of the defamatory communication understand it as intended to refer to the plaintiff.’

*MacDonald v. Riggs,* 166 P.3d 12, 15 (Alaska 2007) quoting *French v. Jadon, Inc.*, 911 P.2d 20, 32 (Alaska 1996) and *Restatement (Second) of Torts* sec. 564 cmt. a (1977).

The Alaska Supreme Court has never defined “special harm.” But the Restatement defines it as “the loss of something having economic or pecuniary value.” *Restatement (Second) of Torts* sec. 575 cmt. b (1977).

The third element, which defines “defamatory,” was used in *Green v. Northern Pub. Co.,* 655 P.2d 736, 739 (Alaska 1982); *Olivit v. City & Borough of Juneau,* 171 P.3d 1137, 1142 (Alaska 2007); and *State v. Carpenter*, 171 P.3d 41, 51 (Alaska 2007).