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ARTICLES

Nine Characters in Search of an Author: The Supreme Court's Approach to "Falsity" in Defamation and Its Implications for Fiction

Glenn J. Blumstein 1

In defamation law, false statements alleged to be fact are outside the protection of the First Amendment. The Supreme Court has struggled with the issue of how to apply a falsity standard to works of non-fiction that do not make descriptive truth claims, such as journalistic reporting and parody. The "falsity" analysis developed by the Court includes an inquiry into whether the statement contains a factual assertion and is capable of being proven false. Such an analysis fails to take into account fundamental differences between fiction and non-fiction. This Article suggests that works of fiction are not given adequate protection and proposes modest alterations to defamation law. Incongruity, or satiric fantasy, should be treated as another category of non-fiction, in addition to hyperbole. Whereas hyperbole is exaggeration built upon a "kernel of truth," incongruity shows the viewers exactly the opposite of what is expected, with no base factual assertion. Courts have avoided this by saying that completely unbelievable fiction is immune from liability, leading to wildly unpredictable judgments and a resulting chilling effect on satire. In addition, this Article encourages the Court to give more weight to qualifiers such as "I think," or disclaimers such as "opinion" or "satire." The current law requires ignoring all clues exterior to the text itself in determining whether a statement is purportedly fact, or if it is an idea protected by the First Amendment. Disclaimers could be taken at face value if the Court gave consideration to the full context of the statement and broader social impact.

Causation: The Forgotten Element of Conflict Malpractice

Edwin F. McPherson 41

The California Rules of Professional Conduct prohibit lawyers from entering into business transactions with their clients. Such relationships between attorneys and clients are treated as inherent conflicts of interest under the Rules. This Article clarifies that an entertainment attorney should not be held liable in conflict/malpractice actions unless the lawyer's participation in the deal causes adverse economic consequence. Drawing upon analogous securities law cases, the author concludes that malpractice proponents should be required to prove that the client's business transaction would not have failed *but for* the lawyer's involvement.

COMMENTS

The First Amendment: Broadening the Information Superhighway

Scott A. Sarem 57

The Federal Communications Commission has prohibited cross-ownership of telephone and cable companies for over forty years. Recently, Congress passed Section 533(b) of the 1992 Cable Act, which bans local cross-ownership between telephone companies and video programmers in order to prevent unfair competition. This Comment suggests that Section 533(b) should be repealed because it violates the First Amendment. This Comment argues that Section 533(b) is not narrowly tailored and that less restrictive means exist to deal with the problems of anti-competitive conduct.

Tonya Harding's Case: Contractual Due Process, the Amateur Athlete, and the American Ideal of Fair Play

Thomas A. Mayes 109

Following the attack on figure skater Nancy Kerrigan in 1994, it was nearly impossible to avoid stories in the mass media regarding Tonya Harding. Nearly two years later, the story has disappeared from the tabloids, but the implications of Harding's case on amateur athletics still resound today. This Comment examines the degree of due process required under the Amateur Sports Act of 1978, the United States Olympic Committee's rules of incorporation, and the charter of the United States Figure Skating Association. After exposing weaknesses in the current law, this Comment concludes by proposing changes in this area of law, specifically by including amendments to the Amateur Sports Act.

