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## THE ACTUAL MALICE IN DEPP V. HEARD CASE (2022)

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### INTRODUCTION

In the U.S.A., defamation law shows a constitutional balance between protection of the individual's reputation and preservation of "freedom of speech under the First Amendment". The traditional common law permitted the recovery upon the proof of the falsity and harm caused, but the United States Supreme Court in "*New York Times Co. v. Sullivan*" established that "public officials and later the public figures must prove actual malice to succeed in a defamation action".<sup>1</sup> "Actual Malice" in a constitutional sense requires proof that either the defendant knew the statement was false or acted in disregard for its truth.

The defamation suit between Johnny Depp and Amber Heard re-attracted the public and legal attention to this constitutional standard. The main issue before the jury was whether the statements in question satisfied the demanding requirement of actual malice. This project examines the doctrinal foundations of the actual malice standard and evaluates its application in the Depp v. Heard case through a structured IRAC analysis.

### ISSUES

1. Whether Johnny Depp qualifies as a public figure under established United States defamation jurisprudence?
2. Whether the statements published by Amber Heard constituted actionable defamatory statements of fact or did it constitute "protected" opinion under the "First Amendment"?
3. Was the requirement of "actual malice", as established in *New York Times Co. v. Sullivan*, satisfied in the present case?

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<sup>1</sup>*New York Times Co. v. Sullivan*, 376 U.S. 254 (1964).

## RULES

### 1. Elements of Defamation Under U.S. Law.

Under the USA law, the plaintiff must prove the “existence of a false statement of fact” about them, the publication of that information to a third party, the culpability of the defendant, and the consequential reputational loss. It takes more than just hurtful or critical speech to show defamation; the contested claims must be verifiable objectively and be proven accurate or incorrect. In “*Milkovich v. Lorain Journal Co.*”, the Supreme Court of the U.S.A. dismissed the idea that comments classified as “opinion” should be given broad constitutional protection by concluding that the test is “whether a reasonable person would read the remark and understand it to be an actual, verifiable fact.”<sup>2</sup> Thus, mere subjective opinions or rhetorical exaggeration that cannot be interpreted as “factual claims” do not meet the defamation standards.

However, in cases where the plaintiff identifies themselves as public officials or public figures, this traditional law gets modified by the Constitution. In “*New York Times Co. v. Sullivan*”, the Supreme Court clarified that if a Public figure claims defamation, they must prove “actual malice”, i.e. the person who made that statement either knew it was false or seriously doubted its truth but still said it anyway.<sup>3</sup> This constitutional foundation makes sure that the rule against defamation doesn’t unnecessarily restrict free expression, especially when it comes to the famous and prominent people and the subjects of public interest. Therefore, the essentials of defamation work under this greater constitutional standard when the plaintiff is an important figure.

#### a. Public Figure Doctrine

In “*New York Times Co. v. Sullivan*”, the Supreme Court ruled that “in order to obtain damages for derogatory remarks related to professional conduct, public officials have to prove the ‘Actual Malice’ of the plaintiff”, strengthening the distinction between private individuals and public officials in the defamation law.<sup>4</sup> The court determined that even if there is a harsh criticism or inaccurate comments, discussions of public matters must be “uninhibited, robust,

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<sup>2</sup> *Milkovich v. Lorain Journal Co.*, 497 U.S. 1 (1990).

<sup>3</sup> *New York Times Co. v. Sullivan*, 376 U.S. 254 (1964).

<sup>4</sup> *Ibid.*

and wide-open”.<sup>5</sup> The First Amendment’s strong protection of free expression is reflected in this idea.

In “*Curtis Publishing Co. v. Butts*,” the “actual malice” requirement was subsequently “extended beyond public officials to public figures”. The court observed that some people, though not occupying government positions, yet have pervasive fame or influence that attracts a large amount of attention and commentary towards them.<sup>6</sup> This measure guarantees that those who take on prominent positions cannot simply misuse the defamation laws to stifle criticism.

In “*Gertz v. Robert Welch, Inc.*”, the Supreme Court further refined the theory by making a distinction between “limited-purpose public figures” and “all-purpose public figures”. A person who has acquired a broad popularity or renown and serves as a public figure for all purposes is known as an “all-purpose public figure”. On the other hand, a “limited-purpose public figure” is a person who willingly becomes involved in a specific public dispute, making them a public figure for a specific number of problems.<sup>7</sup> There are two main reasons to impose a high burden on public figures: firstly, they usually have media access and public platforms to defend themselves if something false is said about them, and secondly, they have voluntarily chosen to live in the public eye, so they must accept a higher level of criticism and public attention.<sup>8</sup>

Accordingly, when the plaintiff is a “public official or a public figure”, they must establish “actual malice by clear and convincing evidence” in order to succeed in a defamation action.

#### **b. Actionable Statement: Fact vs Opinion**

A statement must be a false statement in order to be actionable in defamation. The mere fact that a remark is regarded as an “opinion” doesn’t mean that it is inherently protected under the First Amendment. The Supreme Court rejected the notion of a different constitutional protection for opinions in “*Milkovich v. Lorain Journal Co.*”, which renders it clear that the “key test is whether the remark may be understood as claiming an objectively verifiable fact.”<sup>9</sup>

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<sup>5</sup> Ibid.

<sup>6</sup> *Curtis Publishing Co. v. Butts*, 388 U.S. 130 (1967).

<sup>7</sup> *Gertz v. Robert Welch, Inc.*, 418 U.S. 323 (1974).

<sup>8</sup> Ibid.

<sup>9</sup> *Milkovich v. Lorain Journal Co.*, 497 U.S. 1 (1990).

The court pointed out that the “First Amendment” normally protects assertions that cannot be proven factual or untrue, such as excessive language, rhetorical exaggeration, or simply subjective utterances. However, a remark may result in defamation liability if it indicates an allegation of fact that can be verified.<sup>10</sup> Therefore, the question is how a reasonable reader would interpret the statement after knowing its full context, which includes the language use and the publication.

Therefore, if a remark presents a “verifiable factual allegation” about the plaintiff, determine whether it qualifies as a fact or opinion, not how the speaker characterises the statement.

### c. Actual Malice Standard

The United States Supreme Court ruled in “*New York Times Co. v. Sullivan*” that a “public official cannot be awarded damages for defamation pertaining to official conduct unless the statement was made with knowledge that it was false or with reckless disregard of whether it was false or not”. This ruling established the concept of “Actual Malice.” Personal animosity, ill will, or spite are not included within this description. Rather, it relates to the “defendant’s mental state at the time of the publication”.<sup>11</sup> In the case of “*St. Amant v. Thompson*”, the Supreme Court elucidated the definition of reckless disregard by concluding that it is a subjective requirement. The reckless disregard is proven only when there is enough proof that the defendant “in fact entertained serious doubts as to the truth of his publication”.<sup>12</sup> Actual malice cannot be alone satisfied by carelessness, lack of investigation or poor journalistic tactics; instead, the plaintiff must prove that the defendant either knew that the statements made were false or intentionally ignored the fact that statements are likely to be false.

Furthermore, the plaintiff “bears the burden” of showing that genuine malice existed by using clear-cut and convincing evidence.<sup>13</sup> This higher requirement shows how strongly the constitution is protecting speech about famous people or public issues and interests. This theory make sures that the possibility of a defamation lawsuit doesn’t unnecessarily limit the right of free speech.

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<sup>10</sup> Ibid.

<sup>11</sup> Supra Note 03.

<sup>12</sup> *St. Amant v. Thompson*, 390 U.S. 727 (1968)

<sup>13</sup> Supra Note 07.

## APPLICATION

### 1. Status Of Johnny Depp as a Public Figure

As established in the case of “*Gretz v. Robert Welch, Inc.*,” individuals who have achieved “pervasive fame” or “notoriety” are classified as all-purpose public figures and are subjected to the heightened concept of “Actual Malice”. As a well-known actor with decades of exposure to media, Johnny Depp undoubtedly fits into this category. He holds a position of global importance, as shown by his professional career, big news coverage, and continuing public presence. Depp’s public position is not only the result of this issue, but in contrast to a limited-purpose public personality who only gains “notoriety” inside a particular issue. His notoriety existed before the dispute. He is recognised as an all-purpose public figure, aligned with the recognised constitutional doctrine. His defamation is therefore subjected to the test of “Actual Malice” as set out in the defamation regime of the U.S.A.

### 2. Whether the Statement Constituted an Actionable Statement of Fact

The disputed remarks were published in the opinion editorial. But according to “*Milkovich v Lorain Journal Co.*”, a publication is not always immune to any kind of liability if they are labelled as “opinion”. The opinion piece mentioned the claims of domestic abuse and portrayed the author as a public spokesperson for abuse. Although the piece did not explicitly mention Depp’s name, the surrounding dates, timing, and public knowledge of prior allegations made it inferable that the remarks were made for him. The main question was still whether the words that conveyed certain factual assertions might be proven true or untrue. The allegations of domestic abuse are inherently factual in nature and subjected to verification. They are not only “abstract opinions or rhetorical exaggerations”. Therefore, if a reasonable reader understood those claims as factual misconduct, the statements may satisfy the threshold for defamation.

### 3. Was Actual Malice Established?

Depp had to establish that the remarks were made with “Actual Malice”, which means that defendants knew the remarks were false or acted “carelessly with contempt for the truth”, because he is a public figure. According to “*St. Amant v. Thompson*”, carelessness necessitates evidence that the defendant actually had substantial concerns about the publication’s truthfulness. The lack of investigation, carelessness, or personal hatred alone cannot meet this

constitutional standard. The jury was instructed by the “*Sullivan*” standards during the trial. The evidence for this case included testimonial contradictions, documentary evidence, and contradicting versions of the relevant events. The jury was to decide if the statements were made with the knowledge of them being false or with deliberate disregard for falsity to harm Depp’s reputation. As a result, it was determined that the constitutional requirement of “Actual Malice” was met.

#### **4. Clear and Convincing Evidence**

The burden of proof in the cases of “Actual Malice” is higher than the typical level in civil cases, and it must be proven by unambiguous and compelling evidence. This calls for the evidence that makes the presence of “Actual Malice” both well-supported and extremely likely. The jury concluded that this increased proof had been satisfied by issuing a verdict in favour of Depp. As a result, the decision explains how the constitutional protections established in “*New York Times Co. v. Sullivan*” and upheld in later case law are applied.

#### **CONCLUSION**

According to the established U.S.A. defamation law, Johnny Depp is an all-purpose public figure, therefore revealing that “Actual Malice” was a more demanding requirement for his claim. Although he was not directly named in the opinion piece, the information provided by the opinion piece may be read as proven factual accusations rather than just protected opinions. The jury determined that the remarks were made with an “Actual Malice”, as supported by “unambiguous and compelling evidence”, by using the constitutional test set up in the case of “*New York Times Co. v. Sullivan*”.

Thus. The decision shows the harmony between preserving one’s reputation and defending “First Amendment Freedom of Expression”.

## **BIBLIOGRAPHY.**

### **Cases**

- *Curtis Publ'g Co. v. Butts*, 388 U.S. 130 (1967).
- *Gertz v. Robert Welch, Inc.*, 418 U.S. 323 (1974).
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- *New York Times Co. v. Sullivan*, 376 U.S. 254 (1964).
- *St. Amant v. Thompson*, 390 U.S. 727 (1968).

### **Court Documents**

- Final Judgment Order, *Depp v. Heard*, CL-2019-2911 (Va. Cir. Ct. June 24, 2022).
- Jury Instructions, *Depp v. Heard*, CL-2019-2911 (Va. Cir. Ct. 2022).
- Jury Verdict Form, *Depp v. Heard*, CL-2019-2911 (Va. Cir. Ct. 2022).