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Libel -- Theories of Liability -- Publication as Single or Multiple Tort

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immediate consequence would be to discredit the union in the eyes of the employees by demonstrating that the union does not effectively represent them.[27] The ultimate consequence may be the complete destruction of the actual bargaining capacity of the representative.[28]

LIVINGSTON VERNON.

Libel—Theories of Liability—Publication as Single or Multiple Tort

At common law it was uniformly held that each time a libelous article was brought to the attention of a third person a new publication had occurred and each publication gave rise to a separate cause of action.[1] This is still the law in many jurisdictions[2] and is the view adopted by the *Restatement of Torts*,[3] but the weight of modern authority favors the "single publication" rule of liability.[4] This rule contemplates that, whereas each publication does give rise to a separate cause of action, in the case of newspapers, magazines and books there is but one publication which occurs at the place where the alleged libel is published[5] and is completed when the libelous matter has been composed, printed and generally distributed.[6]

[27] National Labor Relations Board v. Remington Rand, 94 F. 2d 862, 870 (C. C. A. 2d 1938).

[28] *Ibid.*

[1] ODGERS, LIBEL AND SLANDER 139 (6th ed. 1929); *see* Age-Herald Pub. Co. v. Huddleston, 207 Ala. 40, 43, 92 So. 193, 196 (1921).

[2] *E.g.*, Hartmann v. American News Co., 69 F. Supp. 736 (W. D. Wis. 1947); Holden v. American News Co., 52 F. Supp. 24 (E. D. Wash. 1943), *app. dismissed*, 144 F. 2d 249 (C. C. A. 9th 1944); Lockey v. Metropolitan Life Ins. Co., 26 Tenn. App. 564, 174 S. W. 2d 575 (1943); Underwood v. Smith, 93 Tenn. 687, 27 S. W. 1008 (1894); Renfro Drug Co. v. Lawson, 138 Tex. 434, 160 S. W. 2d 246 (1942); Duke of Brunswick v. Harmer, 14 Q. B. 185, 117 Eng. Rep. 75 (1849).

[3] RESTATEMENT, TORTS §578(b) (1938).

[4] Hartmann v. Time, Inc., 166 F. 2d 127 (C. C. A. 3d 1948); Polchlopek v. American News Co., 73 F. Supp. 309 (D. Mass. 1947); McGlue v. Weekly Publications, Inc., 63 F. Supp. 744 (D. Mass. 1946); Cannon v. Time, Inc., 39 F. Supp. 660 (S. D. N. Y. 1939); Backus v. Look, 39 F. Supp. 662 (S. D. N. Y. 1939); Means v. MacFadden Publications, 25 F. Supp. 993 (S. D. N. Y. 1939); Age-Herald Pub. Co. v. Huddleston, 207 Ala. 40, 92 So. 193 (1921); Winrod v. Time, Inc., 334 Ill. App. 59, 78 N. E. 2d 708 (1948); Forman v. Mississippi Publisher's Corp., 195 Miss. 90, 14 So. 2d 344 (1943); Gregoire v. G. P. Putnam's Sons, 298 N. Y. 119, 81 N. E. 2d 45 (1948), *reversing*, 272 App. Div. 591, 74 N. Y. S. 2d 238 (1st Dep't 1947); Wolfson v. Syracuse Newspapers, Inc., 254 App. Div. 211, 4 N. Y. S. 2d 640 (4th Dep't 1938), *aff'd*, 279 N. Y. 716, 18 N. E. 2d 676 (1939), *rearg. denied*, 280 N. Y. 572, 20 N. E. 2d 21 (1939); *see* Julian v. Kansas City Star Co., 209 Mo. 35, 71, 107 S. W. 496, 500 (1907); *cf.* Murray v. Galbraith, 86 Ark. 50, 109 S. W. 1011 (1908).

[5] *Contra:* Julian v. Kansas City Star Co., 209 Mo. 35, 107 S. W. 496 (1907). *Compare* Age-Herald Pub. Co. v. Huddleston, 207 Ala. 40, 92 So. 193 (1921) *with* Julian v. Kansas City Star Co., *supra*.

[6] General distribution to newsstands and subscribers is all that is required. The mailing out of miscellaneous copies to replace those lost or damaged, or in response to requests for the purchase of single copies is a part of the original publication and does not constitute a republication such as will amount to an additional tort

This conflict of theories has been thrown into sharp relief by a recent Pennsylvania federal court decision.[7] Defendant, Time, Inc., in an issue of *Life* magazine dated January 17, 1944, published an alleged libel concerning plaintiff, Hartmann. Plaintiff instituted his suit for damages on January 17, 1945, exactly one year after the date of the magazine. Defendant's motion for summary judgment was granted by the trial court[8] on the theory that while the issue bore the date January *17,* 1944, general distribution to newsstands and subscribers had been completed January *14,* 1944, and, therefore, under the law, plaintiff's cause of action, which had accrued on that date, was now barred by the Pennsylvania one year statute of limitations. Plaintiff appealed.

For reasons beyond the scope of this note, the circuit court of appeals *held* that plaintiff's complaint was broad enough to cover all causes of action arising in his favor in the various states and foreign countries and that under the doctrine of *Erie R. R. v. Tompkins*[9] the law of the jurisdiction in which each cause arose would govern in the creation of substantive rights. For that reason, the summary judgment was correct as applied to those causes of action arising in "single publication" jurisdictions, but erroneous as to those causes which accrued in "multiple tort" states, since in the latter group a new and different cause of action is deemed to have arisen each time the libelous publication is brought to the attention of a third party.

Obviously, this decision makes it necessary for the district court to investigate the law of libel in the various jurisdictions so that it may determine what portion of plaintiff's over-all claim persists and what portion has been barred by the statute of limitations. Thus, we too are put on inquiry as to North Carolina's position in regard to this conflict in theories of liability.

The North Carolina stand is not clear. Indeed, the reports would indicate that the supreme court has not spoken at all, but in one case[10] it is apparent from the defendant's pleading and brief[11] that the single

or torts. *E.g.,* Hartmann v. Time, Inc., 166 F. 2d 127 (C. C. A. 3d 1948); Polchlopek v. American News Co., 73 F. Supp. 309 (D. Mass. 1947); Backus v. Look, 39 F. Supp. 662 (S. D. N. Y. 1939); Age-Herald Pub. Co. v. Huddleston, 207 Ala. 40, 92 So. 193 (1921); Winrod v. Time, Inc., 334 Ill. App. 59, 78 N. E. 2d 708 (1948); Gregoire v. G. P. Putnam's Sons, 298 N. Y. 119, 81 N. E. 2d 45 (1948). Wide circulation serves only to increase the damages. *E.g.,* Hartmann v. Time, Inc., *supra;* Winrod v. Time, Inc., *supra;* Gregoire v. G. P. Putnam's Sons, *supra. Contra:* Winrod v. MacFadden Publications, Inc., 62 F. Supp. 249 (N. D. Ill. 1945) (supports single publication rule insofar as it applies to the *completed* process of composing, printing and distributing, but will not permit mailing out of additional copies later).

[7] Hartmann v. Time, Inc., 166 F. 2d 127 (C. C. A. 3d 1948).

[8] Hartmann v. Time, Inc., 64 F. Supp. 671 (E. D. Pa. 1946).

[9] 304 U. S. 64 (1938).

[10] Harrell v. Goerch, 209 N. C. 741, 184 S. E. 489 (1936).

[11] Brief for Appellee, p. 4, Harrell v. Goerch, 209 N. C. 741, 184 S. E. 489 (1936).

publication rule *has* been pressed upon our court and rejected insofar as that theory contemplates that the publication is completed when the libelous matter has been generally distributed. Since, however, there was no discussion of, or reference to, defendant's contention in the report of the case, and since, at worst, only a portion of the rule was rejected, this case need be given little, if any, weight in future adjudications and the court remains free to adopt the theory it finds most appealing to logic and justice.

It is submitted that the better reasoning favors the single publication, single tort rule and that the North Carolina court, when once again given the opportunity to do so, should follow the line of decisions which support it.

The old common law principles on which the multiple tort theory is founded had their origin in relation to the single acts of individuals in a more primitive society and should not be applied to the widely circulated publications of today.[12] To allow a plaintiff to pursue a defendant publisher or distributor into every jurisdiction in which the alleged libel is circulated, to give him as many causes of action within each jurisdiction as there are copies circulated, and to set the statute of limitations running anew with each purchase or perusal of the libelous matter by a third person is "to shock the sense of justice and right."[13] Such a rule of liability renders the statute of limitations completely ineffective,[14] restricts the freedom of the press,[15] operates as a burden upon the courts and is impractical in application.[16]

On the other hand, reasons why the multiple tort rule should persist and the single tort doctrine be abandoned are rarely advanced and are difficult of ascertainment.[17] The only discoverable specific objection to

[12] Age-Herald Pub. Co. v. Huddleston, 207 Ala. 40, 92 So. 193 (1921).

[13] *See* Julian v. Kansas City Star Co., 209 Mo. 35, 101, 107 S. W. 496, 510 (1907) (dissenting opinion); *accord*, Winrod v. Time, Inc., 334 Ill. App. 59, 78 N. E. 2d 708 (1948); Gregoire v. G. P. Putnam's Sons, 298 N. Y. 119, 81 N. E. 2d 45 (1948).

[14] *E.g.*, Means v. MacFadden Publications, 25 F. Supp. 993 (S. D. N. Y. 1939); Gregoire v. G. P. Putnam's Sons, 298 N. Y. 119, 81 N. E. 2d 45 (1948). Under the multiple tort doctrine the statute can never run so as to absolutely bar an action as long as there is in existence a single copy of the publication capable of being passed around or sold. Duke of Brunswick v. Harmer, 14 Q. B. 185, 117 Eng. Rep. 75 (1849) (a newspaper was published more than *17* years before suit was brought. Defendant pleaded the statute of limitations, but it was *held* that the plea was negatived by proof that a single copy had been purchased within the statutory period).

[15] Hartmann v. Time, Inc., 166 F. 2d 127, 134 (C. C. A. 3d 1948).

[16] Even if the circulation were restricted to one county, the rule, carried to its logical conclusion, would permit the plaintiff to enlarge his declaration to include as many counts as there are subscribers. Forman v. Mississippi Publisher's Corp., 195 Miss. 90, 107, 14 So. 2d 344, 347 (1943).

[17] In multiple publication decisions, the old rule is usually accepted (and the single publication rule rejected) with no reasons assigned. Holden v. American News Co., 52 F. Supp. 24, 32 (E. D. Wash. 1943); Lockey v. Metropolitan Life Ins. Co., 26 Tenn. App. 564, 174 S. W. 2d 575, 581 (1943); Renfro Drug Co. v. Lawson, 138 Tex. 434, 443, 160 S. W. 2d 246, 251 (1942).

the modern rule is that under it a venomous publisher "could with immunity print a large number of extra copies of an issue containing libelous matter, retain them on hand and from time to time through the years mail them to members of the general public."[18] This, it is urged, would be a part of the original publication and, as such, would not amount to another tort.

This argument, though weighty, would seem to be more concerned with the applicability than the validity of the single publication doctrine. It is to be remembered that this new theory of liability finds its basic justification in the fact that it protects the publisher or distributor of integrity from the legal hazards arising out of mass distribution of his printed matter.[19] This justification is lost in the case of a malicious defendant who persists in circulating the libelous matter for the sake of the libel itself and not as a usual business practice,[20] and the beneficial single tort rule would appear inapplicable. In such a case, the single publication court could hold with consistence that the further malicious act of distribution, not occurring in the ordinary course of business, amounts to a new publication and a new tort.

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Negligence—Per Se or Evidence of—Violation of Statute as

In a recent case[1] plaintiff's decedent was killed by defendant's truck. In an action brought to recover for the death, defendant claimed that plaintiff's decedent was contributorily negligent in that at the time of his death he was violating a statute requiring pedestrians to walk on the left-hand side of any highway.[2] *Held:* Plaintiff's decedent's violation of the statute did not make him contributorily negligent *per se* and the question of his contributory negligence was for the jury.

Negligence is the failure to comply with the legal standard of care[3]

[18] Winrod v. MacFadden Publications, Inc., 62 F. Supp. 249, 251 (N. D. Ill. 1945).

[19] Hartmann v. Time, Inc., 64 F. Supp. 671, 679 (E. D. Pa. 1946) ("There is discernible . . . a reluctance among the modern courts to apply that law (of multiple tort liability) when confronted with a controvery involving large distributions of printed matter such as are made by present day newspaper and magazine publishers."); Winrod v. Time, Inc., 334 Ill. App. 59, 78 N. E. 2d 708 (1948).

[20] *See* Winrod v. Time, Inc., 334 Ill. App. 59, 65, 78 N. E. 2d 708, 710 (1948) (". . . no new cause of action will accrue if the subsequent distribution is reasonably connected, by trade practice relating to the type of printed matter involved, to the original distribution. . . .").

[1] Lewis v. Watson, 229 N. C. 20, 47 S. E. 2d 484 (1948).

[2] N. C. GEN. STAT. §20-174 (1943): "It shall be unlawful for pedestrians to walk along the traveled portion of any highway except on the extreme left-hand side thereof, and such pedestrians shall yield the right-of-way to approaching traffic."

[3] RESTATEMENT, TORTS §284 (1934); HARPER ON TORTS §§68, 69 (1933); CLERK & LINDSELL ON TORTS §§12, 13 (7th ed., Wyatt-Paine, 1921); Moore v. Chicago