



What is defamatory language?

“... the protection of reputation has not diminished with the passage of time. Its vibrance as a contemporary value is attested by the 1948 Universal Declaration of Human Rights, which proclaims that no one shall be subjected to ‘attacks upon his honour and reputation.’ ”

Tiersma 1987, 303

“Unlike contracts, defamation does not involve: the relationship between two individuals, but rather the relationship of the individual to the community. A public accusation of wrongdoing is a linguistic act that lowers the status of an individual who allegedly has violated community norms; this act thereby reinforces those norms.”

Tiersma 1987, 304

In class exercise 1.

In four minutes:

arrive at straightforward definitions of  
locution

illocutionary act

perlocutionary act

locution—what is said, the saying: references & proposition

*illocution*—*what* the act of saying intends to achieve: force

*perlocution*—*the* effect/uptake of the saying/consequences

*locution*—*what* is said, the saying: references & proposition

illocution—what the act of saying intends to achieve: force

*perlocution*—*the* effect/uptake of the saying/consequences

*locution*—*what* is said, the saying: references & proposition

*illocution*—*what* the act of saying intends to achieve: force

perlocution—the effect/uptake of the saying/consequences

*locution*— what is said: references & proposition

*illocution*— what the act of saying intends to achieve: force

*perlocution*— the effect/uptake of the saying/consequences

- Every utterance has an **illocutionary force** that reflects a speaker's intent  
--may be expressed by a verb--*order, warn, assert, question, offer, and promise.*
- The perlocutionary act -- the effect the utterance has on the feelings or actions of the hearer. Common perlocutions -- *persuading, convincing, frightening, alarming, enlightening, inspiring* (citing Searle).

after Tiersma 1987

Defamation usu. involves not only an effect on the reputation of the victim, but also require that this effect result from the illocutionary act of accusing.

after Tiersma 1987

# Tiersma's thesis

“the law is moving toward requiring a plaintiff who alleges defamation to prove that the publication has **the force of an accusation**.”

Limiting defamatory language to accusations helps rationalize this otherwise nebulous area of the law.”

Tiersma 1987, 306

“an accusation attributes responsibility for an act, a report simply states that the act has occurred.”

an opinion is not an accusation but a report of one's belief or state of mind.

after Tiersma 1987, 307

“Defamatory language is best defined as the illocutionary act of accusing. The importance of this definition is not simply that it allows a more accurate description of the language of defamation, but also that it makes possible a dichotomy between accusations and reports.”

Tiersma 1987, 349

“The crucial difference between reporting and accusing is that reporting simply represents a proposition as being an actual state of affairs, whereas accusing attributes responsibility for a blameworthy act or condition to the accused.”

Tiersma 1987, 349

“An accusation is a successfully communicated utterance that intentionally attributes responsibility to someone for a blameworthy act.”

Tiersma 1987, 303

Bradley S. Cohen

# Cruise v. Bauer

# Cruise v. Bauer

## **Cruise—Team P (Plaintiff)**

- Tamarae Hildebrand
  - Aine McAlinden
  - Kate Rosenberg
  - Xiaoping Wang
  - others?
- 
- Consultant: Keith

## **Bauer—Team D (Defendant)**

- Traci Conner
  - Hannah Cope
  - Janet Liu
  - Febi Tandiari
  - others?
- 
- Consultant: Ed