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Defamation of Deceased Report

This report aims to understand the laws surrounding the ability to defame the deceased. We performed a thorough search to obtain information on the different state statutes within this topic. In the Vermont Legislature, a bill relating to defamation of the deceased was introduced in 2023, but it did not pass through the committee after the first reading. Our review of individual state legislation found a near consensus that the deceased cannot be defamed. Rhode Island is the one exception to that consensus.¹

Defamation of Deceased Individuals

Defamation is defined as the act of communicating false statements, either through libel (written) or slander (orally), that injures a party's reputation.² States' common law and statutes govern defamatory acts, and each state has its own standards when determining defamation cases as well as awarding damages.³ Since defamation is described as injuring a party's reputation, it has been widely accepted in common law that the deceased do not have reputations to injure. While the memory of a deceased individual can be damaged, that damage of memory is not specifically addressed under the tort of defamation, therefore irrelevant to a defamation suit.⁴ *Black's Law Dictionary* specifies this by stating that "the person must be in being."⁵ In other words, defamation for or against the estate of a deceased individual, or an unborn person, is not actionable. Relatives of deceased individuals cannot bring about suits for the tort of defamation no matter the emotional distress it brings. Relatives may only act on defamatory statements of deceased family if the statement is in some way defamatory to them as well.⁶

¹ Rhode Island General Law, "Libel of a Deceased Person," §10-7.1-1 (1974), accessed November 12, 2024, <http://webserver.rilin.state.ri.us/Statutes/title10/10-7.1/10-7.1-1.HTM>.

² John William Salmond, "Salmond on the Law of Torts," 17th Edition (Sweet & Maxwell, 1977) as cited in Bryan A. Garner, Editor in Chief, *Black's Law Dictionary*, 11th Edition, (Thomas Reuters, 2019).

³ Cornell Law School, "Defamation," accessed November 13, 2024, <https://www.law.cornell.edu/wex/defamation>.

⁴ Minc Law, "Can You Defame & Slander a Dead Person?" accessed November 13, 2024 <https://www.minclaw.com/legal-resource-center/what-is-defamation/can-dead-people-defamed/>.

⁵ Bryan A. Garner, Editor in Chief, *Black's Law Dictionary*, 11th Edition, (Thomas Reuters, 2019).

⁶ Garner, "Black's Law Dictionary."

Current Law

A scholarly article comparing defamation between Hong Kong, the United Kingdom, Australia, and the United States by Suen details the nations' positions on defamation suits against deceased individuals⁷ In the United States Rhode Island is the only jurisdiction that allows for defamation of the deceased. Suen states that common law in Hong Kong has the fundamental belief that "reputation dies with the person." One's reputation cannot be damaged after one's death. Similarly to Hong Kong, the laws in Australia and England also do not allow for defamation of deceased individuals.⁸

Under Rhode Island's general laws, Chapter 7.1, "Libel of a Deceased Person," if an individual has been defamed in an obituary, newspaper, or on any radio or television station within three months of their death, Rhode Island allows for the action of damages if the defamatory statements would have entitled the party to damages had the death not happened (the defamation cannot relate to the death of the individual).⁹

While no law similar to Rhode Island's exists in Vermont, Vermont does address defamation of the deceased in Title 14, "Descendants Estates and Fiduciary Relations." A statute, § 931, "Limitation on creditors," discusses claims *against* the estate (i.e., claim a creditor or any third party may have had against the deceased that arose prior to their death).¹⁰ This statute provides for a one-year statute of limitations from the time of death for a third party or creditor to bring about the claim against the estate. This statute does not refer to executors of estates bringing actions of defamation on behalf of deceased persons.¹¹

Our Methodology

For this report, we did an extensive search on Google and Google Scholar for laws, articles, and research using keywords like "defamation," "defame," "dead," "deceased," and "state law." Under that search, we found very few articles and laws describing the defamation of the deceased. We found the Rhode Island defamation law through a scholarly article on Google Scholar. The article stated that this was the only law in the US that allows for the defamation of a dead person. We fact-checked this by doing a broad search throughout the states. We also connected with the University of Vermont's reference librarian. We looked through the multiple

⁷ Sze-Yick Suen, "Defamation: Protection of the Reputation of the Deceased," Hong Kong Journal of Legal Studies, 1 (2007): 43-58,

<https://heinonline.org/HOL/Page?handle=hein.journals/hkjlsl&id=24&collection=journals&index=https://heinonline.org/HOL/Page?handle=hein.journals/hkjlsl&id=24&collection=journals&index=>.

⁸ Sze-Yick Suen, "Defamation: Protection of the Reputation of the Deceased."

⁹ Rhode Island General Law, "Libel of a Deceased Person," §10-7.1-1 (1974), accessed November 12, 2024, <http://webserver.rilin.state.ri.us/Statutes/title10/10-7.1/10-7.1-1.HTM>.

¹⁰ Vermont General Assembly, "Limitations on claims of creditors," Title 14, Chapter 61, Subchapter 1, §931 (2017) <https://legislature.vermont.gov/statutes/fullchapter/14/061>.

¹¹ Vermont General Assembly, "Limitations on claims of creditors."

law databases and Black's Law Dictionary. We only found general law describing defamation. No other information was found about the defamation of the deceased.

Conclusion

Generally, legislation in each state calls for a person to be living to be defamed. Rhode Island is the only exception to this, allowing for defamatory statements made up to three months after the date of death to be actionable. Throughout our extensive research, we found nothing else of substance related to this topic that would provide additional information. Currently, there are no state statutes that permit an executor or administrator of an estate to bring an action for defamation of the deceased person, except in Rhode Island.

This report was completed on November 19, 2024, by Chloe Elkort, Kate Butcher, and Sarah Kelleher under the supervision of VLRS Director, Professor Anthony "Jack" Gierzynski in response to a request from the House Judiciary Committee.

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