CLIENT ALERTS & INSIGHTS

The Headline Problem in Defamation Law: A Proposal for Fixing Illinois' and Ohio's Outdated Innocent Construction Rule

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Key Takeaways

- Defamation law generally requires courts to read allegedly defamatory statements in full context, but Illinois' and Ohio's "innocent construction rule" often shields misleading headlines by relying on clarifying body text-even though many readers never read past the headline.
- In a headline-driven media environment, this approach can permit material reputational harm without accountability, increasing legal, reputational and business risks for individuals and organizations affected by inaccurate or sensationalized headlines.
- Courts should adapt by severing and independently analyzing headlines that are not "substantially accurate" summaries of the article, incentivizing publishers to ensure headlines align with underlying facts and reducing exposure to modern forms of defamation.

I. Introduction

Defamation lawsuits are on the rise in the United States, and have been for several years.[1] Because defamation litigation is so increasingly relied upon as a means to address reputational injury, it is appropriate to examine whether the doctrines that govern defamation are fit to address the realities of modern information transmission. One such reality is the tendency of modern audiences to receive their information from headlines alone.[2]

All United States courts apply roughly the same basic defamation requirements: (1) the defendant made a false statement about the plaintiff, (2) the statement was unprivileged[3] and published to a third-party, and (3) the statement caused damage. Even if those basic elements are satisfied, however, the plaintiff still must clear the hurdle of demonstrating that the statement is defamatory when viewed in context and through the eyes of the reasonable recipient or reader. This inquiry is particularly challenging because it is inherently fact-intensive and varies meaningfully across jurisdictions (and judges).

Indeed, every jurisdiction in the United States has some iteration of the requirement that the allegedly defamatory statement be considered in context.[4] The majority of jurisdictions apply the "reasonable construction rule" in which the court construes the entire publication in context through the lens of a reasonable person.[5] Illinois and Ohio, however, apply the "*innocent* construction rule." Under the innocent construction rule, a statement will be treated as non-actionable if it is capable of an innocent understanding.[6]

This article examines Illinois' and Ohio's innocent construction rules and considers whether they suit modern media. This article ultimately recommends that courts adopt a framework under which headlines that are not "substantially accurate" summaries of the underlying article may be severed and analyzed independently for defamatory meaning, rather than being immunized by the ameliorating body of the story.

II. The Innocent Construction Rule in Illinois and Ohio

Illinois' innocent construction rule has a long and muddled evolution. In 1962, the Illinois Supreme Court decided *John v. Tribune Co.*, 24 Ill.2d 437 (1962), in which the court endorsed the innocent construction rule and held that the allegedly defamatory statements at issue were innocent.[7] In 1982, the Illinois Supreme Court in *Chapski v. Copley Press* acknowledged that "[t]he principal criticism of the [innocent construction] rule seems to be that . . . courts generally strain to find unnatural but possibly innocent meanings of words where such a construction is clearly unreasonable and a defamatory meaning is far more probable."[8] The Court attempted to correct course, clarifying that "a written or oral statement is to be considered in context, with the words and the implications therefrom given their natural and obvious meaning; if, as so construed, the statement may reasonably be innocently interpreted or reasonably be interpreted as referring to someone other than the plaintiff it cannot be actionable *per se.*"[9]

Following *Chapski*, Illinois courts still struggled to apply the innocent construction rule consistently. The same strained interpretations remained. Roughly a decade later, the Illinois Supreme Court again felt compelled to clarify the rule. In *Bryson v. News America Publications, Inc.*, the court took pains to emphasize the proper application of the doctrine. The court's central clarification was that "[o]nly *reasonable* innocent constructions will remove an allegedly defamatory statement from the *per se* category."[10] The court stressed that it would not "strain to find an unnatural but possibly innocent meaning for words where the defamatory meaning is far more reasonable," nor would it "espouse a naïveté unwarranted under the circumstances."[11] Rather, courts must interpret the words "as they appeared to have been used and according to the idea they were intended to convey to the reasonable reader."[12]

Unsurprisingly, given this history, a decade after *Bryson* the Illinois Supreme Court was forced to explicate the rule again. In *Solaia Technology*, the court attempted to dispel any lingering confusion: "When the defendant clearly intended and unmistakably conveyed a defamatory meaning, a court should not strain to see an inoffensive gloss on the statement."[13] This continues to be Illinois' standard for the innocent construction rule.

Ohio adopted the innocent construction rule in 1965 under the Sixth Circuit's decision, *England v. Automatic Canteen Co.*[14] The Sixth Circuit applied the innocent construction rule to a diversity case arising out of Ohio, citing the Seventh Circuit and Illinois precedent.[15]

In the following years, several Ohio district courts relied on that precedent and applied the doctrine to their diversity cases. Then, in 1983, the Ohio Supreme Court quietly adopted the rule in *Yaeger v. Local Union 20, Teamsters*.[16] The Court upheld a lower court's decision that followed the innocent construction rule without responding to Appellant's argument that the lower court erred in doing so.[17] The Court barely explained its reasoning for the adoption, writing simply that, "the language used is capable of different meanings; is mere hyperbole or rhetoric, and is an expression of opinion, not fact[,]" and upheld summary judgment for the defendants.[18]

From there, Ohio courts readily applied the rule, often to plaintiffs' detriment. A particularly illustrative example is *Mann v. Cincinnati Enquirer*, in which an Ohio court of appeals declared a statement non-actionable because it did not "explicitly state" the defamatory suggestion.[19] The defendant-newspaper had misquoted the plaintiff as saying that he was told during an employment interview that the job included an expectation of illegal conduct.[20] In reality, the plaintiff had stated that if he had been told of this expectation, he would not have accepted the job.[21] Applying the innocent construction rule, the Court rejected plaintiff's contention that this misquote plainly communicated that he had agreed to engage in illegal acts, explaining that in the context of the article, "the statement merely relays what an interviewer allegedly told Plaintiff during his interview and does not explicitly state that Plaintiff accepted the position based on the alleged requirement[.]"[22]

The fact that Illinois and Ohio are the only states to apply the innocent construction rule results primarily from historical circumstances and judicial continuity, rather than intentional policy differentiation. Illinois adopted the rule in 1962 during a period of broad judicial solicitude toward media defendants, and once the Illinois Supreme Court adopted it, *stare decisis* entrenched it-even as the courts struggled repeatedly to apply it consistently. Ohio's adoption was largely incidental. The Sixth Circuit imported the rule from Illinois and Seventh Circuit precedent in a federal diversity case, and Ohio state courts quietly absorbed it from there. But the majority of jurisdictions never saw a need for the rule because the reasonable construction standard was already sufficient to protect defendants from liability based on strained or implausible interpretations of ambiguous language. This origin story reveals that the innocent construction rule rests on a thin policy foundation-one that is increasingly difficult to justify in the modern media landscape.

III. The Headline Problem

Headlines play a monumental role in contemporary news media. This is due, in part, to the "headline problem"-the phenomenon by which individuals read only the headline of an article. This is common practice, at least among American audiences: a 2014 study reported that only four in ten Americans read beyond a headline in a week,[23] and research suggests that around 75% of links shared on Facebook were made without posters even clicking the link first.[24] The issue is compounded by the prevalence of paywalls: according to a 2025 Pew study, 83% of Americans have not paid for news in the past year, 74% of Americans encounter paywalls when trying to access articles online, and roughly one-third simply give up on accessing the information altogether.[25]

One can readily appreciate the challenge this presents to defamation law. The headline of a story, the caption above a photograph, the opening "tease" of a broadcast story (the equivalent of a printed headline), or the pre-story publicity ("hype") and advertising that may appear prior to the

story's actual publication-all these may turn what would otherwise have been a non-actionable article or broadcast into a defamatory communication.

A. The Majority Approach to the Headline Problem

The majority approach is not to construe the headline alone, but to construe it in conjunction with the rest of the publication to determine whether it is capable of a defamatory meaning.[26] This is often referred to as the reasonable construction rule.[27] The reasonable construction rule is more consistent with the general common-law principle that the alleged defamatory speech is to be construed in context. This approach "necessitates that the whole publication be considered . . . The place and position of the item are to be considered . . . as are the headlines of the articles."[28] In so examining the issue, "both the headline and the body of the article [are] to be considered as one document."[29] This approach is widespread and consistent among many courts across the country.[30]

B. Innocent Construction Rule's Approach to the Headline Problem

As previewed above, however, Illinois and Ohio courts applying the innocent construction rule are asked to strip these publications of their nuance. For example, in *Harrison v. Chicago Sun-Times, Inc.*,[31] an Illinois Appellate Court held that front-page statements claiming a woman kidnapped a girl were non-actionable because the full article explained that the woman was the girl's mother who was allegedly fleeing an abusive husband.[32] The Court explained that headlines and newspaper articles are generally read together under the innocent construction rule.[33] Because the text as a whole was capable of an innocent construction, the blatantly misleading and damaging front-page statement was considered nonactionable.[34]

Ohio has upheld similar principles.[35] In *Crall v. Gannett Satellite Information Network Inc.*,[36] for example, an Ohio District Court held that a headline imputing that the plaintiff was held in jail was not actionable, in part because the body of the article made clear that the Plaintiff was actually only ordered to appear in court and that the maximum penalty that the plaintiff could receive was a fine of $81.[37] The Court emphasized that, in deciding whether statements are defamatory, they must "consider the statements in the context of the entire article."[38]

IV. Updating the Innocent Construction Rule for the Modern Era

Any proposed reform must balance two competing interests. On the one hand, a media defendant must be allowed some leeway in reducing a complicated story into an intelligible headline. On the other hand, a media defendant should not be able to exploit the headline, caption, or broadcast tease to misleadingly sensationalize the story and create an overall impact more damaging to the plaintiff than the actual facts of the story warrant. While it may be the case that the ultimate article or broadcast ameliorates whatever false understanding the headline caused, that means little in modern media where, as demonstrated in this article, many readers ingest the headline as fact without ever reading the remainder of the publication.

A. The Proposed Framework

We propose that the best way for the innocent construction doctrine to adapt to this modern media landscape is to, in appropriate circumstances, sever the article and the headline as two independent

and potentially actionable statements. Under this approach, courts would consider the headline and the article next to each other and treat them differently depending on how they measure up.

The threshold inquiry is whether the headline is "substantially accurate"-that is, whether it reasonably represents the facts recited in the body of the article. This standard is borrowed from New York's "fair and true" standard, which provides an affirmative defense to defamation claims targeted at judicial and legislative proceedings.[39] The standard acknowledges that reporting "is, by its very nature, a condensed report of events which must, of necessity, reflect to some degree the subjective viewpoint of its author."[40] This premise lends itself naturally to the headline context, where headlines are fundamentally condensed summaries designed to attract readers and convey the thrust of a story.

If the headline is substantially accurate-meaning it does not lead the reader to a conclusion totally unsupported by the body of the story-the headline and the story should be considered together under the traditional innocent construction analysis. However, headlines that reasonably lead the average reader to an entirely different conclusion than the facts recited in the body of the story should not receive the benefit of innocent construction. Under this analysis, the rights of media defendants to engage in good-faith journalism are protected, without leaving victims of headline defamation without recourse.

To illustrate how this framework would operate in practice, consider the cases discussed above. In *Harrison*, the front-page headline declared that a woman had kidnapped a girl, while the article explained that the woman was the girl's own mother fleeing an abusive husband. Under the proposed framework, a court would ask whether the headline "woman kidnaps girl" is a substantially accurate summary of a custody dispute arising from alleged domestic abuse. Because the headline's characterization of "kidnapping" would reasonably lead the average reader to an entirely different conclusion than the facts recited in the article, the headline would be severed and analyzed independently. Similarly, in *Crall*, a headline imputing that the plaintiff was jailed, when the article revealed only that he was ordered to appear in court and faced a maximum fine, would likely fail the substantial-accuracy threshold. In both cases, the ameliorating body text would not save a headline that fundamentally misrepresents the underlying facts.

B. Existing Precedent for Bifurcation

This approach is not entirely novel. In *Sprouse v. Clay Communications, Inc.*,[41] the West Virginia Supreme Court conducted a similar analysis to resolve an issue of actual malice. The Court applied the rule that "where oversized headlines are published which reasonably lead the average reader to an entirely different conclusion than the facts recited in the body of the story, and where the plaintiff can demonstrate that it was the intent of the publisher to use such misleading headlines to create a false impression on the normal reader, the headlines may be considered separately with regard to whether a known falsehood was published."[42]

C. First Amendment Considerations

As with any restriction on speech, this proposal must contend with the First Amendment. One might argue that the framework could chill dramatic headlines by leading journalists to shy away from evocative language or stylistic flair. This concern, while logical, does not withstand scrutiny. As a threshold matter, the First Amendment does not protect defamatory speech. More importantly, the

proposed framework does not penalize dramatic or attention-grabbing headlines-it targets headlines that are not substantially accurate representations of the underlying article. A headline may be vivid, provocative, or even inflammatory, so long as it does not lead the reader to a materially different understanding of the facts than the article itself supports.

It is worth noting that the Supreme Court's decision in *New York Times v. Sullivan* and its progeny established constitutional limits on defamation liability precisely to prevent the chilling of protected speech. But the purpose of that framework was not to immunize headlines that bear little resemblance to the articles they purport to summarize. Requiring that headlines be substantially accurate summaries of the remainder of the publication imposes a modest and proportionate burden that is well within the bounds of existing First Amendment jurisprudence. This does not mean that accurate yet dramatic headlines should not be published. Rather, it means that if a headline is going to be published it better be true.

A practical objection to this framework is that courts will have a challenging time determining whether a headline is substantially accurate, potentially complicating motion to dismiss practice. But this concern is overstated. Courts already engage in context-dependent analysis of allegedly defamatory publications at the pleading stage. Comparing a headline to the underlying publication is no more complex than the contextual analysis courts already perform under either the reasonable construction rule or the innocent construction rule. Moreover, the proposed framework provides a workable benchmark: courts need only ask whether the headline would give a reasonable reader a materially different understanding of the relevant facts than the article itself. If the answer is no, dismissal remains available. If the answer is yes, the headline should be assessed on its own terms.

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[1] Mark Curriden, *The Defame Game Libel Cases Are on the Rise and Increasingly Politicized*, ABA J., October/November 2023, at 34, 35.

[2] AMERICAN PRESS INSTITUTE, How Americans Get Their News (Mar. 17, 2014), available at https://americanpressinstitute.org/how-americans-get-news/ (reporting that only "4 in 10 Americans report that they delved deeper into a particular news subject beyond the headlines in the last week.").

[3] "Privileged" here refers to common law privileges that insulate the statement from being deemed defamatory.

[4] *See* § 4:21. Rules of construction-Reasonable construction rule, 1 Law of Defamation § 4:21 (2d ed.) ("Every jurisdiction in the United States save Illinois and Ohio applies the 'reasonable construction rule' to the interpretation of allegedly defamatory language, which is really nothing more than an application of the general principle that words are to be construed in context to determine their effect on recipients.").

[5] *See, e.g., D Magazine Partners, L.P. v. Rosenthal*, 529 S.W.3d 429, 434 (Tex. 2017) ("In making the initial determination of whether a publication is capable of a defamatory meaning, we examine its 'gist.' That is, we construe the publication as a whole in light of the surrounding circumstances based upon how a person of ordinary intelligence would perceive it.") (internal citations and quotations omitted).

[6] *Chapski v. Copley Press*, 92 Ill. 2d 344, 352 (1982).

[7] *Id.*

[8] *Chapski*, 92 Ill. 2d at 350-51.

[9] *Id.* at 352.

[10] *Bryson v. News Am. Publ'ns, Inc.*, 174 Ill. 2d 77, 90 (1996) (emphasis in original).

[11] *Id.* at 94.

[12] *Id.*

[13] *Solaia Tech., LLC v. Specialty Pub. Co.*, 221 Ill. 2d 558, 580, 852 N.E.2d 825, 839 (2006).

[14] 349 F.2d 989 (6th Cir. 1965).

[15] *Id.* at 991.

[16] *Id.*

[17] *Id.* at 370.

[18] *Id.* at 372.

[19] *Mann v. Cincinnati Enquirer,* 2010 WL 3328631, at *3 (Oh. Ct. App. Aug. 25, 2010).

[20] *Id.* at *1.

[21] *Id.*

[22] *Id.* at *3.

[23]American Press Institute, *How Americans Get Their News* (Mar. 17, 2014), *available at* https://americanpressinstitute.org/how-americans-get-news/ (reporting that only "4 in 10 Americans report that they delved deeper into a particular news subject beyond the headlines in the last week.").

[24] Ashley Wenners Herron, *Social Media Users Probably Won't Read Beyond this Headline, Researchers Say*, PennState, Nov. 19, 2024, https://www.psu.edu/news/research/story/social-media-users-probably-wont-read-beyond-headline-resear

[25] PEW RESEARCH CENTER, *Few Americans pay for news when they encounter paywalls* (June 24, 2025), *available at* https://www.pewresearch.org/short-reads/2025/06/24/few-americans-pay-for-news-when-they-encounter-

[26] *See, e.g., Fairbanks Pub. Co. v. Pitka*, 376 P.2d 190 (Alaska 1962); *Reardon v. News-Journal Co.*, 53 Del. 29, 164 A.2d 263 (1960); *Floyd v. Atlanta Newspaper, Inc.*, 102 Ga. App. 840, 117 S.E.2d 906 (1960); *Ledger-Enquirer Co. v. Brown*, 214 Ga. 422, 105 S.E.2d 229, conformed to 98 Ga. 462, 106 S.E.2d 61 (1958); *Fernandes v. Tenbruggencate*, 65 Haw. 226, 649 P.2d 1144 (1982).

[27] *See* § 4:21. Rules of construction-Reasonable construction rule, 1 Law of Defamation § 4:21 (2d ed.) ("Every jurisdiction in the United States save Illinois and Ohio applies the 'reasonable

construction rule' to the interpretation of allegedly defamatory language, which is really nothing more than an application of the general principle that words are to be construed in context to determine their effect on recipients.").

[28] *Fernandes*, 65 Haw. 1148, n.3.

[29] *Id.*

[30] *See, e.g., Swanton v. UTE City Tea Party, Ltd.*, No. CIV. A. 93 CV 256, 1994 WL 740035 (Colo. Dist. Ct. Aug. 5, 1994) (holding that the title of an article was not defamatory because in the context of the full article the title was true and capable of innocent construction); *Stepanov v. Dow Jones & Co.*, 120 A.D.3d 28, 987 N.Y.S.2d 37 (2014) (holding that a statement identifying the plaintiff Maxim Stepanov as a "former Russian diplomat" in conjunction with the article's headline was non-actionable because the corruption detailed in the article involved police and tax officials, not diplomats).

[31] 341 Ill. App. 3d 555 (2003).

[32] *Id.* at 570-71.

[33] *Id.* at 570.

[34] *Id.* at 571.

[35] *See, e.g.*, *Mendise v. Plain Dealer Pub. Co.*, 69 Ohio App. 3d 721 (1990) (holding that a headline suggesting Plaintiff was a criminal was nonactionable because the article ultimately clarified that he was acquitted, saying "[e]ven if there were some way to argue that there was a possible defamatory interpretation of the article, the trial court still properly gave the article the nondefamatory interpretation under the innocent construction rule").

[36] No. C-2-92-233, 1992 U.S. Dist. LEXIS 20386 (S.D. Ohio, Nov. 6 1992).

[37] *Id.* at *1, *10.

[38] *Id.* at *7. The Court also found it significant that the Plaintiff's name was not included in the headline, so a reader would have to read the story in order to link the claim to him. *Id.* at *9.

[39] *See Holy Spirit Ass'n for Unification of World Christianity v. New York Times Co.*, 399 N.E.2d 1185, 1187 (1979).

[40] *Id.*

[41] 158 W. Va. 427, 430 (1975).

[42] *Id.* at 443.