The Law of Reputation

When Shakespeare wrote in Othello, “Who steals my purse steals trash; 'tis something, nothing; 'Twas mine, 'tis his, and has been slave to thousands; But he that filches from me my good name /Robbs me of that which not enriches him, /And makes me poor indeed,” he was expressing a universal sentiment: the value of one’s reputation. Although an individual has control over many of the statements, acts, and other biographical data points that are used to construct her reputation, she does not ultimately have control over the result of that assessment, the pronouncement of which is a task reserved to others. At its core, then, reputation is the act of speaking for another, and challenges to acts that diminish one’s reputation are ultimately attempts to reclaim the ability to speak on one’s own behalf.

The harm posed by injury to reputation underlies several areas of the law. Defamation involves the publication of false facts that causes others to think more poorly of the plaintiff. Privacy law (such as the false light and right of publicity torts) often involves misimpressions created as to another’s associations or affiliations. Trade libel and product disparagement cases assert similar claims with respect to a product or service. False endorsement claims seek remedies for the unauthorized implication that one supports a product or service when one does not desire such association. (Tom Waits’s suit against Frito-Lay for using an imitation of his voice in a Doritos commercial is one such example; Waits was particularly aggrieved because he had taken a public stand against participation in advertising.) Various aspects of trademark law (such as anti-dilution doctrine) involve false, misleading, or dilutive associations attached to a name. Misappropriation and/or copyright lawsuits often comprise not only economic harms but also the loss of credit for one’s endeavors. The common thread among all these various causes of action is a false statement about (or purporting to be by) the plaintiff that causes disruption to the plaintiff’s autonomy and identity.

In light of the similar interest at the center of each of these doctrines, it is interesting that the law approaches this harm in so many different ways. The goal of this project will be to explore the sociological and psychological factors underlying the interest in reputation, to assess the various ways in which the law does and does not respond to this interest (including an evaluation of how disclaimers are an attempt to even the playing field by forcing the defendant to speak on the plaintiff’s behalf), and to consider whether unifying this doctrine might make the law of reputation more coherent.