

**Tort Law as a Framework for Addressing Online Activity: Liability for
Negligence Misrepresentation in Response for Liability under Defamation Law
in Social Media**

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Occasionally, a discussion develops on social networks regarding the quality of a professional's work. Readers are expected to choose between positive and negative opinions based on which ones appear to be more reliable and sensible. At this stage, however, defamation law enters the picture, imposing liability on those who harm the reputation of another. This deters the publication of negative reviews, to the point of preventing the publication of any criticism, including justified ones. By contrast, the law does not deter in any way those wishing to post a positive review. This state of affairs is likely to result in the publication of positive reviews, some unreliable and massive avoidance of writing negative reviews.

The law can follow two paths to change this undesirable outcome. One is to reduce liability under defamation law. This option seems unwelcome for the very reasons that led to the imposition of liability under defamation law in the first place. The alternative option is to impose legal liability on writers of unreliable positive opinions, through the negligent misrepresentation law.

Negligent misrepresentation laws impose liability on the maker of the representations toward its recipient, if certain conditions obtain. A key condition for liability is that makers of the representation can expect recipients to rely on their remarks. Case law has formulated several conditions to the expectation of reliance, one of which is the existence of special relations between the parties. These can be contractual, pre-contractual, or trust relations. In applying the law of negligent misrepresentation to the world of social networks, it has been found that this condition does not generally obtain.

Most users who make a positive recommendation do not meet the condition of having a special relation with the recipient of the recommendation, as is the case outside the Internet.

In this lecture, we seek to set adequate boundaries for negligent misrepresentation on social networks in response to liability under defamation law. We examine whether the elements of liability in the case of negligent misrepresentation are appropriate for social networks, and the manner in which these elements in general, and the boundary lines of individual trust relations on social networks, are applied.