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Chapski v. Copley Press: Modification of the Illinois Innocent Construction Rule, 17 J. Marshall L. Rev. 233 (1984)

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CHAPSKI v. COPLEY PRESS:* MODIFICATION OF THE ILLINOIS INNOCENT CONSTRUCTION RULE

Since the Illinois Supreme Court's decision in *John v. Tribune Co.*,[1] Illinois courts have adhered to the innocent construction rule in determining whether allegedly defamatory[2] language is actionable.[3] Under the rule enunciated in *John*, courts are required to read the allegedly defamatory words as a whole and accord them their natural and obvious meaning.[4] Words capable of an innocent reading must be declared nonactionable as a matter of law.[5] Courts have applied this rule inconsistently, however, often reaching patently inequitable results.[6] Some courts have construed words innocently only when such a

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* 92 Ill. 2d 344, 442 N.E.2d 195 (1982).

1. 24 Ill. 2d 437, 181 N.E.2d 105, *cert. denied*, 371 U.S. 877 (1962).

2. "A defamation is the publication of anything injurious to the good name or reputation of another, or which tends to bring him into disrepute." Whitby v. Associates Discount Corp., 59 Ill. App. 2d 337, 340, 207 N.E.2d 482, 484 (1965). "[I]t is not necessary that the communication actually cause harm to another's reputation or deter third persons from associating with him. Its [defamatory] character depends upon its general tendency to have such an effect." RESTATEMENT (SECOND) OF TORTS § 559 comment d (1965).

3. *E.g.*, Levinson v. Time, Inc., 89 Ill. App. 3d 338, 343, 411 N.E.2d 1118, 1123 (1980) ("attempts to eliminate the innocent construction rule have been consistently rejected by the courts of Illinois for many years"); Kakuris v. Klein, 88 Ill. App. 3d 597, 601, 410 N.E.2d 984, 987 (1980) ("the innocent construction rule enjoys continued vitality in Illinois"); Vee See Const. Co. v. Jensen & Halstead, Ltd., 79 Ill. App. 3d 1084, 1087, 399 N.E.2d 278, 280 (1979) ("Illinois appellate courts have religiously applied the rule enunciated in *John*").

4. Springer v. Harwig, 94 Ill. App. 3d 281, 283, 418 N.E.2d 870, 872 (1981) (citing the rule in *John*); Vee See Constr. Co. v. Jensen & Halstead, Ltd., 79 Ill. App. 3d 1084, 1086, 399 N.E.2d 278, 279-80 (1979) (*quoting John*).

5. John v. Tribune Co., 24 Ill. 2d 437, 442, 181 N.E.2d 105, 108, *cert. denied*, 371 U.S. 877 (1962).

6. *See, e.g.*, Valentine v. North Am. Co. for Life & Health Ins., 60 Ill. 2d 168, 328 N.E.2d 265 (1974) (insurer's statement that it had fired one of its employees because "he was a lousy agent" construed innocently to mean that an unsatisfactory agency relationship existed between the insurer and the employee); Rasky v. Columbia Broadcasting Sys., 103 Ill. App. 3d 577, 431 N.E.2d 1055 (1981) (construing "slumlord" and "slum landlord" innocently to mean that landlord owned buildings in poor and dirty neighborhood); Jacobs v. Gasoline Retailers' Ass'n, 28 Ill. App. 3d 7, 328 N.E.2d 187 (1975) (plaintiff's photograph and an amount of money which he allegedly owed on a "wanted" poster held not to imply that plaintiff was a criminal); Roemer v. Zurich Ins. Co., 25 Ill. App. 3d 606, 323 N.E.2d 582 (1975) (defendant's statement that she had to leave her employment because of plaintiff's "sexual advances" construed innocently because "sexual advances" could mean generally acceptable social conduct such as a wink).

construction was reasonable,[7] while other courts have strained to find possible innocent constructions.[8] Additionally, there has been confusion regarding the actionability of language susceptible of an innocent construction when resort to extrinsic evidence will reveal that a defamation is likely and pecuniary injury has resulted.[9] In *Chapski v. Copley Press*,[10] the Illinois Supreme Court clarified and modified the innocent construction rule, holding that words reasonably susceptible of an innocent construction "cannot be actionable *per se*."[11] *Chapski* marks a step forward in Illinois defamation law. If applied correctly, the number of inconsistent and inequitable decisions should decrease sharply.

Robert A. Chapski, an attorney, filed a libel action alleging that the defendants published[12] a series of defamatory articles which implied that he was immoral and lacked integrity.[13] Additionally, Mr. Chapski alleged that the articles caused a citizens group to be formed which helped to defame his character and

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7. *See, e.g.*, Catalano v. Pechous, 83 Ill. 2d 146, 419 N.E.2d 350, *cert. denied*, 451 U.S. 911 (1980) ("two hundred forty pieces of silver changed hands — thirty for each alderman" not susceptible of innocent construction); Moricoli v. Schwartz, 46 Ill. App. 3d 481, 361 N.E.2d 74 (1977) (reference to plaintiff as a "fag," although capable of a non-defamatory dictionary construction, held not reasonably susceptible of innocent construction); McGuire v. Jankiewicz, 8 Ill. App. 3d 319, 290 N.E.2d 675 (1972) ("you could not have chosen a worse attorney" held not susceptible of innocent construction).

8. *See supra* note 6.

9. *See, e.g.*, American Pet Motels v. Chicago Vet. Med. Ass'n, 106 Ill. App. 3d 626, 435 N.E.2d 1297 (1982) (noting the confusion and then choosing to decide the case before it on the basis of a conditional privilege).

10. 92 Ill. 2d 344, 442 N.E.2d 195 (1982).

11. *Id.* at 352, 442 N.E.2d at 199.

12. Publication is an essential element of every defamation action. Libert v. Turzynski, 129 Ill. App. 2d 146, 150, 262 N.E.2d 741, 743 (1970). It requires that the defendant communicate the defamatory statement to some third party. Zepeda v. Zepeda, 41 Ill. App. 2d 240, 254, 190 N.E.2d 849, 855, *cert. denied*, 379 U.S. 945 (1963). The publication may be printed, written, spoken or conveyed by gesture. W. PROSSER, HANDBOOK OF THE LAW OF TORTS § 113, at 776 (4th ed. 1971).

13. Chapski v. Copley Press, 92 Ill. 2d 344, 346, 442 N.E.2d 195, 196 (1982). Plaintiff's libel action was based upon a series of newspaper articles, written and published by defendants, which related to the death of a two-year-old victim of child abuse. *Id.* at 345, 442 N.E.2d at 195. Plaintiff had represented the child's mother in proceedings in which the mother was granted custody of the child. *Id.* at 345-46, 442 N.E.2d at 195-96. Subsequent to the child's death, for which the mother's boyfriend was convicted of involuntary manslaughter, defendants published a series of articles, "most of which purported to summarize and clarify the judicial proceedings and events that preceded the [child's] death." *Id.* at 345, 442 N.E.2d at 195. In his complaint, plaintiff alleged that the articles were defamatory, in substance implying that he had misused the judicial system and, as a result of such misuse, he was somehow to blame for the child's death. Chapski v. Copley Press, 100 Ill. App. 3d 1012, 1014-16, 427 N.E.2d 638, 639-41 (1981).

reputation by writing to various authorities, including the Attorney Registration and Disciplinary Commission.[14] Plaintiff sought general and punitive damages.[15] Both the trial court and the appellate court applied the innocent construction rule and held that the articles were capable of an innocent reading or could be interpreted as referring to someone other than the plaintiff.[16]

On appeal, the Illinois Supreme Court reversed and remanded.[17] Writing for the court, Justice Underwood emphasized the non-uniform and often inequitable application of the innocent construction rule[18] since the court's approval of the rule in *John v. Tribune Co.*[19] The court remarked that, like the long-discarded doctrine of *mitior sensus*,[20] the innocent con-

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14. Chapski v. Copley Press, 92 Ill. 2d 344, 347, 442 N.E.2d 195, 196 (1982). The Attorney Registration and Disciplinary Commission found that there was insufficient evidence to indicate that plaintiff, in representing his client, had engaged in any conduct which would tend to bring the legal profession into disrepute or defeat the administration of justice. *Id.* at 346, 442 N.E.2d at 196.

15. Chapski v. Copley Press, 100 Ill. App. 3d 1012, 1016, 427 N.E.2d 638, 641 (1981). In each count of his complaint, plaintiff sought general and punitive damages of $3,500,000. *Id.*

16. *Id.* at 1012, 427 N.E.2d at 638. The appellate court found that, "although the articles were highly critical of the court system, they did not charge plaintiff with any illegal act nor did they suggest he was incompetent." *Id.* at 1016, 427 N.E.2d at 641.

17. Chapski v. Copley Press, 92 Ill. 2d 344, 442 N.E.2d 195 (1982).

18. *See supra* notes 6-8.

19. 24 Ill. 2d 437, 181 N.E.2d 105, *cert. denied*, 371 U.S. 877 (1962). In *John*, defendant published newspaper articles which reported that Dorothy Clark, also known as Dolores Reising, "alias Eve Spiro and Eve John," was arrested and charged with keeping a disorderly house and selling liquor without a license. *Id.* at 439-40, 181 N.E.2d at 106. Plaintiff, Eve Spiro John, who lived in the apartment below Dorothy Clark, was not involved in the activities. The Illinois Supreme Court held that the articles were not "of and concerning" plaintiff because the term "alias" preceding plaintiff's name eliminated plaintiff as the "target" of the articles. *Id.* at 442, 181 N.E.2d at 108. The court then stated that:

> [T]he language in defendant's articles is not libelous of plaintiff when the innocent construction rule is consulted. That rule holds that the article is to be read as a whole and the words given their natural and obvious meaning, and requires that words allegedly libelous that are capable of being read innocently must so be read and declared nonactionable as a matter of law.

Id.

For an excellent discussion of *John* and the history of the innocent construction rule in Illinois, see Polelle, *The Guilt of the "Innocent Construction Rule" in Illinois Defamation Law*, 1 N.I.U. L. REV. 181 (1981) (finding no firm precedential basis for the innocent construction rule in Illinois and advocating a "reasonable construction rule").

20. The doctrine of *mitior sensus* was developed by the English common law courts in the sixteenth century in order to cut down on the number of defamation actions that were flooding the courts at that time. Holdsworth, *Defamation in the Sixteenth and Seventeenth Centuries*, Part II, 40 L.Q.

struction rule permitted the dismissal of cases when a *possible* innocent construction could be found.[21] Despite the rule's requirement that allegedly defamatory words be given their natural and obvious meaning, courts often strained to find unnatural and unreasonable innocent constructions when defamatory meanings were far more probable.[22] The supreme court was convinced that modification of the innocent construction rule was necessary in order to "better . . . protect the individual's interest in vindicating his good name and reputation."[23] The court held 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*.[24]

Defamatory statements are either actionable *per se* or ac-

REV. 397, 404-06 (1924). The doctrine required that allegedly defamatory words "be construed, not in their natural sense, but, whenever possible, in *'mitiori sensu*.' That is, they must be held not to be defamatory if a non-defamatory sense could be twisted out of them." *Id.* at 406-07. "[L]anguage which could by any process of scholastic ingenuity be tortured into a harmless significance went without remedy." Veeder, *The History and Theory of the Law of Defamation*, 3 COLUM. L. REV. 546, 558 (1903). The innocent construction rule has been considered by some to be a resurrection of the doctrine of *mitior sensus*. ELDREDGE, THE LAW OF DEFAMATION § 24, at 161 (1978). *See generally* W. PROSSER, *supra* note 12, § 111.

21. Chapski v. Copley Press, 92 Ill. 2d 344, 350-51, 442 N.E.2d 195, 198 (1982). *See* cases cited *supra* note 6.

22. Chapski v. Copley Press, 92 Ill. 2d 344, 350-51 442 N.E.2d 195, 198 (1982). Several appellate courts avoided such harsh application of the innocent construction rule by construing words innocently only when such a construction was *reasonable*. *See, e.g.*, Altman v. Amoco Oil Co., 85 Ill. App. 3d 104, 406 N.E.2d 142 (1980) ("09" credit rating, defined by the collection agency as "bad debt, placed for collection, suit, judgment, bankrupt, skip," *reasonably* susceptible of being construed to mean "placed for collection"); Moricoli v Schwartz, 46 Ill. App. 3d 481, 361 N.E.2d 74 (1977) ("fag" not *reasonably* susceptible of innocent construction, despite a possible non-defamatory dictionary definition).

23. Chapski v. Copley Press, 92 Ill. 2d 344, 351, 442 N.E.2d 195, 198 (1982). The *Chapski* court noted that "broader protections . . . now exist to protect first amendment interests" than those which existed when the innocent construction rule was announced in *John*. *Id*. *See, e.g.*, Gertz v. Robert Welch, Inc., 418 U.S. 323 (1974) (public figures required to prove "actual malice"); New York Times Co. v. Sullivan, 376 U.S. 254 (1964) (public officials required to prove "actual malice"); Colson v. Stieg, 89 Ill. 2d 205, 433 N.E.2d 246 (1982) (requiring a showing of "actual malice" where publication concerning a subject of public interest is made to persons with a legitimate interest in subject of publication). In *Chapski*, the supreme court was persuaded that modification of the innocent construction rule would not infringe upon the broader first amendment guarantees. 92 Ill. 2d 344, 351, 442 N.E.2d 195, 198 (1982).

24. Chapski v. Copley Press, 92 Ill. 2d 344, 352, 442 N.E.2d 195, 199 (1982) (emphasis added).

tionable *per quod*.[25] These terms have very specific legal meanings. In Illinois, words which on their face and without the aid of extrinsic evidence impute to the plaintiff any of the following are deemed actionable *per se*: (1) commission of a crime; (2) infection with a loathsome disease; (3) unfitness or lack of integrity in performing the duties of office or employment; or (4) inadequate ability of the party in his or her profession, business or trade.[26] These types of statements are considered to be "so obviously and materially hurtful"[27] that general damages will be presumed.[28] The plaintiff is not required to plead or prove actual pecuniary injury.[29]

Language is labeled actionable *per quod* when its defamatory meaning is not apparent on the face of the publication, but

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25. Levinson v. Time, Inc., 89 Ill. App. 3d 338, 340, 411 N.E.2d 1118, 1121 (1980) ("libels may be classified as *per se* or *per quod*"); Whitby v. Associates Discount Corp., 59 Ill. App. 2d 337, 341, 207 N.E.2d 482, 485 (1965) (*per se* and *per quod* distinguished). *See generally*, 33A ILL. L. & PRAC. *Slander and Libel* § 11 (1970).

26. Costello v. Capital Cities Media, Inc., 111 Ill. App. 3d 1009, 1012, 445 N.E.2d 13, 15 (1982) (reference to plaintiff as a "liar" and to his "lying brand of leadership" held to impute a lack of ability and integrity); Springer v. Harwig, 94 Ill. App. 3d 281, 283, 418 N.E.2d 870, 871 (1981) (statement that plaintiff was being sued for failing to perform under an agreement did not impute to plaintiff lack of ability or integrity); Makis v. Area Publications Corp., 77 Ill. App. 3d 452, 456, 395 N.E.2d 1185, 1188 (1979) (allegations of failure to pay bills and failure of a business venture not necessarily injurious to business ability or indicative of a lack of integrity); Kirk v. Village of Hillcrest, 31 Ill. App. 3d 1063, 1065, 335 N.E.2d 535, 537 (1975) ("they took the plat showing the lots we are being sued over and I went to [plaintiff] and, believe it or not, he gave them back," did not impute a burglary or other criminal offense).

At common law, all libel which was defamatory on its face (libel *per se*) was actionable *per se*. A slander, even though defamatory on its face, was not actionable *per se* unless it fell within one of the four defined categories of slander *per se*. J. MIRZA & J. APPLEMAN, ILLINOIS TORT LAW AND PRACTICE § 14.2, at 378-79 (1974). "Illinois no longer adheres to these distinctions, but treats libel and slander alike, applying the common law rules governing slander to all defamations. . . ." *Id.* at 379. Illinois' "rule equating libel *per se* with slander *per se* was designed in part to remove the somewhat illogical inconsistencies that existed within the law of defamation." Irving v. J.L. March, Inc., 46 Ill. App. 3d 162, 166, 360 N.E.2d 983, 985 (1977).

27. Bruck v. Cincotta, 56 Ill. App. 3d 260, 264, 371 N.E.2d 874, 877 (1977), *leave to appeal denied*, 71 Ill. 2d 602 (1978).

28. *Id.* General (presumed) damages usually fall within four categories: "(1) [t]he injury to the plaintiff's reputation; (2) the general falling off of business, patronage, or custom; (3) wounded feelings and humiliation; and (4) physical pain and illness resulting from injury to the feelings." C. MCCORMICK, HANDBOOK ON THE LAW OF DAMAGES § 116, at 424-25 (1935).

29. *E.g.*, Moricoli v. Schwartz, 46 Ill. App. 3d 481, 484, 361 N.E.2d 74, 76 (1977) ("utterances which are actionable *per se* . . . do not require proof of special damages"); Lorillard v. Field Enter., Inc., 65 Ill. App. 2d 65, 78, 213 N.E.2d 1, 7 (1965) (allegations of special damages not required if libelous *per se*).

arises only in light of extrinsic evidence.[30] Additionally, defamatory statements not falling within one of the four defined categories of actionable *per se* will be deemed actionable *per quod* even though proof of their injurious character through the aid of extrinsic evidence is not necessary.[31] Language which is actionable *per quod* does not carry a presumption of damages.[32] The plaintiff must prove actual pecuniary injury, frequently called special damages, in order to recover for the defamation.[33]

Prior to *Chapski*, there was confusion as to whether the innocent construction rule was to be applied to statements alleged to be actionable *per quod*. The confusion was such that one recent appellate court decision avoided the innocent construction rule and decided the case before it on alternative grounds.[34] The court found it difficult to reconcile the "sweeping language" used by the supreme court in *John v. Tribune Co.*, indicating that the rule was applicable to language alleged to be actionable *per quod*,[35] with several appellate court opinions containing language which would indicate that the rule did *not* apply in *per quod* actions.[36] The court concluded that the law regarding the

30. Bruck v. Cincotta, 56 Ill. App. 3d 260, 264, 371 N.E.2d 874, 877 (1977), *leave to appeal denied*, 71 Ill. 2d 602 (1978); 33A ILL. L. & PRAC., *Slander and Libel* § 11, at 24 (1970). "In common law pleading, . . . extrinsic facts were set forth in what was called the 'inducement,' while the 'innuendo' portion of the declaration explained the defamatory meaning of the communication in the light of the extrinsic facts." ELDREDGE, *supra* note 20, § 23 at 154. *See generally* Prosser, *More Libel Per Quod*, 79 HARV. L. REV. 1629 (1966); Prosser, *Libel Per Quod*, 46 VA. L. REV. 839 (1960).

31. American Pet Motels v. Chicago Vet. Med. Ass'n, 106 Ill. App. 3d 626, 629, 435 N.E.2d 1297, 1300 (1982) (language not falling within one of the four actionable *per se* categories "may be actionable . . . *per quod* if . . . actually defamatory and if specific damage is alleged").

32. Bruck v. Cincotta, 56 Ill. App. 3d 260, 264, 371 N.E.2d 874, 877-78 (1977), *leave to appeal denied*, 71 Ill. 2d 602 (1978) (proof that "some substantial injury has followed from their use" required when libelous *per quod*).

33. "Injury to reputation without more, humiliation, mental anguish, physical sickness — these do not suffice." C. MCCORMICK, *supra* note 28, § 114, at 419-20. The plaintiff must show "the loss of something having economic or pecuniary value." RESTATEMENT (SECOND) OF TORTS § 575, comment b (1977). "[S]pecial damages must be alleged with particularity, and general allegations as to damages are insufficient." Bruck v. Cincotta, 56 Ill. App. 3d 260, 266, 371 N.E.2d 874, 879 (1977), *leave to appeal denied*, 71 Ill. 2d 602 (1978). *See generally* ELDREDGE, *supra* note 20, at § 30.

34. American Pet Motels v. Chicago Vet. Med. Ass'n, 106 Ill. App. 3d 626, 435 N.E.2d 1297 (1982) (decided four months before *Chapski*).

35. *See supra* note 19.

36. American Pet Motels v. Chicago Vet. Med. Ass'n, 106 Ill. App. 3d 626, 630, 435 N.E.2d 1297, 1300 (1982). *See, e.g.*, Springer v. Harwig, 94 Ill. App. 3d 281, 283, 418 N.E.2d 870, 871-72 (1981) ("To determine whether language under scrutiny is actionable *per se*, . . . Illinois courts have consistently applied the innocent construction rule"); Whitby v. Associates Discount Corp., 59 Ill. App. 2d 337, 341, 207 N.E.2d 482, 484 (1965) ("a defamation can never be [actionable] *per se* if the words themselves are capable of inno-

applicability of the innocent construction rule in *per quod* actions was unsettled.[37] *Chapski* resolves this confusion by limiting application of the rule to language which is alleged to be actionable *per se*.

Unlike *John*, where the court very broadly held that words capable of an innocent construction must be "declared nonactionable as a matter of law,"[38] *Chapski* holds that such words "cannot be actionable *per se*"[39] In so holding, *Chapski* impliedly narrows the applicability of the innocent construction rule to language which is alleged to be actionable *per se*. The rule clearly does not apply to statements alleged to be actionable *per quod*. The innocent construction rule is now merely a means of distinguishing language actionable *per se* from language actionable *per quod*.[40] If a plaintiff alleges defamation actionable *per se*, under *Chapski* the language will become actionable *per quod*, if it is reasonably susceptible of an innocent interpretation. Plaintiffs who can prove a defamatory imputation and special damages will be allowed to recover in a *per quod* action.

The *Chapski* court's failure to be more explicit in stating the practical implications of its holding cannot support a contention that the innocent construction rule is to be applied in *per quod* actions.[41] Had the court intended that the rule be applicable in such cases, it would have held that any language reasonably susceptible of innocent interpretation is *nonactionable*, as it did in *John*.[42] This fact and several other considerations support the analysis that *Chapski* restricts application of the rule to language alleged to be actionable *per se*.

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cent construction"). *See also* Fleck Bros. Co. v. Sullivan, 385 F.2d 223, 225 (7th Cir. 1967) (where an alleged libel capable of an innocent construction was nevertheless held to be actionable *per quod).*

37. American Pet Motels v. Chicago Vet. Med. Ass'n, 106 Ill. App. 3d 626, 630, 435 N.E.2d 1297, 1301 (1982).

38. John v. Tribune Co., 24 Ill. 2d 437, 442, 181 N.E.2d 105, 108, *cert. denied*, 371 U.S. 877 (1962).

39. Chapski v. Copley Press, 92 Ill. 2d 344, 352, 442 N.E.2d 195, 199 (1982).

40. According to one commentator, the innocent construction rule "was at best simply intended to be the test of the kind of defamation involved, that is, defamation *per se* or defamation *per quod*." Polelle, *supra* note 19, at 206 (finding no firm precedential basis for the innocent construction rule in Illinois).

41. This is not to say, however, that the *Chapski* court's failure to be explicit will not lend to continued confusion regarding the applicability of the innocent construction rule in *per quod* actions. The theory that *Chapski* restricts application of the rule to language alleged to be actionable *per se* relies heavily on a very close reading of the court's holding. *See supra* text accompanying note 24. Additionally, the theory relies on a distinction of the language of the court's holdings in *Chapski* and *John*. *See supra* text accompanying notes 38 and 39.

42. John v. Tribune Co., 24 Ill. 2d 437, 442, 181 N.E.2d 105, 108, *cert. denied*, 371 U.S. 877 (1962).

Compelling is the fact that *if* the innocent construction rule was applicable in *per quod* actions, the only *per quod* actions which would survive dismissal would be those in which the allegedly defamatory language was defamatory on its face. Language requiring extrinsic evidence to establish a defamatory imputation would not be actionable. It is unlikely that such a rule was intended by the supreme court, as it would run counter to one of the court's essential purposes in modifying the innocent construction rule.[43]

Chapski's disposition of the case before it demonstrates how the modified innocent construction rule must be applied. In seeking general or presumed damages, plaintiff was alleging that the defamatory articles were actionable *per se*.[44] The court held that, on remand, if the newspaper articles were reasonably susceptible of an innocent interpretation, they could not be actionable *per se*.[45] The court did not hold that the articles would be nonactionable. The court merely held that the articles would not be actionable within one of the four defined categories of actionable *per se*.[46] If an innocent construction was found, Mr. Chapski would have to prove both the defamatory character of the articles and special damages in order to recover for the defamation, as such words "cannot be actionable *per se*,"[47] only actionable *per quod*.[48]

The confusion surrounding the applicability of the innocent construction rule in *per quod* actions was not the only problem with the pre-*Chapski* innocent construction rule. Prior to *Chapski*, courts often found innocent constructions when defamatory interpretations were far more probable.[49] In *Watson v. Southwest Messenger Press*,[50] an appellate court found that the defendant's statement that the plaintiff mayor would "fix" traffic

43. The supreme court wanted to adopt a rule which would "better serve to protect the individual's interest in vindicating his good name and reputation." Chapski v. Copley Press, 92 Ill. 2d 344, 351, 442 N.E.2d 195, 198 (1982). If the innocent construction rule were applicable in *per quod* actions, many defamed individuals who had suffered actual pecuniary harm would be precluded from recovery for the mere reason that the defamatory imputation was not clear on the face of the language. This would not protect the individual's interest. *See infra* note 53. *See also* ELDREDGE, *supra* note 20, §§ 2 to 4 (discussing the individual's protected interest).

44. *See supra* text accompanying notes 25 - 33. General damages will be presumed only if the court determines that the allegedly defamatory language is actionable *per se*. *See supra* note 29.

45. Chapski v. Copley Press, 92 Ill. 2d 344, 352, 442 N.E.2d 195, 199 (1982).

46. *See id*. *See also* text accompanying note 26.

47. Chapski v. Copley Press, 92 Ill. 2d 344, 352, 442 N.E.2d 195, 199 (1982).

48. *See supra* text accompanying notes 38 - 40.

49. *See supra* note 6. *See also* Polelle, *supra* note 19, at 182.

50. 12 Ill. App. 3d 968, 299 N.E.2d 409 (1973).

tickets could be innocently construed to mean that the mayor might repair, mend or put the tickets in order. The innocent construction rule allowed "clever writer[s] versed in the law of defamation"[51] to make patently defamatory statements in ambiguous language, knowing that they were protected if there was any possible innocent construction.[52] This fact was a major consideration of the California Supreme Court in its decision to abandon the California innocent construction rule.[53] Though Illinois has far from abandoned the innocent construction rule, *Chapski* makes a significant modification of the rule which will likely decrease the number of inequitable decisions.

Chapski clearly instructs the lower courts that allegedly defamatory language is not to be interpreted innocently unless such an interpretation is *reasonable*.[54] By requiring *reasonable* constructions of language, courts will not be as apt to find *possible* innocent constructions when defamatory interpretations are far more probable. Under *Chapski*, courts are now precluded from unreasonably construing language in order to find possible innocent meanings.[55]

By limiting application of the innocent construction rule to language which is alleged to be actionable *per se*, *Chapski* eliminates the confusion that resulted from the broad language of

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51. MacLeod v. Tribune Pub. Co., 52 Cal. 2d 536, 551, 343 P.2d 36, 44 (1959) (abandoning the California innocent construction rule).

52. *Id.*

53. *Id.* The law of defamation deals "with the impact of communications between ordinary human beings." *Id.* Allegedly defamatory language should be measured, "not so much by its effect when subjected to the critical analysis of a mind trained in the law, but by the natural and probable effect upon the mind of the average reader." *Id.* *See* Comment, *The Illinois Doctrine of Innocent Construction: A Minority of One*, 30 U. CHI. L. REV. 524, 538 (1963) (discussing inherent problems with the Illinois innocent construction rule).

54. Chapski v. Copley Press, 92 Ill. 2d 344, 352, 442 N.E.2d 195, 199 (1982).

55. Costello v. Capital Cities Media, Inc., 111 Ill. App. 3d 1009, 1015, 445 N.E.2d 13, 17 (1982). In *Costello*, the *Chapski* requirement that all innocent constructions be reasonable was adhered to strictly. There, plaintiff alleged libel actionable *per se*, claiming that defendant's editorial attacked his honesty and ability as chairman of a county board. *Id.* at 1012, 445 N.E.2d at 15. The editorial was alleged to have repeatedly attacked Costello as a "liar," and to have made reference to his "brand of lying leadership." *Id.* In light of *Chapski*, the court refused to strain to find an innocent construction. *Id.* at 1015, 445 N.E.2d at 18. The court held that the editorial constituted libel actionable *per se* because it imputed that plaintiff was unable to perform the duties of his office and that he lacked integrity. *Id.* at 1014, 445 N.E.2d at 17.

Compare *Costello*'s application of the innocent construction rule with pre-*Chapski* application of the rule, where, for example, the words "liar," "dishonorable" and "deluded" in a letter relating to plaintiff's activities as secretary of an organization were found to be mere "name calling." Delis v. Sepsis, 9 Ill. App. 3d 217, 292 N.E.2d 138 (1972).

John v. Tribune Co.[56] Further, *Chapski* unequivocally requires that all innocent constructions of language be *reasonable*. Unlike the rule enunciated in *John*, the innocent construction rule after *Chapski* will not act as an insurmountable barrier to redress for harm to the plaintiff's reputation. *Chapski* will have the desirable effect of providing defamed individuals with a remedy in situations where, although there is a *possible* innocent construction, there is no *reasonable* innocent construction.[57] Furthermore, when there is a reasonable innocent construction, plaintiffs will be able to pursue their actions as *per quod*. Because cases will not be dismissed as promptly as they were prior to *Chapski*, the jury will play an increased role in determining whether plaintiffs have been defamed.[58] Applied correctly, *Chapski*'s clarification and modification of the innocent construction rule will do that which the Illinois Supreme Court intended: "protect the individual's interest in vindicating his good name and reputation."[59]

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56. 24 Ill. 2d 437, 442, 181 N.E.2d 105, 108, *cert. denied*, 371 U.S. 877 (1962) (under which courts often strained to find possible innocent constructions).

57. *See supra* note 53. *Compare* Costello v. Capital Cities Media, Inc., 111 Ill. App. 3d 1009, 445 N.E.2d 13 (1982) (decided after *Chapski* — holding references to plaintiff as a "liar" and to his "lying brand of leadership" actionable *per se*) *with* Delis v. Sepsis, 9 Ill. App. 3d 217, 292 N.E.2d 138 (1972) (decided prior to *Chapski* — finding the words "liar," "dishonorable," and "deluded" to be mere name calling).

58. Whether the allegedly defamatory language is reasonably susceptible of an innocent construction is a question of law to be resolved by the court. Chapski v. Copley Press, 92 Ill. 2d 344, 352, 442 N.E.2d 195, 199 (1982). Under *Chapski*, courts will now be examining language for *reasonable* innocent constructions instead of *possible* innocent constructions. Allegedly defamatory language which has a *possible* innocent construction, but not a *reasonable* innocent construction, will not be rendered nonactionable by the rule, but instead will go to the trier of fact for determination of whether a defamation actually resulted from the language.

59. Chapski v. Copley Press, 92 Ill. 2d 344, 351, 442 N.E.2d 195, 198 (1982).