

1)

90

===== Start of Answer #1 (4484 words) =====

Question One:

What are Paul's potential causes of action against Doris, Inc?

**Paul v. Doris:**

**Products Liability:**

The facts show that Paul may be able to bring a products liability action against Doris Inc. In such an action, Paul can bring claims for battery, negligence, breach of warranty and strict products liability. Below is a discussion of these causes of action.

**Battery:**

Battery is the intentional harmful or offensive touching of another without consent. To prove the requisite intent necessary to recover for battery, Paul would have to show that Doris Inc intended that such harmful contact occur, such that, Doris Inc either actually intended the harmful contact or knew with a substantial certainty that the harmful contact would occur. Here, the facts do not directly support such a contention but do imply that it is possible that Doris Inc was aware that Riowax was not safe for use on the skin and was possibly caustic to a person's eyes. If these contentions can be further supported by evidence that Doris Inc was aware of the product's safety issues and put the product on the market intentionally with a label that stated contrary, it is possible that Doris Inc possessed the intent necessary for battery. While it is likely that a cosmetic company would be aware of and required to test their product prior to placing it in the stream of commerce, we are not provided with enough supporting facts to prove that Doris Inc either acted intentionally or knew that their product was harmful and put it into the stream of commerce knowing with a substantial certainty that such harm would

result. Therefore, it is not likely that Paul would prevail on a battery claim without more information to support Doris Inc's intention when placing the product into the stream of commerce.

### **Negligence:**

Negligence is the creation of an unreasonable risk of harm to a foreseeable plaintiff. Negligence is composed of four elements: duty, breach, causation, and damages. In a products liability situation, negligence is used to establish that a commercial manufacturer, distributor, retailer, or supplier carelessly placed a product in the stream of commerce that was somehow unsafe when it reached a foreseeable user or consumer.

Accordingly, a commercial manufacturer, distributor, retailer, or supplier owes a duty of due care to any foreseeable purchaser, user, or other consumer of their product. Here, Doris Inc is a manufacturer of Riowax that placed their product into the stream of commerce in a manner in which it was foreseeable for Paul to buy the product as an ordinary consumer. Therefore, Doris Inc owes a duty of due care, as a commercial manufacturer, to Paul, as a foreseeable consumer of Riowax.

In a products liability situation, a commercial manufacturer's duty of due care is breached when the manufacturer fails to act reasonably in the manufacturing, inspection, or distribution of their product. Here, the facts show that Doris Inc placed their product Riowax, in the stream of commerce with a label that states, "Riowax is perfect for removal of all bodily hair and harmless to your skin." The facts show, however, that when Paul was applying Riowax to remove facial hair, immediately he felt a stinging sensation and a rash occurred. It appears that Riowax may not be "harmless to the skin" as claimed by Doris Inc. Clearly, Doris Inc has a duty to act reasonable when putting labels on their product. If the label on Riowax was not true or founded on any proof that Riowax is in fact harmless to the skin, Doris Inc was likely not acting reasonably when they put such a label on knowing that it would mislead consumers into

believing that their product was harmless to the skin.

Additionally, the label also intimated that Riowax was perfect for the removal of bodily hair anywhere on the body, presumably including facial hair. Even if Doris Inc believed that their product was harmless to the skin, it is likely that a corporation in the business of selling cosmetics would be aware that hair removal concoctions are generally caustic to porous bodily parts including the eyes. While it is unclear if there was any type of warning on the product that warned against using products around the eye area, it is likely not reasonable for Doris Inc to intimate that their product is safe for use on skin period without also disclosing the caveat that Riowax can cause severe damage if it gets into a person's eye. Therefore, it is likely that Doris breach their duty of due care as a manufacturer of Riowax when they lulled the consumer into a false sense of security that Riowax was not harmful. It is widely known that consumers rely on product labelling and warnings to notify them of any potential dangerous misuses of products that are not blatantly obvious to the ordinary user; therefore, Doris Inc breached their duty to act reasonably when they made claims purported to be true that led to permanent eye damage for Paul.

In addition Res Ipsa Loquitor is often used in products liability cases to establish duty and breach for negligence when the injury in question is the type of injury that would not usually occur without negligence and the product was unchanged between the time it left the manufacturer's control to the time it was consumed by the injured party. Here, Paul specifically bought the Riowax and opened it to use on his eyebrows. There is nothing in the facts that show that the product was tampered with in anyway between leaving Doris Inc's control and being bought by Paul. Generally, permanent blurred vision is not the type of injury that occurs without the existence of introduction of some foreign substance into a person's eye and generally a person would not put something in their eye if they were aware that it would cause such permanent damage. Therefore, the fact that Paul presumably had fine vision prior to the use of Riowax and he was using the Riowax on his face when the injury to his eye occurred, may be enough to establish duty and breach using Res Ipsa.

Once a person has established duty and breach, they must still establish causation to recover for negligence in products liability. Generally, causation exists for negligence when the defendant's careless act is the actual and proximate cause of the plaintiff's harm. Actual cause is established using the But For Test or the Substantial Factor Test. Generally, the But For Test is used when there is one defendant or one careless act. Here, because we are considering a corporate entity as one person under the law, we will use the But For Test. According to the But For Test, a defendant is the actual cause of a plaintiff's harm if, but for the defendant's careless action, the plaintiff would not have been injured. Here, the question is whether but for Doris Inc's careless labelling would the plaintiff have been harmed? Clearly, the facts show that Paul relied on the labelling to chose which product to use to manicure his unibrow and subsequently bought and used Riowax with the belief that it was safe for his skin; therefore, but for the labelling Paul would not have been using Riowax on his face in a manner that caused injury. It is therefore likely that Doris Inc is the actual cause of Paul's injury.

Proximate cause is the legally close relationship between the defendant's careless action and the plaintiff's harm. Generally, proximate cause exists unless causation is limited in one of the following four ways: the plaintiff's injury was too remote in time or distance from the defendant's careless conduct, there was a superseding intervening cause that served to break the causal chain between the defendant's careless action and the plaintiff's harm, public policy requires that causation be limited, or lack of foreseeability. The issue of foreseeability varies depending on jurisdictional approach. Some jurisdictions use the Wagon Mound approach which allows recovery as long as the type of harm suffered was foreseeable and other jurisdictions use the Polemis approach which allows recovery as long as any type of harm was foreseeable. Here, it is not likely that there are strong public policy reasons or superseding cause, or remoteness issues that should serve to break the causal chain; however, issues may arise with foreseeability in Wagon Mound jurisdictions. The problem that arises for Paul is that even though the bottle was labelled in a manner that intimated that the product was safe for use on the skin, the product did not say that it was safe for use in the eyes.

While Paul clearly did not intend to use the Riowax in his eye, an issue may arise for foreseeability in a Wagon Mound jurisdiction if this is not the type of harm that is generally foreseeable due to mislabelling. While this is not an incredibly strong argument to limit proximate cause, it may require more information to show that Doris Inc knew or should have known that such misuse was foreseeable by the ordinary consumer in order to allow Paul to recover.

Lastly, once a plaintiff has established duty, breach, and causation, they must still prove actual damages to recover for negligence in products liability. Actual damages are proven by showing harm due to physical injury and/or property damage. Here, Paul suffered permanent eye damage which likely resulted in medical expenses and potential other damages; therefore, it is likely that Paul could prove actual damages to recover for negligence.

Conclusively, it is likely that Paul can bring a successful negligence action for products liability.

### **Breach of Warranty**

There are three warranty that can run with the sale of a product that is sold by a person in the business of selling such products: Express Warranty, Implied Warranty of Fitness, and Implied Warranty of Merchantability.

#### **Express Warranty:**

A person in the business of selling products may be sued for breach of express warranty if they misrepresent a material fact about the product which is likely to induce reliance and the consumer justifiably relies on such a misrepresentation resulting in harm to the consumer. In an express warranty situation, the plaintiff must establish that the defendant is in the business of selling such products, that the defendant misrepresented a past or present material fact, that the misrepresentation was the kind

that would induce reliance, that the plaintiff did in fact rely on the misrepresentation, and that the plaintiff was harmed by reliance on such a misrepresentation. Here, facts show that Doris Inc is a manufacturer in the business of selling such products by placing them in the stream of commerce. The facts also show that Doris Inc's representation that the Riowax was "harmless to your skin" was likely a misrepresentation because in fact, Paul's skin reacted poorly to the product. The facts additionally show that Paul relied on the misrepresentation by using the product on his skin and furthermore that Paul was harmed by the misrepresentation and received a skin rash and permanent damage to his eye sight. The facts show that it is likely that Paul could recover for breach of express warranty due to the misrepresentation made by the express label on the Riowax box that caused Paul's harm. Additionally, Paul can recover economic and non-economic damages that he suffered due to such a misrepresentation.

### **Implied Warranty of Fitness:**

A person in the business of selling products may be sued for breach of implied warranty of fitness when a consumer relies on the seller's knowledge and expertise to pick a product for a specific purpose and the seller is aware of the consumer's reliance and the product fails to be fit for the purpose for which it was bought. Here, as mentioned above, Doris Inc is clearly in the business of manufacturing such products and placing them in the stream of commerce for sale; therefore, they are likely exposed to liability for implied warranty. The facts show that Doris Inc placed a label on the front of Riowax that stated that it was "perfect for removal of all body hair." While generally implied warranty of fitness issues arise with a seller who provides more specific assistance in the consumer's decision to buy a particular product, such a warranty can be implied when the product is held out for a specific use. The facts do not show how Paul arrived at his decision to buy Riowax and whether he bought the product specifically because it said that it could remove any type of body hair or whether he simply picked the first product he saw. Therefore, it is not clear if Paul relied on the seller's expertise through the labelling of the product or potentially an agent of the seller

who led Paul to chose Riowax for his specific purpose. It can be assumed that Paul believed that Riowax would be fit to be used to remove body hair; however, it is not clear if Paul relied on the label or other information provided to make this decision to his detriment. Additionally, if Paul did rely on the label or other expertise to make his decision to buy the product for the specific purpose of waxing his eyebrows and in turn that product was not safe for his face, Paul can recover if he can demonstrate such reliance; however, the facts are not clear enough to show whether Doris Inc breach the implied warranty of fitness.

### **Implied Warranty of Merchantability**

A person in the business of selling products may be sued for breach of implied warranty of merchantability when their product fails to be fit for the general purpose and industry in which it is sold. As previously mentioned, Doris Inc is in the business of manufacturing such products by placing them in the stream of commerce for sale; therefore, Doris Inc is in the business of selling. Additionally, the facts show that Paul bought the Riowax to use to wax his eyebrows and that the Riowax was a hair removal product for removal of any type of hair. When Paul used the product, he suffered a severe rash and permanent damage to his eye. Because Riowax was held out to be a hair removal product and it was not safe for Paul to use as a hair removal product for his eyebrow hair, it is possible that Doris Inc breach their implied warranty of merchantability because Riowax failed to be suitable for the general purpose for which it was sold.

### **Strict Products Liability**

There are three general causes of action under strict products liability: strict liability for manufacturing defect, strict liability for design defect, and strict liability for failure to warn. In the three strict products liability actions the manufacturer, distributor, retailer, and seller are held strictly liable when their product injures a consumer due to a defect in design, manufacturing or failure to warn. In all three defects, the consumer plaintiff

must show that the manufacturing defendant is in the business of selling such products, the product was defect in manufacturing, design, or failure to warn, the product was put into the stream of commerce and was unchanged from the time it left the manufacturer to the time it reached the consumer, the defect caused injury to the consumer, and the consumer incurred damages as a result. The three strict products liability <sup>causes of action</sup> cases differ based on how the defect is proven. In a design defect situation, the product is defective in design in a manner that fails the consumer expectation test or the risk utility test. In a manufacturing defect situation, the product is defective in a manner that arose during manufacturing that was not intended by the manufacturer such as a defect on the assembly line. In failure to warn defect situations, the product is defect in its warnings, such that, there is a risk of harm that is not obvious to the ordinary consumer but is foreseeable to the manufacturer and can be mitigated with a reasonable warning.

Because the same elements apply to products liability independent of the defect aspect, first we will discuss the additional elements outlined above. As we have mentioned before, Doris Inc is a manufacturer in the business of selling such products by placing them in the stream of commerce. Additionally, there is no reason to believe that the product was changed from the time it left the manufacturer to the time it reached Paul and it is clear that Paul was injured while using Riowax. The one issue that arises is whether Riowax is to blame alone, or whether Paul also had a hand in creating the harm by reacting poorly to the stinging on his skin. For the purposes of causation, it is likely that Paul's harm was a foreseeable consequence of using Riowax as a hair removal product and that therefore Riowax was the legal cause of Paul's harm. This issue that may arise with Paul's reaction is in jurisdictions that still allow contributory negligence claims to bar a plaintiff's recovery. More will be discussed on defenses below. Essentially, the facts show that the elements for strict products liability apply to the facts at hand to allow Paul to bring such a cause of action if he can also prove defect which we will discuss below.

Because design defect, manufacturing defect, and failure to warn require the same elements in addition to the various defects, next we shall discuss which defects may



apply to Riowax to establish strict products liability.

First, in a design defect case, it must be shown that the product fails the consumer expectation test or the risk utility test. Under the consumer expectation test, a product is defective in design if it is not safe for use ordinary use by the ordinary consumer. Here, the facts show that Paul was using the product as intended when the product began burning causing a rash; therefore, the product is not usable in a manner that is safe for the ordinary consumer. However, the main danger with the product is that is caused damage to Paul's eye sight; therefore, the real issue with the product arises due to the fact that it is made with an ingredient that causes damage to one's eye. Clearly if a product is design to be used around a person's face it should not be corrosive to one's eyes however, it is not clear in the facts whether there are alternative that could be used to remove hair but be safer for a person's eyes or potentially used as a hair remover in a different manner. Therefore it is likely that Riowax is defective in design if there is a safer alternative that could be used to remove hair or prevent such an injury through different application of the product.

In addition, according to the risk utility test a product is defective in design if its risks outweigh its benefits. Here, if Riowax is likely to cause permanent damage to a person's eyesight and it is foreseeable that using the product on facial hair can result in getting the product in your eyes, the danger of the product is relatively high for the goal it accomplishes of removing facial hair. Therefore, it is likely that Riowax is defective in design according to the risk utility test as well.

Second, in a manufacturing defect case, it must be shown that the product failed at some point on the assembly line that made the finished product defective in a manner that was unintended by the manufacturer. Here, we simply do not have enough information to show whether a manufacturing defect exists. The facts show the point afterwards at which the product was sold with no intimation that a manufacturing issue occurred and no reason to believe that one did occur.

Third, in a failure to warn defect case, it must be shown that there was a foreseeable risk of harm that was not obvious to the ordinary consumer that could have been mitigated by a reasonable warning. Here, clearly, it appears that Riowax is caustic if it gets into a person's eyes. Additionally, it is likely foreseeable that if a person is using Riowax for facial hair, including eyebrows, that the product could get into a person's eyes accidentally and cause serious damage. Furthermore, the packaging presents the product as if it is safe for such use; therefore, the risk of harm is likely foreseeable to the manufacturer who could mitigate the damage by changing their label and including a warning that contact with eyes is extremely dangerous or perhaps that the product should not be used on a person's facial hair. Therefore, it is likely that a failure to warn defect exists.

#### **Vicarious Liability:**

Under respondeat superior a principal is jointly and severally liable for the tortious acts of his agent which generally also applies to corporate entities and their principals and agents. Here, Doris Davis acting as CEO of Doris Inc posted false statements on the company's facebook page that were potentially defamatory in nature towards Paul; therefore, if Paul can establish defamation or any other tortious conduct on behalf of Ms. Davis, it is likely that Paul can hold Doris Inc jointly and severally liable with Doris Davis.

#### **Defamation:**

Defamation is the publication of a false statement to a third party of and concerning the plaintiff that causes reputational harm. Defamation is treated differently at common law than modernly under Gertz and New York Time case law. Accordingly, in order to determine what level of proof and damages are necessary to recover, one must first determine whether the plaintiff is a private or public plaintiff and whether the statement is a private statement or a matter of public concern.

Here, the facts show that Doris Davis published a statement that was false on a facebook page. The statement was presumably written or recorded as posted and therefore constitutes libel because it is likely permanent in nature due to its posting on the internet. Additionally, because the facts show that the statement was published, that the statement was false, and that the statement was concerning Paul, the remaining question to establish defamation for libel are what type of damages must be proven for Paul to recover.

Paul is a private person and Doris Davis is a private person who is acting as CEO of a corporation. Both parties are discussing issues publicly; however, it is unlikely that their discussion of mutual distrust has reached such a level that posting about Paul is considered to be a matter of public concern; therefore, it is likely that Paul is considered a private plaintiff in a matter of private concern and therefore the common law standards would likely apply. At common law, falsity and damages are presumed in a libel action; therefore, the fact that the statement about Paul was published in a written capacity that was permanent in nature, shows that the defamatory statement was libellous and damages are presumed once the statement is deemed defamatory.

A statement is defamatory if it would be objectionable to a reasonable person, such that, a reasonable person would believe the statement would cause reputational harm. Here, the statement in question accused Paul of lying and not being trustworthy in publication of his own blog. Clearly, a large corporation calling someone a liar is the type of statement that would subject a person to reputational harm; therefore, it is likely that Paul can recover for defamation.

What are Doris Inc's defenses?

Doris can use contributory negligence or comparative fault to defend against the negligence, warranty, and products liability causes of action due to Pauls exacerbation of a risk by causing the Riowax to get into his eye causing damage.

What are Doris Inc's potential causes of action against Paul?

**Doris v. Paul:**

Doris potentially can bring causes of action for defamation, false light, injurious falsehood, and interference with prospective business relationships.

**Defamation:**

Defamation is the publication of a false statement to a third party of and concerning the plaintiff that causes reputational harm. Defamation is treated differently at common law than modernly under Gertz and New York Time case law. Accordingly, in order to determine what level of proof and damages are necessary to recover, one must first determine whether the plaintiff is a private or public plaintiff and whether the statement is a private statement or a matter of public concern.

Here, the facts show that Paul published a statement that was false on a blog. The statement was presumably written or recorded as posted and therefore constitutes libel because it is likely permanent in nature due to its posting on the internet. Additionally, because the facts show that the statement was published, that the statement was false, and that the statement was concerning Doris Inc, the remaining question to establish defamation for libel are what type of damages must be proven for Doris Inc to recover.

Doris Inc is a public company with an acting CEO. Paul is a private individual. Both parties are discussing issues publically; however, it is unlikely that their discussion of mutual distrust has reached such a level that posting about Doris Inc is considered to be a matter of public concern; therefore, it is likely that Doris Inc is considered a private plaintiff in a matter of private concern and therefore the common law standards would likely apply. At common law, falsity and damages are presumed in a libel action;

therefore, the fact that the statement about Doris Inc was published in a written capacity that was permanent in nature, shows that the defamatory statement was libellous and damages are presumed once the statement is deemed defamatory.

A statement is defamatory if it would be objectionable to a reasonable person, such that, a reasonable person would believe the statement would cause reputational harm. Here, the statement in question accused Doris Inc of selling products knowingly with lye in them, which is a widely known caustic substance. Clearly, a large corporation calling using lye in their cosmetic products is the type of statement that would subject a person to reputational harm; therefore, it is likely that Doris Inc can recover for defamation.

### **False Light**

Is one of the privacy torts that occurs when a defendant published a false statement concerning the plaintiff that casts them in a false light in a manner that would be objectionable to a reasonable person. Here, the statement made by Paul about Doris Inc likely casts them in a false light and it the kind that would be objectionable to a reasonable business owner; therefore, it is likely that Paul is liable for casting Doris Inc in false light in his blog publication.

### **Injurious Falsehood**

*elements, including actual damages and const. MoJice*

What are Paul's defenses?

Paul does not have many defenses to work with. Paul can claim that he was telling the truth, or at least believed in the truth.

=====  
===== End of Answer #1 =====

2)

85

===== Start of Answer #2 (1262 words) =====

Peter vs Doug

**Intentional Misrepresentation** (fraud) - 1) a misrepresentation of a material past or present fact 2) scienter (knowledge of falsity or reckless disregard for possibility of falsity) 3) with the intent to induce reliance 4) actual reliance by plaintiff 5) justifiable reliance, and 6) damages.

Doug told Peter that he presently intended to open a farm equipment rental company on the lot adjoining the lot Peter was interested in buying. Although statements about future events are typically not actionable as fraud, they can be when, as is the case here, the person making the statement knows they have no present intention to carry out them out. This satisfies the first element and the second element - Doug knew he had no present intention to do what he said. It also seems clear that he made his statement to in order to induce reliance since he made the statement after Peter told

him his plans for opening a plant nursery. He wanted to make the lot more appealing to Peter so that Peter would buy it. The facts expressly tell us that Peter did rely on this statement. Doug may claim that this reliance was not justified. With such a large investment (\$500k just for the lot), a reasonable person would probably want more than just the seller's word. Peter's suit may well fail for this reason. He would have to come up with a good explanation for his reliance. If he does, there still may be an issue with causation. Was the failure of his business due to their not being the rental location next door or was it because of what was there. Peter may have a stronger claim if he can show that not did Doug not intent to open what he said, but that at the time he made the statement he already intended to open the adult bookstore.

**Nuisance** - Public or Private. Public nuisance is interference with the general public's right to the use and enjoyment of air, water, and land. Private nuisance is interference with an individual's right to the use and enjoyment of their land.

To establish a public nuisance, Peter will have to show that he suffered harm different in kind, and not just degree, than the general public. He may well be able to make this showing. Doug's adult bookstore had flashing strobe lights visible from premises, obnoxious noises were audible from at least some distance, there were blowup dolls visible through the windows, and the clientele were leering unconventional types. To the members of the general public that would be offended by this, this would likely just make them feel uncomfortable. To Peter, it meant the loss of his business. This harm is different in kind from the average passerby.

Some of the same facts discussed above will more easily establish a private nuisance. Peter has a right to the use of his land for his business. The noises and lights actually come over onto his property. The dolls in the windows and the clientele, however, did not. Peter may be able to get damages, but probably only for the lights and sounds.

**Trespass to Chattel** - Although this at first sounds like a trespass situation because the harm to Peter's dog, the act was neither intentional nor substantially certain to

---

occur. No further discussion is needed.

*good*

**Negligence** - the creation of an unreasonable risk of harm to a foreseeable plaintiff. Negligence has four elements: duty; breach; causation; damages.

Doug, like all members of the public, owed a duty to not create an unreasonable risk of harm by his actions. He had a duty to watch where he was going because he could possibly hurt persons or property by being careless.

Doug was careless. But was this a breach of the duty he was under? The duty is owed to foreseeable plaintiffs. If he had run into a person, the breach would be clear. Here though, it was a dog laying on the ground that he stepped on. Some may consider it a stretch but his carelessness was likely a breach.

If Doug was watching where he was going he would not have stepped on the dog: he was the actual cause of the dog's injury. As to proximate cause, the same foreseeability issue applies, at least in jurisdictions that follow the Wagon Mound rule. In these jurisdictions the harm suffered must be of the type that was foreseeable. As discussed above, this issue could go either way but seems more likely to go in Peter's favor - it is not all that unusual for there to be a pet hanging out in a business, especially a plant nursery. In jurisdictions that follow the Polemis rule this would not be an issue at all. So long as the harm was the result of the careless act proximate cause is established.

*Good*

### Doug vs. Peter

**Defamation** - Defamation - the utterance to a third party of a false statement that is injurious to the reputation of the plaintiff. Defamation is either slander (oral) or libel (written or preserved in some other manner).

Assuming that Peter provided the signs to his hired picketers, this could be libel. The elements of libel are 1) the publication 2) of a false statement 3) of and concerning the



plaintiff 4) that causes reputational harm to the plaintiff.

Three of the elements are clearly established. However, the statements were of matters of opinion and opinions are not actionable under defamation. The problem is that statements such as "he is immoral/unwholesome" and not subject to verification. They are completely subjective. There is not claim for defamation here.

*Jeopardy*

**Injurious Falsehood** - the publication of a false statement intended to cause plaintiff pecuniary harm that does in fact cause pecuniary harm.

Peter was angry at Doug. He probably wanted to hurt him in any way possible. He chose to try and affect Doug's business. He probably wanted to draw attention to what the store was and in that way embarrass the clientele. It seems that his plan was effective since soon after putting it into action Doug's business dried up and he was forced to close up shop. But, as discussed above in defamation, these statements are not subject to verification - they are opinion. There is probably no liability here.

**Interference with prospective economic advantage** - wrongful interference with plaintiffs prospective business opportunity.

There was no doubt an interference with Doug's present and future clientele since the business dried up and soon closed. However, Doug will have to show that this was wrongful. He can do this if he can he prevails on any other tort based on the same actions. If not, the general malice with which it was done will be all Doug can present.

This is probably not enough to prevail on this claim.

*boycott / 1st amendment defense*

**False Light** - publication of a statement that puts the plaintiff in a false light that would be highly offensive to a reasonable person.

There was publication here - the picketers marched in front of the business and it seems clear people notice. But the same issue discussed earlier applies here as well.

