

Right of Privacy (“The Right To Be Left Alone”)

4 Separate Torts

Tort: a wrongful act, other than a breach of contract, for which the law gives the injured party some legal remedy, usually money, against the wrongdoer in civil, not criminal court.

- 1) Commercial appropriation of name or likeness (or simply “Appropriation”)
- 2) Public disclosure of embarrassing private facts (or simply “Disclosure”)
- 3) Placing an individual in a false light (or simply “False Light”)
- 4) Intrusion upon physical seclusion (or simply “Intrusion”)

- Recognized in the U.S. for only a little over 100 years.
- Origin credited to the article “The Right of Privacy,” written by **Samuel Warren** and **Louis Brandeis** and published in Harvard Law Review in 1890.
- A slight majority of state, including Illinois, recognize all four privacy torts, either by statute or common law.
- These laws apply to all photographers who may commit torts while taking photos.

I. Appropriation

The use of an individual's name, likeness, or identity for trade or advertising purposes without consent.

- Oldest and best-established form of invasion of privacy.
- Not necessarily related to celebrities.

Elements: **1)** commercial use; **2)** name or likeness; and **3)** lack of consent.

Appropriation Review:

- 1) Is the context commercial, such as a product advertisement, endorsement, or promotion?
- 2) Is someone identified by name, photo, voice, or otherwise?
- 3) Is the person being exploited for commercial gain rather than appearing incidentally?
- 4) Was proper consent obtained by release or otherwise?

II. Disclosure

Public disclosure of non-newsworthy, embarrassing private facts that would be offensive to a reasonable person.

- Truly private “facts.”
- Truth is no defense as in defamation.
- With few exceptions, events in public places are fair game.
- *Sports Illustrated* case
- Hinges greatly upon prevailing mores of society, which are, subject to change and interpretation.

Elements: 1) disseminated private facts; 2) non-newsworthy; and 3) highly offensive.

Disclosure Review:

- 1) Has publicity already been given?
- 2) Would the publicity be highly offensive or embarrassing to a reasonable person?
- 3) Is the disclosed information of a legitimate public interest?

III. False Light

Representation of an individual in a false and highly offensive manner before the public.

Elements: **1)** publication of false information to the public; and **2)** in a highly offensive manner.

3 categories:

1) Distortion **2) Embellishment** **3) Fictionalization**

- Similar to **defamation**--both torts involve the dissemination of false information.
- **False light** compensates for embarrassment or anguish; **defamation** compensates for damage to reputation.

False Light Review:

- 1)** Has the person been placed before the public in a false light?
- 2)** Would the false portrayal be highly offensive to a reasonable person?
- 3)** Did the communicator act with negligence or, if the subject is a public person, with reckless disregard for the truth?

IV. Intrusion

Intentional invasion of a person's physical seclusion or private affairs in a manner that would be highly offensive to a reasonable person.

Elements: **1)** intentional invasion; **2)** of another's seclusion; and **3)** highly offensive.

- Does not involve **publication**.
- Often goes hand in hand with a **trespass** claim.
- Threshold question: was the individual in a place where he or she could reasonably expect privacy? Stated another way, is there a reasonable expectation of privacy?

****Rule**: a reasonable expectation of privacy does not exist on public sidewalks, parks, beaches, department stores, or in open dining rooms of restaurants.

Intrusion Review:

- 1) Is the seclusion intentionally intruded upon, either physically or otherwise?
- 2) Would the intrusive conduct be highly offensive to a reasonable person?
- 3) Does this person have a reasonable expectation of solitude or seclusion, such as would be found in a private residence?

V. Other Privacy Torts: Intentional Infliction of Emotional Distress

Typically, privacy lawsuits involve 2 or more privacy torts as well as other torts such as trespass, fraud, or **intentional infliction of emotional distress**.

- The most prevalent of these other torts is i.i.e.d.
- Outrageous conduct that is calculated to cause, and does actually cause severe mental or emotional distress.
- Plaintiff must prove severe emotional distress.
- *Hustler v. Falwell* case