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[Invasion of Privacy in California](#)

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In California, generally, there are four types of invasion of privacy causes of action: 1. Public Disclosure of Private Facts; 2. Intrusion into Private Matters; 3. Misappropriation of Person's Name or Likeness; and 4. Portraying a Person in a False Light. In this Article, we explore elements of such causes of action and provide some examples for clarification and exposition.

1. PUBLIC DISCLOSURE OF PRIVATE FACTS

The elements of tort of Public Disclosure of Private Facts are: 1. public disclosure of a 2. private fact, 3. that would be offensive and objectionable to a reasonable person, and 4. that is not a legitimate public concern or interest. See Catsouras v Department of Cal. Highway Patrol (2010) 181 CA4th 856, 874, 104 CR3d 352.

To ascertain what line would divide what is a legitimate public interest or concern and what is not, courts have stated that "the publicity ceases to be the giving of information to which the public is entitled, and becomes a morbid and sensational prying into private lives for its own sake, with which a reasonable member of the public, with decent standards, would say that he had no concern." Virgil v Time, Inc. (9th Cir 1975) 527 F2d 1122, 1129. In other words, morbid and sensational eavesdropping or gossip serves no legitimate public interest and is not deserving of protection. Catsouras, 181 CA4th at 874.

Importantly, this is also difficult to ascertain what facts are private whose disclosure is deemed actionable under this tort. However, the following factors might be helpful in such determination:

- Whether the fact is newsworthy
- Whether the fact is widely known



EXAMPLES OF PUBLIC DISCLOSURE OF PRIVATE FACTS

A. SEXUAL ORIENTATION: In Sipple v Chronicle Publ'g Co. (1984) 154 CA3d 1040, 201 CR 665, the plaintiff was a man who helped to thwart an assassination attempt on the life of the President of the United States. Two newspapers disclosed plaintiff's homosexuality. The trial court determined that plaintiff's sexual orientation was not a private fact and granted summary judgment, which was affirmed on appeal.

B. DISSEMINATION OF DECAPITATION IMAGES. The case of Catsouras v Department of Cal. Highway Patrol (2010) 181 CA4th 856, 104 CR3d 352, involved a public disclosure of private facts over the Internet. A young woman was decapitated in an automobile accident investigated by two officers of the California Highway Patrol. During the course of the investigation, the officers took photographs of the victim, and later disseminated these photographs to friends and to members of the public, on Halloween, for "shock value." The court found that the foreseeable impact of the death images on the decedent's relatives satisfied the requirements of (181 CA4th at 870):

- The dissemination of private facts;
- A disclosure that would be offensive to reasonable persons; and
- The absence of a legitimate public concern.

2. INTRUSION INTO PRIVATE MATTERS

The elements of intrusion into private matters are (Miller v National Broadcasting Co. (1986) 187 CA3d 1463, 232 CR 668):

1. An intentional intrusion, physical or otherwise
2. into plaintiff's private life, seclusion or solitude
3. that would be highly objectionable to a reasonable person; and
4. it is the cause of an adverse effect on the plaintiff.

Despite the fact that the elements of this tort seem to be spuriously straightforward, delineation of such elements often proves difficult. Therefore, most cases seeking to apply these elements to the facts of a case tend to be fact-specific and not precedent driven.

EXAMPLES OF INTRUSION INTO PRIVATE MATTERS

A. In Miller v National Broadcasting Co. (1986) 187 CA3d 1463, 232 CR 668, a television camera crew, without permission, entered the home of a man who had suffered a heart attack, to film a story about the work of paramedics who administer lifesaving techniques. The man later died. The television station used portions of the film in the nightly news and in advertising a "mini-documentary" about the paramedics' work. 187 CA3d at 1469. The court held that "reasonable people" could regard the camera crew's intrusion into plaintiff's husband's bedroom



"at a time of vulnerability and confusion occasioned by his seizure as 'highly offensive' conduct," thus establishing an essential element of invasion of privacy by intrusion. 187 CA3d at 1484.

B. In Sanders v American Broadcasting Cos. (1999) 20 C4th 907, 85 CR2d 909, Plaintiff prevailed at trial on a claim for invasion of privacy by intrusion, after a reporter, posing as a coworker, covertly videotaped and recorded plaintiff's workplace conversations. On appeal, the court reversed the judgment for plaintiff, holding that because coworkers could overhear the workplace conversations, plaintiff had no reasonable expectation in their privacy. The supreme court reversed, finding a valid claim for intrusion and holding that a plaintiff need not expect complete privacy for plaintiff to state a cause of action. That plaintiff did not have an action for violation of Pen C §632 did not necessarily bar him from a common law action for intrusion. 20 C4th at 924.

3. PORTRAYING A PERSON IN A FALSE LIGHT

Portraying a Person in a False Light entails:

1. Defendant's dissemination of information;
2. that may be false or erroneous;
3. that places plaintiff in a derogatory and false light; and
4. that would be offensive to a reasonable person

It is inferred from relatively few cases involving Portraying a Person in a False Light that a publicized claim, as may be true, still might present a false impression in the context of other information, thus portraying plaintiff in a false light. In such scenario, such facts, even if true, might still be misleading since they lead to incomplete or selective inferences about the plaintiff.

EXAMPLE OF PORTRAYING A PERSON IN A FALSE LIGHT

In M.G. v Time Warner, Inc. (2001) 89 CA4th 623, 107 CR2d 504, stories about the coach of an athletic team who was convicted of child molestation also included a photograph of a Little League team that the convicted child molester had coached. As to the "false light" claim, the court of appeal held that some of the plaintiffs "may be able to prove a 'false light' claim. The 'false light' tort applies, if at all, to the players who were not molested and, secondarily, to the two assistant coaches." 89 CA4th at 636. This was because "the article and the program could reasonably be interpreted as reporting that some or all the players in the photograph had been molested." 89 CA4th at 636.

4. MISAPPROPRIATION OF PERSON'S NAME OR LIKENESS

Misappropriation of a person's name or likeness is the unwarranted unauthorized publication of that person's name, photograph or likeness that causes an injury. Hence, the elements of cause of action for tort of misappropriation of a person's name or likeness are (Eastwood v Superior Court (1983) 149 CA3d 409, 417, 198 CR 342) :



1. Appropriation of a person's name or likeness;
2. to the defendant's advantage, commercially or otherwise;
3. without the plaintiff's consent; and
4. causing injury to the plaintiff.

EXAMPLE FOR MISAPPROPRIATION

In Melvin v Reid (1931) 112 CA 285, 291, 297 P 91, plaintiff was a woman who had been a prostitute and had been tried and acquitted of murder. After the acquittal, she "became entirely rehabilitated," got married, "lived an exemplary, virtuous, honorable and righteous life," and "made many friends who were not aware of the incidents of her earlier life." 112 CA at 286. Years later, the defendants produced and released a motion picture based on plaintiff's past life, using her maiden name and advertising that the movie reflected "the true story of the unsavory incidents" in her life. 112 CA at 286. As a result, plaintiff's friends abandoned her and she was exposed to "obloquy, contempt, and ridicule, causing her grievous mental and physical suffering." 112 CA at 286. The court held that the use of incidents from a person's life in a motion picture "is in itself not actionable," especially because many of the incidents "appeared in the records of [plaintiff's] trial for murder, which is a public record, open to the perusal of all." 112 CA at 290. Moreover, the court ruled, there is no "property right in the story of one's life." 112 CA at 292. Rather, it was the use of plaintiff's "true name in connection with the incidents of her former life in the plot and advertisements" that was found to be "unnecessary and indelicate, and a [willful] and wanton disregard of that charity which should actuate us in our social intercourse and which should keep us from unnecessarily holding another up to the scorn and contempt of upright members of society." 12 CA at 291.

SALIENT NOTE

This article NEITHER supplants NOR supplements the breadth or depth of such rarefied topic. In fact, this article ONLY provides a rudimentary analysis of such esoteric subject matter.

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