



False Light, Disclosure, and Outrage Torts

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Some general notes about false light, disclosure, and outrage:

- They are available for natural, living persons only - not for corporations
- Much of defamation doctrine applies
 - Identification of plaintiff
 - Fact vs. opinion
 - Substantial truth (but not for disclosure)
- The First Amendment can substantially limit any of these torts
 - State action hurdle overcome a la *NYT v. Sullivan*

False Light

The Elements:

1. A public statement
2. Made with actual malice
3. Placing the plaintiff in a false light
4. That is highly offensive to the reasonable person

False Light

Defenses:

- Essentially the same as for defamation
- So, for example:
 - A public figure will have to prove actual malice.*
 - A private figure, if a matter of public concern, must prove actual malice or negligence + special damages.*

*That is, if actual malice is not required as a prima facie element, which it generally, but not always, is.

Disclosure

The Elements:

1. A public disclosure
2. Of private facts
3. That is highly offensive to the reasonable person

Disclosure

Defenses:

- Legitimate public interest or concern
 - a/k/a “newsworthiness privilege”
 - First Amendment requires this, even if common law in a jurisdiction would not

Outrage

(a/k/a Intentional Infliction of Emotional Distress)

The Elements:

1. Intentional or reckless conduct that is
2. Extreme and outrageous
3. Causing severe emotional distress

Review

Intrusion

The Elements:

1. Physical or other intrusion
2. Into a zone in which the plaintiff has a reasonable expectation of privacy
3. Which is highly offensive to the reasonable person



Right of Publicity

The Elements:

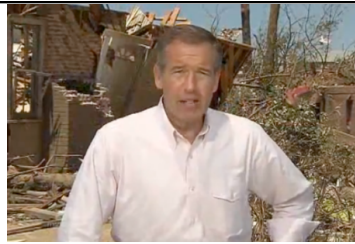
1. The commercial use
2. Of a person's name, voice, likeness, image, or other indicia of identity

The Indignancy Matrix

	To how many?	True or false?	Highly offensive?	Intent requirement?	After death?
Intrusion	n/a	n/a	yes	intent	n/a
Disclosure	public	true	yes	intent	no
False light	public	false	yes	actual malice	no
Defamation	1	false	no	[complex]	no
Outrage / IIED	n/a	n/a	yes+ <small>(extreme & outrageous)</small>	intent	n/a
Publicity right	commercial	either	no	none	often

Realotheticals

Brian Williams
Realothetical



Daily Times Democrat v. Graham

(Ala. 1964)

Woman emerges from a fun house at the county fair. A jet of compressed air blows up her skirt above her waist. A newspaper photographer captures a photo of the woman waist down bare except for her underwear. The photo is run without the woman's consent on the front page a few days later.

What cause of action? Disclosure

Prima facie case? Yes.

Paper says it was newsworthy because it related to a story about the county fair. **Privileged?** No.

Court: "We can see nothing of legitimate news value in the photograph. Certainly it discloses nothing as to which the public is entitled to be informed."

Sipple v. Chronicle

(Cal. App. 1984)

Private citizen and ex-Marine Oliver Sipple becomes a national hero when he foils the attempted assassination of President Ford by grabbing the arm of Sara Jane Moore as she was about to shoot. Columnist Herb Caen outed Sipple as gay.

What cause of action? Disclosure

Prima facie case? [close question]

Argument is that it was newsworthy to dispel false public perception of gay men. **Privileged?** Yes.

Court: Newsworthiness value from from legitimate consideration "to dispel the false public opinion that gays were timid, weak, and unheroic figures."