



# Privacy Torts, Other Torts in Context, and the Indignancy Matrix

Torts  
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Konemark  
Most rights sharable

## Privacy Torts

- Intrusion
- Public Disclosure
- False Light
- Appropriation / Right of Publicity

# Privacy Torts

- Intrusion 
- Public Disclosure 
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## 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

# Disclosure

The Elements:

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

# False Light

The Elements:

1. A public statement
2. Made with actual malice
3. Placing the plaintiff in
4. A false light
5. 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.

## 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*
- § 230 applies

# Right of Publicity

*(a/k/a "Appropriation" or "Commercial Misappropriation")*

The Elements:

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

**NOTE:** This blackletter formulation is overbroad. The scope of the doctrine is greatly limited by:

- First Amendment freedom of expression
- Copyright preemption
- Ad-hoc "spin"

**Three circumstances where rights of publicity actions are commonly recognized:**

- **Endorsement/advertising**
- **Merchandising**
- **"Virtual impressment"**

## Think about these together:

(they often travel in the same fact patterns):

- Intrusion
- Public Disclosure
- False Light
- Appropriation / Right of Publicity
- IIED (Outrage)
- Defamation

# The Indignancy Matrix

## The Indignancy Matrix

	To how many?	True or false?	Highly offensive?	Intent requirement?	After death?
Intrusion					
Disclosure					
False light					
Defamation					
Outrage / IIED					
Publicity right					

## 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 &amp; outrageous)</small>	intent or recklessness	n/a
Publicity right	commercial	either	no	none	often