





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

Torts
Eric E. Johnson
ericejohnson.com



Konemark
Most rights sharable

Privacy Torts

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

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:

- These are available for natural, living persons only - not for corporations
- The First Amendment can substantially limit any of these torts
 - State action hurdle overcome a la *NYT v. Sullivan*
- § 230 applies as a defense
- Much of defamation doctrine can apply
 - especially for false light (identification of plaintiff, fact vs. opinion, substantial truth as a defense)

Think about these together:

(they often travel in the same fact patterns):

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

Privacy
Torts

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	<i>[complex]</i>	no
Outrage / IIED	n/a	n/a	yes+ <small>(extreme & outrageous)</small>	intent or recklessness	n/a
Publicity right	commercial	either	no	none	often