



Privacy Torts

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Konomark
Most rights sharable

Privacy Torts

- Intrusion
- Public Disclosure
- False Light
- Right of Publicity (Appropriation)

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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:

- 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

The
**Indignancy
Matrix**

The Indignancy Matrix

	Communicated to how many?	Communicated statement is true or false?	Must it be highly offensive?	State-of-mind requirement?	Cause of action after death?
Intrusion					
Disclosure					
False light					
Defamation					
IIED					
Right of publicity					

The Indignancy Matrix

	Communicated to how many?	Communicated statement is true or false?	Must it be highly offensive?	State-of-mind requirement?	Cause of action 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	one person	false	no <small>(instead, must be reputation harming)</small>	<small>[it's complicated!]</small>	no
IIED	N/A	N/A	yes+ <small>(extreme & outrageous)</small>	intent or recklessness	N/A
Right of publicity	<small>the usual requirement is just that it be</small> commercial	either	no	none	often

**See the Defamation Flowchart.*