Privacy and the Media 1

Intrusion Upon Seclusion and Public Disclosure of Private Facts

Restatement of Torts

- § 652A General Principle

(1) One who invades the right of privacy of another is subject to liability for the resulting harm to the interests of the other.
(2) The right of privacy is invaded by
- **(a) unreasonable intrusion upon the seclusion of another, as stated in § 652B; or**
- **(b) appropriation of the other's name or likeness, as stated in § 652C; or**
- **(c) unreasonable publicity given to the other's private life, as stated in § 652D; or**
- **(d) publicity that unreasonably places the other in a false light before the public, as stated in § 652E.**

Intrusion vs. Disclosure

- How do the privacy torts compare?
  - Purpose
  - Elements
  - Privileges/Defenses (especially First Amendment)

§ 652B Intrusion Upon Seclusion

One who intentionally intrudes, physically or otherwise, upon the solitude or seclusion of another or his private affairs or concerns, is subject to liability to the other for invasion of his privacy, if the intrusion would be highly offensive to a reasonable person.

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- *Nader v. General Motors Corp.*
- *Dietemann v. Time*
- *Desnick v. American Broadcasting Co.*
- *Shulman v. Group W. Prod'ns, Inc.*

Nader v. General Motors Corp.

- Nader alleges that GM started a "campaign of intimidation," including
  - interviewing acquaintances to cast aspersions
  - surveillance in public places
  - accosting with women to entrap him in relations
  - harassing phone calls
  - tapping phone
- Which of these, if proved, can support an intrusion complaint?
- Must GM publish the info or intend to?

Dietemann v. Time, Inc.

- Life Magazine, working with DA's office, enters plaintiff's home, from which he practices "quack" healing. Photographs with hidden camera and broadcasts conversations with hidden mic.
  - Are they safe because invited in?
  - Why does it matter that Dietemann doesn't run this as a commercial enterprise? (contrast Desnick)
  - Why no 1st A privilege to trespass?

Desnick v. ABC

- ABC's Primetime Live investigates Desnick Eye Center for performing unnecessary eye surgery, entering pretending to be patients.
  - What's Posner's meaning in discussing different kinds of "frauds"?
    - recall Posner's skepticism of privacy "deception"
  - Is Desnick distinguishable from Dietemann?

Intentional Intrusion upon Solitude or Seclusion

- Plaintiff's bank records are examined, which plaintiff discovers a month later?
- The deed to plaintiff's home, revealing how much she paid, is examined?
- A stalker bursts into plaintiff's living room?
- A stalker bursts into plaintiff's department store?

Highly offensive to a reasonable person

- Our old torts friend, the "reasonable person":
  - Plaintiff has a nervous condition and goes into fits every time someone knocks on the door?
  - Plaintiff doesn't like to be seen drinking, and is caught on film at a local bar?

Publicity Given to Private Life

- Rest. 2d of Torts § 652D

One who gives publicity to a matter concerning the private life of another is subject to liability to the other for invasion of his privacy, if the matter publicized is of a kind that

(a) would be highly offensive to a reasonable person, and

(b) is not of legitimate concern to the public.

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- **Without conflict with the First Amendment.**

- *Gill v. Hearst Publ. Co.*
- *Daily Times Democrat v. Graham*
- *Miller v. Motorola, Inc.*
- *Sipple v. Chronicle Publ. Co.*
- *Shulman v. Group W. Prod'ns, Inc.*

Gill v. Hearst Publ. Co.

- Mr. and Mrs. Gill are photographed "in an affectionate pose" in their farmers' market booth. Harpers uses the photo to illustrate a generic feature about "love."
  - Offensive "in light of 'ordinary sensibilities'"?
  - Can there be "disclosure" of something already made public to a non-private group?
  - What would be the consequences of an alternate rule?

Daily Times Democrat v. Graham

- Graham is photographed leaving a funhouse, with her skirts blowing. Local paper prints the picture over a story about the Cullman County Fair.
  - Who determines "legitimate news value"?
  - Wasn't this public too?
  - Does involuntariness of the situation matter?
  - What would be the consequences of an alternate rule?

Miller v. Motorola, Inc.

- Someone spreads the news of Miller's mastectomy among fellow employees. Miller suffers physical and emotional distress.
  - Publicity?
  - Lior Strahilevitz: Policy should follow social network theory, not numbers but the likelihood of further disclosure

Highly offensive to the reasonable person

- The “reasonable person's” offense at disclosure:
  - Plaintiff has religious objection to being photographed?
  - Plaintiff sits with her boyfriend in a public café, but doesn’t want her out-of-state parents to know of the relationship?
  - Plaintiff is leaving a drug detox center?
  - Plaintiff is stumbling out of a bar?

Private

- What about the involuntary public figure?
  - Plaintiff is caught on the way out of a funhouse?
  - Plaintiff is rescued from a serious car accident?
  - Plaintiff’s bedroom window is open and visible from across the street?

Publicity

- Disclosure to a friend?
- Disclosure to family?
- Disclosure to company?

- Is it a numbers test? Should it be?

Not of legitimate public concern

- Who decides what’s “legitimate public concern”?
- Is identification a matter of public concern?

Intrusion vs. Disclosure

- How do the elements of the torts compare?
  - Purpose
  - Elements
  - Privileges/Defenses (especially First Amendment)

Sipple v. Chronicle Publ. Co.

- Sipple knocks the gun away from a would-be assassin of President Ford. San Franciso Chronicle outs him as gay in its report on his heroic act and Ford’s alleged failure to thank.
  - Private fact?
  - Offensive to reasonable person?
  - Newsworthy?

Shulman v. Group W. Prod'ns, Inc.

- As Shulman is being rescued from a car accident, a television network records her comments and appearance for “On Scene: Emergency Response” broadcast, as she says things like “I want to die.”
  - Newsworthy?
  - Is identification necessary to the newsworthiness?
    - In the age of Jayson Blair and NYT policy on anonymity?

First Amendment

- Does “newsworthiness” cover the First Amendment requirements?