

Defamation - Constitutional Privilege

- Note that freedom of speech is not really relevant here, because the First Amendment does not protect false, defamatory statements
- However, because of “freedom of the press” concerns, the Supreme Court has ruled that if the plaintiff is a “public figure” that plaintiff should have to shoulder an extra burden when bringing a defamation action (this is primarily to alleviate the “chilling effect” defamation actions would otherwise have on the press’ coverage of important events).
- When the plaintiff is a public figure and the defendant is a media outlet:
 - 1) The plaintiff must affirmatively prove falsity (he has the burden) to prevail in a defamation action
 - 2) The plaintiff must prove “fault” on the part of the defendant

Defamation - Constitutional Privilege (cont.)

3 scenarios:

1) Where the plaintiff is a “public figure,” the plaintiff has to show “actual malice” to recover any damages

[“actual malice” means knowledge that the statement is false or reckless disregard for the truth]

2) Where the plaintiff is a “private figure” but the subject matter involved is of a “public concern,” actual malice is only required to receive punitive or “presumed” (“general”) damages. However, even to receive compensatory damages, some level of negligence (fault) is required

3) Where the plaintiff is a “private figure” and the subject matter involved is not of a “public concern,” there is no Constitutional limitation on the award of damages (regular defamation rules apply)

Invasion of Privacy - Intrusion Upon Seclusion

Elements:

- An intrusion that would be highly offensive to a reasonable person
- By actions done intentionally or negligently by the defendant
- That caused the plaintiff's privacy to be violated and thus caused the plaintiff some level of harm (including emotional distress or embarrassment)

Examples

- Wiretapping phone lines
- Hidden cameras, etc.

Invasion of Privacy – Public Disclosure of Private Facts

Elements:

- Highly offensive disclosure
- To the public (not just one or two people)
- That there was no legitimate public interest in knowing
- That the defendant was at fault in the disclosure

Unlike defamation, truth is not a defense

Other issues

- Must not be “newsworthy”
- Consent is an absolute defense
- Must not already be contained in a public document

QUIZ TIME!

Invasion of Privacy – Appropriation of Name or Likeness

Elements:

- Use of plaintiffs name or likeness
- For commercial purposes

Newsworthiness exception: If the defendant is simply reporting news, that's not a tort even if it also makes a profit by using the plaintiff's name or likeness

Invasion of Privacy - False Light

- Publishing a statement about or concerning the plaintiff, that
- Implies something false about the plaintiff or sheds a false light on the plaintiff

(does not require specific allegations, as does defamation)

Constitutional Privileges for the media apply to the same extent as with defamation!