

## Excerpts from Restatement (Second) of Torts (1977)

### § 652A Invasion of Privacy, General Principles

**(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.**

**Comment:**

*a. History.* The right of privacy has been defined as the right to be let alone. Prior to 1890 no English or American court had ever expressly recognized the existence of the right, although there were decisions that in retrospect appear to have protected it in one manner or another. In 1890 a noted article, by Warren and Brandeis, *The Right to Privacy*, in 4 *Harv.L.Rev.* 193, reviewed these cases, and concluded that they were in reality based upon a broader principle that was entitled to separate recognition. Although this conclusion was first rejected in Michigan and New York, it was accepted by the Georgia court in *Pavesich v. New England Life Insurance Co.* (1905) 122 Ga. 190, 50 S.E. 68. Following that decision, the existence of a right of privacy is now recognized in the great majority of the American jurisdictions that have considered the question.

*b. Forms of invasion.* As it has developed in the courts, the invasion of the right of privacy has been a complex of four distinct wrongs, whose only relation to one another is that each involves interference with the interest of the individual in leading, to some reasonable extent, a secluded and private life, free from the prying eyes, ears and publications of others. Even this nexus becomes tenuous in the case of the appropriation of name or likeness covered by § 652C, which appears rather to confer something analogous to a property right upon the individual. This Section states the four forms of invasion thus far recognized as tortious, and refers to following Sections in which each is dealt with.

*c.* Thus far, as indicated in the decisions of the courts, the four forms of invasion of the right of privacy stated in this Section are the ones that have clearly become crystallized and generally been held to be actionable as a matter of tort liability. Other forms may still appear, particularly since some courts, and in particular the Supreme Court of the United States, have spoken in very broad general terms of a somewhat undefined "right of privacy" as a ground for various constitutional decisions involving indeterminate civil and personal rights. These and other references to the right of privacy, particularly as a protection against various types of governmental interference and the compilation of elaborate written or computerized dossiers, may give rise to the expansion of the four forms of tort liability for invasion of privacy listed in this Section or the establishment of new forms. Nothing in this Chapter is intended to exclude the possibility of future developments in the tort law of privacy.

*d. Overlapping of sections.* It is possible and not infrequent for privacy to be invaded by the same act or by a series of acts in two or more of the ways stated in §§ 652B to 652E.

When this occurs, the plaintiff may maintain his action for invasion of privacy upon any or all of the grounds available to him. He may, however, have only one recovery of his damages upon one or all of the different grounds.

- **Illustration:**

- 1. A breaks and enters B's home, steals a photograph of B, and publishes it to advertise his whiskey, together with false statements about B that would be highly objectionable to a reasonable man. A is subject to liability to B for invasion of privacy by intrusion upon B's seclusion, as stated in § 652B; by the appropriation of his likeness, as stated in § 652C; by giving publicity to B's private photograph, as stated in § 652D; and by giving publicity to B that places him in a false light before the public, as stated in § 652E. B may proceed upon any or all of these grounds, but he may have only one recovery of damages for invasion of privacy.

### § 652B Intrusion on 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.**

**Comment:**

*a.* The form of invasion of privacy covered by this Section does not depend upon any publicity given to the person whose interest is invaded or to his affairs. It consists solely of an intentional interference with his interest in solitude or seclusion, either as to his person or as to his private affairs or concerns, of a kind that would be highly offensive to a reasonable man.

*b.* The invasion may be by physical intrusion into a place in which the plaintiff has secluded himself, as when the defendant forces his way into the plaintiff's room in a hotel or insists over the plaintiff's objection in entering his home. It may also be by the use of the defendant's senses, with or without mechanical aids, to oversee or overhear the plaintiff's private affairs, as by looking into his upstairs windows with binoculars or tapping his telephone wires. It may be by some other form of investigation or examination into his private concerns, as by opening his private and personal mail, searching his safe or his wallet, examining his private bank account, or compelling him by a forged court order to permit an inspection of his personal documents. The intrusion itself makes the defendant subject to liability, even though there is no publication or other use of any kind of the photograph or information outlined.

- **Illustrations:**

- 1. A, a woman, is sick in a hospital with a rare disease that arouses public curiosity. B, a newspaper reporter, calls her on the telephone and asks for an interview, but she refuses to see him. B then goes to the hospital, enters A's room and over her objection takes her photograph. B has invaded A's privacy.
- 2. A, a private detective seeking evidence for use in a lawsuit, rents a room in a house adjoining B's residence, and for two weeks looks into the windows of B's upstairs bedroom through a telescope taking intimate pictures with a telescopic lens. A has invaded B's privacy.
- 3. The same facts as in Illustration 2, except that A taps B's telephone wires and installs a recording device to make a record of B's conversations. A has invaded B's privacy.

- 4. A is seeking evidence for use in a civil action he is bringing against B. He goes to the bank in which B has his personal account, exhibits a forged court order, and demands to be allowed to examine the bank's records of the account. The bank submits to the order and permits him to do so. A has invaded B's privacy.
  - 5. A, a professional photographer, seeking to promote his business, telephones B, a lady of social prominence, every day for a month, insisting that she come to his studio and be photographed. The calls are made at meal times, late at night and at other inconvenient times, and A ignores B's requests to desist. A has invaded B's privacy.
- c. The defendant is subject to liability under the rule stated in this Section only when he has intruded into a private place, or has otherwise invaded a private seclusion that the plaintiff has thrown about his person or affairs. Thus there is no liability for the examination of a public record concerning the plaintiff, or of documents that the plaintiff is required to keep and make available for public inspection. Nor is there liability for observing him or even taking his photograph while he is walking on the public highway, since he is not then in seclusion, and his appearance is public and open to the public eye. Even in a public place, however, there may be some matters about the plaintiff, such as his underwear or lack of it, that are not exhibited to the public gaze; and there may still be invasion of privacy when there is intrusion upon these matters.

### § 652D Publicity Given to Private Life

- **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.

#### **Special Note on Relation of § 652D to the First Amendment to the Constitution.**

This Section provides for tort liability involving a judgment for damages for publicity given to true statements of fact. It has not been established with certainty that liability of this nature is consistent with the free-speech and free-press provisions of the First Amendment to the Constitution, as applied to state law through the Fourteenth Amendment. Since 1964, with the decision of *New York Times Co. v. Sullivan*, 376 U.S. 254, the Supreme Court has held that the First Amendment has placed a number of substantial restrictions on tort actions involving false and defamatory publications. These restrictions are treated in Division Five of this Restatement. See especially §§ 580A, 580B and 621.

The Supreme Court has rendered several decisions on invasion of the right of privacy involving this Section and § 652E. The case of *Cox Broadcasting Co. v. Cohn* (1975) 420 U.S. 469, holds that under the First Amendment there can be no recovery for disclosure of and publicity to facts that are a matter of public record. The case leaves open the question of whether liability can constitutionally be imposed for other private facts that would be highly offensive to a reasonable person and that are not of legitimate concern. Pending further elucidation by the Supreme Court, this Section has been drafted in accordance with the current state of the common law of privacy and the constitutional restrictions on that law that have been recognized as applying.

#### **Comment:**

*a. Publicity.* The form of invasion of the right of privacy covered in this Section depends upon publicity given to the private life of the individual. "Publicity," as it is used in this Section, differs from "publication," as that term is used in § 577 in connection with liability for defamation. "Publication," in that sense, is a word of art, which includes any communication by the defendant to a third person. "Publicity," on the other hand, means that the matter is made public, by communicating it to the public at large, or to so many persons that the matter must be regarded as substantially certain to become one of public knowledge. The difference is not one of the means of communication, which may be oral, written or by any other means. It is one of a communication that reaches, or is sure to reach, the public.

Thus it is not an invasion of the right of privacy, within the rule stated in this Section, to communicate a fact concerning the plaintiff's private life to a single person or even to a small group of persons. On the other hand, any publication in a newspaper or a magazine, even of small circulation, or in a handbill distributed to a large number of persons, or any broadcast over the radio, or statement made in an address to a large audience, is sufficient to give publicity within the meaning of the term as it is used in this Section. The distinction, in other words, is one between private and public communication.

- **Illustrations:**

- 1. A, a creditor, writes a letter to the employer of B, his debtor, informing him that B owes the debt and will not pay it. This is not an invasion of B's privacy under this Section.
- 2. A, a creditor, posts in the window of his shop, where it is read by those passing by on the street, a statement that B owes a debt to him and has not paid it. This is an invasion of B's privacy.
- 3. A, a motion picture exhibitor, wishing to advertise a picture to be exhibited, writes letters to a thousand men in which he makes unprivileged and objectionable statements concerning the private life of B, an actress. This is an invasion of B's privacy....
  - *b. Private life.* The rule stated in this Section applies only to publicity given to matters concerning the private, as distinguished from the public, life of the individual. There is no liability when the defendant merely gives further publicity to information about the plaintiff that is already public. Thus there is no liability for giving publicity to facts about the plaintiff's life that are matters of public record, such as the date of his birth, the fact of his marriage, his military record, the fact that he is admitted to the practice of medicine or is licensed to drive a taxicab, or the pleadings that he has filed in a lawsuit. On the other hand, if the record is one not open to public inspection, as in the case of income tax returns, it is not public, and there is an invasion of privacy when it is made so.
  - Similarly, there is no liability for giving further publicity to what the plaintiff himself leaves open to the public eye. Thus he normally cannot complain when his photograph is taken while he is walking down the public street and is published in the defendant's newspaper. Nor is his privacy invaded when the defendant gives publicity to a business or activity in which the plaintiff is engaged in dealing with the public. On the other hand, when a photograph is taken without the plaintiff's consent in a private place, or one already made is stolen from his home, the plaintiff's appearance that is made public when the picture appears in a newspaper is still a private matter, and his privacy is invaded.

- Every individual has some phases of his life and his activities and some facts about himself that he does not expose to the public eye, but keeps entirely to himself or at most reveals only to his family or to close friends. Sexual relations, for example, are normally entirely private matters, as are family quarrels, many unpleasant or disgraceful or humiliating illnesses, most intimate personal letters, most details of a man's life in his home, and some of his past history that he would rather forget. When these intimate details of his life are spread before the public gaze in a manner highly offensive to the ordinary reasonable man, there is an actionable invasion of his privacy, unless the matter is one of legitimate public interest.
- **Illustrations:**
  - 4. While A is walking on the street, B takes a motion picture of a scene and activities on the street, which he exhibits to the public in a newsreel. The picture shows A walking past the camera with a rip in the seat of his trousers. This is not an invasion of A's privacy.
  - 5. Sitting at a sidewalk cafe in a public market, A puts his arm around his wife and kisses her. A reporter from B Newspaper takes a photograph of the incident, which the newspaper publishes under the caption, "Love in the Market." This is not an invasion of A's privacy.
  - 6. A, an undistinguished hardware merchant, is engaged in an adulterous affair with the wife of one of his friends. B Magazine buys from private detectives a picture of the pair in a hotel room in a state of dishabille and publishes it. B has invaded A's privacy.
  - 7. A gives birth to a child with two heads, which immediately dies. A reporter from B Newspaper asks A's permission to photograph the body of the child, which is refused. The reporter then bribes hospital attendants to permit him, against A's orders, to take the photograph, which is published in B Newspaper with an account of the facts, naming A. B has invaded A's privacy.

**Comment on Clause (a):**

*c. Highly offensive publicity.* The rule stated in this Section gives protection only against unreasonable publicity, of a kind highly offensive to the ordinary reasonable man. The protection afforded to the plaintiff's interest in his privacy must be relative to the customs of the time and place, to the occupation of the plaintiff and to the habits of his neighbors and fellow citizens. Complete privacy does not exist in this world except in a desert, and anyone who is not a hermit must expect and endure the ordinary incidents of the community life of which he is a part. Thus he must expect the more or less casual observation of his neighbors as to what he does, and that his comings and goings and his ordinary daily activities, will be described in the press as a matter of casual interest to others. The ordinary reasonable man does not take offense at a report in a newspaper that he has returned from a visit, gone camping in the woods or given a party at his house for his friends. Even minor and moderate annoyance, as for example through public disclosure of the fact that the plaintiff has clumsily fallen downstairs and broken his ankle, is not sufficient to give him a cause of action under the rule stated in this Section. It is only when the publicity given to him is such that a reasonable person would feel justified in feeling seriously aggrieved by it, that the cause of action arises.

- **Illustrations:**

- 8. A's newspaper publishes in its column of local events the truthful statement: "Mrs. B did her washing yesterday." This is not an invasion of the privacy of Mrs. B.
- 9. When A's daughter is married, A holds in his home a private wedding, to which only members of the family and a few intimate friends are invited. B Newspaper obtains information from those present and publishes an accurate account and description of the wedding. This is not an invasion of the privacy of A.
- 10. A publishes, without B's consent, a picture of B nursing her child. This is an invasion of B's privacy.
- 11. A is about to give birth to a child, and is told that a caesarian operation will be necessary. She agrees to allow B to make a motion picture of the operation for exhibition to medical students for educational purposes. B exhibits the picture to the public in a commercial theater. This is an invasion of A's privacy.

**Comment on Clause (b):**

*d. Matter of legitimate public concern.* When the matter to which publicity is given is true, it is not enough that the publicity would be highly offensive to a reasonable person. The common law has long recognized that the public has a proper interest in learning about many matters. When the subject-matter of the publicity is of legitimate public concern, there is no invasion of privacy.

This has now become a rule not just of the common law of torts, but of the Federal Constitution as well. In the case of *Cox Broadcasting Co. v. Cohn* (1975) 420 U.S. 469, the Supreme Court indicated that an action for invasion of privacy cannot be maintained when the subject-matter of the publicity is a matter of "legitimate concern to the public." The Court held specifically that the "States may not impose sanctions for the publication of truthful information contained in official court records open to public inspection." Other language indicates that this position applies to public records in general.

It seems clear that the common law restrictions on recovery for publicity given to a matter of proper public interest will now become a part of the constitutional law of freedom of the press and freedom of speech. To the extent that the constitutional definition of a matter that is of legitimate concern to the public is broader than the definition given in any State, the constitutional definition will of course control. In the absence of additional holdings of the Supreme Court, the succeeding Comments are based on decisions at common law.

● **Illustration:**

- 12. A state statute prohibits the public disclosure of the name of a victim of rape. In a news broadcast covering a prosecution for rape, a broadcasting company discloses the name of the victim, who had been identified in the indictment. A State decision awarding damages for invasion of privacy is unconstitutional.

**Comment:**

*e. Voluntary public figures.* One who voluntarily places himself in the public eye, by engaging in public activities, or by assuming a prominent role in institutions or activities having general economic, cultural, social or similar public interest, or by submitting himself or his work for public judgment, cannot complain when he is given publicity that he has sought, even though it may be unfavorable to him. So far as his public appearances and activities themselves are concerned, such an individual has, properly speaking, no right of privacy, since these are no longer his private affairs. (See Comment *b*). Thus an actor, a prize fighter or a public officer has no cause of action when his appearances or

activities in that capacity are recorded, pictured or commented upon in the press. In such a case, however, the legitimate interest of the public in the individual may extend beyond those matters which are themselves made public, and to some reasonable extent may include information as to matters that would otherwise be private. (See Comment *f* below).

*f. Involuntary public figures.* There are other individuals who have not sought publicity or consented to it, but through their own conduct or otherwise have become a legitimate subject of public interest. They have, in other words, become “news.” Those who commit crime or are accused of it may not only not seek publicity but may make every possible effort to avoid it, but they are nevertheless persons of public interest, concerning whom the public is entitled to be informed. The same is true as to those who are the victims of crime or are so unfortunate as to be present when it is committed, as well as those who are the victims of catastrophes or accidents or are involved in judicial proceedings or other events that attract public attention. These persons are regarded as properly subject to the public interest, and publishers are permitted to satisfy the curiosity of the public as to its heroes, leaders, villains and victims, and those who are closely associated with them. As in the case of the voluntary public figure, the authorized publicity is not limited to the event that itself arouses the public interest, and to some reasonable extent includes publicity given to facts about the individual that would otherwise be purely private. (See Comment *g*).

• **Illustrations:**

- 13. A is tried for murder and acquitted. During and immediately after the trial B Newspaper publishes daily reports of it, together with pictures and descriptions of A and accounts of his past history and daily life prior to the trial. This not an invasion of A's privacy.
- 14. A is run down in the street by an automobile and taken to a hospital. B newspaper publishes an account of the accident, together with a picture of A taken by a reporter after the event. This is not an invasion of A's privacy.
- 15. A, a girl twelve years old, gives birth to a child. B Newspaper publishes a report of the event, together with a picture of A and her child. This is not an invasion of A's privacy.
- 16. While A is walking along the street with her husband, he is set upon by thugs and murdered in her presence. B Newspaper publishes an account of the event, with a picture of A. This is not an invasion of A's privacy.
- 17. The police raid a cigar store upon suspicion that gambling activities are conducted there. By prior arrangement with the police, the A Broadcasting Company sets up a television camera and broadcasts the raid. B, who has entered the store to buy a cigar, is caught in the raid, and the television broadcast shows him being questioned by the police. This is not an invasion of A's privacy.

*g. News.* Included within the scope of legitimate public concern are matters of the kind customarily regarded as “news.” To a considerable extent, in accordance with the mores of the community, the publishers and broadcasters have themselves defined the term, as a glance at any morning paper will confirm. Authorized publicity includes publications concerning homicide and other crimes, arrests, police raids, suicides, marriages and divorces, accidents, fires, catastrophes of nature, a death from the use of narcotics, a rare disease, the birth of a child to a twelve-year-old girl, the reappearance of one supposed to

have been murdered years ago, a report to the police concerning the escape of a wild animal and many other similar matters of genuine, even if more or less deplorable, popular appeal.

*h. Private facts.* Permissible publicity to information concerning either voluntary or involuntary public figures is not limited to the particular events that arouse the interest of the public. That interest, once aroused by the event, may legitimately extend, to some reasonable degree, to further information concerning the individual and to facts about him, which are not public and which, in the case of one who had not become a public figure, would be regarded as an invasion of his purely private life. Thus the life history of one accused of murder, together with such heretofore private facts as may throw some light upon what kind of person he is, his possible guilt or innocence, or his reasons for committing the crime, are a matter of legitimate public interest. (See Illustration 13 above). On the same basis the home life and daily habits of a motion picture actress may be of legitimate and reasonable interest to the public that sees her on the screen.

The extent of the authority to make public private facts is not, however, unlimited. There may be some intimate details of her life, such as sexual relations, which even the actress is entitled to keep to herself. In determining what is a matter of legitimate public interest, account must be taken of the customs and conventions of the community; and in the last analysis what is proper becomes a matter of the community mores. The line is to be drawn when the publicity ceases to be the giving of information to which the public is entitled, and becomes a morbid and sensational prying into private lives for its own sake, with which a reasonable member of the public, with decent standards, would say that he had no concern. The limitations, in other words, are those of common decency, having due regard to the freedom of the press and its reasonable leeway to choose what it will tell the public, but also due regard to the feelings of the individual and the harm that will be done to him by the exposure. Some reasonable proportion is also to be maintained between the event or activity that makes the individual a public figure and the private facts to which publicity is given. Revelations that may properly be made concerning a murderer or the President of the United States would not be privileged if they were to be made concerning one who is merely injured in an automobile accident.

• **Illustrations:**

- 18. A is tried for sedition. B publishes in his newspaper the fact that during the trial A is employed as a waiter in a Washington hotel where he might possibly overhear conversations of government officers while they are dining. This is not an invasion of A's privacy.
- 19. A is an infant prodigy, who at the age of twelve lectures to leading mathematicians on the fourth dimension. On arriving at adolescence he develops an abnormal dislike for publicity, abandons his mathematical pursuits, obtains employment as an obscure clerk and leads a very secluded life. Twenty years later B Magazine seeks him out and publishes an article on his life history, disclosing his present whereabouts, employment and manner of life, and such matters as his collection of street car transfers and his interest in the lore of an Indian tribe. This is not an invasion of A's privacy.
- 20. A is run down and injured in an automobile accident. A reporter from B Newspaper, investigating the accident, discovers that A is living with a man who is not her husband. B Newspaper publishes that fact in its account of the accident. This may be but is not definitely an invasion of A's privacy.

## § 652E False Light

- **One who gives publicity to a matter concerning another that places the other before the public in a false light is subject to liability to the other for invasion of his privacy, if**
  - (a) **the false light in which the other was placed would be highly offensive to a reasonable person, and**
  - (b) **the actor had knowledge of or acted in reckless disregard as to the falsity of the publicized matter and the false light in which the other would be placed.**

### **Caveat:**

The Institute takes no position on whether there are any circumstances under which recovery can be obtained under this Section if the actor did not know of or act with reckless disregard as to the falsity of the matter publicized and the false light in which the other would be placed but was negligent in regard to these matters.

### **Comment:**

*a. Nature of Section.* The form of invasion of privacy covered by the rule stated in this Section does not depend upon making public any facts concerning the private life of the individual. On the contrary, it is essential to the rule stated in this Section that the matter published concerning the plaintiff is not true. The rule stated here is, however, limited to the situation in which the plaintiff is given publicity. On what constitutes publicity and the publicity of application to a simple disclosure, see § 652D, Comment *a*, which is applicable to the rule stated here.

*b. Relation to defamation.* The interest protected by this Section is the interest of the individual in not being made to appear before the public in an objectionable false light or false position, or in other words, otherwise than as he is. In many cases to which the rule stated here applies, the publicity given to the plaintiff is defamatory, so that he would have an action for libel or slander under the rules stated in Chapter 24. In such a case the action for invasion of privacy will afford an alternative or additional remedy, and the plaintiff can proceed upon either theory, or both, although he can have but one recovery for a single instance of publicity.

It is not, however, necessary to the action for invasion of privacy that the plaintiff be defamed. It is enough that he is given unreasonable and highly objectionable publicity that attributes to him characteristics, conduct or beliefs that are false, and so is placed before the public in a false position. When this is the case and the matter attributed to the plaintiff is not defamatory, the rule here stated affords a different remedy, not available in an action for defamation.

### • **Illustrations:**

- 1. A is an actress. B, seeking to advertise a motion picture, sends out to 1,000 men letters on scented pink feminine stationery, signed with A's name, which invite each man to meet A on a particular evening in front of a designated theater. The language and tone of these letters suggest prior acquaintance and an assignation. B is subject to liability to A for both libel and invasion of privacy.
- 2. A is a taxi driver in the city of Washington. B Newspaper publishes an article on the practices of Washington taxi drivers in cheating the public on fares, and makes use of A's photograph to illustrate the article, with the implication that he is one of the drivers who engages in these practices. A never has done so. B is subject to liability to A for both libel and invasion of privacy.

- 3. A is a renowned poet. B publishes in his magazine a spurious inferior poem, signed with A's name. Regardless of whether the poem is so bad as to subject B to liability for libel, B is subject to liability to A for invasion of privacy.
- 4. A is a Democrat. B induces him to sign a petition nominating C for office. A discovers that C is a Republican and demands that B remove his name from the petition. B refuses to do so and continues public circulation of the petition, bearing A's name. B is subject to liability to A for invasion of privacy.
- 5. A is a war hero, distinguished for bravery in a famous battle. B makes and exhibits a motion picture concerning A's life, in which he inserts a detailed narrative of a fictitious private life attributed to A, including a non-existent romance with a girl. B knows this matter to be false. Although A is not defamed by the motion picture, B is subject to liability to him for invasion of privacy.

### § 652C Appropriation of Name or Likeness

- **One who appropriates to his own use or benefit the name or likeness of another is subject to liability to the other for invasion of his privacy.**

**Comment:**

*a.* The interest protected by the rule stated in this Section is the interest of the individual in the exclusive use of his own identity, in so far as it is represented by his name or likeness, and in so far as the use may be of benefit to him or to others. Although the protection of his personal feelings against mental distress is an important factor leading to a recognition of the rule, the right created by it is in the nature of a property right, for the exercise of which an exclusive license may be given to a third person, which will entitle the licensee to maintain an action to protect it.

*b. How invaded.* The common form of invasion of privacy under the rule here stated is the appropriation and use of the plaintiff's name or likeness to advertise the defendant's business or product, or for some similar commercial purpose. Apart from statute, however, the rule stated is not limited to commercial appropriation. It applies also when the defendant makes use of the plaintiff's name or likeness for his own purposes and benefit, even though the use is not a commercial one, and even though the benefit sought to be obtained is not a pecuniary one. Statutes in some states have, however, limited the liability to commercial uses of the name or likeness.

- **Illustrations:**

- 1. A is an actress, noted for her beautiful figure. B, seeking to advertise his bread, publishes in a newspaper a photograph of A, under the caption, "Keep That Sylph-Like Figure by Eating More of B's Rye and Whole Wheat Bread." B has invaded A's privacy.
- 2. A is the President of the United States. B forms and operates a corporation, engaged in the business of insurance, under the name of A Insurance Company. This is an invasion of A's privacy.
- 3. A, a private detective, seeking to obtain information as to the relations of B's wife with C, impersonates B, and so induces others to disclose to him confidential information that they would not otherwise have disclosed. A has invaded B's privacy.
- 4. A, who has been B's mistress, poses as his common law wife, calling herself Mrs. B. A has invaded the privacy of B, and also of his wife, Mrs. B.

- 5. Without the consent of A, B signs A's name to a telegram that he sends to the governor of the state, urging the governor to veto a bill that B finds objectionable. This is an invasion of A's privacy.
- 6. Without the consent of A, B files suit in the name of A as plaintiff, seeking a judgment advantageous to B. This is an invasion of A's privacy.

*c. Appropriation.* In order that there may be liability under the rule stated in this Section, the defendant must have appropriated to his own use or benefit the reputation, prestige, social or commercial standing, public interest or other values of the plaintiff's name or likeness. It is not enough that the defendant has adopted for himself a name that is the same as that of the plaintiff, so long as he does not pass himself off as the plaintiff or otherwise seek to obtain for himself the values or benefits of the plaintiff's name or identity. Unless there is such an appropriation, the defendant is free to call himself by any name he likes, whether there is only one person or a thousand others of the same name. Until the value of the name has in some way been appropriated, there is no tort.

- **Illustrations:**

- 7. ABC is a noted millionaire philanthropist. Out of admiration for ABC, XYZ adopts the name of ABC, lists himself in the telephone book and the city directory under that name, informs all of his friends and associates that he wishes to be known by it in the future, and consistently makes use of it. This is not an invasion of the privacy of A.
- 8. The same facts as in Illustration 9, with the addition that XYZ, representing himself to be ABC, registers under that name at an expensive summer resort hotel, where he stays for a month, incurring a large bill that he does not pay, on credit extended to him in the belief that he is ABC. This is an invasion of the privacy of ABC.

*d. Incidental use of name or likeness.* The value of the plaintiff's name is not appropriated by mere mention of it, or by reference to it in connection with legitimate mention of his public activities; nor is the value of his likeness appropriated when it is published for purposes other than taking advantage of his reputation, prestige, or other value associated with him, for purposes of publicity. No one has the right to object merely because his name or his appearance is brought before the public, since neither is in any way a private matter and both are open to public observation. It is only when the publicity is given for the purpose of appropriating to the defendant's benefit the commercial or other values associated with the name or the likeness that the right of privacy is invaded. The fact that the defendant is engaged in the business of publication, for example of a newspaper, out of which he makes or seeks to make a profit, is not enough to make the incidental publication a commercial use of the name or likeness. Thus a newspaper, although it is not a philanthropic institution, does not become liable under the rule stated in this Section to every person whose name or likeness it publishes.

- **Illustrations:**

- 9. A writes and publishes an autobiography in which at several points, he names B as one of his friends. This is not an invasion of B's privacy.
- 10. A makes and exhibits a motion picture, one scene of which shows a view from a city rooftop. Prominent in the foreground is a factory, with B's name on the side of it. This is not an invasion of B's privacy.