



Protection of Personality

CASE 2

With a strong telephoto lens a paparazzo took a photo of a famous princess sitting in the garden of a private villa together with her new lover and her little son. The picture was published on the cover of a tabloid under the heading 'the princess' new family'

Can the princess skim off the profit that the magazine earned due to the publication of her photo?

Would it make a difference if the princess was not sitting at home but at the back garden of a country side restaurant?

- ☐ This case specifically focuses on damages claims of celebrities photographed in places which are clearly private, or on the borderline between public and private. Two main questions arise: How is the conflict between privacy of celebrities and freedom of the press to be solved? If the former interest prevails and the celebrity has a claim for damages, how are the latter to be assessed?

Case 2 Discussion

- ❑ It is unlawful to photograph people inside their homes with the help of a strong telephoto lens, even if these people are famous princesses. This is an unjustified violation of the right to privacy and/or image of the portrayed person.
- ❑ Restaurants are in principle public places, but they can offer more or less privacy to their clients. People sitting in a terrace pizzeria in a crowded city square are of course more exposed to the public eye than people sitting in the back garden of a countryside restaurant. The legal system takes account of such differences in balancing the privacy interests of celebrities against the freedom of the tabloid press.
- ❑ In this case the princess would enjoy the same privacy protection at home and in the back garden of a countryside restaurant. Therefore, private places may include public places where there is a reasonable expectation of privacy
- ❑ The princess can skim off the profit that the magazine earned due to the publication of her photo as compensation

Case 3

Princess Caroline of Monaco

Privacy/ the right to freedom of expression/ right to publicity

Paparazzi - photos taken of the Princess Caroline of Hanover (formerly Caroline of Monaco) published in German magazines showing scenes from her daily life, although in public, such as riding, leaving a restaurant or on holiday.

*Princess Caroline sought an injunction against the further publication of photographs that had appeared in the German magazine *Frau im Spiegel*. The first photograph showed Princess Caroline and her husband out for a walk during their skiing holiday in St Moritz and was accompanied by an article about the illness of her father, Prince Rainier III. The second and third photographs similarly depicted Princess Caroline and her husband during their skiing holiday but the corresponding captions made no reference to Prince Rainier's health.*



Case 3 Princess Caroline of Monaco

Privacy/ the right to freedom of expression/ right to publicity

Evaluation Criteria

- 1) **Contribution to a debate of general interest?**
The publication of the first photograph was justified because the accompanying article discussed the ill health of the reigning Prince of Monaco, and so contributed to a **debate of general interest**.
- 2) **How well known the person is (celebrity or ordinary citizen?)** given the political position of the individuals concerned, they were undoubtedly public figures. Public figures cannot claim the same protection for their private life as ordinary individuals.
- 3) **The subject matter of the report?** Is the subject matter fiction or not is another criteria.
- 4) **Prior conduct of the person concerned?** if they had cooperated with the press in the past? But this mere fact is not sufficient to demonstrate consent for publication of the photographs in question.
- 5) **Content, form and consequences of the publication?** The way in which the photograph or article is published, the manner in which the person concerned is represented therein and the extent of dissemination may be important factors. Although the photos considered a public official, the content of the articles did not concern the content of the photographs. Thus, while the content of the articles contributed to a matter of public interest, the content of two of the three photographs in the article did not,
- 6) **Circumstances in which photographs are taken?** Whether the person photographed gave their consent to the taking of the photographs and subsequent publication or whether this was done without their knowledge or by subterfuge will be relevant considerations. The nature or seriousness of the intrusion and the consequences for the persons concerned must be considered.

Case 4

S and R sold a photo of their four year old daughter Lily, running naked on the beach, to a sun cream manufacturer. The photo appeared in several magazines as an advertisement for the products of that firm. K scanned the photo and put it on the Internet on a site called naked.little.girl.com. Can Lily claim damages from K? Is there a liability of the Internet provider?

- ☐ This case revolves around the unconsented use of a minors photo on an internet website. However, prior to this, the photo in question was published legally in several magazines as an advertisement for a suncream manufacturer. Therefore, the case concerns the right to ones image in the context of a photo which is already in the public domain. In particular, does prior lawful publication mean that a third party can subsequently make use of the photo for his/her own purposes without seeking consent? In this framework we consider two questions. Firstly, can Lily sue Kevin for damages for the unauthorised use of her photo? Secondly, is there liability on the part of the internet provider?

Case 4 Discussion

- ☐ Lily enjoys protection of her right to image. The fact that she is a minor is irrelevant. However, from a procedural point of view, it is her parents who will take an action on her behalf.
- ☐ The publication of Lilys photo, without consent, is an unlawful act on the part of Kevin and constitutes a civil wrong and a criminal offence.
- ☐ It does not make a difference that the photo had already been published prior to Kevins use of it. Publication is unlawful.
- ☐ If the photograph in question is unlawful and the provider has actual knowledge of its existence, then it can be sued for an injunction. The provider shall also be liable under these conditions.