

[Return to Privacy Module II](#)**Restatement of the Law, Second, Torts, § 652**

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**§ 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.**

**Comments:**

*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.

**§ 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.**

**Comments:**

*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.

§ 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.

**Comments:**

*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.