

A popular sports magazine published an investigative article detailing the prohibited tactics used by a university football program to recruit and retain top players. The article stated that at least five players had received postgame cash from their coaches based on performance during the game. One of those players, the quarterback, was quoted as saying that he lived "rent-free at the ranch of a booster club member" who had told him, "I'll pay you \$400 a week to shoe horses and shovel manure." The quarterback was further quoted as saying, "I never even touched a horse [at the ranch]."

Soon after the article was published, the booster club member was asked to leave the club because of the public outrage created by the article. The booster club member now seeks to file an action against the magazine, alleging that the quarterback did odd jobs to earn his keep and that the magazine had published the article with reckless disregard for its truthfulness.

Under which theory would the booster club member be most likely to recover?

- A. Intrusion upon seclusion.
- B. Public disclosure of private facts.
- C. Publicity in a false light.
- D. Slander.

## Explanation:

### Invasion of privacy

<b>Intrusion upon seclusion</b>	Highly offensive & intentional intrusion on plaintiff's solitude, seclusion, or private affairs
<b>Appropriation of name or likeness</b>	Unauthorized use of plaintiff's name or likeness for personal benefit—eg, commercial advantage
<b>Public disclosure of private facts</b>	Publicity given to highly offensive & private matter concerning plaintiff that is not of legitimate public concern & results in damages
<b>Publicity in a false light</b>	Publicity given to false information about plaintiff with actual malice that places him/her in highly offensive & false light & results in damages

**Invasion of privacy** based on **publicity in a false light** (recognized in most jurisdictions) requires the following elements:

The defendant **publicized false information** that **placed the plaintiff in a false light** (eg, the magazine published an article falsely stating that the quarterback lived rent-free at the booster club member's ranch, which falsely portrayed the member as someone willing to engage in prohibited recruiting tactics).

The false light would be **highly offensive** to a **reasonable person** (eg, the public was outraged by the booster club member's engagement in prohibited tactics).

The publication was made with **actual malice** (eg, the magazine published the article with reckless disregard for its truthfulness).

The plaintiff suffered **damages** (eg, the booster club member was asked to leave the club).

Here, all of the elements of publicity in a false light have been satisfied. Therefore, the booster club member is most likely to recover under a false-light theory.

**(Choice A)** Intrusion upon seclusion requires a highly offensive intrusion on the plaintiff's solitude, seclusion, or private affairs. Here, the magazine interviewed the *quarterback*, who voluntarily spoke about his *own* housing arrangement. This means there was no intrusion upon the private affairs of the booster club member.

**(Choice B)** Public disclosure of private facts is grounded in the disclosure of *truthful* information about the plaintiff. Here, the booster club member is alleging that the magazine article was *false*. Therefore, he is unlikely to recover for public disclosure of private facts.

**(Choice D)** **Defamation** by words written, printed, or otherwise recorded in permanent form is libel. In contrast, defamation by spoken word, gesture, or any form other than libel is slander. Since the publication was made in a magazine article (printed word), it may constitute libel—but not slander.

**Educational objective:**

Invasion of privacy based on publicity in a false light requires proof that (1) the defendant publicized false information that placed the plaintiff in a false light, (2) the false light would be highly offensive to a reasonable person, (3) the publication was made with actual malice, and (4) the plaintiff suffered damages.

**References**

Restatement (Second) of Torts § 652E (Am. Law Inst. 1977) (publicity placing person in false light).

New York Times Co. v. Sullivan, 376 U.S. 254, 279–280 (1964) (standard for actual malice).

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