

After a woman left a company to start her own business, her former supervisor became convinced that she was breaching a noncompetition agreement that she had signed when she had begun employment with the company. At the supervisor's suggestion, the company assigned its security officer to investigate and provided the officer with information about the woman, including her telephone number. Unbeknownst to the company, the officer emailed the woman's phone service provider, pretending to be the woman, and obtained copies of her phone records, which showed that she had contacted several customers of the company after she left, in breach of the agreement. The records also revealed a number of phone calls by the woman to others, including medical providers.

The woman, after learning of the security officer's investigation, sued the company, asserting several tort claims.

Should the trial court allow the case to go to the jury?

- A. No, because the company did not expressly authorize the security officer's acts.
- B. No, because the woman was in breach of her noncompetition agreement with the company.
- C. Yes, on a claim of intentional infliction of emotional distress.
- D. Yes, on a claim of invasion of privacy.

Correct

Collecting Statistics

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Explanation:

Invasion of privacy

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

A court should allow a plaintiff's claim to go to the jury to determine the defendant's liability when the evidence would reasonably allow the jury to find in the plaintiff's favor. There are four theories of recovery for an **invasion of privacy claim** (see table above), including **intrusion upon seclusion**. This tort occurs when the defendant **intentionally intrudes** on the plaintiff's **private affairs** in a manner that would be **highly offensive** to a reasonable person.

Here, the company assigned its security officer to investigate whether the woman was breaching her noncompetition agreement with the company. The officer then emailed the woman's phone service provider, pretending to be the woman, and obtained copies of her phone records. A jury could find that a reasonable person would be highly offended by such an intentional intrusion into private affairs. Therefore, the trial court should allow the woman's case to go to the jury on a claim of invasion of privacy.

(Choice A) Although the company did not expressly authorize the security officer's acts, the company assigned the officer to investigate the woman and provided the officer with her phone number. As a result, the company can be vicariously liable for the officer's actions under the doctrine of [respondeat superior](#).

(Choice B) The fact that the woman may have breached her noncompetition agreement does not prevent a jury from concluding that the company is liable for intrusion upon seclusion. The company would need to bring a separate claim or assert a counterclaim to determine whether the woman is liable for such a breach.

(Choice C) [Intentional infliction of emotional distress](#) occurs when the defendant intentionally causes the plaintiff severe emotional distress (or acts recklessly to cause such distress) through extreme and outrageous conduct. However, there is no indication here

that the company or the security officer intentionally or recklessly caused the woman such distress.

Educational objective:

Intrusion upon seclusion (a type of invasion of privacy) occurs when the defendant intentionally intrudes on the plaintiff's private affairs in a manner that would be highly offensive to a reasonable person.

References

Restatement (Second) of Torts § 652B (Am. Law Inst. 1977) (defining the tort of intrusion upon seclusion).

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