

An assistant to a famous writer surreptitiously observed the writer as the writer typed her private password into her personal computer in order to access her email. On several subsequent occasions in the writer's absence, the assistant read the writer's email messages and printed out selections from them.

The assistant later quit his job and earned a considerable amount of money by leaking information to the media that he had learned from reading the writer's email messages. All of the information published about the writer as a result of the assistant's conduct was true and concerned matters of public interest.

The writer's secretary had seen the assistant reading the writer's emails and printing out selections, and she has told the writer what she saw. The writer now wishes to sue the assistant for damages. At trial, the writer can show that the media leaks could have come only from someone reading her email.

Can the writer recover damages from the assistant?

- A. No, because the assistant was an invitee on the premises.
- B. No, because the published information resulting from the assistant's conduct was true and concerned matters of public interest.
- C. Yes, because the assistant invaded the writer's privacy.
- D. Yes, because the published information resulting from the assistant's conduct constituted publication of private facts concerning the writer.

Explanation:

Invasion of privacy

Theories of recovery	Required elements
Intrusion upon seclusion	Intentional intrusion (physical or otherwise) on plaintiff's solitude, seclusion, or private affairs Intrusion would be highly offensive to reasonable person
Appropriation of name or likeness	Unauthorized use of plaintiff's name or likeness for personal benefit (typically for commercial purpose)
Public disclosure of private facts	Publicity given to plaintiff's private matter Matter publicized would be both: highly offensive to reasonable person not of legitimate public concern Results in damages
Publicity in a false light	Publicity given to false information that places plaintiff in false light False light would be highly offensive to reasonable person Publication is made with actual malice Results in damages

Intrusion upon seclusion is an invasion of privacy that occurs when the defendant **intentionally intrudes** on the plaintiff's **private affairs** in a manner that would be **highly offensive** to a reasonable person—eg, tapping telephone wires, examining private bank account, opening personal mail.

Here, the assistant opened and read the writer's private, password-protected emails. Since a reasonable person would be highly offended by that intrusion, the writer can likely recover damages from the assistant for invasion of privacy (intrusion upon seclusion).

(Choice A) The fact that the assistant was an **invitee** shows that he had permission to enter the writer's premises, but does not show that he had permission to open and read the writer's private, password-protected emails. Therefore, the assistant's status as an invitee does not shield him from liability.

(Choice B) Truth is generally not a defense to invasion of privacy. And though public interest in the disclosed material may preclude an invasion of privacy claim based on *public disclosure of private facts*—publicizing a private matter that is highly offensive and not of legitimate public concern—it is irrelevant to *intrusion upon seclusion*.

(Choice D) A privacy claim for the public disclosure of private facts requires proof that the publicized matter would be highly offensive to a reasonable person. Since there is no

evidence that the writer's emails would be highly offensive, the writer cannot prevail on that claim.

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) (intrusion upon seclusion).

Restatement (Second) of Torts § 652D (Am. Law Inst. 1977) (publicity given to private life).

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