

A 15-year-old boy was killed during a gang fight. Two days after his funeral, the boy's mother saw a television program about gang violence and was shocked to see video of herself weeping over the boy's body. The video had been shot by the television reporting team while the boy's body was still lying on a public street. The mother suffered severe emotional distress as a result of seeing the video.

If the mother sues the television station for invasion of her privacy and that of her son, will the mother be likely to prevail?

- A. No, because a person has no right to privacy after his or her death.
- B. No, because the street was open to the public and the subject was newsworthy.
- C. Yes, because the mother did not give permission to have the video used in the program.
- D. Yes, because the mother suffered severe emotional distress as a result of viewing the video.

## Explanation:

There are four theories of recovery for **invasion of privacy**:

**intrusion upon seclusion** – an intentional intrusion (physical or otherwise) on the plaintiff's solitude, seclusion, or *private affairs* that would be highly offensive to a reasonable person

**public disclosure of private facts** – publicity given to the plaintiff's *private matter* (1) that does not address a *legitimate public concern*, (2) would be highly offensive to a reasonable person and (3) causes damages

**appropriation of name or likeness** – the unauthorized use of the plaintiff's name, picture, or likeness for a *personal benefit* (e.g., a monetary advantage)

**publicity in a false light** – publicity given to *false information* about the plaintiff with actual malice that places him/her in a false light that would be highly offensive to a reasonable person and causes damages

Here, the woman's invasion of privacy claim will likely fail because the video was taken when the woman and son were on a *public* street, so it did not intrude upon their private affairs. Additionally, the video was used to present a *newsworthy topic* and address a legitimate *public concern*—not for personal benefit or to present false information.

**(Choice A)** A person has a right to privacy against the appropriation of his/her name or likeness—even after death. But since the television station did not use her son's likeness for personal benefit (e.g., for an advertisement), the mother, suing on her dead son's behalf, will not prevail.

**(Choice C)** Although the mother did not give the television station permission to use the video in its program, her consent was unnecessary because she was in a public place and the video addressed a newsworthy issue.

**(Choice D)** Evidence of emotional distress alone is insufficient to prove invasion of privacy. The mother must also show some type of intrusion, publicity, or unauthorized use.

## Educational objective:

The four theories of recovery for invasion of privacy are: (1) intrusion upon seclusion, (2) appropriation of name or likeness, (3) public disclosure of private facts, and (4) publicity in a false light.

## References

Restatement (Second) of Torts §§ 652A–652E (Am. Law Inst. 1977) (invasion of privacy).

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