

A professional motorcycle rider put on a performance in a privately owned stadium during which he leaped his motorcycle over 21 automobiles. Spectators were charged \$5 each to view the jump and were prohibited from using cameras. However, the local television station filmed the whole event from within the stadium without the rider's knowledge or consent and showed the film in its entirety on the evening newscast that day.

The rider thereafter brought suit to recover damages from the station for the admittedly unauthorized filming and broadcasting of the performance. The television station raised only constitutional defenses.

How should the court rule on the rider's suit?

- A. Find the station liable, because its action deprives the rider of his property without due process.
- B. Find the station liable, because the First and Fourteenth Amendments do not deprive an entertainer of the commercial value of his or her performances.
- C. Hold against the rider, because news broadcasts are absolutely privileged under the First and Fourteenth Amendments.
- D. Hold against the rider, because the First and Fourteenth Amendments authorize press coverage of newsworthy entertainment events.

Explanation:

The First Amendment—applicable to the states through the Fourteenth Amendment—protects the **right to publish** lawfully obtained and truthful information about **matters of public significance** (ie, newsworthy events). But this right is not unlimited and must be balanced against the **right to publicity**—ie, the right to control or commercially benefit from one's own name, likeness, or other intimately associated qualities.

Here, the station published the rider's entire performance—a newsworthy event—on its evening newscast without the rider's consent. That newscast deprived the rider of the commercial value of his performance since people are less likely to pay to see what they can now view for free. Therefore, the First and Fourteenth Amendments offer the station no protection, and the court should find the station liable.

(Choice A) The Fourteenth Amendment prohibits the *government* from depriving an individual of **life, liberty, or property** without due process. But since the television station is a *private* entity, it is not required to provide due process.

(Choice C) Some news broadcasts are **absolutely privileged** under the First and Fourteenth Amendments—eg, shows broadcast with the entertainer's consent—and shield the broadcaster from liability for interfering with another's right to publicity (ie, **invasion of privacy**). But no absolute privilege applies to the newscast at issue here.

(Choice D) The First and Fourteenth Amendments authorize *some* press coverage of newsworthy entertainment events. But they do not authorize the unapproved broadcasting of an *entire* event because that would seriously infringe upon the entertainer's right to publicity.

Educational objective:

There is a First Amendment right to report on newsworthy events. But there is no right to publish an entertainer's entire act without his/her consent since that would seriously infringe upon the entertainer's right to publicity.

References

- *Zacchini v. Scripps-Howard Broad. Co.*, 433 U.S. 562, 578 (1977) (holding that the press does not have a First Amendment right to broadcast the entirety of a private individual's performance).

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