



CLASS 13

TORTS AND PERSONAL INJURY

DEFAMATION - CONSTITUTIONAL PRIVILEGE

- Note that freedom of speech is not really relevant here, because the First Amendment does not protect false, defamatory statements
- However, because of “freedom of the press” concerns, the Supreme Court has ruled that if the plaintiff is a “public figure,” that plaintiff should have to shoulder an extra burden when bringing a defamation action. (This is primarily to alleviate the “chilling effect” defamation actions would otherwise have on the press’ coverage of important events.)

DEFAMATION - CONSTITUTIONAL PRIVILEGE (CONT.)

- When the plaintiff is a public figure and the defendant is a media outlet:
 - 1) The plaintiff must affirmatively prove falsity (he has the burden) to prevail in a defamation action
 - 2) The plaintiff must prove “fault” on the part of the defendant

DEFAMATION - CONSTITUTIONAL PRIVILEGE (CONT.)

- 3 scenarios:
 - 1) Where the plaintiff is a “**public figure**,” the plaintiff has to show “**actual malice**” to recover any damages
 - [“actual malice” means knowledge that the statement is false or reckless disregard for the truth]
 - 2) Where the plaintiff is a “**private figure**” but the subject matter involved is of a “**public concern**,” actual malice is only required to receive punitive or “presumed” (“general”) damages. However, even to receive compensatory damages, some level of negligence (fault) is required
 - 3) Where the plaintiff is a “**private figure**” and the subject matter involved is not of a “public concern,” there is no Constitutional limitation on the award of damages (regular defamation rules apply)

INVASION OF PRIVACY - INTRUSION UPON SECLUSION

- Elements:
 - An **intrusion** that would be **highly offensive to a reasonable person**
 - By **actions done intentionally or negligently** by the defendant
 - That **caused the plaintiff's privacy to be violated** and thus caused the plaintiff **some level of harm** (including emotional distress or embarrassment)
- Examples:
 - Wiretapping phone lines
 - Hidden cameras

INVASION OF PRIVACY - PUBLIC DISCLOSURE OF PRIVATE FACTS

- Elements:
 - **Highly offensive** disclosure
 - To the **public** (not just one or two people)
 - That there was **no legitimate public interest** in knowing
 - That the **defendant was at fault in the disclosure**
- **Unlike defamation, truth is NOT a defense**
- Other issues:
 - Must not be “**newsworthy**”
 - **Consent** is an absolute defense
 - Must not already be contained in a public document



QUIZ TIME

INVASION OF PRIVACY – APPROPRIATION OF NAME OR LIKENESS

- Elements:
 - Use of **plaintiff's name or likeness**
 - For **commercial** purposes
- Newsworthiness exception:
 - If the defendant is simply reporting news, that's not a tort even if it also makes a profit by using the plaintiff's name or likeness

INVASION OF PRIVACY - FALSE LIGHT

- Elements:
 - Publishing a statement about or concerning the plaintiff, that
 - Implies something false about the plaintiff or sheds a false light on the plaintiff
- (This does not require specific allegations, as does defamation.)
- Constitutional privileges for the media apply to the same extent as with defamation.