

OXFORD

MEDIA PRIVACY & RELATED LAW 2012-13

REPORTS FROM ALL FIFTY STATES, THE FEDERAL
COURTS OF APPEALS, U.S. TERRITORIES, AND CANADA

EDITED BY THE MEDIA LAW RESOURCE CENTER, INC.

MILRC *Media
Law
Resource
Center*

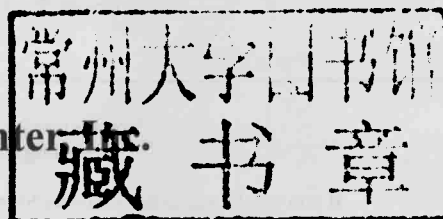
50-STATE SURVEY

MLRC 50-STATE SURVEY 2012-13

MEDIA PRIVACY & RELATED LAW

**Prepared by Leading Media Attorneys
and Law Firms in All Fifty States,
the U.S. Territories and Canada**

**Edited by
The Media Law Resource Center**



**With Special Reports on the Federal Law of Electronic Eavesdropping
and Privacy & Related Law in the Federal Circuits and Canada**



OXFORD
UNIVERSITY PRESS

Oxford University Press, Inc., publishes works that further Oxford University's objective of excellence in research, scholarship, and education.

Copyright © 2012 by Media Law Resource Center, Inc.
Published by Media Law Resource Center, Inc.
520 Eighth Avenue, North Tower, 20th Floor, New York, New York 10018
and
Oxford University Press, Inc.
198 Madison Avenue, New York, New York 10016

MLRC and Media Law Resource Center are registered trademarks of Media Law Resource Center, Inc.
Oxford is a registered trademark of Oxford University Press.
Oxford University Press is a registered trademark of Oxford University Press, Inc.

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted, in any form or by any means, electronic, mechanical, photocopying, recording, or otherwise, without the prior permission of Media Law Resource Center, Inc.

ISBN: 978-0-19-991537-8

Printed in the United States of America on acid-free paper

Note to Readers

This publication is designed to provide accurate and authoritative information in regard to the subject matter covered. It is based upon sources believed to be accurate and reliable and is intended to be current as of the time it was written. It is sold with the understanding that the publisher is not engaged in rendering legal, accounting, or other professional services. If legal advice or other expert assistance is required, the services of a competent professional person should be sought. Also, to confirm that the information has not been affected or changed by recent developments, traditional legal research techniques should be used, including checking primary sources where appropriate.

(Based on the Declaration of Principles jointly adopted by a Committee of the American Bar Association and a Committee of Publishers and Associations.)

You may order this or any other Oxford University Press publication by visiting the Oxford University Press website at www.oup.com

If you would like to be placed on Standing Order status for MLRC 50-State Survey: Media Privacy & Related Law, whereby you will automatically receive and be billed for new annual volumes as they publish, please contact an Oxford University Press Customer Service Representative.

In the United States, Canada, Mexico, Central and South America, contact:

**Customer Service
Oxford University Press USA
2001 Evans Road
Cary, NC 27513
Email: custserv.us@oup.com
Phone (toll free in US): 1-866-445-8685
Phone (international customers): 1-919-677-0977
Fax: 1-919-677-1303**

In the United Kingdom, Europe, and Rest of World, contact:

**Customer Service
Oxford University Press
Saxon Way West, Corby
Northants, NN18 9ES
United Kingdom
Email: bookorders.uk@oup.com
Phone: +44 1536 741017
Fax: +44 1536 454518**

EDITORS' NOTE

In introducing the 2012-13 edition of MLRC's PRIVACY LAW SURVEY, we would like to extend our heartfelt thanks to MLRC's over 115 supporting organizations, without whose continuing financial and moral support an annual effort of such magnitude would not be possible. To this we again add thanks to the over 200 members of MLRC's Defense Counsel Section, many of whom also serve as SURVEY preparers.

As in prior years, the bulk of the credit for the MLRC's SURVEYS goes to the attorneys and law firms who have again given most generously of their time and expertise in the preparation of the annual SURVEY reports. The names of these preparers — the mainstays of MLRC's annual SURVEYS — appear at the beginning of each report.

In the 1,600 pages that follow, MLRC has undertaken comprehensively to set out the basic law of privacy and related tort claims against the media, in the federal circuits, state-by-state and in Canada. Two important notes to the reader are in order.

First, because various of the torts outlined in this text are either not recognized or the law is relatively undeveloped in some of the jurisdictions surveyed, not all of the topics included in the general survey outline are included in all individual state reports. In jurisdictions in which a tort is either not recognized or has not been addressed, a brief statement to that effect, supported by any relevant authority, appears immediately under the primary level heading for that tort, and the remainder of the outline for that tort has generally been deleted. Similarly, where the jurisdiction has some law on the particular tort, but no law on a specific aspect or subcategory of that tort, inferior-level outline headings have generally been deleted.

Second, and as with previous volumes, it continues to be important to note that any work, however valuable, has its limitations. Users of this work should understand that each of the reports is an outline and not a treatise on the law. Each tends to focus on black letter law and may to some extent not give full treatment to gray areas or exceptions to rules. Finally, as current as the MLRC 50-STATE SURVEY may be, no such work can ever be fully up to date. The reader should take note of the cutoff dates for coverage of developments, indicated at the beginning of each state report.

Media Law Resource Center, Inc.
New York, New York
June 2012

EDITORS' NOTE

In introducing the 2012-13 edition of MLRC's Privacy Law Survey, we would like to extend our heartfelt thanks to MLRC's over 115 supporting organizations, without whose continuing financial and moral support an annual effort of such magnitude would not be possible. To this we again add thanks to the over 100 members of MLRC's Defense Counsel Section many of whom also serve as Survey preparers.

As in prior years, the bulk of the credit for the MLRC's Surveys goes to the attorneys and law firms who have again given most generously of their time and expertise in the preparation of the annual Survey reports. The names of these preparers — the members of MLRC's annual Surveyers — appear at the beginning of each report.

In the 1,500 pages that follow, MLRC has undertaken comprehensively to set out the basic law of privacy and related tort claims across the media in the federal circuit, state-by-state and in Canada. Two important notes to the reader are in order.

First, because various of the torts outlined in this text are either not recognized or the law is relatively undeveloped in some of the jurisdictions surveyed, not all of the torts included in the general survey outline are included in all individual state reports. In jurisdictions in which a tort is either not recognized or has not been widely or fully developed, to that effect, supported by any relevant authority, appears immediately under the primary level heading for that tort, and the remainder of the outline for that tort has generally been deleted. Similarly, where the jurisdiction has some law on the particular tort, but no law on a specific aspect or subcategory of that tort, inferior-level outline headings have generally been deleted.

Second, and as in previous volumes, it continues to be important to note that any work, however valuable, has its limitations. Users of this work should understand that each of the reports is an outline and not a treatise on the law. Each leads to focus on black letter law and may to some extent not give full treatment to gray areas or extensions to values. Finally, as current as the MLRC 20-STATE SURVEY may be, no such work can ever be truly up to date. The reader should take note of the short times for coverage of developments indicated at the beginning of each state report.

Media Law Resource Center, Inc.
New York, New York
June 2012

MEDIA LAW RESOURCE CENTER, INC.

520 Eighth Avenue, North Tower, 20th Floor

New York, NY 10018

212-337-0200 | www.medialaw.org

Board of Directors:

Susan E. Weiner, (Chair); David S. Bralow; Mark H. Jackson;
Marc Lawrence-Apfelbaum; Eric N. Lieberman; Karole Morgan-Prager;
Kenneth A. Richieri; Mary Snapp; Kurt A. Wimmer; Elizabeth A. Ritvo (DCS President)

Executive Director: Sandra S. Baron

Staff Attorneys: Maherin Gangat, Robert Hawley, David Heller, Michael Norwick

Legal Fellow: Erika Kweon **MLRC Institute Fellow:** Dorianne Van Dyke

Publications Assistant: Jacob Wunsch **MLRC Administrator:** Debra Danis Seiden

MLRC MEDIA MEMBERSHIP

(as of June 2012)

A & E Television Networks
A. H. Belo Corp.
ABC, Inc.
Advance Publications, Inc.
Allbritton Communications Company
ALM Media, LLC
American Media, Inc.
AOL Inc.
ARTstor
Associated Newspapers Ltd
The Associated Press
Association of American Publishers
The Authors Guild, Inc.
AXIS PRO
Bauer Publishing Group
Belo Corp.
Bloomberg L.P.
Broadway Video Entertainment
California Newspaper Publishers Association
Capitol Broadcasting Company, Inc.
CBS Broadcasting Inc.
CBS Corporation
CBS Interactive
CBS Outdoor
CBS Radio, Inc.
Chubb Specialty Insurance
CNA Insurance
Connecticut Broadcasters Association
Consumers Union of U.S., Inc.
Courthouse News Service
Cox Enterprises, Inc.
Crain Communications Inc.
Daily News, L.P.
Discovery Communications, Inc.
Donald W. Reynolds National Center for Courts and Media
Dow Jones & Company
E! Entertainment
The E. W. Scripps Company
ESPN, Inc.
Fairfax Media Limited
The First Amendment Center
First Amendment Coalition
Forbes, Inc.
Fox News Network, LLC
Fox Television Stations, Inc.
Gannett Company, Inc.
Gawker Media, LLC
Getty Images
The Globe and Mail, Inc.
Google Inc.
Greenpeace International
Guardian News & Media Ltd
Hachette Book Group
The Hearst Corporation
Hiscox Media
Home Box Office, Inc.
Hubbard Broadcasting, Inc.
International Media Lawyers Project - Media Entities
Investigative News Network

Jacqueline Anne Sutton
John Wiley & Sons, Inc.
Journal Communications, Inc.
LIN Media
Macmillan
The McClatchy Company
The McGraw-Hill Companies, Inc.
Media Insurance Brokers Limited
Meredith Corporation
Microsoft Corporation
Motion Picture Association of America, Inc.
MPA - The Association of Magazine Media
MTV Networks
Mutual Insurance Company, Limited
National Association of Broadcasters
National Geographic Society
National Press Photographers Association
NBCUniversal
New York Public Radio
The New York Times Company
The New Yorker Magazine
News Corporation
News International
Newsday LLC/News 12 Networks LLC
Newspaper Association of America
The Newsweek/Daily Beast Company
North Jersey Media Group, Inc.
NPR
OneBeacon Professional Insurance
Oxford University Press Inc.
Page Productions
Penguin Group (USA) Inc.
Pennsylvania Newspaper Association
Playboy Enterprises, Inc.
PR Newswire Association, LLC
Promotion Marketing Association, Inc.
ProPublica
Radio Free Europe/Radio Liberty
Radio Television Digital News Association
Random House, Inc.
Reuters America LLC
RHI Entertainment
SBS
Scottsdale Insurance Co.
Showtime Networks Inc.
Simon & Schuster
Stephens Media LLC
Telegraph Media Group
Thai Public Broadcasting Service
Time Inc.
Time Warner Cable, Inc.
Tribune Company
Turner Broadcasting System, Inc.
Village Voice Media
The Washington Post Company
Wenner Media LLC
WGBH Educational Foundation
WNET.ORG

MLRC DEFENSE COUNSEL SECTION MEMBERSHIP
(as of June 2012)

Adams and Reese LLP	Epstein Becker & Green, P.C.
Alice Neff Lucan, Attorney At Law	Faegre Baker Daniels LLP
Allied Law Group LLC	Faruki Ireland & Cox P.L.L.
Alston Hunt Floyd & Ing	Fenno Law Firm, LLC
Archer & Greiner, P.C.	Finers Stephens Innocent LLP
Arnall Golden & Gregory LLP	Fishman Haygood Phelps Walmsley Willis & Swanson, LLP
Baker & Hostetler LLP	Fitzpatrick Lentz & Bubba, P.C.
Banki Haddock Fiora	Foley & Lardner LLP
Banner & Bower, P.C.	Fox Rothschild LLP
Barnes & Thornburg	Frankfurt Kurnit Klein & Selz, P.C.
Benn Law Firm	Frost Brown Todd LLC
Bernardi, Ronayne & Glusac, P.C.	Funkhouser Vegosen Liebman & Dunn Ltd.
Bernstein, Shur, Sawyer & Nelson	George & Brothers
Bernas Jacobsen Chouest Thomson Blackburn LLP	Godfrey & Kahn, S.C.
Bingham Greenebaum Doll LLP	Golenbock Eiseman Assor Bell & Peskoe LLP
Bingham McCutchen LLP	Goodwin Procter LLP
Blake, Cassels & Graydon LLP	Gordon Silver
Blish & Cavanagh, LLP	Gowling Lafleur Henderson LLP
Bond, Schoeneck & King, PLLC	Graham & Dunn
Bostwick & Jassy LLP	Gravel & Shea
Bradley Arant Boult Cummings LLP	Graves, Dougherty, Hearon & Moody, P.C.
Brian MacLeod Rogers, Barrister & Solicitor	Graydon, Head & Ritchey
Brooks, Pierce, McLendon, Humphrey & Leonard, LLP	Greenberg Traurig
Brown Rudnick LLP	Hall, Estill, Hardwick, Gable, Golden & Nelson
Bryan Cave LLP	Hangley Aronchick Segal Pudlin & Schiller
Buchanan Ingersoll & Rooney PC	Haynes and Boone LLP
Burch Porter & Johnson, PLLC	Henry R. Kaufman, P.C.
Butler, Snow, O'Mara, Stevens & Cannada, PLLC	Hinckley, Allen & Snyder LLP
Butzel Long	Hiscock & Barclay LLP
Byelas & Neigher	Hogan Lovells US LLP
C. Thomas Dienes, Attorney At Law	Holland & Knight LLP
Cades Schutte LLP	Holmes Weinberg, PC
Cahill Gordon & Reindel LLP	Honigman Miller Schwartz and Cohn LLP
Cameron A. Stracher, Esq.	Hunton & Williams
Campbell & Williams	Jackson Walker LLP
Carlton Fields	Jenner & Block LLP
Charles A. Brown, Attorney At Law	Johnson Winter & Slattery
Cobalt LLP	Johnston Barton Proctor & Rose LLP
Cooper, White & Cooper LLP	Jorden Burt LLP
Counts Law Group	Joshua Koltun, Attorney
Covington & Burling LLP	K & L Gates LLP
Cowan, DeBaets, Abrahams & Sheppard LLP	Katten Muchin Rosenman LLP
Cravath, Swaine & Moore LLP	Kelley Drye / White O'Connor
David M. Snyder, P.A.	Kelly and Hannah, P.A.
Davis Wright Tremaine LLP	King & Ballou
Debevoise & Plimpton LLP	King & Spalding LLP
Devereux Chatillon, Esq.	Koley Jessen P.C., L.L.D.
Dinsmore & Shohl LLP	Lathrop & Gage LLP
DLA Piper US LLP	Law Office of John J. Lynch
Doerner, Saunders, Daniel & Anderson	Law Office of Michael A. Pezza Jr.
Donald M. Craven, P.C.	Law Office of Paul Steinberg
Donaldson & Callif, LLP	Law Offices of Jennifer A. Klear
Dorsey & Whitney LLP	Law Offices of Judith B. Bass
Dow Lohnes PLLC	Law Offices of Kathleen Conkey
Doyle & McKean, LLP	LeClairRyan

Leopold, Petrich & Smith PC
 Levine Sullivan Koch & Schulz, L.L.P.
 Lewis, Rice & Fingersh, L.C.
 Lightfoot Franklin & White, LLC
 Loeb & Loeb LLP
 Lowe, Stein, Hoffman, Allweiss & Hauver L.L.P.
 Lowenstein Sandler PC
 Lucas and Cavalier, LLC
 Mandell Menkes LLC
 Mayer Brown LLP
 McCusker Anselmi Rosen & Carvelli, PC
 McGuireWoods LLP
 McKenna Long & Aldridge LLP
 Media Risk Consultants LLC
 Miller Korzenik Sommers LLP
 Miller, Canfield, Paddock & Stone, PLC
 Minter Ellison
 Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.
 Montgomery McCracken Walker & Rhoads LLP
 Munger, Tolles & Olson
 Nesbitt, Vassar, McCown & Roden, L.L.P.
 Nixon Peabody LLP
 Norwick, Schad & Goering
 Ogden, Gibson, Broocks, Longoria & Hall, LLP
 Orr & Reno, P.A.
 Owen Bird Law Corporation
 Parr Brown Gee & Loveless
 Parsons Behle & Latimer
 Patterson Belknap Webb & Tyler LLP
 Paul, Hastings, Janofsky & Walker LLP
 Peifer, Hanson & Mullins, P.A.
 Pepper Hamilton LLP
 Perkins Coie LLP
 Phelps Dunbar LLP
 Pillsbury Winthrop Shaw Pittman LLP
 Preti Flaherty Beliveau & Pachios, LLP
 Prince Lobel Tye LLP
 Proskauer Rose LLP
 Quattlebaum, Grooms, Tull & Burrow PLLC
 Quinn Emanuel Urquhart & Sullivan, LLP
 Rahdert, Steele, Reynolds and Driscoll, P.A.
 Ram & Olson
 Reed Smith LLP
 Richards, Layton & Finger, P.A.
 Rodey, Dickason, Sloan, Akin & Robb, P.A.
 Rothwell, Figg, Ernst & Manbeck, P.C.
 RPC
 Rushton, Stakely, Johnston & Garrett, P.A.
 Satterlee Stephens Burke & Burke LLP
 Saul Ewing LLP
 Schiff Hardin LLP
 Schnader, Harrison, Segal & Lewis

Sedgwick LLP
 Sheppard Mullin Richter & Hampton LLP
 Sidley Austin LLP
 Skadden, Arps, Slate, Meagher & Flom LLP
 Smith Moore Leatherwood LLP
 SmithAmundsen LLC
 SmithDehn LLP
 SNR Denton US LLP
 Stephen Fuzesi, Jr.
 Steptoe & Johnson LLP
 Steven P. Suskin, Attorney At Law
 Stevens Martin Vaughn & Tadych, PLLC
 Stites & Harbison
 Stokes Lawrence, P.S.
 Strassburger, McKenna, Gutnick & Gefsky
 Swanson, Martin & Bell, LLP
 Tantalo & Adler LLP
 The Bussian Law Firm PLLC
 The Maneke Law Group, L.C.
 Thomas & LoCicero PL
 Thompson & Knight LLP
 Thompson Coburn LLP
 Troutman Sanders LLP
 Venable LLP
 Vinson & Elkins
 Waller Lansden Dortch & Davis, LLP
 Walter & Haverfield
 Weil, Gotshal & Manges LLP
 Willcox & Savage, P.C.
 Williams & Anderson PLC
 Williams & Connolly
 Willkie Farr & Gallagher LLP
 Wilmer Cutler Pickering Hale and Dorr LLP
 Wilson Sonsini Goodrich & Rosati
 Winston & Strawn LLP
 Womble Carlyle Sandridge & Rice, PLLC
 Wyatt, Tarrant & Combs LLP
 Wyche, Burgess, Freeman & Parham, P.A.

Associate Members

Broadcasting Board of Governors/Voice of America
 Clifford Chance Europe LLP
 Doughty Street Chambers
 Gabriella Rubagotti, Barrister
 GRAEF Rechtsanwälte
 Kennedy Van der Laan
 Melkonian & Co.
 Simpson Grierson
 Taylor Wessing LLP

SURVEY OF [YOUR STATE] PRIVACY AND RELATED CLAIMS AGAINST THE MEDIA

Survey Preparers
Name of Firm
Firm Address
Telephone: Facsimile:

[please follow above format — e.g., do not use boldface or all-capital type when inserting the information regarding authorship and affiliation]

(With Developments Reported Through **April 1, 2012**)

[although initial drafts are due prior to April 1, 2011, SURVEY preparers are expected to hold open their reports during the editing process to insert any new developments reported through April 1, 2012]

GENERAL COMMENTS

[including comments or caveats regarding structure of local court system, the manner in which local cases are reported or cited, etc.]

I. INVASION OF PRIVACY — GENERAL

[including whether jurisdiction recognizes some or all of the four traditional branches of the privacy tort, based on (1) common law, (2) statutory provisions, and/or (3) constitutional provisions]

II. FALSE LIGHT

A. Recognition of False Light Tort

[including whether jurisdiction has explicitly accepted/rejected the tort]

1. **In General.**
2. **As Applied to the Media.**

B. Substantive Elements — False Light

[including introductory paragraph listing all requisite elements of tort, or cross reference if elements have already been set forth in A.1, *supra*]

1. Public Disclosure.

[including examples of particular disclosures that have or have not been found sufficiently public to satisfy this element]

2. Falsity.

[including whether falsity is or is not sufficiently substantial and material to trigger liability; extent to which embellishment or exaggeration, distortion or fictionalization, or false association have or have been found to satisfy this element; treatment of implication or innuendo; and consideration, if any, of fact–opinion dichotomy]

3. Identification of Plaintiff.

[focusing exclusively on application of the “of and concerning” element in false light as opposed to defamation cases]

4. Offensiveness.

[including degree of offensiveness required and application of “reasonable person” standard in measuring offensiveness]

5. Fault.

a. Issue of Public Concern.

[including whether jurisdiction applies actual malice standard of *Time, Inc. v. Hill*, 385 U.S. 374 (1967) in all instances or potentially lesser fault standard of *Gertz v. Robert Welch, Inc.*, 418 U.S. 323 (1974) in cases involving private-figure plaintiffs]

b. **Issue of Private Concern.**

[including effect, if any, of *Dun & Bradstreet, Inc. v. Greenmoss Builders, Inc.*, 472 U.S. 749 (1985)]

C. **Privileges and Defenses — False Light**

1. **Constitutional.**

a. **Opinion.**

[including any recognition of opinion as a privilege or defense, and effect, if any, of *Milkovich* on the availability of such a privilege or defense in false light cases]

2. **Common Law.**

D. **Relationship of False Light to Defamation**

1. **Substantive Distinctions.**

[including cases comparing different nature of the protected interests, e.g., reputation versus emotional distress; differing degree of societal concern in protected interest; absence of a requirement that falsity be defamatory; requirement, if any, that extrinsic facts be proved when false light not intrinsically apparent]

2. **Application of Constitutional and Common Law Privileges and Defenses.**

[including cases holding that privileges or defenses applicable to defamation must be incorporated into false light claim, e.g., cases rejecting “end runs” around the protections of defamation law]

3. **Viability of Separate Claim.**

[including cases holding that when offending conduct consists only of allegedly false and defamatory statement, only cause of action lies in defamation]

E. **Damages and Other Remedies — False Light**

1. **General Damages.**

2. **Special Damages.**

3. **Punitive Damages.**

4. **Injunctive Relief.**

F. **Procedural Matters — False Light**

1. **Burden of Proof.**

2. **Retraction Statutes.**

[applicability]

3. **Statute of Limitations.**

[including whether statute of limitations for false light is same as or different than that for defamation claims; and, if different, whether false light claim can be used to circumvent shorter defamation statute of limitations]

4. **Other Procedural Matters.**

[including motions to dismiss; discovery; summary judgment; trial practice; appellate review; prior restraints; remedies for malicious, frivolous, or abusive prosecution; jurisdiction, venue, and choice of law; and survivability of action; to the extent significant determinations have been made regarding such matters in false light cases]

III. **PUBLICATION OF PRIVATE FACTS**

A. **Recognition of Private Facts Tort**

[including whether jurisdiction has explicitly accepted/rejected the tort]

1. **In General.**
2. **As Applied to the Media.**

B. Substantive Elements — Private Facts

[including introductory paragraph listing all requisite elements of tort, or cross reference if elements have already been set forth in A.1, *supra*]

1. **Public Disclosure.**

[including examples of particular disclosures that have or have not been found sufficiently public to satisfy this element; examples of particular circumstances in which and parties to whom disclosure is or is not considered public]

2. **Private Facts.**

[including examples of facts that have or have not been found sufficiently private to satisfy this element, e.g., facts contained in public records, facts relating to public activities, facts previously disclosed or already publicly known; or waiver by plaintiff, either express or implied]

3. **Identification of Plaintiff.**

[including both issue of whether plaintiff is sufficiently identifiable from the context of the matter published and instances involving failure to sufficiently disguise plaintiff during broadcast pursuant to consent limited to nonidentifiability of face or voice]

4. **Offensiveness.**

[including degree of offensiveness required and application of “reasonable person” standard in measuring offensiveness]

5. **Absence of Legitimate Concern to the Public.**

[including examples of communications that have or have not been found to be of legitimate interest or concern to the public, whether under the rubric of “newsworthiness” or not, *see also Privileges and Defenses, infra*, and the effect of plaintiff’s status, e.g., recognition of varying zones of privacy for private figures, public figures, and involuntary and former public figures and the effect of passage of time upon such figures]

C. Privileges and Defenses — Private Facts

1. **Constitutional.**

- a. ***Truthful Facts in Public Records.***

[focusing on application of the line of Supreme Court cases from *Cox Broadcasting v. Cohn*, 420 U.S. 469 (1975), through *Florida Star v. B.J.F.*, 491 U.S. 524 (1989), defining a constitutional privilege or defense for such truthful publications; and including definition of public record, and consideration of lawfulness of means by which information was obtained]

- b. ***Information of Public Concern.***

[focusing on cases holding that there is a constitutional privilege to publish matters of public interest]

2. **Common Law.**

[including cases holding that newsworthiness is to be considered a privilege under the common law and providing examples of facts that have or have not been found to be of sufficient newsworthiness to activate privilege]

D. Relationship of Private Facts to Defamation and Other Privacy Torts

[including absence of a truth defense in relation to defamation and false light claims; relationship to breach of confidence or breach of promise]

E. Damages and Other Remedies — Private Facts

1. **General Damages.**
2. **Special Damages.**

3. **Punitive Damages.**

4. **Injunctive Relief.**

F. Procedural Matters — Private Facts

1. **Burden of Proof.**

2. **Statute of Limitations.**

[including whether statute of limitations for private facts is same as or different than that for defamation claims; and, if different, whether private facts claim can be used to circumvent shorter defamation statute of limitations]

3. **Other Procedural Matters.**

[including motions to dismiss; discovery; summary judgment; trial practice; appellate review; prior restraints; remedies for malicious, frivolous, or abusive prosecution; jurisdiction, venue, and choice of law; and survivability of action; to the extent significant determinations have been made regarding such matters in private facts cases]

G. Private Facts Statutes

[including all statutes specially creating categories of private facts or otherwise barring disclosure of certain facts or information, e.g., AIDS confidentiality statutes, rape victim statutes, statutes barring publication of names of minors, providing for grand jury secrecy, or otherwise prohibiting the disclosure of certain confidential matters, proceedings, or documents, to the extent such statutes either expressly impose criminal penalties or create a civil cause of action against media publication or have been interpreted to imply a private cause of action]

IV. INTRUSION

A. Recognition of Intrusion Tort

[including whether jurisdiction has explicitly accepted/rejected the tort]

1. **In General.**

2. **As Applied to the Media.**

B. Substantive Elements — Intrusion

[including introductory paragraph listing all requisite elements of tort, or cross reference if elements have already been set forth in A.1, *supra*]

1. **Unauthorized Intentional Intrusion or Prying into Plaintiff's Seclusion.**

2. **Offensiveness.**

[including degree of offensiveness required and application of "reasonable person" standard in measuring offensiveness, e.g., adequacy or inadequacy of promised disguising of source (electronic or otherwise); disclosure of information allegedly not to be disclosed, etc.]

3. **As to Private Matter.**

4. **Causing Anguish or Suffering.**

C. Privileges and Defenses — Intrusion

1. **Constitutional.**

2. **Common Law.**

a. **Consent.**

[including cases in which consent has been held to have been granted or exceeded]

b. **Other.**

D. Relationship of Intrusion to Trespass and Other Privacy Torts

[including cases discussing absence of a requirement of publication and addressing the distinctions between trespass and intrusion]

E. Damages and Other Remedies — Intrusion

1. **General Damages.**
2. **Special Damages.**
3. **Punitive Damages.**
4. **Injunctive Relief.**

F. Procedural Matters — Intrusion

1. **Burden of Proof.**
2. **Statute of Limitations.**

[including whether statute of limitations for intrusion is same as or different than that for defamation claims; and, if different, whether intrusion claim can be used to circumvent shorter defamation statute of limitations]

3. Other Procedural Matters.

[including motions to dismiss; discovery; summary judgment; trial practice; appellate review; prior restraints; remedies for malicious, frivolous, or abusive prosecution; jurisdiction, venue, and choice of law; and survivability of action; to the extent significant determinations have been made regarding such matters in intrusion cases]

G. Forms of Intrusion**1. Electronic Eavesdropping or Recording.****a. Statutes.**

- (1) *Citations and Brief Description.*
- (2) *Consent Rule(s) and Exceptions.*

[including whether the eavesdropping statute requires the consent of all parties or only one party to the conversation; and whether, based on party's reasonable expectation of privacy in the communication, statute has been interpreted as requiring only one-party consent despite statutory language requiring multiparty consent]

- (3) *Criminal Sanctions Authorized.*
- (4) *Civil Action(s) Authorized.*
- (5) *Statute(s) of Limitations.*

b. Case Law.**2. Hidden Cameras.****a. Statutes.**

[including citations and brief description, and discussion of any consent rule(s) and exceptions, criminal sanctions, civil actions authorized, and statutes of limitations]

b. Case Law.**3. Other Surveillance.**

[focusing on physical observation, e.g., peering into windows or other private places, and following, e.g., "stalking"]

a. **Statutes.**

[including citations and brief description, and discussion of any consent rule(s) and exceptions, criminal sanctions, civil actions authorized, and statutes of limitations]

b. **Case Law.**

4. **Unauthorized Reproduction of Private Documents.** *See also* Conversion, VII

5. **"Ride-Alongs."**

[including claims arising out of media accompaniment of government agents into homes or other places, e.g., crime or fire scenes, based on permission granted by such agents, whether on a theory of intrusion or on a § 1983 claim based on constitutional violations, e.g., wrongful search and seizure]

H. Related Newsgathering Claims

1. **Trespass.**

[including cases addressing the distinctions between trespass and intrusion and considering the application of trespass to media newsgathering, including cases considering any requirement of damage to property as an element of the trespass tort]

a. **Criminal Trespass.**

b. **Civil Trespass.**

2. **False Pretenses/Misrepresentation/Fraud.**

[including cases considering media liability for alleged misrepresentations used in obtaining access to or cooperation of persons or sources interviewed, considering misrepresentations both as to reporter's identity and as to how information will be used]

3. **Harassment.**

[including any statutes (e.g., antistalking statutes) and cases such as *Galella v. Onassis*, 487 F.2d 986 (2d Cir. 1973) or other newsgathering techniques (e.g., ambush interviews) alleged to amount to physical or psychological harassment]

V. MISAPPROPRIATION/RIGHT OF PUBLICITY

A. Recognition of Tort — Misappropriation

1. **Nature of Protection.**

a. **Judicial.**

[including whether jurisdiction has explicitly accepted/rejected the tort by common law and relationship between common law and any statutory recognition]

b. **Statutory.**

[including citation and explication of relevant statutes]

2. **Scope of Protection.**

[particularizing those facets of plaintiff's identity that have or have not been accorded protection, e.g., name, likeness, photograph, portrait, or picture, voice, signature, personality, or any other indicia of identity, including "soundalikes" or "lookalikes"]

3. **Substantive Elements.**

[including listing of all requisite elements of tort, or cross reference if elements have already been set forth in A.1, *supra*]

a. **Appropriation of Plaintiff's Identity or Persona.**

b. **For Use or Benefit of Defendant.**

4. **Descendibility.**

[extent to which jurisdiction does or does not treat misappropriation as descendible]

B. Recognition of Claim — Right of Publicity

1. **Nature of Protection.**

a. ***Judicial.***

[including whether jurisdiction has explicitly accepted/rejected the claim by common law and relationship between common law and any statutory recognition]

b. ***Statutory.***

[including citation and explication of relevant statutes]

2. **Scope of Protection.**

[particularizing those facets of plaintiff's identity that have or have not been accorded protection, e.g., name, likeness, photograph, portrait, or picture, voice, signature, personality, or any other indicia of identity, including "soundalikes" or "lookalikes"]

3. **Substantive Elements.**

[including listing of all requisite elements of claim, or cross reference if elements have already been set forth in B.1, *supra*]

4. **Descendibility.**

a. ***Common Law.***

[extent to which jurisdiction does or does not treat right of publicity as descendible under common law]

b. ***Statutory.***

[including citation and explication of relevant statutes]

C. Privileges and Defenses — Misappropriation/Right of Publicity

1. **Constitutional.**

[including privilege or defense for use of another's identity in news reporting, commentary, entertainment, or works of fiction or nonfiction, to the extent recognized as required under the First Amendment or the state Constitution]

2. **Common Law.**

[including privilege or defense for use of another's identity in news reporting, commentary, entertainment, or works of fiction or nonfiction, to the extent recognized as a matter of common law]

D. Damages and Other Remedies — Misappropriation/Right of Publicity

1. **General Damages.**

2. **Special Damages.**

3. **Punitive Damages.**

4. **Injunctive Relief.**

E. Procedural Matters — Misappropriation/Right of Publicity

1. **Burden of Proof.**

2. **Statute of Limitations.**

3. **Other Procedural Matters.**

[including motions to dismiss; discovery; summary judgment; trial practice; appellate review; prior restraints; remedies for malicious, frivolous, or abusive prosecution; jurisdiction, venue, and choice of law; and survivability of action; to the extent significant determinations have been made regarding such matters in misappropriation/right of publicity cases]

VI. BREACH OF CONTRACT/PROMISSORY ESTOPPEL

A. Confidential Sources

[including cases dealing with revelation of the identity of a confidential source, under *Cohen v. Cowles Media*, 111 S.Ct. 2513 (1991)]

B. Consent Exceeded

[including cases applying principles similar to those of *Cohen v. Cowles Media* to claims involving alleged violation of other promises relating to the disclosure of information]

C. Other

VII. CONVERSION

[focusing on claims for wrongful appropriation of documents or other items, including any First Amendment or state constitutional privilege recognized for publication of information in such documents regardless of the method of acquisition]

VIII. INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

A. Recognition of Tort — Intentional Infliction of Emotional Distress

[including whether jurisdiction has explicitly accepted/rejected the tort]

1. **In General.**
2. **As Applied to the Media.**

B. Substantive Elements — Intentional Infliction of Emotional Distress

[including introductory paragraph listing all requisite elements of tort, or cross reference if elements have already been set forth in A.1, *supra*]

1. **Intentional or Reckless Conduct.**
2. **Extreme and Outrageous Conduct.**
3. **Severe Emotional Distress.**
4. **Causation.**

C. Privileges and Defenses — Intentional Infliction of Emotional Distress

1. **Constitutional.**
 - a. **Applicability of Actual Malice Standard.**

[including application of principles stated in *Hustler Magazine, Inc. v. Falwell*, 485 U.S. 46 (1988), and whether such principles have been applied to private figures on issues of public concern]

- b. **Other. See also *infra*, D.1.**
2. **Common Law.**

D. Relationship of Intentional Infliction of Emotional Distress to Defamation

1. **Application of Constitutional and Common Law Privileges and Defenses.**

[including cases holding that privileges or defenses applicable to defamation must be incorporated into intentional infliction of emotional distress claim, e.g., cases rejecting “end runs” around the protections of defamation law]

2. **Viability of Separate Claim.**

[including cases holding that when offending conduct consists only of allegedly false and defamatory statement, only cause of action lies in defamation]

E. **Damages and Other Remedies — Intentional Infliction of Emotional Distress**

1. **General Damages.**
2. **Special Damages.**
3. **Punitive Damages.**
4. **Injunctive Relief.**

F. **Procedural Matters — Intentional Infliction of Emotional Distress**

1. **Burden of Proof.**
2. **Statute of Limitations.**

[including whether statute of limitations for intentional infliction of emotional distress is same as or different than that for defamation claims; and, if different, whether intentional infliction of emotional distress claim can be used to circumvent shorter defamation statute of limitations]

3. **Other Procedural Matters.**

[including motions to dismiss; discovery; summary judgment; trial practice; appellate review; prior restraints; remedies for malicious, frivolous, or abusive prosecution; jurisdiction, venue, and choice of law; and survivability of action; to the extent significant determinations have been made regarding such matters in intentional infliction of emotional distress cases]

IX. **PRIMA FACIE TORT**

A. **Recognition of Tort — Prima Facie Tort**

[including whether jurisdiction has explicitly accepted/rejected the tort]

1. **In General.**
2. **As Applied to the Media.**

B. **Substantive Elements — Prima Facie Tort**

[including introductory paragraph listing all requisite elements of tort, or cross reference if elements have already been set forth in A.1, *supra*]

1. **Infliction of Intentional Harm.**
2. **By Otherwise Lawful Activity.**
3. **Without Excuse or Justification.**
4. **Causing Damage.**

C. **Privileges and Defenses — Prima Facie Tort**

1. **Constitutional.**
 - a. ***Applicability of Actual Malice Standard.***
 - b. ***Other. See also infra, D.1.***
2. **Common Law.**

D. **Relationship of Prima Facie Tort to Other Claims**

1. **Application of Constitutional and Common Law Privileges and Defenses.**