

## Restatement (2d) of Torts

### **§ 558. Elements Stated**

To create liability for defamation there must be:

- (a) a false and defamatory statement concerning another;
- (b) an unprivileged publication to a third party;
- (c) fault amounting at least to negligence on the part of the publisher [with respect to the act of publication]; and
- (d) either actionability of the statement irrespective of special harm or the existence of special harm caused by the publication.

### **§ 559. Defamatory Communication Defined**

A communication is defamatory if it tends so to harm the reputation of another as to lower him in the estimation of the community or to deter third persons from associating or dealing with him.

### **§ 578. Liability of Republisher.**

[With the exception of the rule stated in Section 581], one who repeats or otherwise republishes defamatory matter is subject to liability as if he had originally published it.

### **§ 581. Transmission of Defamation Published by Third Person.**

(1) . . . one who only delivers or transmits defamatory matter published by a third person is subject to liability if, but only if, he knows or has reason to know of its defamatory character. . . .

### **§ 12. Reason to Know; Should Know**

. . . “reason to know” [means] the actor has information from which a person of reasonable intelligence . . . would infer that the fact in question exists, or that such person would govern his conduct upon the assumption that such fact exists.

**47 U.S.C. § 230. Protection for private blocking and screening of offensive material.**

**(a) Findings**

The Congress finds the following:

. . .

- (3) The Internet and other interactive computer services offer a forum for a true diversity of political discourse, unique opportunities for cultural development, and myriad avenues for intellectual activity.
- (4) The Internet and other interactive computer services have flourished, to the benefit of all Americans, with a minimum of government regulation.

. . .

**(b) Policy**

It is the policy of the United States—

- (1) to promote the continued development of the Internet and other interactive computer services and other interactive media;
- (2) to preserve the vibrant and competitive free market that presently exists for the Internet and other interactive computer services, unfettered by Federal or State regulation;
- (3) to encourage the development of technologies which maximize user control over what information is received by individuals, families, and schools who use the Internet and other interactive computer services;

. . .

**(c) Protection for “Good Samaritan” blocking and screening of offensive material**

- (1) Treatment of publisher or speaker—No provider or user of an interactive computer service shall be treated as the publisher[, distributor,] or speaker of any information provided by another information content provider.
- (2) Civil liability—No provider or user of an interactive computer service shall be held liable on account of—
  - (A) any action voluntarily taken in good faith to restrict access to or availability of material that the provider or user considers to be obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise objectionable, whether or not such material is constitutionally protected; or
  - (B) any action taken to enable or make available to information content providers or others the technical means to restrict access to material described in [subparagraph (A)].

. . .

**(e) Effect on other laws**

- (1) No effect on criminal law—Nothing in this section shall be construed to impair the enforcement of . . . any . . . Federal criminal statute.
- (2) No effect on intellectual property law—Nothing in this section shall be construed to limit or expand any law pertaining to intellectual property.
- (3) State law—Nothing in this section shall be construed to prevent any State from enforcing any State law that is consistent with this section. No cause of action may be brought and no liability may be imposed under any State or local law that is inconsistent with this section.

## Restatement (2d) of Torts

### **§ 652E. Publicity Placing Person in False Light**

One who gives publicity to a matter concerning another that places the other before the public in a false light is subject to liability to the other for invasion of his privacy, if

- (a) the false light in which the other was placed would be highly offensive to a reasonable person, and
- (b) the actor had knowledge of or acted in reckless disregard as to the falsity of the publicized matter and the false light in which the other would be placed.

### **§ 46. Intentional Infliction of Emotional Distress**

One who by extreme and outrageous conduct intentionally or recklessly causes severe emotional distress to another is subject to liability for such emotional distress, and if bodily harm to the other results from it, for such bodily harm.

Restatement (2d) § 652C Appropriation of Name or Likeness

**One who appropriates to his own use or benefit the name or likeness of another is subject to liability to the other for invasion of his privacy.**

**Comments:**

a. The interest protected by the rule stated in this Section is the interest of the individual in the exclusive use of his own identity, in so far as it is represented by his name or likeness, and in so far as the use may be of benefit to him or to others. Although the protection of his personal feelings against mental distress is an important factor leading to a recognition of the rule, the right created by it is in the nature of a property right, for the exercise of which an exclusive license may be given to a third person, which will entitle the licensee to maintain an action to protect it.

b. *How invaded.* The common form of invasion of privacy under the rule here stated is the appropriation and use of the plaintiff's name or likeness to advertise the defendant's business or product, or for some similar commercial purpose. Apart from statute, however, the rule stated is not limited to commercial appropriation. It applies also when the defendant makes use of the plaintiff's name or likeness for his own purposes and benefit, even though the use is not a commercial one, and even though the benefit sought to be obtained is not a pecuniary one. Statutes in some states have, however, limited the liability to commercial uses of the name or likeness.