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Tort Of Invasion Of Privacy Recognized In Maryland

*Carr v. Watkins*¹

The plaintiff, a security guard for a regional shopping center, brought action against a naval security officer and two members of the county police department. His declaration sounded primarily in slander and invasion of privacy and alleged that the defendants, both orally and in writing, communicated to plaintiff's employer charges made against him years ago when he was employed by the Navy and of which he was acquitted, thus causing the termination of his employment at the shopping center.² The lower court sustained demurrers to this declaration, holding that all three defendants were absolutely privileged as to the slander count and that the tort of invasion of privacy did not exist in Maryland. The plaintiff appealed and secured a reversal, the Court holding *inter alia* that the tort of invasion of privacy should be recognized in Maryland in a proper case.³ In reaching this decision the Maryland Court of Appeals rejected the lower court's denial of that tort's existence, reasoning that recognition of the tort had been quickening since 1890⁴ and that it was presently firmly enconced in more than thirty states, would probably be recognized in several others, and is rejected in but three.⁵ Also the Court indicated that both legal writers⁶ and most courts⁷ recognize a right of redress for the invasion of privacy.⁸ However, the real significance of the instant case lies not in the reasoning employed by the Court of Appeals but in the fact that, by approving a previous

¹ 227 Md. 578, 177 A. 2d 841 (1961).

² Specifically the declaration was in five counts: slander, invasion of privacy, the divulgence of information without legal right, malicious interference with contract rights and conspiracy to interfere with such rights.

³ The Court of Appeals also held that the privilege as to the slander count was only a qualified one and hence a defense not available on demurrer.

⁴ Warren and Brandeis, *The Right To Privacy*, 4 Harv. L. Rev. 193 (1890).

⁵ The court cited Prosser, *Privacy*, 48 Calif. L. Rev. 383, 386-9 (1960).

⁶ 4 RESTATEMENT, TORTS (1939) § 867 states that "A person who unreasonably and seriously interferes with another's interest in not having his affairs known to others . . . is liable to the other." See also 1 HARPER AND JAMES, THE LAW OF TORTS (1956) §§ 9.5, 9.7; PROSSER, TORTS (2d ed. 1955) § 97, p. 635.

⁷ See, e.g., *Sidis v. F-R Corporation*, 113 F. 2d 806, 138 A.L.R. 15, 22, 89 (1940); *Cason v. Baskin*, 155 Fla. 198, 20 So. 2d 243, 168 A.L.R. 430, 446, 461 (1944); 14 A.L.R. 2d 750, 770 (1949).

⁸ Among other cases and texts the Court cited *Graham v. Baltimore Post Co.*, Daily Record, Nov. 9, 1932 (Super. Ct. of Baltimore City), reported and discussed in O'Dunne, *The Right of Privacy*, 22 Ky. L.J. 108 (1933); HARPER AND JAMES, *loc. cit. supra*, n. 6; PROSSER, *op. cit. supra*, n. 6, 637; RESTATEMENT, TORTS, *loc. cit. supra*, n. 6; Warren and Brandeis, *supra*, n. 4; PROSSER, *supra*, n. 5.

lower court decision,⁹ it has approved a new tort for Maryland law.

Although only briefly embodied in the *Carr* decision, the reasons for the right, as stated by other jurisdictions, are overwhelmingly logical and soundly buttressed by precedent. Some courts have stated the "right's" definition ". . . as the right to live one's life in seclusion, without being subjected to unwarranted and undesired publicity. In short, it is the right to be let alone."¹⁰ Others have described it as the right of an individual to be protected from any wrongful intrusion into his private life which would outrage a person of ordinary sensibilities.¹¹ The right has even been said to be one of natural law,¹² but more practically it seems an outgrowth of the complexities of our modern civilization and the increased range and facilities of publicity in these modern times.

The early equity cases which tiptoed on the fringes of the privacy concept dealt primarily with rights of property in various letters surreptitiously obtained from their writers or recipients.¹³ Such cases were responsible for establishing the framework for what was to become a right of privacy independent of contract and trust theories¹⁴ and from the law of libel and slander.¹⁵

⁹ *Graham v. Baltimore Post Co.*, *supra*, n. 8. In this dispute the defendant newspaper published pictures of the plaintiff for the purpose of commercial advertisement. Like the instant case a demurrer was filed admitting the facts but challenging legal liability. The demurrers were overruled, but the case was never appealed.

¹⁰ *Kerby v. Hal Roach Studios*, 53 Cal. App. 2d 207, 127 P. 2d 577, 579 (1942); *COOLEY, TORTS* (2d ed. 1888) 29.

¹¹ *Barber v. Time Inc.*, 348 Mo. 1199, 159 S.W. 2d 291, 293 (1942).

¹² *Pavesich v. New England Life Ins. Co.*, 122 Ga. 190, 50 S.E. 68, 69-70 (1905).

¹³ In *Hoyt v. MacKenzie*, 3 Barb. Ch. 320 (N.Y. 1848) it was conceded that the theft of private letters was criminally reprehensible but that equity had no jurisdiction to punish crime or to enforce moral duties except those involving property rights. Here the court found no such property right as the letters weren't artistic but merely friendly communication. However, in the later case of *Woolsey v. Judd*, 4 Duer 379 (N.Y. 1885), that rule was disapproved "as a departure from previously established law", and the solution in the English case of *Gee v. Pritchard*, 2 Swanst. 418 (1818) was adopted, the Court proclaiming that writers of letters written for any purpose possessed such a right of property in them that they could never be published without their consent. Thus was dissolved the distinction supposed to have existed between letters of literary value and those of ordinary friendship and business. Although these decisions did not utilize the label "right of privacy" as a separate body of law they did lay the foundation for its subsequent inception.

¹⁴ See *Holmes v. Underwood & Underwood*, 225 App. Div. 360, 233 N.Y.S. 153 (1929); *Clayman v. Bernstein*, 38 Pa. D. & Co. 543 (1940). The preponderance of authority tends to the view that the right of privacy exists as an independent right and that it is not merely an incident to some other long recognized rights such as those of property or contract.

¹⁵ See *Brents v. Morgan*, 221 Ky. 765, 299 S.W. 967 (1927), 55 A.L.R. 964 (1928).

It is interesting that the real right as we now recognize it was prompted by an amusing circumstance involving Samuel Warren's entertaining exploits in the prominent Back Bay section of Boston. Warren had become the subject of hawk-like scrutiny by local newspapers and, resenting this invasion, he collaborated with his law partner Louis D. Brandeis on a Harvard Law Review article¹⁶ which shaped the concepts of the right of privacy and its exceptions so emphatically that variations from that mean are today unique. The article concluded that the rights protected, whatever their exact nature, are not rights arising from contract or from special trust, but are rights against the world; and the principle which has been applied to protect these rights is in reality not the principle of private property. The principle which protects personal writings and any other production of the intellect or of the emotions, is the right to privacy, and the law has no new principle to formulate when it extends this protection to the personal appearance, sayings, acts, and to personal relations.¹⁷

Obviously the right is a creature of judicial legislation and for that reason is still the focal point of bitter opposition in some quarters.¹⁸ When Warren and Brandeis called for their legal advance most jurisdictions were conservatively hesitant to follow suit and even yet have not begun to develop the mass of precedent in this area as did the early starters, Georgia and Kentucky.

Either because these states could rely on the "letter cases" decided within their own boundaries¹⁹ or because they felt free to choose whether or not to accept the new tort²⁰ their entrance into this new area, though diametrically opposed in method, was typical of most of the developmental pangs later experienced by sister states.

The leading *Pavesich* case²¹ honestly treated the matter as one of first impression in Georgia and held that a plain-

¹⁶ Warren and Brandeis, *supra*, n. 4.

¹⁷ *Id.*, 195.

¹⁸ *Trammell v. Citizens News Co.*, 285 Ky. 529, 148 S.W. 2d 708 (1941). Even as late as this date the defendant argued that the rule announced in a prior case, which had adopted this "innovation in the common law", was unsound as the right had never existed at common law. In the face of that approach the Court spoke of the flexibility of common law which made such "innovations" possible.

¹⁹ *Grigsby v. Breckinridge*, 2 Bush. 480 (Ky. 1867). Here equity decreed the restraining of the defendant's publishing letters written by the plaintiff but allowed publication of those he had authored stating that if they were legally given the defendant as a gift their return was not compellable even if the plaintiff was the author of some of them.

²⁰ *Pavesich v. New England Life Ins. Co.*, 122 Ga. 190, 50 S.E. 68, 69 L.R.A. 101 (1905).

²¹ *Ibid.*

tiff whose unauthorized picture and indorsement appeared in the defendant's advertising, was entitled to recover for a direct invasion of his legal rights. These rights, spoke the court, were guaranteed by natural law and by the instincts of fair play.²²

The law in Kentucky evolved quite differently in that its development was a gradual process as compared with Georgia's whirlwind technique. In *Foster-Milburn Co. v. Chinn*,²³ Senator Chinn sued the manufacturer of Doan's Kidney Pills for printing his picture and indorsement of the defendant's product without his consent. The action sounded in libel but the decision did not rest on that count alone. The Court, in its dicta hinted that such a publication without consent was a violation of the right of privacy.²⁴ *Douglas v. Stokes*,²⁵ which closely followed, neglected to refer to privacy as a principle of law but did speak of feelings and sentiment even though the decision was based on breach of contract. *Brents v. Morgan*²⁶ gave the final

²² Compare the important case of *Roberson v. Rochester Folding Box Co.*, 171 N.Y. 538, 64 N.E. 442, 59 L.R.A. 478 (1902), now overruled by statute, which scoffed at the right and expressed abhorrence at fabricating new law when precedent for such didn't exist. This too was a case of first impression and involved the invasion of plaintiff's privacy by circulating her likeness on a flour box which bore the legend "Flour of the Family". Although the court referred to the Harvard Law Review article, it held that the recognition of privacy as a legal principle could only be done by statute. Gray, dissenting, exemplified the importance of the old property cases by declaring in effect that if one has a right to protection against unauthorized circulation of letters, the same right should extend to one whose portrait is exploited commercially. In short, if a face has a value, that value is its owner's property until he chooses to give it away. It is interesting that the Pavesich case chided the Roberson decision by mentioning that conservatism should not go to the extreme of failing to recognize a right which the instincts of nature prove to exist. *Pavesich v. New England Life Ins. Co.*, 122 Ga. 190, 50 S.E. 68 (1905).

²³ 134 Ky. 424, 120 S.W. 364 (1909).

²⁴ Compare the English case of *Tolley v. J. S. Fry & Sons Ltd.*, A.C. 333 (1931). Here a candy company published a cartoon depicting the plaintiff with a pack of defendant's chocolates peeking slyly from his pocket. The House of Lords held that this could be libel as the jury might reasonably find that such a cartoon implied that the plaintiff had consented for a fee to be so pictured. Note that under this libel theory if the plaintiff really does consent to the use of his picture his action would be barred, the defenses of truth would be available and would preclude recovery. Under the privacy theory consent would not bring the defense of truth into play, but recovery, the effect being the same, would likewise be precluded.

²⁵ 149 Ky. 506, 149 S.W. 849 (1912). Here the plaintiff engaged the defendant photographers to photograph the corpse of plaintiff's deformed child. Contrary to the agreement the defendant secured a copyright on the photo and plaintiff sued for the unauthorized use of the negative. The court skirted the necessity of deciding on the privacy issue by finding an implied contract which limited defendant's authority to use the negative, thus he invaded plaintiff's right.

²⁶ 221 Ky. 765, 299 S.W. 967 (1927), 55 A.L.R. 964 (1928).

boost to the formalized acceptance of the right as an independent one. Here it was held that a creditor who posted a sign on the plaintiff's premises declaring a debt owed defendant constituted an "unwarranted invasion of privacy."²⁷

The approach of both the *Brents* and the *Pavesich* opinions shows that these Courts realized they were confronted with a problem not previously resolved. Despite this fact both opinions chose to stress the existence of the tort as if predestined, the opportunity to choose was played down. It is only in this characteristic that Maryland's mode of adoption resembles that of the aforementioned cases. The Maryland Court of Appeals justified acceptance of the right by stating it found nothing in Maryland law to deny existence of the tort and by so saying quietly entered the field by wisely avoiding the difficulty of twisting precedent to fit a mold.

Thus far many courts have been preoccupied with the problem of whether the tort exists at all and there has been little discussion of its varied characteristics. Basically there are four distinct wrongs which, as a group, though they have little in common except that each constitutes an interference with the plaintiff's right to be let alone, form the complexion of this tort.²⁸

The first consists of intrusion upon the plaintiff's physical solitude or seclusion, examples of which are invasion of sleeping quarters,²⁹ tapping telephone wires,³⁰ compulsory blood tests,³¹ shadowing,³² window peeping,³³ unau-

²⁷ One wonders whether in the *Stokes*, *Pavesich* and *Chinn* situations the plaintiff's real motives are to sell the pictures and the rights to advertise for the price of damages awarded him. This granted, the "right of privacy" becomes the "right to advertise." Even so there is still no reason to allow business to use names and pictures without the consent of the one thus exposed.

²⁸ PROSSER, TORTS (2d ed. 1955) § 97, pp. 637-640.

²⁹ *Walker v. Whittle*, 83 Ga. App. 445, 64 S.E. 2d 87 (1950); *Byfield v. Candler*, 33 Ga. App. 275, 125 S.E. 905 (1924); *Welsh v. Pritchard*, 125 Mont. 517, 241 P. 2d 816 (1952). Although these decisions were founded on privacy concepts they could have been dealt with on a trespass theory.

³⁰ *Rhodes v. Graham*, 238 Ky. 225, 37 S.W. 2d 46 (1931). *Cf. Chaplin v. National Broadcasting Co.* (S.D.N.Y. 1953) 15 F.R.D. 134. See also *McDaniel v. Atlanta Coca Cola Bottling Co.*, 60 Ga. App. 92, 2 S.E. 2d 810 (1939) (where defendant used an electronic device).

³¹ *Bednarik v. Bednarik*, 18 N.J. Misc. 633, 16 A. 2d 80 (1940). See also, Note, *Conclusiveness of Blood Tests in Paternity Suits*, 22 Md. L. Rev. 333 (1962). In many circumstances liability for compulsory blood tests could be founded on the basis of trespass to the person.

³² *Schulty v. Frankfort Marine Accident & Plate Glass Ins. Co.*, 151 Wis. 537, 139 N.W. 386 (1913). *Cf. Chappell v. Stewart*, 82 Md. 323, 33 A. 542 (1896).

³³ *Pritchett v. Board of Com'rs*, 42 Ind. App. 3, 85 N.E. 32 (1908) which was sustained on nuisance grounds; *Moore v. New York Elev. R. Co.*, 130

thorized investigation of a private bank account³⁴ and intruding on childbirth.³⁵

The second wrong involves cases founding a cause of action in publicity which violates the ordinary decencies, given to private information about the plaintiff, even though it may be so that no action would lie for defamation.³⁶ Such cases include the publication of a picture of plaintiff's deformed child,³⁷ publishing the details of an embarrassing sickness,³⁸ posting a sign that plaintiff had not paid his debts³⁹ and dredging up a reformed prostitute's past.⁴⁰

The third, a vague area at best, consists in putting the plaintiff in a false but not necessarily defamatory position in the public eye such as signing his name to a telegram,⁴¹ attributing to the plaintiff views which he does not actually hold⁴² and placing his picture in a rogue's gallery after he has been exonerated of all crimes.⁴³

The fourth and most clearly recognized wrong consists of the appropriation of some element of the plaintiff's personality for commercial use as in the unauthorized use of

N.Y. 523, 29 N.E. 997 (1892) sustained on the ground of loss of rental value to real estate.

³⁴ *Brex v. Smith*, 104 N.J. Eq. 386, 146 A. 34 (1929).

³⁵ *DeMay v. Roberts*, 46 Mich. 160, 9 N.W. 146 (1881) which was sustained on assault and battery grounds.

³⁶ It is interesting to note that in *Brents v. Morgan*, 221 Ky. 765, 299 S.W. 967, 970, 55 A.L.R. 964 (1928) reference was made to that part of the Warren-Brandeis article dealing with "exceptions", wherein it was stated that the law would probably not grant redress for invasion by oral publication in the absence of special damages. Often this brand of logic is unfair; why, for example, should the plaintiff's sensibilities be protected against embarrassment by publication of his debt while the defendant can speak of it with impunity. Certainly in such a case recovery on a slander theory is precluded due to the lack of special damages but why shouldn't relief be granted under the privacy concepts? Perhaps the reasoning is that such offenses are insignificant and the courts cannot afford the time to punish for mere bad manners.

Fortunately the Maryland Court of Appeals was unimpressed with such shabby justification and aligning itself with the newer view stated in the Carr opinion that oral communication was sufficient to found an action for invasion of privacy when that tort's other requisites are present.

³⁷ *Bazemore v. Savannah Hospital*, 171 Ga. 257, 155 S.E. 194 (1930); *Douglas v. Stokes*, 149 Ky. 506, 149 S.W. 849 (1912).

³⁸ *Barber v. Time Inc.*, 348 Mo. 1199, 159 S.W. 2d 291 (1942).

³⁹ *Brents v. Morgan*, 221 Ky. 765, 299 S.W. 967 (1927), 55 A.L.R. 964 (1928); *Thompson v. Adelberg & Berman, Inc.*, 181 Ky. 487, 205 S.W. 558, 3 A.L.R. 1594 (1918). *Contra*, *Judevine v. Benzies-Montanye Fuel & Warehouse Co.*, 222 Wis. 512, 269 N.W. 295, 106 A.L.R. 1443 (1936).

⁴⁰ *Melvin v. Reid*, 112 Cal. App. 285, 297 P. 91 (1931).

⁴¹ *Hinish v. Meier & Frank Co.*, 166 Or. 482, 113 P. 2d 438 (1941).

⁴² *Leverton v. Curtis Pub. Co.*, 192 F. 2d 974 (3d Cir. 1951); *Prey v. Curtis Pub. Co.*, 78 F. Supp. 305 (D.C. 1948); *Gill v. Curtis Pub. Co.*, 38 Cal. 2d 273, 231 P. 2d 565 (1951).

⁴³ *State ex rel Mavity v. Tyndall*, 224 Ind. 364, 66 N.E. 2d 755 (1946); *Itzkovitch v. Whitaker*, 115 La. 479, 39 So. 499 (1905).

his name or picture in the defendant's advertising.⁴⁴ In this area recovery is allowed only when the plaintiff's name is both connected and identified with other aspects of his personality such as his reputation in the community where he lives. The simple use of a name similar to plaintiff's is not actionable in itself.⁴⁵

As far as limitations on the tort are concerned, it is generally one founded upon publicity and communication except for the rather remote circumstance of actual physical invasion.⁴⁶ It is, of course, strictly a personal right relating to the specific individual alone, and suit cannot be brought by a next friend whose privacy hasn't also been affected by the embarrassing publication.⁴⁷ As a consequence the cause of action does not remain after the death of the person wronged⁴⁸ and because the tort is a personal one a corporation or partnership, having no personal privacy, has no "privacy" to be invaded.⁴⁹ However, they do have a right to their name and business reputation.⁵⁰ Another characteristic of the tort of invasion of privacy is that it differs from slander, in that in order to recover substantial damages, no special monetary damage need be proven,⁵¹ and from both slander and libel in that the truth of the matter published doesn't result in a defense.⁵²

The right may be surrendered by consent to the publication complained of or to a similar form of publicity.⁵³ Generally speaking, one who puts himself in the public eye cannot later complain of publicity which deals with his

⁴⁴ *Continental Optical Co. v. Reed*, 119 Ind. App. 643, 86 N.E. 2d 306 (1949); *Kunz v. Allen*, 102 Kan. 883, 172 P. 532 (1918); *Foster Milburn Co. v. Chinn*, 134 Ky. 424, 120 S.W. 364 (1909); *Flake v. Greensboro News Co.*, 212 N.C. 780, 195 S.E. 55 (1938).

⁴⁵ See *State v. Hinkle*, 131 Wash. 86, 229 P. 317 (1924); *Vanderbilt v. Mitchell*, 72 N.J. Eq. 910, 67 A. 97 (1907); *Von Thodorovich v. Franz Josef Beneficial Ass'n*, 154 F. 911 (C.C.E.D. Pa. 1907).

⁴⁶ See *Walker v. Whittle*, 83 Ga. App. 445, 64 S.E. 2d 87 (1950); *Bednarik v. Bednarik*, 18 N.J. Misc. 633, 16 A. 2d 80 (1940).

⁴⁷ *Bazemore v. Savannah Hospital*, 171 Ga. 257, 155 S.E. 194 (1930); *Douglas v. Stokes*, 149 Ky. 506, 149 S.W. 849 (1912).

⁴⁸ See the leading case of *Schumann v. Loew's Incorporated*, 135 N.Y.S. 2d 361 (1954); *Atkinson v. John E. Doherty & Co.*, 121 Mich. 372, 80 N.W. 285 (1899). Cf. that plaintiff may maintain an action against the estate of the defendant, *Reed v. Real Detective Pub. Co.*, 63 Ariz. 294, 162 P. 2d 133 (1945).

⁴⁹ *Rosenwasser v. Ogoglia*, 172 App. Div. 107, 158 N.Y.S. 56 (1916).

⁵⁰ *Uproar Co. v. National Broadcasting Co.*, 8 F. Supp. 358 (D. Mass. 1934); *Benevolent & Protective Order of Elks v. Improved Benevolent & Protective Order of Elks*, 205 N.Y. 459, 98 N.E. 756 (1912).

⁵¹ *Pavesich v. New England Life Ins. Co.*, 122 Ga. 190, 50 S.E. 68 (1905); *Foster Milburn Co. v. Chinn*, 134 Ky. 424, 120 S.W. 364 (1909).

⁵² *Melvin v. Reid*, 112 Cal. App. 285, 297 P. 91 (1931); *Brents v. Morgan*, 221 Ky. 765, 299 S.W. 967, 55 A.L.R. 964 (1927).

⁵³ *Thayer v. Worcester Post Co.*, 284 Mass. 160, 187 N.E. 292 (1933); *Garden v. Parfumerie Rigaud*, 151 Misc. 692, 271 N.Y. Supp. 187 (1933).

activities.⁵⁴ Not all of such a public figure's right to privacy is dissolved by virtue of gaining notoriety, however. He naturally can still recover for the unauthorized commercial uses of his name or picture,⁵⁵ for the production of his "life story" with fiction heavily stirred in⁵⁶ and for the revealing of intimate private life details which are not a part of his public activity.⁵⁷

Often yellow journalism and sensational reporting are privileged merely because they are justified by the public's desire to read about one who has suddenly, but not purposefully, placed himself in the public eye by becoming "hot news".⁵⁸ Naturally the privilege is not unlimited in the scope of its application, but those cases in which the privilege has been found not to have existed involved the most bizarre and outrageous affronts imaginable.⁵⁹ "The Press is no less privileged to discuss the past than the present"⁶⁰ and because of this a lapse of time does not absolve the privilege to rekindle the public's insatiable interest.⁶¹

Clearly, the importance of the *Carr* decision is that it recognizes, for the first time, the existence of the tort of invasion of privacy in Maryland. Furthermore, in accepting the view that an oral communication may give rise to a cause of action, Maryland, it would appear, has taken the more liberal view among those jurisdictions which recognize the tort.

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⁵⁴ *Estill v. Hearst Publishing Co.*, 186 F. 2d 1017 (7th Cir. 1951); *Smith v. Suratt*, 7 Alaska 416 (1928); *Martin v. Dorton*, 210 Miss. 660, 50 So. 2d 391 (1951).

⁵⁵ *Jansen v. Hilo Packing Co.*, 202 Misc. 900, 118 N.Y.S. 2d 162 (1952).

⁵⁶ *Binns v. Vitagraph Co. of America*, 210 N.Y. 51, 103 N.E. 1108 (1913); *Sharkey v. National Broadcasting Co.*, 93 F. Supp. 986 (S.D.N.Y. 1950) (where element of fiction is absent).

⁵⁷ *Stryker v. Republic Pictures Corporation*, 108 Cal. App. 2d 191, 238 P. 2d 670 (1952).

⁵⁸ *Berg v. Minneapolis Star & Tribune Co.*, 79 F. Supp. 957 (D. Minn. 1948); *Jones v. Herald Post Co.*, 230 Ky. 227, 18 S.W. 2d 972 (1929); *Hillman v. Star Pub. Co.*, 64 Wash. 691, 117 P. 594 (1911).

⁵⁹ *Douglas v. Stokes*, 149 Ky. 506, 149 S.W. 849 (1912) (picture of plaintiff's deformed child). Also see *Barber v. Time Inc.*, 348 Mo. 1199, 159 S.W. 2d 291 (1942) (publication of an article concerning plaintiff's physical ailment).

⁶⁰ *Prosser, Torts* (2d ed. 1955) § 97, p. 644.

⁶¹ But here also there are limits. See *Mau v. Rio Grande Oil, Inc.*, 28 F. Supp. 845 (N.D. Cal. 1939), where a radio drama was made of a robbery of which the plaintiff had been the shaken victim.