

# Torts - Libel and Slander - Right of Privacy

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TORTS—LIBEL AND SLANDER—RIGHT OF PRIVACY.—The plaintiff, a carpenter and general contractor, owed the defendant corporation \$4.32 for merchandise sold and delivered to him. The plaintiff failed to answer the statement of account signed by the defendant. The defendant notified the plaintiff that unless the account was paid by June 15, 1935, "he was going to collect it." The account was turned over to a professional collection service for collection. The collection service listed the name of the plaintiff together with 23 others on a flaming handbill stating the amount of the debt each owed, and all listed accounts were distributed about the town and offered for sale to the highest bidder. The action is brought to recover damages for injury to the plaintiffs reputation for credit, and injury to his feelings for distributing the handbills throughout the city of his residence. The trial judge overruled the demurrer. On appeal, *held*, order reversed; there is no allegation of a loss of credit or other injury to his contracting business and the court does not recognize the facts as constituting an invasion of the plaintiff's right to privacy. *Judevine v. Benzies-Montanye Fuel & Warehouse Co.*, (Wis. 1936) 269 N.W. 295.

In the instant case the court points out that no special damages are alleged in the complaint, so that to constitute a cause of action, for libel, the matter published must be actionable *per se*. At common law where the defamatory words were written or printed no allegation of special damages was necessary. 17 R.C.L. 263, 264. Similarly, where spoken words were defamatory *per se*, that is, where the words imputed the commission of a crime, the suffering from a loathsome disease or the like, no allegation of special damages was necessary to make out a cause of action. 17 R.C.L. 263, 264. The Wisconsin court holds that written or printed words are defamatory and actionable *per se* if they tend to subject the plaintiff to ridicule or contempt. *Scofield v. Milwaukee Free Press Co.*, 126 Wis. 81, 175 N.W. 227 (1905). It has been held, as in the principal case, that when a person's name is published with the amount he owes the publication is not defamatory. *McDonald v. Lee*, 246 Pa. 253, 92 Atl. 135 (1914). [*Quaere*: Why is not truth an absolute defense in these cases?] However, the publication has been held to be defamatory when it sets out that the persons whose name are listed therein as delinquent debtors are unworthy of credit. *Nichols v. Daily Reporter Co.*, 30 Utah 74, 83 Pac. 575 (1905). Another court has held that it is not defamatory for one to charge that a debtor has hidden behind the statute of limitations and refused to pay his bill. *Hollenbeck v. Hall*, 103 Iowa 214, 72 N.W. 518 (1897). The Wisconsin court has held that the publication of words imputing nonpayment of debts, want of credit or insolvency as to merchants, traders and others in business is defamatory. *Kay v. Jansen*, 87 Wis. 118, 58 N.W. 245 (1894). The plaintiff in the instant case contended that he also had a right to privacy which the defendant had invaded. The Wisconsin court has never heretofore considered the question of a right to privacy. Authorities are definitely divided on the subject. The doctrine is relatively a new one, said to be non-existent at the common law. Violation of the right to privacy consists in the interference with another's seclusion by subjecting him to unwarranted and undesired publicity. See Warren and Brandeis, *The Right to Privacy*, (1890) 4 HAR. L. REV. 193. In a case like the principal case the Kentucky court has held that the advertising of a debt for sale to coerce payment constitutes an invasion of the right to privacy. *Brents v. Morgan*, 221 Ky. 765, 299 S.W. 967 (1927). The publishing of a person's likeness without his consent may give rise to a claim for damages if the particular court feels that a person's right to privacy should be protected against invasion by another. *Pavesich v. New Eng-*

*land Life Insurance Co.*, 122 Ga. 190, 50 S.E. 68 (1905). Those are, however, the exceptional cases. The New York court has enunciated what is probably the majority rule when it said "\* \* \* the so-called 'right to privacy' has not as yet found an abiding place in our jurisprudence, and, as we view it, the doctrine cannot now be incorporated without doing violence to settled principles of law by which the profession and the public have long been guided." *Roberson v. Rochester Folding Box Co.*, 171 N.Y. 538, 556, 64 N.E. 442, 447 (1902) : *cf.* Note (1929) 43 HAR. L. REV. 297. Perhaps the courts feel that any recognition of a right to privacy would lead to much litigation some of it bordering upon the absurd. See *Robinson v. Rochester Folding Box Co.*, *supra*. The court in the instant case pointed out that protection against invasions of individuals' rights to privacy should be prescribed for by the legislature. *Cf.* N.Y. CIVIL RIGHTS LAW §§ 50, 51.

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