

Finding Cases By Subject

**Using KeySearch on Westlaw and
Topic Search on Lexis**

Accessing KeySearch



Search for Key Numbers

Enter terms e.g., *landlord duty of care to trespassers*

Search

Jurisdiction selected: **Indiana State**
[Change Jurisdiction](#)▼

Browse Key Numbers

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Browse through the 400+ topics of the West American Digest System.

[KeySearch](#)

KeySearch, powered by the West Key Number System, identifies relevant Key Numbers and their underlying concepts and runs a query for you. KeySearch can retrieve reported cases as well as documents that don't contain Key Numbers, such as law reviews and unpublished cases.

What is a Key Number? [Show](#)▼

KeySearch on Westlaw



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KeySearch

A research tool powered by the West Key Number System that identifies the terms and key numbers most relevant to your legal issue and creates a query for you.


Click a  or its corresponding topic to browse more subtopics.


Scan the list of topics and subtopics for these terms:

[KeySearch Tips](#)


-  [Administrative Law](#)
[Open Meetings](#), [Exhaustion](#), [Primary Jurisdiction](#)
-  [Agriculture](#)
[Federal Aid](#), [Veterinarians](#), [Pest Control](#)
-  [Alternative Dispute Resolution \(ADR\)](#)
[Securities Law](#), [Insurance](#), [Bankruptcy](#)
-  [Antitrust and Trade Regulation](#)
[Horizontal Restraints](#), [Price Fixing](#), [Crimes](#)
-  [Art, Entertainment, and Sports Law](#)
[Agents](#), [Licenses](#), [Torts](#)
-  [Bankruptcy](#)
[Exemptions](#), [Stay](#), [Priorities](#), [Preferences](#)
-  [Business Organizations](#)
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[Rates](#), [Electricity](#), [Deregulation](#),
-  [Environmental Law](#)
[Air Pollution](#), [Nuclear Power](#), [CERCLA](#), [Water Pollution](#),
-  [Government](#)
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[Mental Health](#), [Nursing Homes](#), [Hospitals](#)
-  [Immigration Law](#)
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[Liability Coverage](#), [Motor Vehicles](#), [Bad Faith](#)
-  [Intellectual Property](#)
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[Espionage](#), [Sovereignty](#), [Treaties](#)
-  [Juvenile Justice](#)
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-  [Torts/ Personal Injury](#)
[Fraud](#), [Defamation](#), [Motor Vehicles](#), [Negligence](#),
-  [Transportation](#)
[Aviation](#), [Motor Vehicles](#), [Mass Transit](#),

KeySearch

Click a  or its corresponding topic to browse more subtopics.

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KeySearch Topics:


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[Art, Entertainment, and Sports](#)
[Bankruptcy](#)
[Business Organizations](#)
[Civil Procedure](#)
[Civil Remedies](#)


[All Topics](#) > [Torts/ Personal Injury](#)

[Search all of Torts/ Personal Injury](#), or select a topic below.

-  [Animals](#)
-  [Assault and Battery](#)
-  [Attorney Malpractice](#)
-  [Carriers and Passengers](#)
-  [Children](#)
-  [Civil Rights](#)
-  [Consortium](#)
-  [Conspiracy](#)
-  [Consumer Protection](#)
-  [Conversion](#)
-  [Damages](#)
-  [Interference with Business Relations](#)
-  [Interference with Contract](#)
-  [Invasion of Privacy](#)
-  [Joint and Several Liability](#)
-  [Malicious Prosecution](#)
-  [Maritime Law](#)
-  [Medical Malpractice](#)
-  [Miscellaneous Torts](#)
-  [Motor Vehicle Accidents](#)
-  [Negligence](#)
-  [Negligent Misrepresentation](#)

KeySearch

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KeySearch Topics:

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- [Agriculture](#)
- [Alternative Dispute Resolution /](#)
- [Antitrust and Trade Regulation](#)
- [Art, Entertainment, and Sports](#)
- [Bankruptcy](#)
- [Business Organizations](#)
- [Civil Procedure](#)
- [Civil Remedies](#)

[All Topics](#) > [Torts/ Personal Injury](#) > Invasion of Privacy

[Search all of Invasion of Privacy](#), or select a topic below.

-  [Appropriation of Name or Likeness](#)
-  [Employment Issues](#)
-  [False Light](#)
-  [Financial Records](#)
-  [Intrusion on Seclusion](#)
-  [Misappropriation of Name or Likeness](#)
-  [Newsworthiness](#)
-  [Public Figures](#)
-  [Public Interest](#)
-  [Public Record](#)
-  [Surveillance](#)
-  [Use of Name](#)
-  [Use of Picture or Likeness](#)
-  [Wiretapping and Electronic Eavesdropping](#)

- Select Jurisdiction
- Select type of material to find
- Add additional terms if desired


KeySearch

[All topics](#) > [Torts/ Personal Injury](#) > [Invasion of Privacy](#) > Public Figures


Choose a source:

Cases With West Headnotes 

- Indiana State
- All Federal Cases

Cases Without West Headnotes 

- Indiana State
- All Federal Cases

Encyclopedias and Treatises: 

- American Jurisprudence 2d

Journals & Law Reviews (JLR)

Add Search terms (optional):

(surviv! /2 death) descend!

Search

[View/Edit Full Query](#)

Results based on topic and key numbers

Result List
7 Docs

Links for
560 F.2d 1061

[Full Screen List](#)
[Edit Search](#) | [Locate in Result](#)

Trademarks...

6. Memphis Development Foundation v. Factors, etc., Inc.,
441 F.Supp. 1323, 3 Media L. Rep. 2012, W.D.Tenn., December 05, 1977

...of publicity as in the case of unfair competition, unjust enrichment, or wrongful appropriation of good will, [3] 379 Torts **379IV** Privacy and Publicity **379IV**(B) Privacy **379IV**(B)1 Privacy in General 379k 330 k. In General. (Formerly 379k8.5(2)) 379 Torts **379IV** Privacy and Publicity **379IV**(C) Use of Name, Voice or Likeness; Right to Publicity 379k 384 k. Nature and Extent of Right. (Formerly 379k8.5(2)) Tennessee courts would recognize and acknowledge distinction between valuable right of publicity of **public figures** and the right of privacy in the sense of being left alone, free from harassment or humiliation, a tortious claim...

...no reason why the valuable right of publicity clearly exercised by and financially benefiting Elvis Presley in

Meeropol v. Nizer
560 F.2d 1061
C.A.N.Y. 1977.
July 28, 1977 (Approx. 15 pages)

FOR EDUCATIONAL USE ONLY

560 F.2d 1061, 2 Media L. Rep. 2269, 195 U.S.P.Q. 273

United States Court of Appeals,
Second Circuit.
Michael MEEROPOL and Robert Meeropol, Plaintiffs-Appellants,
v.
Louis NIZER, Doubleday & Co., Inc. and Fawcett Publications, Inc., Defendants-Appellees.
No. 886, Docket 76-7434.
Argued May 19, 1977.
Decided July 28, 1977.

Suit was instituted on complaint alleging infringement of statutory copyright, invasion of privacy and defamation, and infringement of common-law copyright. The United States District Court for the Southern District of New York, Harold R. Tyler, Jr., and Lee P. Gagliardi, JJ., [381 F.Supp. 29](#) and [417 F.Supp. 1201](#), entered summary judgments of dismissal and plaintiffs appealed. The Court of Appeals, J. Joseph Smith, Circuit Judge, held that: (1) defamation with respect to book written and published by defendants in respect to trial of plaintiffs' parents was not established in absence of evidence that defendants had recklessly or maliciously disregarded proof in statements pertaining directly to them; (2) book could not have invaded plaintiffs' privacy under law of New York where it never referred to

Term Doc 1 of 7

Search for Key Numbers

Enter terms e.g., *landlord duty of care to trespassers*

Jurisdiction selected: **All State Cases**
[Change Jurisdiction](#)▼

[West Key Number Digest Outline](#)

All State Cases

TORTS

- [379k384](#) USE OF NAME, VOICE OR LIKENESS; **RIGHT TO PUBLICITY** > Nature and extent of **right**
- [379k391](#) USE OF NAME, VOICE OR LIKENESS; **RIGHT TO PUBLICITY** > Defenses in general
- [379k387](#) Conduct or misappropriation actionable in general > In general
- [379k383](#) USE OF NAME, VOICE OR LIKENESS; **RIGHT TO PUBLICITY** > In general
- [379k396](#) USE OF NAME, VOICE OR LIKENESS; **RIGHT TO PUBLICITY** > Persons entitled to sue
- [379k388](#) Conduct or misappropriation actionable in general > Name
- [379k327](#) IN GENERAL > What law governs

CONSTITUTIONAL LAW

- [92k1630](#) FALSE STATEMENTS IN GENERAL > **Right of publicity**; misappropriation of likeness, name, or celebrity status

CRIMINAL LAW

- [110k126\(1\)](#) Local prejudice > In general
- [110k633.32](#) COURSE AND CONDUCT OF TRIAL IN GENERAL > **Publicity**, media coverage, and occurrences extraneous to trial

Additional Results from All Jurisdictions

TORTS

- [379k385](#) USE OF NAME, VOICE OR LIKENESS; **RIGHT TO PUBLICITY** > Elements of the tort in general

ResultsPlus™

[View All Results](#)

Law Review

[1. Etw Corp. V. Jireh Publishing, Inc.: Turning an Athlete's Publicity Over to the Public](#)
Journal of Intellectual Property Law, 2004

Am.Jur.2d: Privacy

[2. Persons Suing for Violation of Another's Right, Persons Suing for Invasion of Deceased Person's Right, Right to Publicity](#)

Am.Jur.2d: Descent and Distribution

[3. Particular Property, Interests and Rights, In General, Property Right in Name](#)

Am.Jur.2d: Assignments

[4. Subject Matter, In General, Generally](#)

California Brief

[5. Comedy III Prod., Inc....](#)

...The rights of publicity are a property right very similar to other intellectual property rights such as those protected by copyright and trademark...

Topic or headnote on Lexis

LexisNexis® Total Research System Custom ID ▾: No Description | Switch Client

Search Research Tasks Get a Document Shepard's® Alerts Total Litigator Transactional Advisor Counsel Selector

by Source by Topic or Headnote by Guided Search Form by Dot Command

Use this page to find legal data based on **areas of law and related legal topics**. Using this page can help you target your legal issue, identify appropriate sources, and formulate your search request.



Recently Used Legal Topics ?

General Overview (Torts > Intentional Torts > Invasion of Privacy > Appropriation...) ▾



[Edit Recently Used Topics](#)

Look for a Legal Topic ?

Option 1: Find a Legal Topic



Type in your research issue as an individual term, phrase, list or sentence. Enclose phrases in quotation marks.

Option 2: Explore Legal Topics

- | | | |
|---|--|--|
| <p> Administrative Law
Agency Rulemaking, Governmental Information, Judicial Review, ...</p> | <p> Criminal Law & Procedure
Criminal Offenses, Arrests, Search & Seizure, ...</p> | <p> Legal Ethics
Client Relations, Practice Qualifications, Sanctions, ...</p> |
| <p> Admiralty Law
Finds & Salvage, Shipping, Sovereign Immunity & Liability, ...</p> | <p> Education Law
Athletics, Departments of Education, Students, ...</p> | <p> Military & Veterans Law
Military Justice, Defense Powers, Veterans, ...</p> |
| <p> Antitrust & Trade Law
Monopolization, Price Discrimination, Sherman Act, ...</p> | <p> Energy & Utilities Law
Federal Oil & Gas Leases, Mining Industry, Utility Companies, ...</p> | <p> Patent Law
Infringement Actions, Subject Matter, Utility Requirement, ...</p> |
| <p> Banking Law
Bank Activities, Bank Expansion, National Banks, ...</p> | <p> Environmental Law
Environmental Justice, Solid Wastes, Zoning & Land Use, ...</p> | <p> Pensions & Benefits Law
Employee Benefit Plans, Multiemployer Plans, ...</p> |
| <p> Bankruptcy Law
Case Administration, Discharge & Dischargeability, Exemptions, ...</p> | <p> Estate, Gift & Trust Law
Annuities, Estate Administration, Trusts, ...</p> | <p> Public Contracts Law
Bids & Formation, Dispute Resolution, Terminations, ...</p> |
| <p> Business & Corporate Law
Agency Relationships, Mergers & Acquisitions, ...</p> | <p> Evidence
Documentary Evidence, Relevance, Testimony, ...</p> | <p> Public Health & Welfare Law
Food & Nutrition, Healthcare, Social Services, ...</p> |

Look for a Legal Topic

Option 1: Find a Legal Topic

Find in: Torts

All Search Advisor Topics

Option 2: Explore Legal Topics

Torts

General Overview

Business Torts

Damages

Intentional Torts

Malpractice & Professional Liability

Negligence [\(Related Topics...\)](#)

Premises Liability & Property [\(Related Topics...\)](#)

Procedure

Products Liability [\(Related Topics...\)](#)

Public Entity Liability [\(Related Topics...\)](#)

Strict Liability

Transportation Torts

Vicarious Liability

Wrongful Death & Survival Actions [\(Related Topics...\)](#)

Key:

Click to expand level.

Click to collapse level.

Click to see information about this topic.

Look for a Legal Topic

Option 1: Find a Legal Topic

 Find

Find in: Torts

All Search Advisor Topics

Option 2: Explore Legal Topics

Torts

General Overview

Business Torts

Damages

Intentional Torts

General Overview

Abuse of Process

Assault & Battery

Breach of Fiduciary Duty

Conversion

Defamation [\(Related Topics...\)](#)

Defenses

False Arrest

False Imprisonment [\(Related Topics...\)](#)

Intentional Infliction of Emotional Distress

Interference With Personal Relationships

Invasion of Privacy [\(Related Topics...\)](#)

Malicious Prosecution

Prima Facie Tort

Malpractice & Professional Liability

Negligence [\(Related Topics...\)](#)

Premises Liability & Property [\(Related Topics...\)](#)

Procedure

Products Liability [\(Related Topics...\)](#)

Public Entity Liability [\(Related Topics...\)](#)

Strict Liability

Transportation Torts

Vicarious Liability

Wrongful Death & Survival Actions [\(Related Topics...\)](#)

Look for a Legal Topic

Option 1: Find a Legal Topic

right of publicity

Find in: Torts
 All Search Advisor Topics

Option 2: Explore Legal Topics

Torts

General Overview

Business Torts

Damages

Intentional Torts

General Overview

Abuse of Process

Assault & Battery

Breach of Fiduciary Duty

Conversion

Defamation [\(Related Topics...\)](#)

General Overview

Defamation Per Quod

Defamation Per Se

Defenses

Elements

Procedure

Remedies

Defenses

False Arrest

False Imprisonment [\(Related Topics...\)](#)

Intentional Infliction of Emotional Distress

Interference With Personal Relationships

Invasion of Privacy [\(Related Topics...\)](#)

General Overview

Appropriation [\(Related Topics...\)](#)

General Overview

Defenses

Elements

Remedies

Defenses

False Light Privacy

Intrusion

Public Disclosure of Private Facts

Remedies

-Select Jurisdiction

- Run a headnote search or full-text search

[All Topics](#) > [Torts](#) > [Intentional Torts](#) > [Invasion of Privacy](#) > [Appropriation](#) > **General Overview** ⓘ [\(Browse topic index\)](#)

Option 1 - Search across Sources

Search for 'General Overview' across Cases, Statutes, Analysis and more...

① **Jurisdiction**
All States & Federal [Select Multiple...](#)

② **Sources**

③ **Search Terms** (Optional)
 Terms and Connectors Natural Language

[Suggest Terms for My Search](#)

Search Connectors
[and](#) and
[or](#) or
[w/N](#) within N words
[pre /N](#) precedes by N words
[w/p](#) in same paragraph
>More Connectors & Commands...

How Do I...?
>Restrict by date on the Search by Topic form?
>Search across different sources?

 [View Topic Search Tutorials](#)

OR

Option 2 - Search by Headnote

Retrieve all headnotes and additional cases on 'General Overview'

Jurisdiction
Select a Jurisdiction

Date (Optional)
 No Date Restrictions
 From To [Date Formats...](#)

What's this?
Retrieve all headnotes classified to the topic or cases that discuss the topic, even if there isn't a specific headnote.

Results based on topics assigned to headnotes

[11/13/11](#)

Topic: [All Topics](#) > [Torts](#) > [Intentional Torts](#) > [Invasion of Privacy](#) > [Appropriation](#) > [General Overview](#) ⓘ [Federal & State Cases - Selected Tort Material](#) ⓘ

Terms: **name or likeness** ([Edit Search](#) | [Suggest Terms for My Search](#))

☑ Select for FOCUST™ or Delivery

- ▲ 1. [Cohen v. Cowles Media Co.](#), No. 90-634, SUPREME COURT OF THE UNITED STATES, 501 U.S. 663; 111 S. Ct. 2513; 115 L. Ed. 2d 586; 1991 U.S. LEXIS 3639; 59 U.S.L.W. 4773; 18 Media L. Rep. 2273; 91 Cal. Daily Op. Service 4796; 91 Daily Journal DAR 7417, March 27, 1991, Argued , June 24, 1991, Decided

OVERVIEW: Informer was entitled to compensatory damages after publisher breached its confidentiality agreement, because publisher was liable based on promissory estoppel. First Amendment gave publisher no special immunity from application of general laws.

CORE TERMS: promissory estoppel, truthful, cause of action, newspaper's, reporter, confidentiality, emotional distress, state action, compensatory damages, general applicability ...

... staffs, the informant's **name** was included in ...
... of the informant's **name** did not support ...
... obtained the informant's **name** lawfully, as it ...
... obtained the informant's **name** lawfully, as it ...
... publication of informant's **name** -- Headnote:[13] An informant whose **name** is published by ...
... is, the informant's **name**--is true. APPEAL §1692.2 ...
... revealed the informant's **name** despite a promise ...
... to publish Cohen's **name** as part of ...
... respondents obtained Cohen's **name** "lawfully" in this ...
... the rape victim's **name** was obtained through ...
... respondents obtained Cohen's **name** only by making ...
... information disclosed [his **name**] was true." 457 N.W.2d at 202 ...

- ▲ 2. [Hustler Magazine v. Falwell](#), No. 86-1278 , SUPREME COURT OF THE UNITED STATES, 485 U.S. 46; 108 S. Ct. 876; 99 L. Ed. 2d 41; 1988 U.S. LEXIS 941; 56 U.S.L.W. 4180; 14 Media L. Rep. 2281, December 2, 1987, Argued , February 24, 1988, Decided

OVERVIEW: A nationally known minister could not recover against a magazine for intentional infliction of emotional distress due to an advertisement parody without showing that false statements were published with actual malice or reckless disregard of truth.

CORE TERMS: parody, emotional distress, public figures, infliction, cartoon, emotional distress, actual facts, outrageous, offensive, magazine ...

... that contained the **name** and picture of ...

Result of search for right of publicity under “Look for a Legal Topic”

- ◀ [i Trademark Law](#)
 - ◀ [i Special Marks](#)
 - ♦ [i Likenesses & Names](#)
- ◀ [i Securities Law](#)
 - ◀ [i Liability](#)
 - ◀ [i Securities Act of 1933 Actions](#)
 - ♦ [i Safe Harbor Advertising](#)
- ◀ [i Torts](#)
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 - ◀ [i Trials](#)
 - ◀ [i Jury Trials](#)
 - ◀ [i Jurors](#)
 - ♦ [i Sequestration](#)

Finding Cases By Subject

Full-text searching

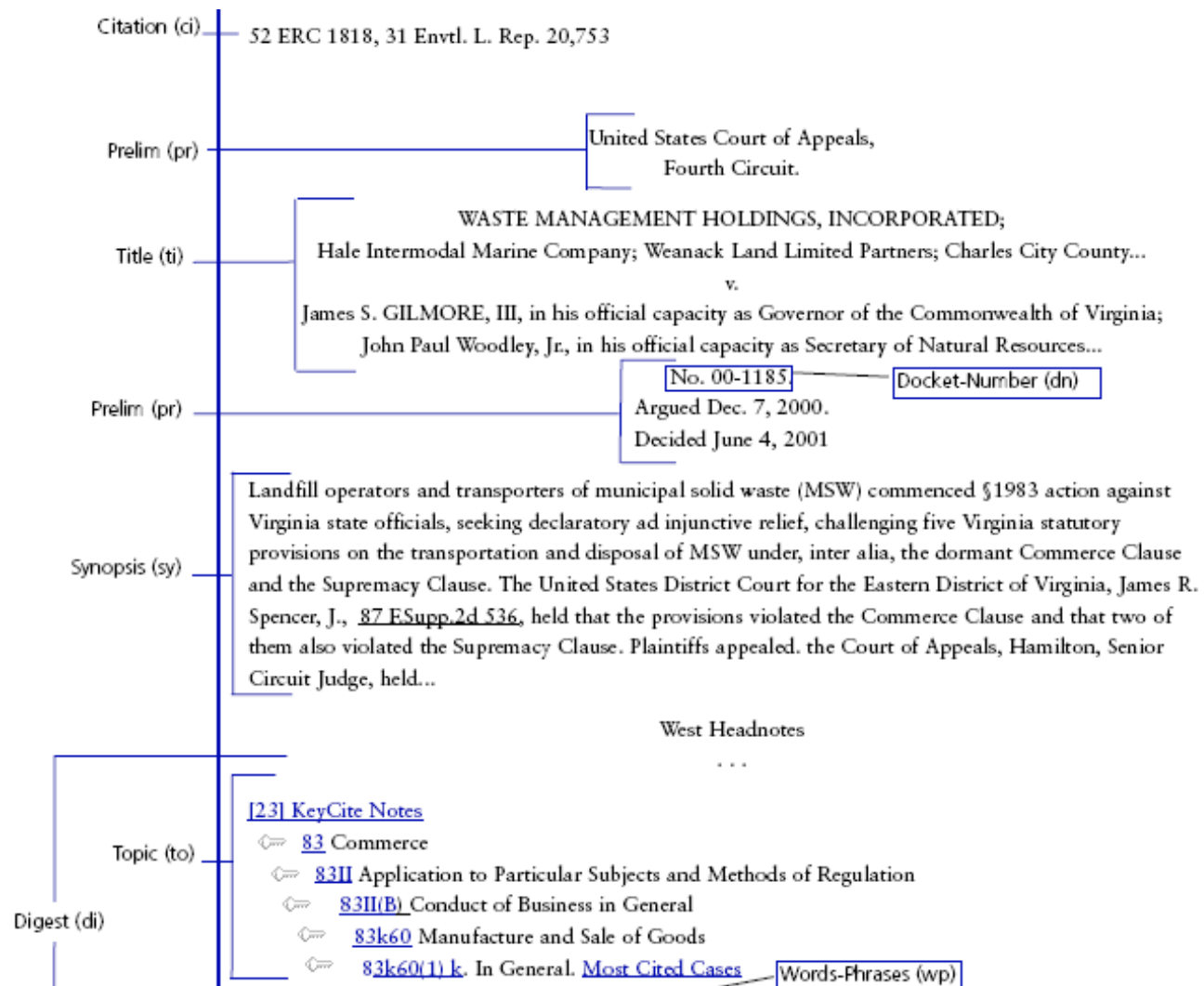
Developing a “terms and connectors” search

1. Analyze the facts and develop issues
2. Determine which words and phrases should become part of the search
 1. Develop a broad, medium, and narrow search
 2. Run the broadest search you can (within reason)
3. Synonyms
4. Consider alternative forms of the word(s) and phrase(s)
 1. Plural forms
 2. Truncation
 3. Hyphenated forms v. multiple words
 4. Spacing with abbreviations (I.B.M.)
5. Determine the relationship between words and phrases
 1. Connectors
 2. Priority of connectors
6. Determine if fields/segments apply (especially sy,di on Westlaw and Overview on lexis)
7. Select the narrowest database possible

	Westlaw	Lexis
Phrase	“ ”	(type phrase)
Or	(space)	or
And	&	and
Within n words	+(n) /(n)	pre/(n) w/(n)
Same sentence	+s /s	w/s
Same paragraph	+p /p	w/p
Not	%	
Within same segment		w/seg

Priority of Connectors

Westlaw	Lexis
Phrases	OR
Or (space)	W/n, PRE/n, NOT W/n
+n /n	W/S
+s /s	W/P
+p /p	W/SEG
AND	NOT W/SEG
But not	AND
	AND NOT



Headnote (he)	Under the <u>“market participant doctrine,”</u> a state acting in its proprietary capacity as a purchaser or seller may favor its own citizens over others, but if there is no direct state involvement in the market, the strictures of the dormant Commerce Clause apply with full force. <u>U.S.C.A. Const. Art. 1, §8, cl. 3.</u>
	... West Codenotes
West Codenotes (wcn)	Held Unconstitutional <u>Va.Code 1950 § 10.1-1408.1, subd. Q</u> <u>Va.Code 1950 § 10.1-1408.3</u> <u>Va.Code 1950 § 10.1-1454.3, subds. A, D.</u>
Attorney (at)	*322 ARGUED: <u>Stewart Todd Leeth</u> , Assistant Attorney General, Richmond, VA, for Appellants. <u>Evan Mark Tager</u> , Mayer, Brown & Platt, Washington, D.C.... ON BRIEF: <u>Mark L. Earley</u> , Attorney General of Virginia, <u>William H. Hurd</u> , Solicitor General, Roger L. Chaffee, Senior Assistant Attorney General...
Panel (pa)	Before <u>WIDENER</u> and <u>KING</u> , Circuit Judges, and <u>HAMILTON</u> , Senior Circuit Judge.
	... Opinions (op)
Judge (ju)	<u>HAMILTON</u> , Senior Circuit Judge:
Lead (le)	In March and April 1999, the Commonwealth of Virginia’s (Virginia) General Assembly, its legislative body, enacted and the Governor of Virginia signed into law five statutory provisions, which, collectively, cap the amount of municipal solid waste (MSW) that may be accepted by landfills... Finally, we vacate the district court’s entry of judgment against Governor Gilmore and remand with instructions that the district court dismiss him as a party in this action. AFFIRMED IN PART, VACATED IN PART and REMANDED.
Concurring (con) and/or Dissenting (dis)	<u>WIDENER</u> , Circuit Judge, concurring: I concur in all of the opinion of the court except Part IV.A, and I concur in the result that Part IV.A obtains ...

Cite



Service: **Get by LEXSEE®**
Citation: **252 f3d 316**

252 F.3d 316, *; *2001 U.S. App. LEXIS 11573*, **;
52 ERC (BNA) 1818; *31 ELR 20753*

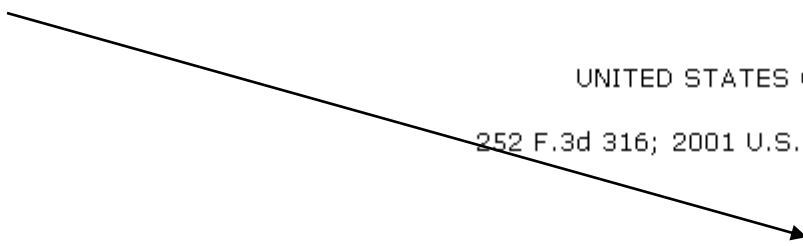
[View Available Briefs and Other Documents Related to this Case](#)

Name



WASTE MANAGEMENT HOLDINGS, INCORPORATED; HALE INTERMODAL MARINE COMPANY; WEANACK LAND LIMITED PARTNERS; CHARLES CITY COUNTY; BRUNSWICK WASTE MANAGEMENT FACILITY, Plaintiffs-Appellees, v. JAMES S. GILMORE, III, in his official capacity as Governor of the Commonwealth of Virginia; JOHN PAUL WOODLEY, JR., in his official capacity as Secretary of Natural Resources; DENNIS TREACY, JR., in his official capacity as Director of the Virginia Department of Environmental Quality, Defendants-Appellants. GLEN BESA; CAMPAIGN VIRGINIA; JOHN H. HAGER, Honorable; EMILY COURIC, Senator; MARGARET WHIPPLE, Senator; BRUCE JAMERSON; MARK A. MINER; LILA YOUNG, Movants.

Date



No. 00-1185

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

252 F.3d 316; 2001 U.S. App. LEXIS 11573; 52 ERC (BNA) 1818; 31 ELR 20753

December 7, 2000, Argued
June 4, 2001, Decided

SUBSEQUENT HISTORY: **[**1]** Certiorari Denied March 4, 2002, Reported at: [2002 U.S. LEXIS 1399](#).

PRIOR HISTORY: Appeal from the United States District Court for the Eastern District of Virginia, at Richmond. James R. Spencer, District Judge. (CA-99-425, CA-99-443).

DISPOSITION: AFFIRMED IN PART, VACATED IN PART, AND REMANDED.

CASE SUMMARY

PROCEDURAL POSTURE: Plaintiffs challenged recently enacted state statutes regulating the transportation of municipal solid waste (MSW) in Virginia and capped the amount of MSW that Virginia landfills were permitted to accept. The United States District Court for the Eastern District of Virginia, at Richmond, granted summary judgment to plaintiffs and denied partial summary judgment to defendants. Defendants appealed.

OVERVIEW: The statutory provisions plaintiffs challenged fell into three categories: provisions capping the amount of MSW Virginia landfills were permitted to accept (cap provision); provisions prohibiting transportation of MSW by barge (barge provisions); and provisions regulating transportation of MSW by trucks (truck provisions). The district court held that the five statutory provisions plaintiffs' challenged violated the United States Constitution's dormant Commerce Clause. The district court further held that the provisions regulating barge transport of MSW violated the Supremacy Clause. The instant court affirmed in part and reversed in part. Except for the claims against defendant Governor, the Ex parte Young Exception to sovereign immunity authorized litigation of plaintiffs' claims. Plaintiffs had standing to assert their claims. The savings clauses of the barge and truck provisions were repugnant to the plain language of those provisions. Genuine issues of material fact precluded summary judgment on the dormant Commerce Clause challenge to the barge transport provisions and the Supremacy Clause challenge to one of the barge transport provisions.

OUTCOME: The court affirmed in part and vacated in part the summary judgment granted to plaintiffs. The court remanded the matter for further consideration of some issues and for dismissal of the claims against defendant governor.

CORE TERMS: landfill, waste, governor, ton, senator, barge, disposal, regional, dormant, cap, solid waste, garbage, summary judgment, parte, regulation, volume, discriminatory, general assembly, discriminate, importation, trash, interstate commerce, Eleventh Amendment, federal law, practical effect, out-of-state, waste disposal, announced, locality, host

Overview

coreconcepts

FOCUS™ Terms

Search Within

Original Results (1 - 1)



Advanced...

Related Content LEARN MORE

Related Court Materials NEW

Briefs

Issue Analysis

ALR® (4)

Proper procedure and course of action by trial court, where both parties move for summary judgment (36 A.L.R.2d 881)

Propriety, under Rule 56 of the Federal Rules of Civil Procedure, of granting summary judgment when deponent contradicts in affidavit earlier admission of fact in deposition (131 A.L.R. Fed. 403)

Validity of local regulation of hazardous waste (67 A.L.R.4th 822)

[View 1 More...](#)

Jurisprudences and Witkin (5)

Burden of proof (73 Am Jur 2d Summary Judgment § 17)

Generally; necessity of and opportunity for submitting opposing affidavits (73 Am Jur 2d Summary Judgment § 26)

Generally; supremacy of federal law (Am Jur 2d States, Territories, and Dependencies § 22)

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Part III Ownership and Enforcement, 11. Infringement Litigation -- Pretrial Procedure (PFC8th Treatise 11.3)

VERMONT LANDFILL OPERATOR MUST PLEAD IMPACT ON COMMERCE. (67 Antitrust & Trade Reg. Rep. (BNA) 188)

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Burdens of Production and Persuasion on Summary Judgment Motion (11-56 Moore's Federal Practice - Civil § 56.13)

Relationship of Rule 50 to Other Rules (9-50 Moore's Federal Practice - Civil § 50.06)

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importation, interstate commerce, certification, genuine, federal law, issue of material fact

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HN1 Under [Fed. R. Civ. P. 56\(c\)](#), a court should grant a motion for summary judgment if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. In considering a motion for summary judgment, the district court should review all of the evidence in the record. In doing so, however, the court must draw all reasonable inferences in favor of the nonmoving party, and it may not make credibility determinations or weigh the evidence. Thus, although the court should review the record as a whole, it must disregard all evidence favorable to the moving party that the jury is not required to believe. That is, the court should give credence to the evidence favoring the nonmovant as well as that evidence supporting the moving party that is uncontradicted and unimpeached, at least to the extent that that evidence comes from disinterested witnesses. [More Like This Headnote](#) | [Shepardize: Restrict By Headnote](#)

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HN2 The United States Court of Appeals for the Fourth Circuit reviews de novo a district court's decision to grant a motion for summary judgment. [More Like This Headnote](#) | [Shepardize: Restrict By Headnote](#)

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HN3 See [U.S. Const. amend. XI](#).

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[Constitutional Law](#) > [State Autonomy](#) > [General Overview](#)

HN4 The doctrine of sovereign immunity under the [Eleventh Amendment](#) extends beyond the literal text of the [Eleventh Amendment](#) to prevent a state from being sued by one of its own citizens without its consent. [More Like This Headnote](#) | [Shepardize: Restrict By Headnote](#)

COUNSEL: ARGUED: Stewart Todd Leeth, Assistant Attorney General, Richmond, Virginia, for Appellants.

Evan Mark Tager, MAYER, BROWN & PLATT, Washington, D.C.; Timothy George Hayes, HUNTON & WILLIAMS, Richmond, Virginia, for Appellees.

ON BRIEF: Mark L. Earley, Attorney General of Virginia, William H. Hurd, Solicitor General, Roger L. Chaffe, Senior Assistant Attorney General, Ellen F. Brown, Assistant Attorney General, William E. Thro, Assistant Attorney General, Richmond, Virginia, for Appellants.

Kenneth S. Geller, Miriam R. Nemetz, MAYER, BROWN & PLATT, Washington, D.C.; D. Alan Rudlin, Shawn A. Copeland, HUNTON & WILLIAMS, Richmond, Virginia; Jason S. Thomas, HUNTON & WILLIAMS, Raleigh, North Carolina; B. Randolph Boyd, RANDOLPH, BOYD, CHERRY & VAUGHAN, Richmond, Virginia, for Appellees.

JUDGES: Before WIDENER and KING, Circuit Judges, and HAMILTON, Senior Circuit Judge. Senior Judge Hamilton wrote the opinion. Judge Widener wrote a concurring opinion (specifying that **[**2]** he concurs in all parts of the court's opinion except Part IV.A, but concurs in the result that Part IV.A obtains). Judge King wrote an opinion concurring in part and dissenting in part.

OPINIONBY: HAMILTON

OPINION: **[*323]** HAMILTON, Senior Circuit Judge:

In March and April 1999, the Commonwealth of Virginia's (Virginia) General Assembly, its legislative body, enacted and the Governor of Virginia signed into law five statutory provisions, which, collectively, cap the amount of municipal solid waste (MSW) that may be accepted by landfills located in Virginia and restrict the use of barges and trucks to transport such waste in Virginia. See Va. Code Ann. §§ 10.1-1408.1(Q); 10.1-1408.3; 10.1-1454.1(A); 10.1-1454.2; 10.1-1454.3 (Michie Supp. 2000). The first statutory provision (the Cap Provision) caps the amount of waste that any landfill located in Virginia may accept. n1 Va. Code Ann. § 10.1-1408.3. The second statutory provision (the Stacking Provision) requires Virginia's Waste Management

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Supreme Court of Georgia.
The MARTIN LUTHER KING, JR., CENTER FOR SOCIAL CHANGE, INC., et al.
v.
AMERICAN HERITAGE PRODUCTS, INC., et al.
No. 38748.
Oct. 28, 1982.

Certified questions regarding the right of publicity came from the United States Court of Appeals for the Eleventh Circuit, Richard C. Freeman, District Judge. The Supreme Court, Hill, P.J., held that: (1) appropriation of another's name and likeness, whether such likeness be a photograph or sculpture, without consent and for financial gain of the appropriator is a tort, whether the person whose name and likeness is used as a private citizen, an entertainer, or a public figure who is not a public official; (2) right of publicity survives death of its owner and is inheritable and devisable; and (3) owner of right of publicity need not have commercially exploited that right before it can survive.

Ordered accordingly.

Weltner, J., concurred specially and filed opinion.

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Appropriation of another's name and likeness, whether such likeness be a photograph or sculpture, without consent and for the financial gain of the appropriator is a tort, whether the person whose name and likeness is used is a private citizen, an entertainer, or a public figure who is not a public official.

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↩ 379 k384 k. Nature and extent of right.

C.D.Cal., 2010

California rights of publicity extend equally to celebrities and non-celebrities alike.

H

[Yeager v. Cingular Wireless LLC, 673 F.Supp.2d 1089](#)

E.D.Cal., 2009

California recognizes, in its common law and its statutes, the right of a person whose identity has commercial value, most often a celebrity, to control the commercial use of that identity.

H

[Gignilliat v. Gignilliat, Savitz & Bettis, L.L.P., 684 S.E.2d 756](#)

S.C., 2009

The use of one's identity is a property right that is transferable, assignable, and survives the death of the named individual.

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Appropriation of another's name and likeness, whether such likeness be a photograph or sculpture, without consent and for the financial gain of the appropriator is a tort, whether the person whose name and likeness is used is a private citizen, an entertainer, or a public figure who is not a public official.

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[Guglielmi v. Spelling-Goldberg Productions, 603 P.2d 454](#)

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Formerly 379k8.5(6)

Cal., 1979

Right of publicity protects against the unauthorized use of one's name, likeness or personality, but the right is not descendible and expires upon the death of the person so protected.

▶ [Cited 29 times for this legal issue]

[Carson v. Here's Johnny Portable Toilets, Inc., 698 F.2d 831](#)

Formerly 379k8.5(3)

C.A.6.Mich., 1983

Theory of right of publicity is that celebrity's identity can be valuable in promotion of products, and celebrity has interest that may be protected from unauthorized commercial exploitation of such identity.

▶ [Cited 22 times for this legal issue]

[Factors Etc., Inc. v. Pro Arts, Inc., 579 F.2d 215](#)

Formerly 379k8.5(7)

C.A.2.N.Y., 1978

Right of publicity survived celebrity's death.

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*250 Ga. 135, *; 296 S.E.2d 697, **;
1982 Ga. LEXIS 1229, ***; 8 Media L. Rep. 2377*

MARTIN LUTHER KING, JR. CENTER FOR SOCIAL CHANGE, INC. et al. v. AMERICAN HERITAGE PRODUCTS, INC. et al.

No. 38748

Supreme Court of Georgia

250 Ga. 135; 296 S.E.2d 697; 1982 Ga. LEXIS 1229; 8 Media L. Rep. 2377; 216 U.S.P.Q. (BNA) 711

October 28, 1982, Decided

PRIOR HISTORY: [***1] Certified questions from the United States Court of Appeals for the Eleventh Circuit.

DISPOSITION: *Certified questions 1 and 2 answered in the affirmative, question 3 answered in the negative, and question 4 not answered.*

CASE SUMMARY

PROCEDURAL POSTURE: The United States Court of Appeals for the Eleventh Circuit submitted certified questions regarding the right of publicity to the court. The questions arose in an appeal filed by plaintiffs, an administratrix, corporation and non-profit corporation, that sought review of the federal court's partial denial of injunctive relief against defendant corporation that manufactured and sold plastic busts of decedent civil rights leader.

OVERVIEW: The court held that the appropriation of another's name and likeness, whether the likeness was a photograph or sculpture, without consent and for the appropriator's financial gain constituted a tort under state law, regardless of whether the person subjected to the appropriation was a private citizen, entertainer, or a public figure who was not a public official. The court held that the right of publicity survived the death of its owner, and was inheritable and devisable. The court found that the measure of a public figure's damages for violation of his right of publicity was the value of the appropriation to the user. The court also found that the fact that decedent civil rights leader elected not to exploit his name and likeness during this lifetime did not give others the right to use his name and likeness after his death, and did not strip his family and estate of the right to prevent unauthorized exploitation of the right by others.

OUTCOME: The court indicated the right of publicity was distinct from the right of privacy and survived the death of its owner, without any requirement that the owner commercially exploited the right before he died.

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HN10  The appropriation of another's identity, picture, papers, name or signature without consent and for financial gain might be a tort for which an action would lie. [More Like This Headnote](#) | [Shepardize: Restrict By Headnote](#)

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HN11  The appropriation of another's name and likeness, whether such likeness be a photograph or sculpture, without consent and for the financial gain of the appropriator is a tort in Georgia, whether the person whose name and likeness is used is a private citizen, entertainer, or as here a public figure who is not a public official. [More Like This Headnote](#) | [Shepardize: Restrict By Headnote](#)

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HN12  While private citizens have the right of privacy, public figures have a similar right of publicity, and that the measure of damages to a public figure for violation of his or her right of publicity is the value of the appropriation to the user. [More Like This Headnote](#) | [Shepardize: Restrict By Headnote](#)

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HN13  The right of publicity is assignable during the life of the celebrity, for without this characteristic, full commercial exploitation of one's name and likeness is practically impossible. [More Like This Headnote](#) | [Shepardize: Restrict By Headnote](#)

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HN14  The right of publicity survives the death of its owner and is inheritable and devisable. [More Like This Headnote](#)

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HN15  There cannot, therefore, be any necessity to exercise the right of publicity during one's life in order to protect it from use by others or to preserve any potential right of one's heirs. [More Like This Headnote](#)

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1. [Martinez v. Green](#), 1 CA-CV 05-0079 , COURT OF APPEALS OF ARIZONA, DIVISION ONE, DEPARTMENT C, 212 Ariz. 320; 131 P.3d 492; 2006 Ariz. App. LEXIS 47; 475 Ariz. Adv. Rep. 24, April 6, 2006, Filed , Review denied by Martinez v. Green, 2006 Ariz. LEXIS 109 (Ariz., Sept. 26, 2006)

OVERVIEW: Because Arizona's survival statute, Ariz. Rev. Stat. § 14-3110, specifically precluded the survivability of invasion of privacy claims, violations of the Telephone Consumer Protection Act (TCPA), which were invasion of privacy torts, could not be assigned. Consequently, the trial court correctly ruled that the TCPA claim could not be assigned.

CORE TERMS: assigned, unsolicited, invasion of privacy, fax, telephone, nuisance, causes of action, telemarketing, facsimile, privacy ...

... action does not **survive death**, it cannot be ...
... of privacy, shall **survive the death** of the person ...

2. [Comedy III Productions, Inc. v. Gary Saderup, Inc.](#), No. S076061. , SUPREME COURT OF CALIFORNIA, 25 Cal. 4th 387; 21 P.3d 797; 106 Cal. Rptr. 2d 126; 2001 Cal. LEXIS 2609; 29 Media L. Rep. 1897; 58 U.S.P.Q.2D (BNA) 1823; 2001 Cal. Daily Op. Service 3380; 2001 Daily Journal DAR 4163, April 30, 2001, Decided , Certiorari Denied January 7, 2002, Reported at: 2002 U.S. LEXIS 212.

OVERVIEW: Although artist's lithograph and silk-screened T-shirts with picture of "The Three Stooges" were entitled to protection by the First Amendment, company owned rights to comedy team's likeness and right of publicity prevailed.

CORE TERMS: celebrity, publicity, likeness, personality's, transformative, creative, t-shirts, deceased, artist, reproduction ...

... action did not **survive the death** of the person ...
... and was not **descendible** to his or ...
... publicity that was **descendible** to the heirs ...
... publicity was not **descendible** (the case predated ...

3. [Shulman v. Group W Productions, Inc.](#), No. S058629. , SUPREME COURT OF CALIFORNIA, 18 Cal. 4th 200; 955 P.2d 469; 74 Cal. Rptr. 2d 843; 1998 Cal. LEXIS 3190; 26 Media L. Rep. 1737; 98 Cal. Daily Op. Service 4105; 98 Daily Journal DAR 5679, June 1, 1998, Decided , As Modified July 29, 1998. Rehearing Denied July 29, 1998, Reported at: 1998 Cal. LEXIS 4846.


OVERVIEW: A claim of public disclosure of private facts was rejected because an accident rescue was newsworthy as a matter of law, but an invasion of privacy claim was stated for the videotaping of private talks with a nurse and within a rescue helicopter.


CORE TERMS: privacy, intrusion, private fact, broadcast's, newsworthiness, newsworthy, rescue, conversation, cause of action, offensive ...

... Conke. still filming. **descends** the embankment. As ...


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-  1. [Ex parte Cohen](#), 988 So. 2d 508, 2008 Ala. LEXIS 10 (Ala., January 18, 2008, Released)

OVERVIEW: Because the purpose of a consent agreement was to provide for a teacher's appearance in a film that was to be distributed worldwide and thus, affect interstate commerce, the Commerce Clause precluded an Alabama court from applying Ala. Code § 10-2B-15.02(a) to prevent enforcement of a forum selection clause within said agreement.

-  2. [S.B. v. St. James Sch.](#), 959 So. 2d 72, 2006 Ala. LEXIS 336 (Ala., December 8, 2006, Released)

OVERVIEW: Trial court properly granted summary judgment to private school, headmaster, and volunteer, in the first case and male classmate and adult in second case, as parents did not show liability in first case over the way their daughters were expelled and did not show liability in the second case regarding the way the explicit photographs were handled.

HNB - The tort of invasion of privacy is the intentional wrongful intrusion into one's private activities in such a manner as to outrage or cause mental suffering, shame, or humiliation to a person of ordinary sensibilities. The tort of invasion of privacy consists of four limited and distinct wrongs: (1) intruding into the plaintiff's physical solitude or seclusion, (2) giving publicity to private information about the plaintiff that violates ordinary decency, (3) putting the plaintiff in a false, but not necessarily defamatory, position in the public eye, or (4) appropriating some element of the plaintiff's personality for a commercial use. Each of those categories of invasion of privacy has distinct elements, and each category establishes a separate privacy interest that may be invaded. [More Like This Headnote](#)

-  3. [Finebaum v. Coulter](#), 854 So. 2d 1120, 2003 Ala. LEXIS 35 (Ala., February 7, 2003, Released)

OVERVIEW: Trial court erred in denying summary judgment to talk show host whose statement about sportscaster was not statement of actual fact, as there was fundamental importance in the free flow of ideas and opinions on matters of public interest and concern.

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HN11 The appropriation of another's name and likeness, whether such likeness be a photograph or sculpture, without consent and for the financial gain of the appropriator is a tort in Georgia, whether the person whose name and likeness is used is a private citizen, entertainer, or as here a public figure who is not a public official. [More Like This Headnote](#) | [Shepardize: Restrict By Headnote](#)

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HN15 There cannot, therefore, be any necessity to exercise the right of publicity during one's life in order to protect it from use by others or to preserve any potential right of one's heirs. [More Like This Headnote](#)

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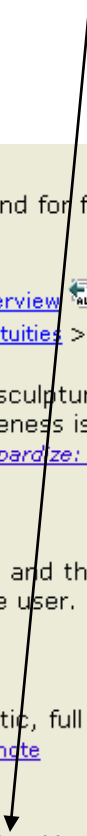
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-  1. [Martin Luther King, Jr., Center for Social Change, Inc. v. American Heritage Products, Inc.](#), 250 Ga. 135, 1982 Ga. LEXIS 1229 (Ga., October 28, 1982, Decided)


OVERVIEW: The right of publicity was recognized as distinct from the right of privacy. Furthermore, the right of publicity survived death of its owner, regardless of whether he commercially exploited the right before he died.

[HN14](#) - The right of **publicity survives** the **death** of its **owner** and is **inheritable** and **devisable**. [More Like This Headnote](#)

-  2. [Martin Luther King, Jr., Ctr. for Social Change v. American Heritage Prods.](#), 694 F.2d 674, 1983 U.S. App. LEXIS 27928 (11th Cir., January 3, 1983)


OVERVIEW: The "right to publicity" was a right in the State of Georgia that was distinct from the right of privacy, and it survived the death of its owner and was inheritable and devisable; the owner need not have commercially exploited the right before death.

[HN12](#) - The right of **publicity survives** the **death** of its **owner** and is **inheritable** and **devisable**. [More Like This Headnote](#)

-  3. [Memphis Dev. Foundation v. Factors Etc., Inc.](#), 616 F.2d 956, 1980 U.S. App. LEXIS 19865 (6th Cir., March 6, 1980, Decided)

OVERVIEW: A father of a famous deceased singer could not enjoin the sale of replicas of a statue of the singer because the exclusive right of publicity was not inheritable even if the singer had made contracts for the commercial usage of his image.

[HN1](#) - Under Tennessee law, the exclusive right to **publicity** does not **survive** a celebrity's **death**. The right is not **inheritable**. After **death** the opportunity for gain shifts to the public domain, where it is equally open to all. [More Like This Headnote](#)

-  4. [Reeves v. United Artists](#), 572 F. Supp. 1231, 1983 U.S. Dist. LEXIS 12606 (D. Ohio, October 19, 1983)

OVERVIEW: A boxer's right of publicity terminated upon his death, and therefore, a representative of the boxer could not seek a share of profits from a movie concerning the boxer.

OPINION:

... Commerce Union Bank v. Coors of the Cumberland, Inc., 7 Media L. Rep. (BNA) 2204, (Tenn. Chan. App. 1981). (Bluegrass musician Lester Flatt's right of **publicity survives** his **death**); The Martin Luther King Jr., Center for Social Change Inc., v. American Heritage Products, 694 F.2d 674 (11th Cir. 1983) 2 (right to **publicity survives** the **death** of its **owner** and is **inheritable** and **devisable**); Estate of Presley v. Russen, 513 F. Supp. 1339 (D. N.J. 1981) (Elvis Presley's right of **publicity** survived his death and became part of Presley's Estate); Factors Etc., Inc. v. Creative Card Co., 444 F. Supp. 279 (S.D. N.Y. 1977), aff'd., 579 F.2d 215 (2d Cir. 1978) ...

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*250 Ga. 135, *; 296 S.E.2d 697, **;
1982 Ga. LEXIS 1229, ***; 8 Media L. Rep. 2377*

MARTIN LUTHER KING, JR. CENTER FOR SOCIAL CHANGE, INC. et al. v. AMERICAN HERITAGE PRODUCTS, INC. et al.

No. 38748

Supreme Court of Georgia

250 Ga. 135; 296 S.E.2d 697; 1982 Ga. LEXIS 1229; 8 Media L. Rep. 2377; 216 U.S.P.Q. (BNA) 711

October 28, 1982, Decided

PRIOR HISTORY: [***1] Certified questions from the United States Court of Appeals for the Eleventh Circuit.

DISPOSITION: *Certified questions 1 and 2 answered in the affirmative, question 3 answered in the negative, and question 4 not answered.*

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