


1  **Appropriation**

- Taking a person's name, image, photo, likeness and using it for commercial gain without permission
- Oldest of the four torts.
- Injury takes 2 forms
  - Shame or humiliation
  - Loss of commercial property
- Early case:
  - Roberson v. Rochester Folding Box (1902) resulted in first privacy statute in NY

2  **Two linked causes of action in appropriation**

- Right to privacy
  - Protects individual from the embarrassment that can occur as a result of ones likeness being used without permission (Roberson is good example)
  - It is personal right, one that dies with the person
  - Does not require that there be value to your likeness
  - Cause of action has been around for about 100 years.

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- Right to publicity
  - Protects an individual from exploitation of their likeness or name for commercial purposes.
  - Property right so it may survive death and becomes part of the estate.
  - Must have some commercial value to your likeness.
  - Cause of action has only been around for about 50 years (arose through the marketing of celebs) Halen Lab v. Topp Chewing Gum (1953)

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- Actor and character closely connected:
  - McFarland v. Miller (1994)
  - Wendt v. Host International (1997)

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- Use of Name or Likeness
  - Plaintiff's case: must show...

- Use of plaintiff's name, picture, likeness, voice or identity for commercial purposes
- Identification - question for jury to answer
  - Faloon v. Hustler, (1985)
  - Cohen v. Herbal Concepts, (1989)
  - Ali v. Playgirl (1978)
  - Kerby v. Hal Roach Studios (1942)
  - Pseudonym - yes
  - Company name- no for now... may be changing

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- Look-a-likes, sound-a-likes
  - Onassis v. Christian Dior (1984)
  - Allen v. Men's World Outlet (1988)
  - Midler v. Ford Motor Co., (1988)
  - White v. Samsung Electronics (1992)
  - Waits v. Frito-Lay (1992)
  - Cardtoons v. MLB Players Assoc. (1996) First time First Amendment was implied

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#### **Misc examples**

- Divorced wife used famous husband's name in brochure to sell their home.
- Michael Costanza sued Jerry Seinfeld for the use of Costanza (George). His image or full name was never used.
- How might it be an issue for media producers, journalists and marketing exec's?

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#### **Defenses against Appropriation**

- Newsworthiness
  - Time v. Hill (1967)
  - Zacchini v. Scripps-Howard (1977) only SCOTUS case
  - Stephano v. News Group W Publ. (1984)
  - Hoffman v. Capital Cities, (1999) (2001)

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- Doctrine of Incidental Use:
  - Booth v. Curtis Publishing (1962)

- Political ads/issue ads
- Fundraising?
- Consent
  - Written?
  - Oral?
  - Withdrawal of consent?
  - Newton v. Thomason (1994)
  - Consent no good when....
    - Consent given now may not hold in distant future
    - Some can't give consent (minors, incompetents)
    - Consent on an image may not hold if image is altered

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- Life after Death?
  - Right to privacy dies with you.
  - Right to publicity is a property right and may survive your death
  - A few states guarantee that the right to commercially exploit the name or likeness of a dead public figure may be passed on to heirs. In some of these states it can only be passed on if the deceased attempted to exploit the right to publicity while alive.
  - Computer reanimation?