

TORTS

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Paula is the president and Stan is the secretary of a labor union that was involved in a bitter and highly-publicized labor dispute with City and Mayor. An unknown person surreptitiously recorded a conversation between Paula and Stan, which took place in the corner booth of a coffee shop during a break in the contract negotiations with City. During the conversation, Paula whispered to Stan, “Mayor is a crook who voted against allowing us to build our new union headquarters because we wouldn’t pay him off.”

The unknown person anonymously sent the recorded conversation to KXYZ radio station in City. Knowing that the conversation has been surreptitiously recorded, KXYZ broadcast the conversation immediately after it received the tape.

After the broadcast, Paula sued KXYZ for invasion of privacy in publishing her conversation with Stan. Mayor sued Paula and KXYZ for defamation.

1. Is Paula likely to succeed in her suit against KXYZ? Discuss.
2. Is Mayor likely to succeed in his suit against Paula and KXYZ? Discuss.

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Outline

- I. Paula v. KXYZ
 - A. Invasion of Privacy
 - 1. Public Disclosure of Private Facts
 - 2. Intrusion Into Seclusion
 - 3. Commercial Appropriation
 - B. Defenses of KXYZ
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- II. Mayor v. Paula
 - A. Defamation
 - B. Paula's Defenses
 - C. Conclusion

- III. Mayor v. KXYZ
 - A. Defamation
 - B. Defenses of KXYZ
 - C. Conclusion: No Liability

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Answer

I. Paula v. KXYZ

Paula is the president of a labor union. KXYZ is a local radio station in City. The radio station broadcast a tape recording of a private conversation between Paula and Stan, the secretary of the union. This recording was made surreptitiously by an anonymous third party and sent to KXYZ. Paula has sued KXYZ for Invasion of Privacy. If successful, she will win compensatory and punitive damages.

A. Invasion of Privacy

Invasion of Privacy is an umbrella for three different theories of liability, each of which is considered a type of invasion of privacy.

1. Public Disclosure of Private Facts

Paula intended for her conversation with Stan to remain private. She even whispered the key statement to Stan about Mayor being “a crook.” The anonymous person obviously had to use a sensitive microphone to secretly record the conversation between Paula and Stan. By broadcasting the tape, KXYZ has published this private conversation to its audience, disclosing these private facts to the general public.

2. Intrusion Into Seclusion

Tort law recognizes that individuals have a right to be left alone. It is considered unreasonable to intrude into the private space of others. The anonymous person who recorded Paula’s conversation with Stan intruded into her seclusion and invaded her privacy. KXYZ chose to take advantage of this misconduct by broadcasting the resulting tape recording.

3. Commercial Appropriation

Assuming KXYZ, like most radio stations, probably is a commercial media outlet, the station commercially profited from its appropriation of their voices. Public radio stations have corporate sponsors, too; even if KXYZ was a public radio station it is conceivable that their unlicensed broadcast of Paula’s conversation might be considered a commercial appropriation.

B. Defenses of KXYZ

The radio station's first defense is based on the First Amendment to the US Constitution. Paula and Stan's union was involved in a bitter and highly-publicized labor dispute with City and Mayor. All of the individuals involved, Paula, Stan and Mayor, are likely to be deemed public figures. Plus, the secretly taped conversation is a matter of public concern, not the sort of private information that typically is protected by invasion of privacy law.

Paula and Stan's conversation took place in the corner booth of a coffee shop, which is a public place. Paula had to foresee the possibility of eavesdroppers listening in on her conversation with Stan, particularly since, as a union president, she is known to the general public.

Although KXYZ may have been able to attract publicity and command a higher price for their commercial time as a result of their publicizing the conversation between Paula and Stan, these circumstances are different from those typically associated with commercial appropriation. It is not as if the radio station used their images or voices as part of an advertising campaign.

Finally, KXYZ did not itself record Paula and Stan's conversation. The radio station did not commit the tortious act of making the recording, it merely broadcast it after receiving the tape anonymously.

C. Conclusion

Paula is unlikely to succeed in her suit against KXYZ. The radio station was fulfilling its obligation to report the news when it broadcast the tape of Paula and Stan's conversation. Both the conversation and the parties involved are of public interest. Paula's invasion of privacy claims are not strong.

II. Mayor v. Paula

After the radio station broadcast the conversation between Paula and Stan, Mayor sued Paula for defamation. He seeks compensatory and punitive damages.

A. Defamation

For Mayor's lawsuit against Paula to succeed, he will have to establish that she made a defamatory statement, published to a third party, and causing damages. In the tape recorded conversation, Paula whispered to Stan, "Mayor is a crook who voted against allowing us to build our new union headquarters because we wouldn't pay him off." This would be slander, a spoken defamation.

Accusing someone of being "a crook" would be considered defamation per se, because it accuses the victim of moral turpitude. Damages would be presumed. Paula's act of whispering the statement to Stan would constitute publication to a third party.

B. Paula's Defenses

Truth is a valid defense to defamation. If, in fact, Mayor had demanded a payoff before he would vote in favor of construction of a new union headquarters, he would not be able to pursue Paula for damages based on defamation. It is apparent that Paula is making a very specific allegation, as opposed to merely expressing a harsh, critical opinion of Mayor.

C. Conclusion

If Paula's allegation is true, Mayor's suit against Paula will fail. If Paula's statement is false, Mayor's suit is likely to succeed, and Mayor will be entitled to compensatory and punitive damages.

III. Mayor v. KXYZ

A. Defamation

As discussed above, defamation requires a defamatory statement published to a third party and causing damages. Although KXYZ did not make the allegedly defamatory statement, it caused the statement to be broadcast throughout City.

B. Defenses of KXYZ

If Paula's allegations are true, her statement would not be defamatory and KXYZ could not be liable to Mayor for defamation.

Even if Paula's statement is judged to be slander per se, KXYZ has a valid First Amendment defense to Mayor's lawsuit for defamation. Mayor is a public figure. Paula's comment is a matter of public concern. Accordingly, Mayor's defamation action would have to meet the *Sullivan v. NY Times* standard. KXYZ did not knowingly publish a false statement with malice or with reckless disregard of truth or falsehood.

C. Conclusion: No Liability

Mayor's suit against KXYZ is likely to fail. The radio station has a solid First Amendment defense to defamation, even if Paula's allegation proves to be false.