



# Brief Highlights of Some Other Topics

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Most rights sharable

# Thresholds of Life

## Three aspects of statutory law to know about:



- Wrongful death
  - Allows a person to sue for loss of a close family member
  - It borrows the wrongful part from other torts, like negligence, battery, etc.
- Loss of consortium
  - Like wrongful death, but when the injured person is still alive (e.g., coma)
- Survival statutes
  - Accrued causes of action and accrued liability survives the death of the plaintiff or defendant and passes to the decedent's estate

# Privacy Torts

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- Intrusion
- Public Disclosure
- False Light
- Right of Publicity (Appropriation)

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# Intrusion

The Elements:

1. Physical or other intrusion
2. Into a zone in which the plaintiff has a reasonable expectation of privacy
3. Which is highly offensive to the reasonable person

# Disclosure

The Elements:

1. A public disclosure
2. Of private facts
3. That is highly offensive to the reasonable person

## False Light

- This is a strange tort that's not even recognized some places.
- It's a lot like defamation, except that it can be used against a non-defamatory yet embarrassing public statement – such as one that is reputation-*enhancing*.
- How much does that come up? Probably not much.

## False Light

Defenses:

- Essentially the same as for defamation

## Some general notes about false light, disclosure, and outrage:

- These are available for natural, living persons only – not for corporations
- The First Amendment can substantially limit any of these torts
  - State action hurdle overcome a la NYT v. Sullivan
- § 230 applies as a defense
- Much of defamation doctrine can apply
  - especially for false light (identification of plaintiff, fact vs. opinion, substantial truth as a defense)

**Think about these together!**

They often travel in the same fact patterns!

- Intrusion
- Public Disclosure
- False Light
- Appropriation / Right of Publicity
- IIED (Outrage)
- Defamation

# The Indignancy Matrix

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	Communicated to how many?	Communicated statement is true or false?	Must it be highly offensive?	State-of-mind requirement?	Cause of action after death?
Intrusion					
Disclosure					
False light					
Defamation					
IIED					
Right of publicity					

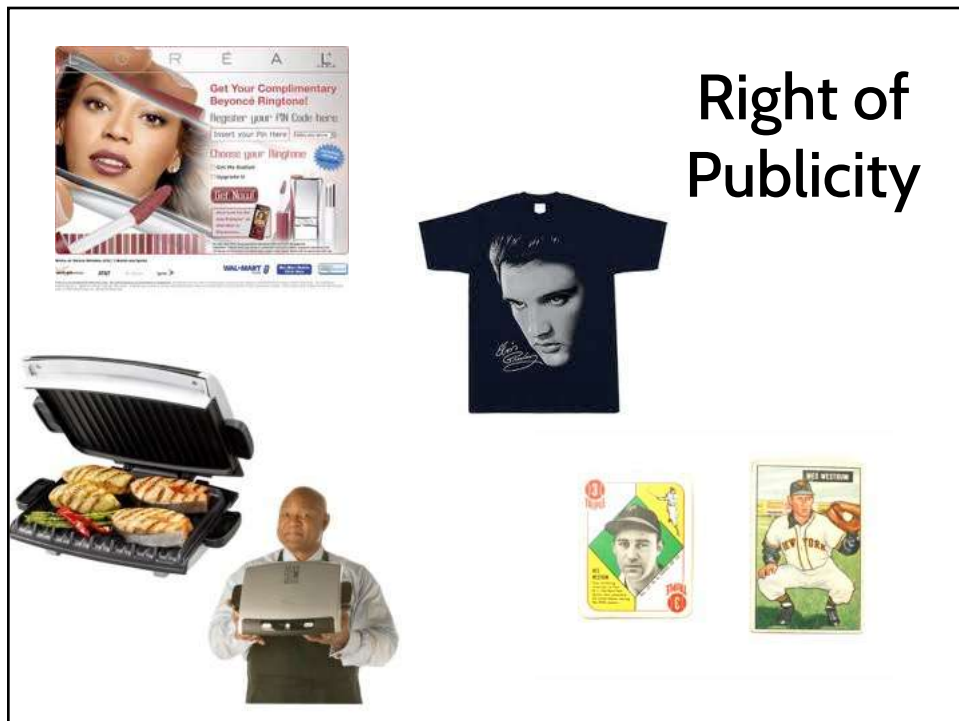
## The Indignancy Matrix

	Communicated to how many?	Communicated statement is true or false?	Must it be highly offensive?	State-of-mind requirement?	Cause of action after death?
Intrusion	N/A	N/A	<b>yes</b>	<b>intent</b>	N/A
Disclosure	<b>public</b>	<b>true</b>	<b>yes</b>	<b>intent</b>	<b>no</b>
False light	<b>public</b>	<b>false</b>	<b>yes</b>	<b>actual malice</b>	<b>no</b>
Defamation	<b>one person</b>	<b>false</b>	<b>no</b> <small>(instead, must be reputation harming)</small>	<i>[it's complicated!]</i>	<b>no</b>
IIED	N/A	N/A	<b>yes+</b> <small>(extreme &amp; outrageous)</small>	<b>intent or recklessness</b>	N/A
Right of publicity	<small>the usual requirement is just that it be</small> <b>commercial</b>	<b>either</b>	<b>no</b>	<b>none</b>	<b>often</b>

*\*See the Defamation Flowchart.*

# Right of Publicity





## Right of Publicity

## Right of Publicity Infringement

(a/k/a "Appropriation" or "Commercial Misappropriation")

The Elements:

1. A commercial use
2. Of a person's name, likeness, voice, or other indicia of identity

**NOTE:** This blackletter formulation is overbroad.

The scope of the doctrine is greatly limited by:

- First Amendment freedom of expression
- Copyright preemption
- Ad-hoc "spin"

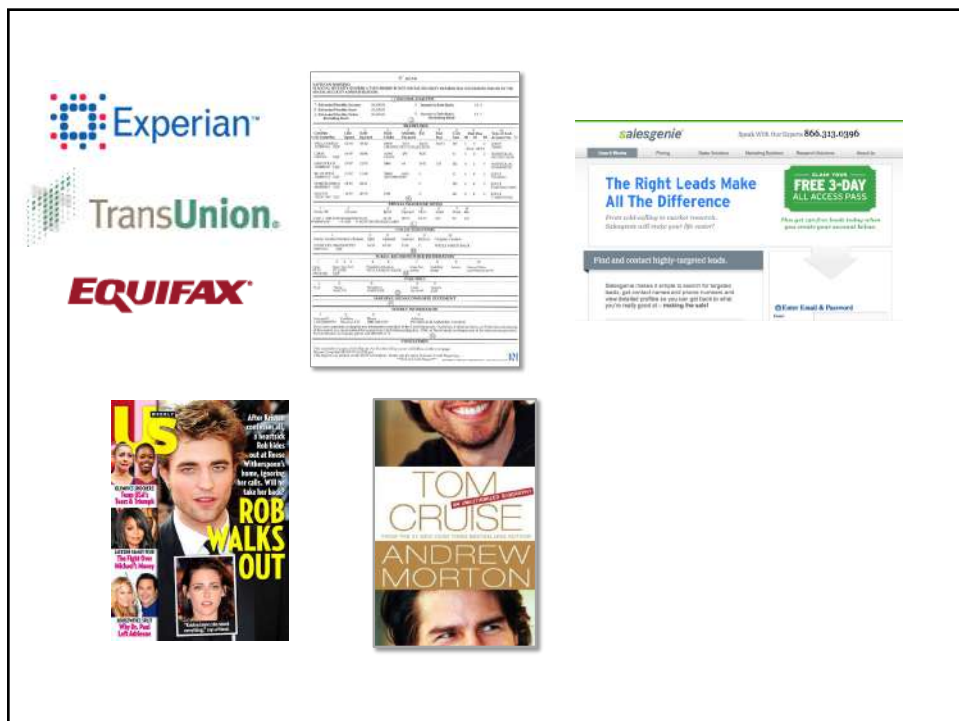
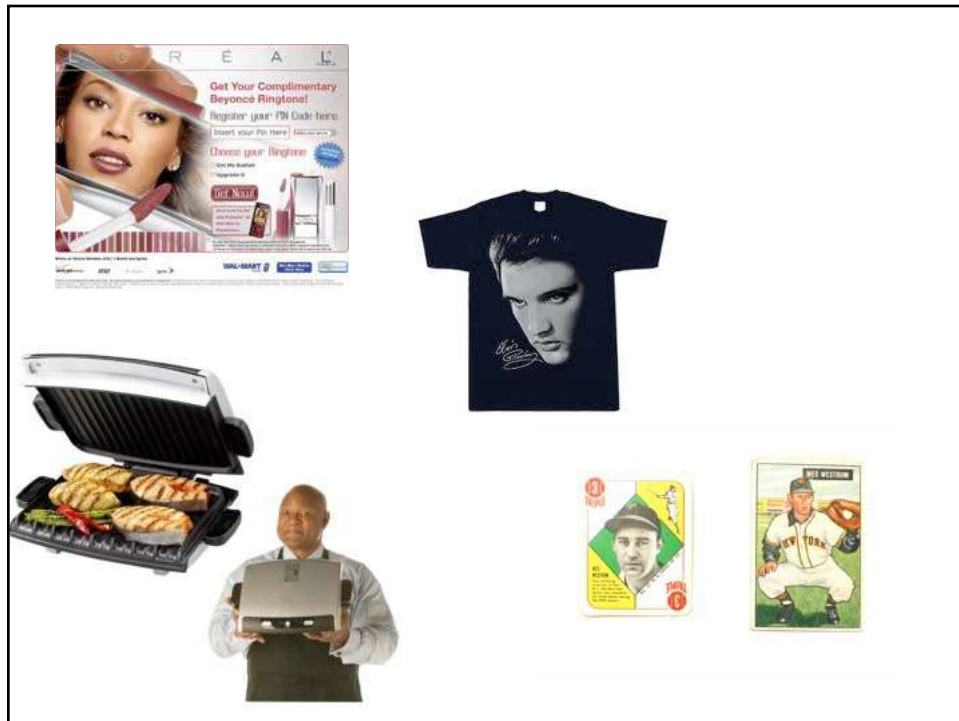
Three circumstances where rights of publicity actions are commonly recognized:

- Endorsement/advertising
- Merchandising
- "Virtual impressment"

"The elements of a common law action are the unauthorized use of the plaintiffs identity to the defendant's advantage by appropriating the plaintiffs name, voice, likeness, etc., commercially or otherwise, and resulting injury."

**Kirby v. Sega of Am., Inc.,  
144 Cal.App. 4th 47 (2006)**





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Right of  
Publicity

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Right of  
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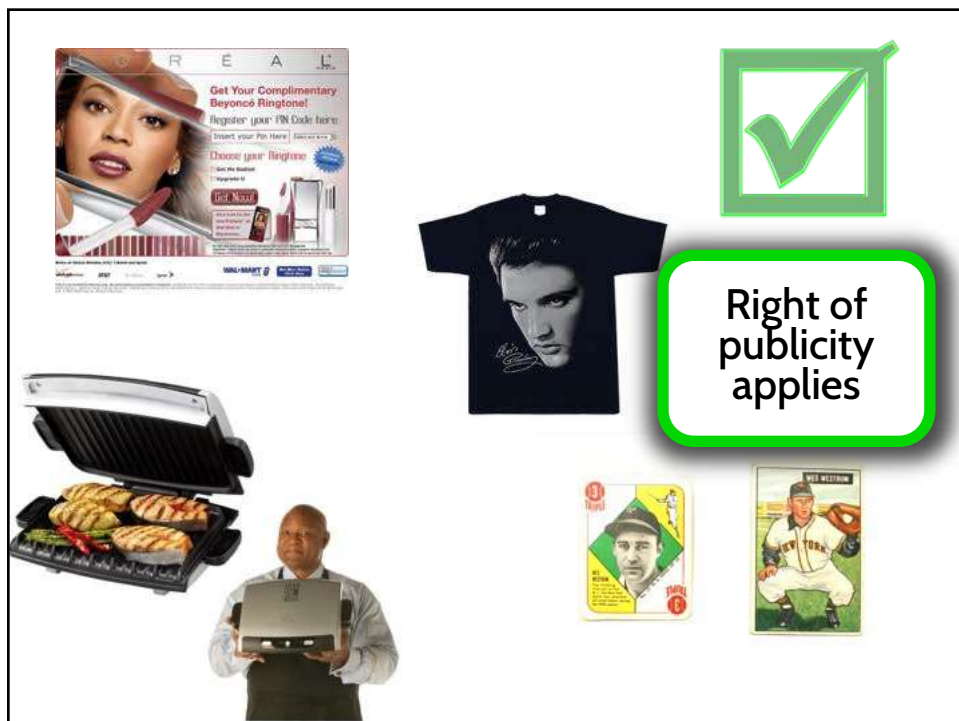
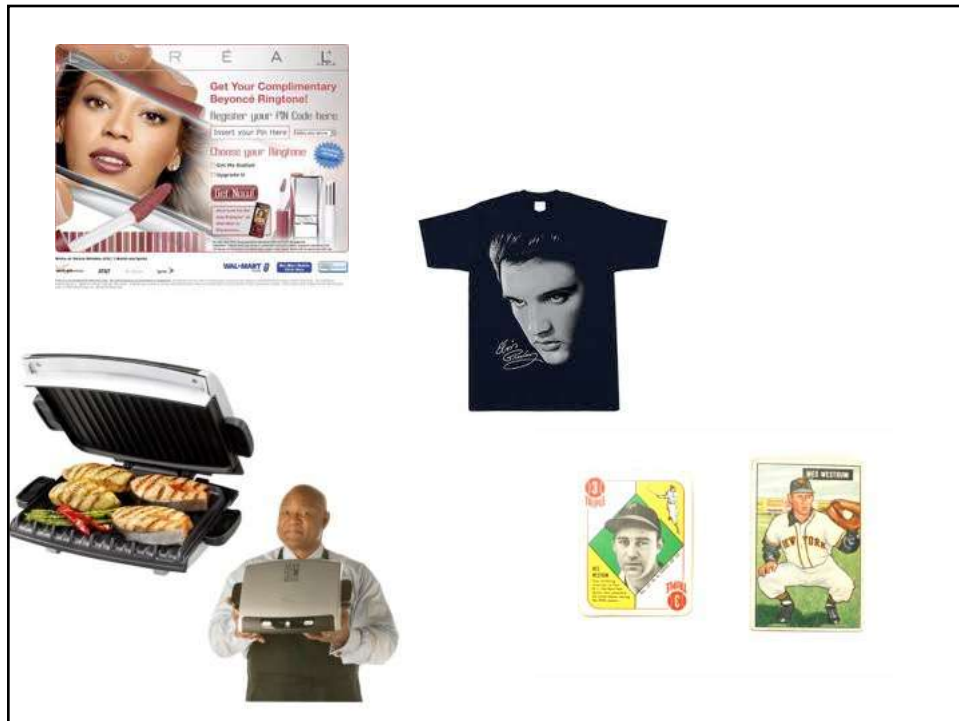
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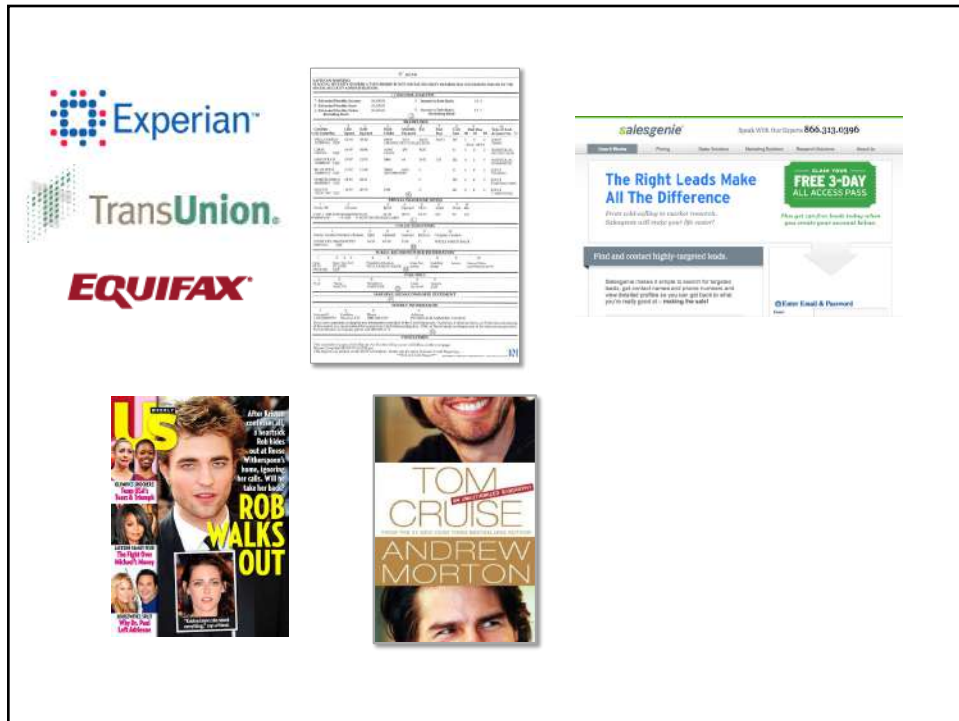
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# Right of Publicity



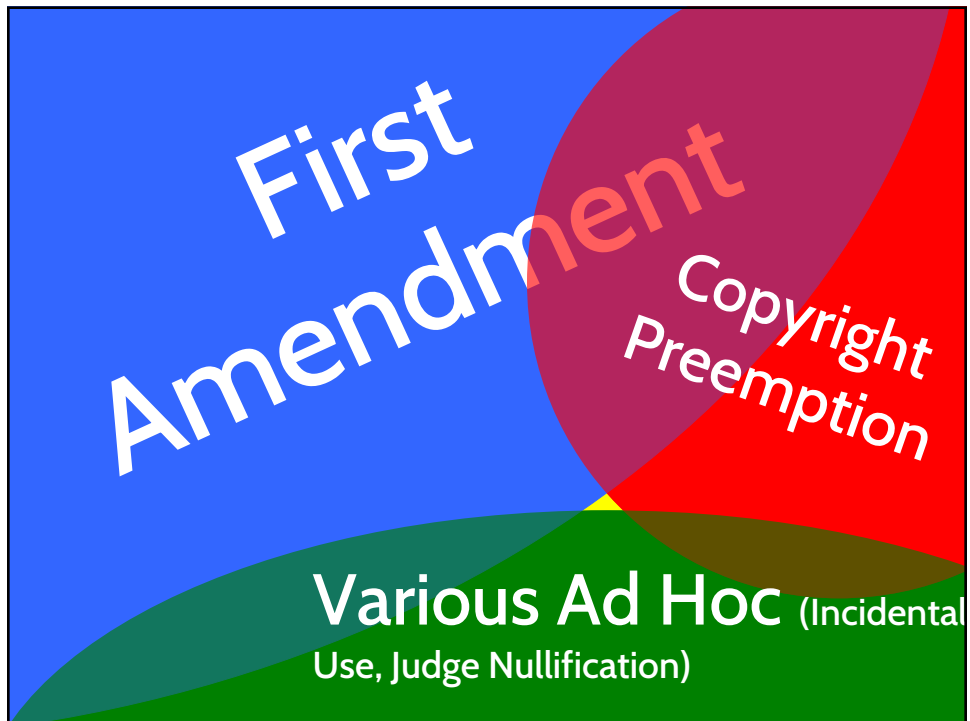
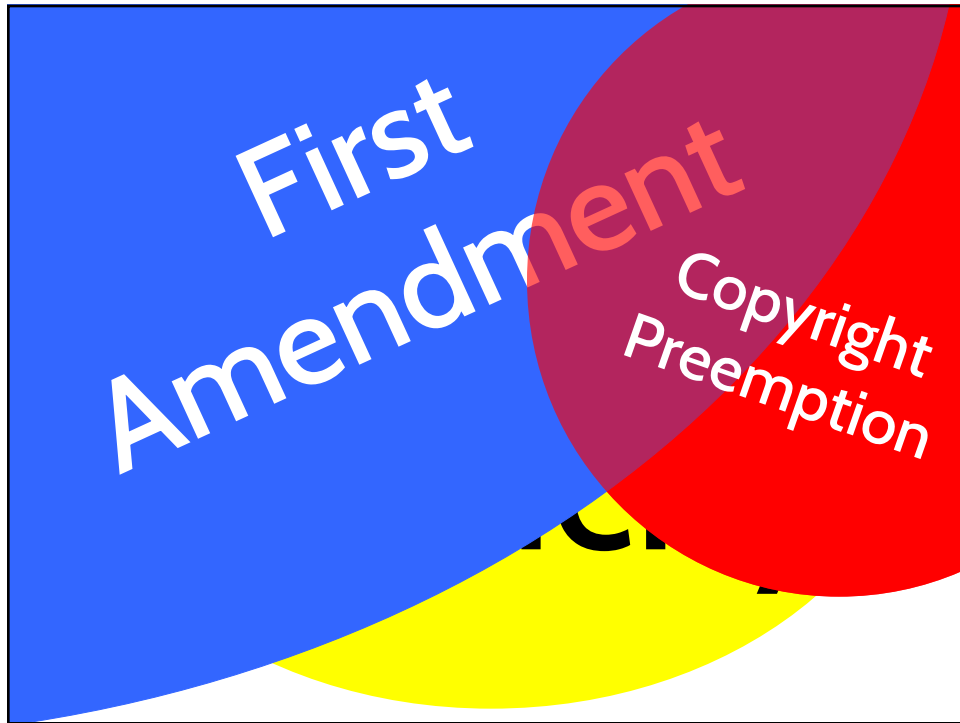


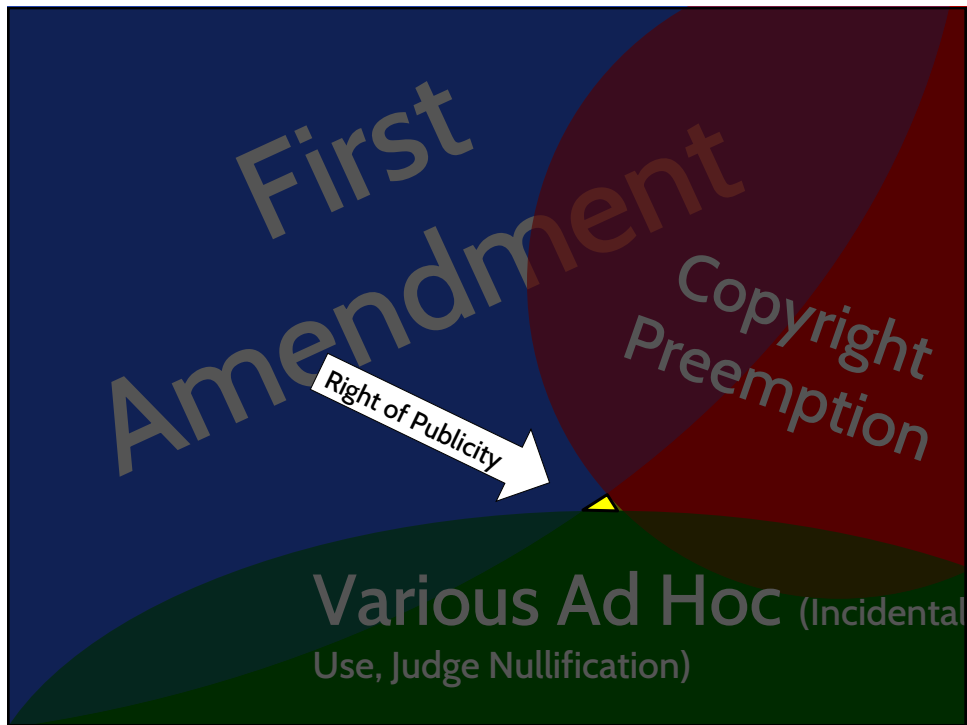
# Right of Publicity

First  
Amendment

city







# Transactional Torts

## Transactional Torts

- Intentional Economic Interference
  - Intentional Interference with Prospective Economic Advantage
  - Intentional Interference with Contract
- Fraud
- Negligent Misrepresentation
- Innocent Misrepresentation
- plus more we won't be covering, e.g.,
  - Breach of Fiduciary Duty
  - Breach of the Covenant of Good Faith and Fair Dealing

## Intentional Economic Interference

The Elements:

1. Valid contract or economic expectancy between plaintiff and third party (not defendant!)
2. Defendant's knowledge of contract or expectancy
3. Intent to interfere
4. Actually caused interference
5. Damages (to plaintiff, not third party)

**NOTE: Wide ranging, nebulously defined "justifications" are the key defense.**

## Intentional Economic Interference – Defenses

Here are some “privilege” or “justification” defenses, which may go by various names or may lack names:

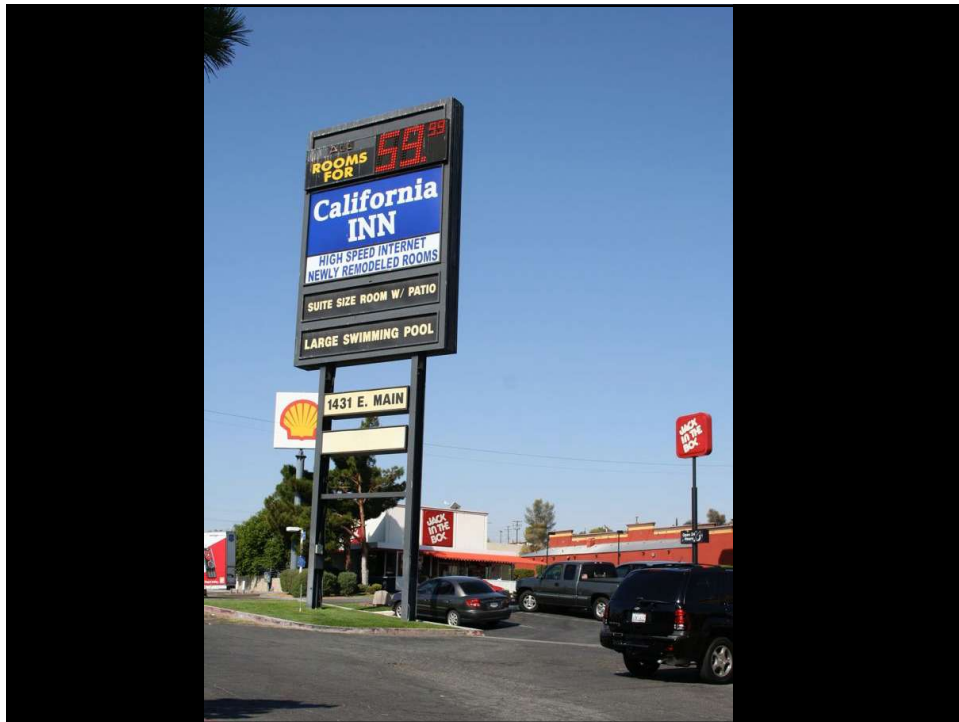
- **Bona-fide, honest business or legal advice**
  - Helps if the advice is asked for
  - Helps if the advice is in the context of some relationship, such as attorney/client, consultant/client
- **Competition**
  - Bona fide competition is the foundation of our economy, so it’s generally privileged.
  - Or at least as long as it’s “fair.” But what does that mean? There’s plenty of room to argue in litigation.
- **Privilege in situations where there is a coinciding interest**
  - Such as a parent corporation telling a subsidiary to breach a contract

## Fraud

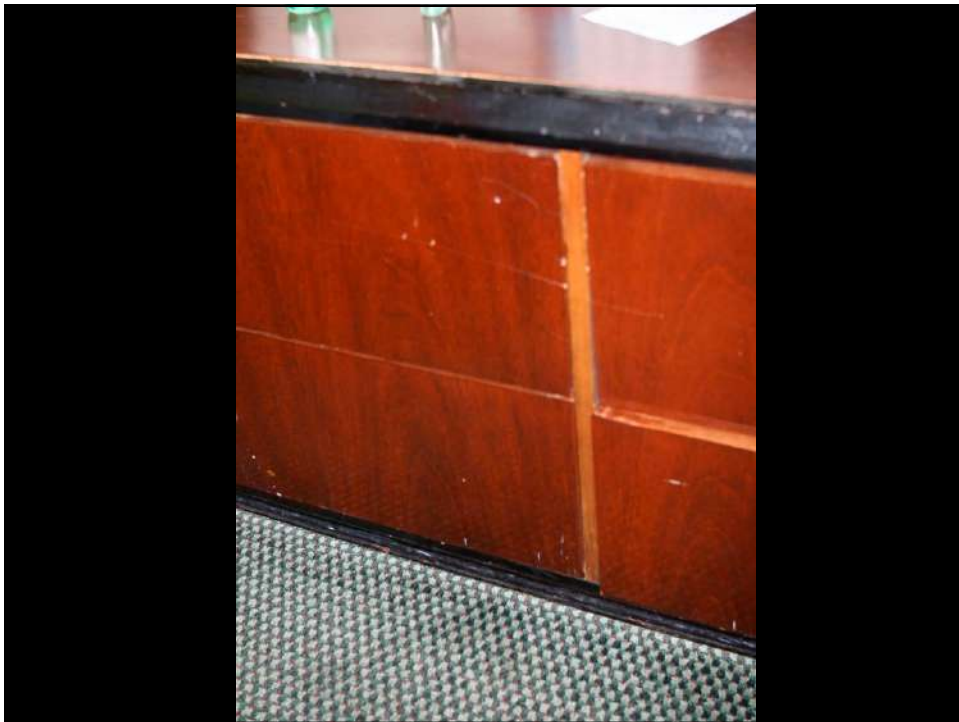
The Elements:

1. **Material misrepresentation by defendant**
2. **Scienter**
  - (at least recklessness; it's a lie)
3. **Intent to induce reliance**
4. **Reliance**
  - a. **Actual reliance (causation)**  
(victim must be actually deceived)
  - b. **Justifiable reliance**  
(must be reasonable in falling for it)
5. **Damages (detriment)**

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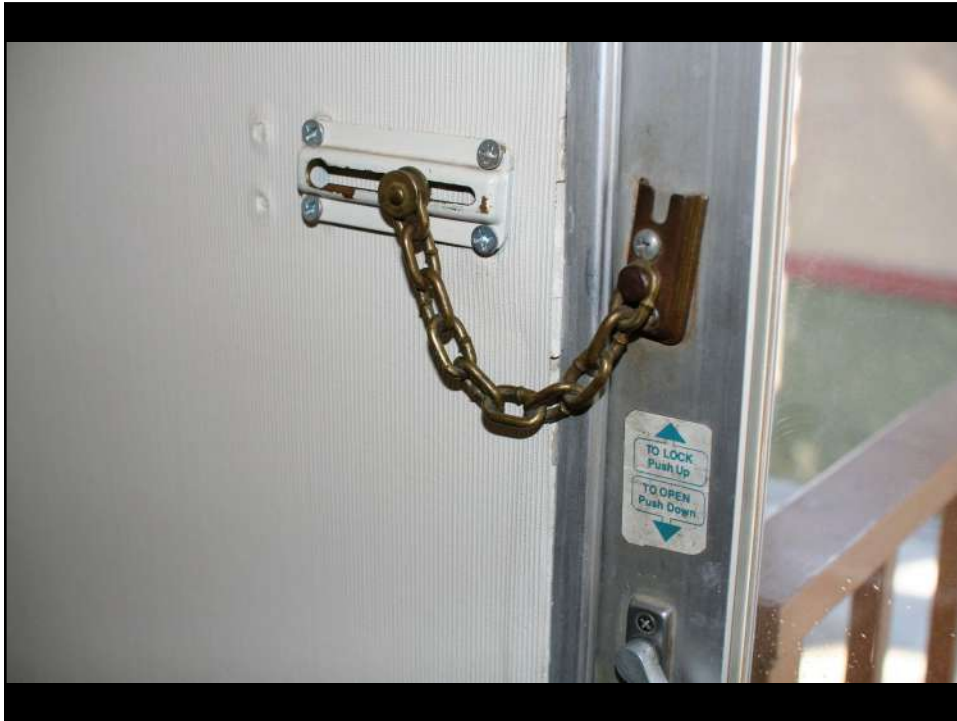












# Fraud

The Elements:

Review ...

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  - b. Justifiable reliance  
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