

**Private Eye**  
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HLC 2.0  
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- I. Allegations giving rise to privacy claims that have been litigated
  - A. Restaurant alleged of sharing medical information of injured worker with outside counsel
  - B. Hotel's employee friends with spouse of guest and alleged to have shared information about guest's activities at hotel to guest's spouse as part of divorce proceeding
  - C. Hotel accused of data breach during reservation process that exposes credit card information of guest
  - D. Restaurant accused of data breach during purchase of food that exposes credit card information of guest
  - E. Hotel accused of using pseudonym of guest with other hotel employees
  - F. Employer making comments that employee "looks sexy" and rubbing her shoulders
  - G. Restaurant selling "lost" album of recording artist without attributing credit to songwriter
  - H. Police entering a hotel room where a guest is living without a warrant and without consent
  - I. Hotel providing receipt of guest to reporter later used to allege guest had an affair at hotel
  - J. Hotel circulating birthday card showing age of employee to other employees
  - K. Police asking maids to search for narcotics in hotel room
  - L. Police using a ruse to enter into a hotel room with a warrant
  - M. Hotel disclosed to employees that another employee received injections from a particular doctor
  
- II. Types of breach of privacy claims (1 minute)
  - A. False light
  - B. Intrusion upon seclusion
  - C. Public disclosure of private facts
  - D. 4<sup>th</sup> Amendment
  
- III. Defenses
  - A. Defenses to breach of privacy generally
    - 1. Negligence (breach of privacy is an intentional tort)
    - 2. Absolute privilege for communications made in the course of judicial proceedings
    - 3. Not in the course and scope of employment (vicarious liability)
    - 4. Not a joint venture (reservations vendor, management vendor)
    - 5. Not a voluntary undertaking
    - 6. No duty

7. No cause of action recognized for breach of privacy
  8. SOL
  9. Acted in a manner inconsistent with expectation of privacy
- B. Defenses specific to false light
1. Not highly offensive to a reasonable person
  2. Not false
- C. Defenses specific to intrusion upon seclusion
1. Not disseminated to the public at large or to so many persons that the matter becomes public knowledge
  2. Not confidential
- D. Defenses specific to public disclosure of private facts
1. Not offensive and objectionable to one of ordinary sensibilities
  2. Doesn't offend the customs and views of the community
  3. No proof of how information released
  4. No implied contract between hospitality guest and hospitality establishment that services conditioned on keeping information private
  5. Not a private fact
  6. Not published to a large group of people
  7. Not an unreasonable, substantial, or serious interference with plaintiff's privacy
  8. Disclosure unrelated to substantive cause of action (i.e., wrongful termination or discrimination)
- E. Fourth Amendment
1. Had warrant
  2. Offered consent
  3. Expectation of actor
  4. Not government action
  5. No reasonable expectation of privacy
  6. Search incident to arrest exception
- IV. Evidence
- A. Type of employee/witness
  - B. Photographs
  - C. Who has access to what system at hospitality establishment
  - D. Training
  - E. Vendors
  - F. Security expert
  - G. eDiscovery
  - H. Hiring policies
  - I. Past security breaches
  - J. Criminal trial evidence

- VI. Damages
  - A. Compensatory
  - B. Punitive
  - C. Criminal
  
- VII. Best Practices
  - A. Background checks
  - B. Training
  - C. Social media investigation