

## Invasion of privacy annotated problem question

In the past E has not minded publicity—will this affect any of her claims?

Do her wishes add anything to her claims? Consider *Douglas v Hello!*

Is the fact that she has made public her desire for her wedding to stay private relevant? See *Murray v Express Newspapers*.

Is this comparable with *Campbell*? Does it make her claim stronger that another person is involved? Does E have a 'reasonable expectation of privacy' in this situation? If a court has to weigh up the right to privacy (Art 8 ECHR) with the right to freedom of expression (Art 10 ECHR), who do you think will win here?

Is there any 'harm' done by these pictures? Compare e.g. *Campbell v MGN*. Does E have a 'reasonable expectation of privacy' in this situation? If a court has to weigh up the right to privacy (Art 8 ECHR) against the right to freedom of expression (Art 10 ECHR), who do you think will win here? See also *Mosley v News Group Newspapers*.

Elizabeth is the fiancée of a Premiership footballer, Alessandro Talenti. She has always been happy to be photographed with Alessandro at awards evenings, film premieres and charity events and also while out with her girlfriends shopping or lunching, or with other footballers' wives and girlfriends watching football matches.

Recently, as she has started to organise her wedding, which she wants to be intimate and private, Elizabeth has found the media attention intrusive and has had several arguments with photographers wanting to take her picture whilst out shopping or in small, quiet restaurants. One photographer, Chris, is particularly persistent and takes photographs when she is leaving a hospital after visiting her mother who is very ill. He also photographed her (using a long-range lens) going to a small London bridal boutique when she was shopping for bridesmaids' dresses with her young sister and niece.

On the wedding day—the press having been successfully excluded from the venue—one of the caterers secretly takes some pictures of the wedding ceremony and the reception, where there were many famous guests. He sells these pictures to *Peachy!*, a well-known celebrity glossy magazine; the pictures are published in the following week's issue as an 'exclusive'. Meanwhile, a journalist contacts Alessandro saying he has found out that he had a brief affair the previous year while away at a football tournament and that this information is going to be published the following day.

Advise Elizabeth and Alessandro as to any legal actions they might be able to pursue.

Following *Douglas v Hello!* would this be actionable? Is there a difference in this case in that there was no existing arrangement to sell pictures to another magazine? If so, would that go in E's favour or against her?

Would this fall foul of the (current) IPSO Editor's Code? If so, would any remedy the IPSO could provide be acceptable?

Does this suggest that it is a 'private' wedding? Leading to the couple having a legitimate or 'reasonable expectation of privacy' with all relating to it?

Does the fact that there are children being photographed help her claim? See *Murray v Express Newspapers* and *Weller v Associated Newspapers Ltd*, but compare *AAA v Associated Newspapers Ltd*. Does E have a 'reasonable expectation of privacy' in this situation? If a court has to weigh up the right to privacy (Art 8 ECHR) against the right to freedom of expression (Art 10 ECHR), who do you think will win here?

This would suggest that Alessandro would seek an injunction to prevent the publication of the story. Consider the purpose of injunctions and the implications for freedom of expression if the story is not published, as well as the public's 'right to know'. Consider the opinion of the court in *Mosley*—in the context of publication of information about private sexual relationships—but also the question of AT being a 'role model' and cases where footballers and other famous people have had this kind of information published on this basis. Recent cases have focused on the balance of the Article 8 right to a private life against Article 10's freedom of expression—each must be carefully weighed against the other—what do you think the outcome would be here, and why?