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Cases of Note-Invasion of Privacy, Appropriation

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LEGAL ISSUES



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Cases of Note — Invasion of Privacy, Appropriation

Column Editor: **Bruce Strauch** (Retired, The Citadel) <strauchb@citadel.edu>

BELA GEORGE LUGOSI et al. v. UNIVERSAL PICTURES. 603 P.2d 425 (Cal. 1979)

In 1930, **Bela Lugosi** signed on with **Universal Pictures Company** to play the title role in *Dracula*.

Hope Linninger Lugosi and **Bela George Lugosi**, widow and son of the iconic vampire sued **Universal** in 1966 alleging they were appropriating property which they had inherited. **Universal** was licensing out the rights to the *Dracula* character without family consent.

And boy did they exploit it. Plastic toy pencil sharpeners, plastic model figures, T-shirts and sweat shirts, card games, soap and detergent products, picture puzzles, candy dispensers, masks, kites, belts and belt buckles, and beverage stirring rods.

They actually identified the date of the movie and actor's name. As if anyone could fail to recognize the immortal **Bela, Sr.** The trial court found it was clearly **Bela's** likeness despite **Christopher Lee**, **Lon Chaney** and **John Carradine** having also also played the role.

Lugosi never tried to exploit his image as *Dracula*. Had he done so in a business or whatever he would have impressed the business with a secondary meaning protectable under the law of unfair competition. **Johnston v. 20th Century-Fox Film Corp.** (1947) 187 P.2d 474.

That legal footnote aside, the trial court found that the interest was one of property which could pass to the heirs. They relied on a line of cases which included **Haelan Laboratories v. Topps Chewing Gum** (2d Cir. 1953) 202 F. 866 and **Cepeda v. Swift and Company** (8th Cir. 1969) 415 F.2d 1205.

The Appeal

The appellate court and later the Supreme Court of California relied on **Dean Prosser** who said it was an issue of privacy. **Prosser**, "Privacy" (196) 48 Cal.L.Rev. 383, 406.

Lugosi could have created "... a right of value" in his name or likeness. But he didn't do it.

Had he done so, it would have been protectable during his lifetime under one of the forms of invasion of privacy — Appropriation for the defendant's advantage of the plaintiff's name or likeness.

The injury is loss of potential financial gain, not mental anguish like the other invasions of privacy (intrusion into seclusion, public disclosure of private facts, false light).

Had he built a T-shirt business, sold it, and not spent the money, the money would become part of his estate.

But because the issue is one of invasion of privacy, his right is a personal one which does not extend to family members. **Prosser**, *Law of Torts* (4th ed. 1971) pp. 814-815.

The heirs of **Al Capone**, after his death, sued for an invasion of their privacy due to a movie about him. **Maritote v. Desilu Productions, Inc.** (7th Cir. 1965) 345 F.2d 418 (cert. den. 382 U.S. 883). They claimed his name, likeness and murderous personality did not fall into the public domain upon his death. The court held it was really an invasion of **Alfonse's** privacy, and he was dead. So no luck.

The widow of **Jesse James** sued a film producer for "exploitation of plaintiff's deceased husband's personality and name for commercial purpose." **James v. Screen Gems, Inc.** (1959) 344 P.2d 799. Note that the language of the allegation is the appropriation invasion of privacy which does not survive death.

For some reason, California puts the year first in the citation if that oddity is bothering anyone.

Plaintiff must prove that his privacy has been invaded.

The court found it odd to urge that, because an ancestor did not exploit his publicity for commercial purposes, the right to do so descends to the heirs. If so, how many generations could this descend to?

A concurring opinion notes that **Lugosi** was an actor. He memorized lines written for him and played the role. He neither wrote the novel nor the screenplay. Many others played the role. He had no more right to exclusivity in exploiting it than **George C. Scott** does to **General Patton**.

Should the descendants of **George Washington** be able to sue the Secretary of the Treasury for using his likeness on the dollar bill? And what about **Dolly Madison** cakes?

And just when you think you've learned something ...

In 1985 California passed *The Celebrities Rights Act*.

I'm surprised they didn't call it the Celebrities Bill of Rights.

Anyhoo, if your name, voice, signature, photograph, or likeness has commercial value when you croak, you can pass it to your heirs. It gets 70 years of protection. Twelve other states have done the same. 🐼



Questions & Answers — Copyright Column

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QUESTION: *A high school librarian inquires about a campus-wide freshman reading program initiative and asks whether the school can show a motion picture as a part of this program.*

ANSWER: To show an entire motion picture to the whole school or to all of the freshmen students is a public performance, and the school would need a license for this

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