

Hypothetical #2

Hester Prynne and her spouse, Roger Chillingworth, are engaged in lengthy divorce proceedings. The issue of custody over their child, Pearl, has become heated with Mr. Chillingworth wanting full custody. Mr. Chillingworth filed for divorce after learning of an extramarital affair that Ms. Prynne had with her local spiritual counselor, Arthur Dimmesdale. The extramarital affair occurred while Mr. Chillingworth was missing for several months and believed dead while serving in a tour of Iraq.

During the affair, Ms. Prynne exchanged a series of photos with Mr. Dimmesdale over Facebook Messenger. The photos show the following:

- Ms. Prynne is pictured in full BDSM lingerie, complete with a whip and sex toys. No genitalia or areolas can be seen.
- Ms. Prynne is completely nude with her breasts visible.
- Ms. Prynne is fully dressed and engaging in masturbation over her clothes.
- Ms. Prynne is dressed in a full animal mascot suit while tied up with ropes. She is wearing lingerie over the animal mascot suit.

After Mr. Chillingworth escaped a prisoner of war camp and being declared alive, Ms. Prynne ended the extramarital affair and resumed her life with Mr. Chillingworth.

Several months into his return home, Mr. Chillingworth discovers that Ms. Prynne had not logged out of her Facebook account on her laptop computer when she left to buy groceries. Out of curiosity, he begins to go through months of her Facebook Messenger conversations.

When Mr. Chillingworth finds the Facebook Messenger conversations with Mr. Dimmesdale, he immediately takes screenshots and downloads the photos Ms. Prynne had sent to Mr. Dimmesdale.

Mr. Chillingworth believes that Ms. Prynne's sexual proclivities endanger their daughter and that she is unfit to be a parent.

After a hearing does not go the way Mr. Chillingworth desires, he sends an email to Ms. Prynne in which he threatens to release photos he downloaded from her Facebook Messenger if she does not agree to the proposed parenting plan. He also threatens to release other information that she "would not want her friends and family" to see.

The photos then appear online by virtue of an anonymous user on the website www.redletternudes.xxx.

On www.mycheatingex.com, the following statement is posted by an anonymous user:

This diseased whore cheated on her husband while he was deployed in Iraq. Watch out or you might catch HPV, and whatever else she's spreading around town. Someone should report her to DHS as she has a five-year old at home while she is running a brothel out of her bedroom.

Submissions for www.mycheatingex.com are received by email to the owner at spillthetea@mycheatingex.com.

In addition to the statement above, the owner of the website added the following comment: "She sounds like a real snack. I've seen the photos and this is real."

Ms. Prynne was diagnosed with HPV in college prior to meeting Mr. Chillingworth. She only told Mr. Chillingworth, Mr. Dimmesdale, and her parents about her diagnosis. Mr. Chillingworth and Mr. Dimmesdale have been her only sexual partners since she was diagnosed.

Mr. Chillingworth denies posting the photos to the websites and claims he only threatened to release the photos and information.

What legal claims does Ms. Prynne have, and against who?

1. Intrusion Upon Seclusion?
2. Public Disclosure of Private Facts?
3. Intentional Infliction of Emotional Distress?
4. Revenge Porn?
5. Defamation?

How can Ms. Prynne bring her claims against Mr. Chillingworth when the person who posted the photos and statements is unknown?

1. Subpoenas and other legal process
2. Technological complications and anonymity software developments

Are there any authentication issues that need to be anticipated?

What First Amendment issues are there?