

If the topless pictures of Kate Middleton were taken in Massachusetts, would she have had a legal claim under Massachusetts law for violation of her privacy?

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Most likely. The topless photos of Kate Middleton reportedly were taken in the south of France while the royal couple was sunbathing. The pictures apparently were obtained from a significant distance, one report being a ½ mile away. Although the privacy laws in France are known to be some of the strictest in the world, and much more so in general than the United States, due to the nature of the photos, the Duchess of Cambridge would likely have a legal claim under Massachusetts law if the incident occurred here in Massachusetts.

Whether a tort for the violation of a person's right to privacy in some shape or form has existed under the common law (created by courts) in Massachusetts and under what circumstances a claim would arise was not firmly established in Massachusetts. *Baker v. Libbie*, 210 Mass. 599 (1912); *Corliss v. E.W. Walker, Co.*, 57 F. 434 (C.C.D. Mass. 1893) *modified*, 64 F. 28 (C.C.D. Mass. 1894). Only in recent times did the tort under the common law take some shape. In *Alberts v. Devine* the Massachusetts Supreme Judicial Court affirmed that a patient has a right of privacy for the information a physician obtains in the patient-physician relationship. 395 Mass. 59, 65 (1985). Today, a right to privacy under the common law may still arguably have some grounding in Massachusetts law. However, reliance on the common law in most instances may not be necessary; in October 1973 the Massachusetts legislature passed a law intended to provide citizens a statutory right to privacy. It is Mass. Gen. Laws ch. 214 § 1B. It reads:

"A person shall have a right against unreasonable, substantial or serious interference with his privacy. The superior court shall have jurisdiction in equity to enforce such right and in connection therewith to award damages."

Although what is "unreasonable" or "substantial" or "serious" is a matter of some legal debate, it is hard to imagine that sneaking around taking nude pictures of a woman who is on private property is not unreasonable or substantial or serious in anyone's book. This author thinks it is safe to say that Kate Middleton would have a claim under this statute under the facts as reported if the photos were taken in Massachusetts. In the event that you are a party in a case involving the right to privacy in Massachusetts, expect to be a party in a case, or want to know if a claim exists under a certain set of facts, feel free to give our office a call.

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Right to privacy in Massachusetts/claim for a violation of privacy in Massachusetts/privacy laws
in Massachusetts