

(DRAFT)

7397 SEM: Information Privacy Law - Cásarez 1:00 - 3:30 p.m. W

Seminar: Information Privacy Law (LAW 7397, #23725) Spring 2014

Professor Nicole Cásarez

Room: _____; 1:00 - 3:30 p.m. W

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Required Text: Solove & Schwartz, Information Privacy Law (4th ed.) ("SS") with online supplement (Aug. 2012) available at <http://informationprivacylaw.com>. Additional readings are noted on the syllabus, and I may distribute other materials, including newly decided cases, as appropriate.

Requirements

1. **Attendance.** Pursuant to the Law Center's policy, you must attend at least 80 percent of our scheduled classes. Students who do not attend 80 percent of the classes can be automatically dropped from the class. I will keep track of attendance by passing around a sign-in sheet at the beginning of class. It is an Honor Code violation to sign in for another student. **Students must attend all classes during which other students present their research projects.**

2. **Class Preparation and Participation.** In a seminar, students are expected to be prepared and to participate. This makes class more enjoyable for you and for me. Preparation and participation will be taken into account in determining your final grade. You may bring appropriate technology into the classroom, but it should be used as you would use it when meeting with a client or a partner. If your technology (including cell phones, laptops, etc.) is not being used professionally, I reserve the right to ask you to leave.

3. **Paper Requirement.** To meet the Senior Writing Requirement in the Law Center's Student Handbook, the paper must be at least 35 pages long, excluding footnotes. Therefore, the total number of pages should be at least 38 or 40 pages, including footnotes. The paper must be original and demonstrate research, analytical and writing skills. Footnotes must be written in Bluebook format. You may select any topic relating to information privacy law, subject to my approval.

To complete the paper requirement, students must complete a short **prospectus**, and submit **two drafts**. The prospectus should briefly introduce the topic and the thesis of the paper. A preliminary **bibliography** must also be attached. The bibliography is simply a list of all materials that you have examined in preparing your prospectus. The quality of the prospectus and drafts will not be taken into account in determining the final grade for the paper, as long as the prospectus and drafts demonstrate a good faith effort toward the development of the paper. However, the final grade for the paper will be negatively affected by the failure to submit the

prospectus or the drafts in a timely manner. If you require an extension, you should speak to me about it in advance of the deadline.

Your paper grade will be based on the following factors: thoroughness of research; organization; analysis of the issues; originality; writing style; citation style and completeness; diligence in responding to comments on drafts; and timeliness in meeting deadlines.

Please submit all writings in the course as Word documents (as attachments) via email to me at casarez@stthom.edu.

4. **Originality.** Please read the Honor Code in the Student Handbook to avoid any problems with plagiarism. However, even if you properly cite all references to another's work, you have not necessarily demonstrated original thinking. To help you develop your own ideas about your topic, please begin your research by reading primary sources: judicial opinions, statutes, legislative history, writings from other disciplines, newspaper or magazine articles. Please do not read law review articles (or similar articles found on the web) on your paper topic until you have completed your first draft. In short, you may consult everything but law review articles before you write your first draft. In writing your second draft, you can polish the paper as well as add references to other points of view from law review articles.

5. **Class Presentations.** The latter part of the course will consist of individual student presentations. The use of PowerPoint is permitted, but not mandatory. Each student will give a 20-minute presentation to the class concerning his or her research project for the paper requirement. Please provide an outline or synopsis of your presentation to your classmates, and send me an electronic version (email attachment) of your presentation by 10 p.m. on the Tuesday before your presentation. **Except for the presenter, students may not use laptops during presentations.** Your comments and questions to your colleagues following their presentations will be considered in determining your grade for class preparation and participation.

6. **Grading.** Your grade will be based on your final paper (80%), your presentation (10%), and your class preparation and participation (10%).

Some Guidelines for Writing Papers (from Prof. Sandra Thompson, used by permission)

Throughout the process, please BACK UP YOUR WORK so you don't lose it if your computer crashes. Computer disasters will not be considered valid excuses for tardiness.

As you start on your first draft:

1. Please number your pages.
2. Your paper should start with a title, followed by your name, both centered.

3. Your text should be in 12 point font , with footnotes in 10 point font, with one-inch margins on all sides. Text is double spaced, with no additional spaces between paragraphs or sections. Footnotes are single spaced within and between notes.

As you start on your second draft:

1. Once you begin working on your second draft, it will be permissible to refer to law review articles. You can think about incorporating the viewpoints of other authors into the text of your paper, checking your research against that in the articles, and/or just using the articles as additional support for points you already make in your paper. Contrary viewpoints can simply be acknowledged, or you can attempt to distinguish them or explain why you think your position is more sensible or reasonable.

2. Think about telling your story three times: (1) first in your introduction; (2) then in the body of the paper; and (3) in your conclusion. Your introduction should give an overview of the entire paper in a straightforward and evenhanded fashion. Be sure to explain your thesis and conclusions, too--don't hide the ball. End your introduction with a roadmap section that explains how each of the major sections of the paper is organized. You can refer to most law review articles for examples. Each major section of your paper should then advance your thesis in some way. Remind the reader of how each section is relevant to your thesis.

3. As best you can, try to use short, simple sentences. Think about topic sentences for your paragraphs, and work toward smooth transitions between sections of the paper.

4. Select a title that gives the reader sufficient information about your topic. It need not be too long or wordy, but it should help the reader to understand the general topic.

As you begin to complete the final version:

1. Before turning in your final papers, please check your footnotes for bluebook compliance. The LRW teachers are happy to assist you if you have any questions.

2. Your conclusion should be brief, from one paragraph to about two pages. You shouldn't need too many footnotes here. This is where you can be a little more emotional or forceful in advancing your position.

Target schedule for semester

Jan. 15 Introduction to Class; Overview of Privacy law

Skim SS 1-48. Pay particular attention to *Sidis v. F-R Publishing* (3-7); and Warren & Brandeis, *The Right to Privacy* (13-25)

Read Jeffrey Rosen, *The web means the end of forgetting*, New York Times Magazine, July 21, 2010, available at http://www.nytimes.com/2010/07/25/magazine/25privacy-t2.html?pagewanted=all&_r=0

In the second half of class, we will hear a presentation on selecting a paper topic and researching a paper by Mon Lin Lung, Associate Director of the O'Quinn Law Library.

Jan. 22 The Traditional Privacy Torts

This material is covered in SS Chap. 2. We will focus on the following cases:

Intrusion: *Nader v. General Motors Corp*; *Dietemann v. Time* (81-88)

Publication of Private Facts: *Sipple v. Chronicle Publishing Co.* (123-126); *Florida Star v. BJJF* (155-160); *Bartnicki v. Vopper* (169- 176)

False Light: Summary (205-207)

Appropriation: *Carson v. Here's Johnny Portable Toilets, Inc.* (223-225) and *Keller v. Electronic Arts*, 9th Cir. (2013) (edited version to be distributed by email).

Intentional Infliction of Emotional Distress: *Snyder v. Phelps* (214-218)

Jan. 29 Guest Lecture: Prof. Tobi Tabor, on writing a seminar paper.

I will be available to meet with students regarding their topics or papers following Professor Tabor's presentation.

Feb. 5 Research and writing day. Prospectus and bibliography due by 4 p.m.

Feb. 12 Privacy and Law Enforcement

This material is covered in SS Chap. 3, pages 247-377. We will focus on the following materials:

Olmstead v. U.S. (256-259); *Katz v. U.S.* (265-268); *Smith v. Maryland* (276-281); *Kyllo v. U.S.* (306-310); *Illinois v. Caballes* (286-288); *U.S. v. Jones* (supplement 1-10); *Florida v. Jardines* (edited version to be distributed by email); *Steve Jackson Games, Inc. v. United States Secret Service* (345-347); *U.S. v. Warshak* (351-356)

Summary of the Electronic Communications Privacy Act (315-323); CALEA (328-329); and the USA Patriot Act (331-333).

Somini Sengupta, *Privacy fears grow as cities increase surveillance*, New York Times, Oct. 13, 2013 <http://www.nytimes.com/2013/10/14/technology/privacy-fears-as-surveillance-grows-in-cities.html>

Richard Wolf, *Your cell phone--private or not?* USA Today, Sept. 9, 2013 <http://www.usatoday.com/story/news/nation/2013/09/09/your-cellphone-private-or-not/2788945/>

Feb. 19 Surveillance and National Security

SS Chap. 3, pages 377-428. We will focus on the following materials:

The *Keith* Case (378-382); the summary of FISA and the FISA Amendments Act (384-387).

Glenn Greenwald, *NSA collecting phone records of millions of Verizon customers daily*, The Guardian, <http://www.theguardian.com/world/2013/jun/06/nsa-phone-records-verizon-court-order>, June 5, 2013.

Charlie Savage, *NSA said to search content of messages to and from U.S.*, New York Times, http://www.nytimes.com/2013/08/08/us/broader-sifting-of-data-abroad-is-seen-by-nsa.html?ref=todayspaper&_r=0, Aug. 8, 2013.

Jeffrey Rosen, *A newly released secret opinion shows surveillance courts are even worse than you knew*, The New Republic, <http://www.newrepublic.com/article/114853/fisa-court-decision-upholding-surveillance-joke>, Sept. 25, 2013.

Feb. 26 Research and writing day. Appointments will be available during our class time for those students who want to discuss their papers with me

March 3 Research and writing day. First drafts due by 5 p.m.

March 12 Spring break

March 19 Health and commercial privacy

Health and Genetic Privacy is covered in SS Chap. 4, and Privacy of Financial and Commercial Data is covered in SS Chap. 7. We will discuss the following materials:

Whalen v. Roe, (503-507); *United States v. Kincaid* (547-553); *Moore v. Regents of the University of California* (527-536); *Sorrell v. IMS Health Inc.* (917-924)

Jeff Sovern, *Opting in, opting out, or no options at all*, 74 Wash. L. Rev. 1033 (1999), excerpt at SS 808-810

Michael E. Staten & Fred H. Cate, *The impact of opt-in privacy rules on retail markets*, 52 Duke L. J. 745 (2003), excerpt at SS 810-813.

William F. Pewen, *Protecting our civil rights in the era of digital health*, The Atlantic, Aug. 2012

Natasha Singer, *An American quilt of privacy laws, incomplete*, New York Times, http://www.nytimes.com/2013/03/31/technology/in-privacy-laws-an-incomplete-american-quilt.html?_r=0, March 30, 2013

Brendan Greely, *The Consumer Privacy Bill of Rights: are we the consumers, or are we the product?* Bloomberg BusinessWeek, <http://www.businessweek.com/articles/2012-02-23/the-consumer-privacy-bill-of-rights-are-we-the-consumers-or-are-we-the-product>, Feb. 23, 2012

Statement of Chief Justice John Roberts respecting the denial of certiorari in *Marek v. Lane*, 571 U.S. ____ (2013), available at <http://graphics8.nytimes.com/packages/pdf/opinion/greenhouse/mareklaneSUB.pdf>

March 26 Privacy at Home, School and Work

Covered in SS Chap. 8. We will focus on the following materials:

Georgia v. Randolph (959-963); *Board of Education v. Earls* (976-979); *O'Connor v. Ortega* (989-993); *NASA v. Nelson* (1021-1025); *Symth v. Pillsbury* (1040-1041)

Stephen Ceasar, *Glendale district says social media monitoring is for student safety*, LA Times, <http://www.latimes.com/local/la-me-glendale-social-media-20130915,0,2775536.story#axzz2kISvG2wd>, Sept. 14, 2013

Alana Semuels, *Tracking workers' every move can boost productivity--and stress*, LA Times, <http://www.latimes.com/business/la-fi-harsh-work-tech-20130408,0,7804529.story#axzz2kISvG2wd>, April 8, 2013

April 2 Research and writing day. Second drafts due by 5 p.m.

April 9 Presentations

April 16 Presentations

April 23 Presentations

April 28 Final paper due by 5 p.m.