

Data Privacy Law

More and more companies and government agencies find themselves in the press and courtrooms for data privacy and security law violations. Given the rapidly increasing technological options to collect and commercialize personal data, this area of the law is rapidly growing. This course will prepare law students for the challenges and opportunities of data privacy law.

Objective of the lectures is to familiarize students with the typical legal problems arising from the conflicting interests in data and privacy in today's global economy and society, in particular in the areas of law enforcement, commerce, media and employment. The significance and practical relevance of domestic, international and foreign national laws is rapidly increasing for individuals, government officials, businesspeople, attorneys, judges, and legislators around the world. We will look at how data processing and laws affect individual privacy in the various areas, including government and private surveillance, press reporting, commercial treatment of financial, health and communications information, and direct marketing.

Topics covered include common law, constitutional and statutory rights and obligations regarding data privacy, data security and legal protection for databases under California, U.S. Federal, European Community, public international and other countries' laws, including, for example, the U.S.-EU Safe Harbor Principles, rules on spamming, wiretapping, homeland security, and employee monitoring.

Method of teaching involves reviewing hypothetical cases that will be available before class and discussed during class in an interactive manner (i.e., with active student participation, Socratic method). Additionally, we will discuss data privacy issues in the news. Our focus will be on active problem solving. When we review court decisions, the emphasis will be on applying the court's rationale, beyond merely memorizing it. A legal counsel or data privacy officer from a company will be invited to class to share experiences of solving data privacy problems in the business world.

Materials and reading assignments. In our course, we will refer to *Dan Solve / Paul Schwartz*, Information Privacy Law, 5th Ed, 2014, 1248 pages, and *Lothar Determann*, Data Privacy Law 2015, Cases & Materials (44 pages + supplements). Both these resources present questions and reading assignments, some of which are selected for our course, as specified in this syllabus. For our course, please refer to the selection of reading assignments in this syllabus, as amended from time to time as our course proceeds (with two weeks notice):

✓ **Required reading** assignments will be necessary to help you solve the problems presented by the hypothetical cases.

- ✓ **Optional reading** identified in the context of each case will be helpful for background purposes, but you can solve the problems without the optional reading. For additional optional reading, I recommend Solve/Schwartz, Information Privacy Law, and academic and popular news articles. I will recommend sections to read in parallel with our course materials, but we will not go over the reading in class. Many students in prior classes said they found the additional reading helpful, but some found it not necessary or essential.
- ✓ **Purely discretionary context** is provided in the introduction to *Lothar Determann, Data Privacy Law 2015, Cases & Materials* for those of you with a true passion for data privacy and reading and movies (you need all three to enjoy these). To be clear, these are extra-super-hyper-optional suggestions, intended to encourage critical thinking as much as finding pleasure in context and absolutely not necessary for our law school course

Class Meetings. Class meets Tuesdays at 8 AM in Room (tbd).

Practice and final exam.

- I will offer an ungraded, two hour open book practice midterm exam on (tbd).
- The final exam will contain one or two essay questions, open-book, but only hardcopy notes. You may not access your hard drive or the internet (bring a hardcopy of your outline). You will have 2 hours.
- Your grade will be largely based on your exam score, provided that I reserve the right to adjust your grade upward for quality class participation.

Questions and office hours. Please contact me at ldetermann@bakernet.com. We can schedule meetings before or after class in Café Zeb.

Academic Calendar - Data Privacy Law - Spring Semester 2015

Instruction Begins	Jan. 13, Tuesday, first class
Spring Recess, no classes meet	Mar. 23-27, Monday-Friday
Make-up day for Monday classes missed on Martin Luther King Day	Apr. 27, Monday
Make-up day for Monday classes missed on Presidents Day	Apr. 28, Tuesday
Instruction Ends	Apr. 28, Tuesday
Final Review Session	Apr. 28?
Final Examinations	May 4-14, Monday-Thursday
Spring Semester Ends	May 14, Thursday

Reading assignments are from Dan Solve / Paul Schwartz, Information Privacy Law, 5th Ed, 2014 ("Information Privacy Law"), or Lothar Determann, Data Privacy Law 2015, Cases & Materials ("Privacy Cases & Materials").

	Date	Topics	Cases ¹	Reading Assignments ²
	before Jan 13	<p>Preparation – First Assignments</p> <p><i>Please answer for yourself the following questions:</i></p> <p>What is privacy? Data privacy? Data protection?</p> <p>What is the difference in focus of trade secret protection vs. personal data protection?</p>		<p><i>Information Privacy Law</i>, pages 1-3 and 58-67 (required).</p> <p><i>Privacy Cases & Materials</i>, pages 3-11 and the facts of the Census Case (required).</p> <p>Golle, Revisiting the Uniqueness of Simple Demographics in the US Population https://crypto.stanford.edu/~pgolle/papers/census.pdf (optional)</p> <p>Lynette Clemetson, Census Policy on Providing Sensitive Data is revised, NYTimes www.nytimes.com/2004/08/31/us/census-policy-on-providing-sensitive-data-is-revised.html (optional)</p>

¹ Cases are from Lothar Determann, *Data Privacy Law 2015, Cases & Materials*.

² Reading assignments are from Dan Solve / Paul Schwartz, *Information Privacy Law, 5th Ed, 2014 ("Information Privacy Law")*, or Lothar Determann, *Data Privacy Law 2015, Cases & Materials ("Privacy Cases & Materials")*.

	Date	Topics	Cases ¹	Reading Assignments ²
		Why protect personal data? From what? Who owns personal data?		
1.	Jan 13	Introduction: In the first session, we will cover #1 (Preparation – First Assignments) and start analyzing Case 1 (Census).	Census	(see above)
2.	Jan 20	1 st Amendment protection, liabilities and immunities for government	Government Warnings	<p>Students prepare written outline for Census Case (in <i>Privacy Cases & Materials</i>) and read:</p> <ul style="list-style-type: none"> - Morales v. Daley 116 F.Supp.2d 801 (required) - U.S. v. Jones 132 S.Ct 945 (required) - Katz v. U.S. 88 S.Ct. 507 (optional) <p>Students prepare written outline for Government Warnings Case (in <i>Privacy Cases & Materials</i>) and read:</p> <ul style="list-style-type: none"> - Doe v. Barrington, 729 F. Supp. 376; 1990 U.S. Dist. LEXIS 1059 (required)
3.	Jan 27	Invasion of privacy torts	Media	<p>Students read Information Privacy Law, pp. 13-29 (required) and 81-107 (optional).</p> <p>Read: Stessman v. American Black Hawk Broadcasting Co., 416 N.W.2d 685 (Iowa 1987) (required)</p> <p>Students prepare written outline for Media Case (in <i>Privacy Cases & Materials</i>).</p>
4.	Feb 3	Invasion of privacy by media (tort laws, 1 st Amendment)	Consent	Students prepare written outline for Consent Case (in <i>Privacy Cases & Materials</i>):

	Date	Topics	Cases ¹	Reading Assignments ²
				<p>Information Privacy Law, p. 178 - 213 (optional)</p> <p><i>Schwartz/Peifer</i> Prosser's Privacy and the German Right of Personality: Are Four Privacy Torts better than One Unitary Concept?, Cal. Law Review 2010</p> <p>http://papers.ssrn.com/sol3/Delivery.cfm/SSRN_ID1816885_code68128.pdf?abstractid=1816885&mirid=1 (optional)</p>
5.	Feb. 10	Unfair competition laws (notices, privacy policies)	Consent Spam	<p>Students prepare written outline for Spam Case (in <i>Privacy Cases & Materials</i>) and read:</p> <p>FTC Complaint v. Sears, available at http://www.ftc.gov/os/caselist/0823099/090604searscomplaint.pdf (required)</p> <p>Rethinking Compliance Strategies: After EU, U.S., Other Countries, Canada Passes Anti-Spam Law, Lothar Determann and Arlan Gates, Privacy & Security Law Report, 10 PVLIR 378 (optional)</p>
6.	Feb. 17	Privacy and Social Media	Social Media	<p>Outline Social Media Case (<i>Privacy Cases & Materials</i>)</p> <p>Social Media Privacy: A Dozen Myths and Facts, Lothar Determann, 2012 Stanford Technology Law Review 7, available at http://stlr.stanford.edu/pdf/determann-socialmediaprivacy.pdf (optional)</p> <p>Internet Freedom and Computer Abuse - The Computer Fraud and Abuse Act: Transformation After Tragedy, Symposium at University of California, Hastings College of the Law, San Francisco, Friday, March 22, 2013 Keynote Speech, Lothar Determann, 35 Hastings Communications and Entertainment Law Journal 429, 2013, available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2298880 (optional)</p> <p>U.S. v. Lori Drew, 259 F.R.D. 449 (optional)</p>

	Date	Topics	Cases ¹	Reading Assignments ²
7.	tbd	Practice Exam		
8.	tbd	Going over Practice Exam and cover Consumer Relations	Consumer Relations	Outline Consumer Relations Case (<i>Privacy Cases & Materials</i>)
9.	tbd	Communications, surveillance, ECPA, 4 th Amendment	Email Surveillance Case	Outline Email Surveillance Case (<i>Privacy Cases & Materials</i>) Warshak v. United States, 631 F.3d 266; 2010 U.S. App. LEXIS 25415; 2010 FED App. 0377P (6th Cir.) (Warshak III) Sec. I A. (p. 1 to p. 29) (required) United States v. Councilman, 418 F.3d 67 (1 st Cir. 2005)(en banc) (required) Information Privacy Law, pp. 260 - 267 (optional)
10.	tbd	Cell phone location data	Location Tracking	Outline Location Tracking (<i>Privacy Cases & Materials</i>) Information Privacy Law, pp. 326-336 (required)
11.	tbd	Privacy after Snowden		Determann / zu Guttenberg, On War & Peace in Cyberspace, 41 Hastings Const. L. Quarterly (2014) (optional) Information Privacy law, pp. 411-471 (optional)
12.	tbd	Field Guide to International data privacy law compliance, in-house counsel's, practitioners' view	n/a	Information Privacy Law, pp. 949-986 (required)
13.	tbd	Employee privacy, Safe Harbor	International Transfers Employment Case	Outline of International Transfers and Employment Cases (<i>Privacy Cases & Materials</i>) International Transfers of Personal Data from Europe and Beyond, Lothar Determann, Review of Banking & Financial Services, Vol. 25 No. 11, available at

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				https://www.privacyassociation.org/media/presentations/12DPC/DPC12_Field_Guide_HO5.pdf (optional) Determann/ Sprague, Intrusive Monitoring, BTLJ 26, 978 (2011) (required)
14.	tbd	Privacy in the Cloud	Cloud	Outline Cloud Case (Cases & Materials) Lothar Determann, Data Privacy in the Cloud, 12 Myths and Facts (2013) (optional)
15.	tbd	Discussion: Legislative proposals		
16.	4/30	Final review session 4-7 PM		