

**Information Privacy Law**  
**Syllabus Spring 2011—Version 7.5**  
 Prof. H. Tomás Gómez-Arostegui

**Casebook:** Daniel J. Solove and Paul M. Schwartz, INFORMATION PRIVACY LAW (Aspen: 3d ed. 2009).  
**Supplement:** Some readings may be posted on my class website as PDFs for you to download; they will be posted at: <http://www.law.lclark.edu/faculty/tomas/infoprivacy.html> [hereinafter WEB].

**Reading Assignments:** The syllabus will be distributed in parts as we progress throughout the course. I will post each part on my webpage as needed. Please note that we will not always discuss all the assigned materials in class (in particular some of the notes). I usually (but not always) qualify those assignments by asking you to merely SKIM them by excluding some notes from the reading. Though you are responsible for all the assigned materials, whether discussed or not, I consider the material we discuss in class to be the most important.

**Meeting Time:** We meet every Tuesday, 10:00 am–12:00 pm, in Classroom 8.

**Contact Information and Office Hours:** My office is on the top floor of the Legal Research Center, No. 320 (next to Dean Klonoff's office). My phone number is 503-768-6816, and my e-mail is [tomas@lclark.edu](mailto:tomas@lclark.edu). My office hours are the hours I am not teaching, so feel free to drop by any time. If you want to make sure I will be around when you drop by, just contact me and we can schedule an appointment.

**Student Evaluation:** Your grade for the course will largely be based upon a final examination at the end of the semester. Class participation may also affect your grade. Your participation may merit a one-step upward or one-step downward adjustment from your exam grade, or (as is more often the case) it may not merit any adjustment at all. I will consider both the quantity and quality of your participation.

**Student Obligations:** You are required to attend class (be on time please), read the assignments, and participate in discussions relating to those assignments. Though I will take volunteers, I will also call on people without prior notice. If you are unprepared on a particular day, please let me know before class and I will not call on you. If you feel uncomfortable with public speaking, please come see me. The ABA requires all ABA-accredited schools to have a posted **attendance policy**. Mine in this class is as follows: If you have two (2) unexcused absences in our class, you will be docked a grade. So, if your final exam score was an A-, for example, your grade in the class will drop to a B+. If you have four (4) unexcused absences, you will be docked two grade levels. So, if you started with an A-, you would end up with a B. Six (6) or more unexcused absences could lead to you being dropped from the class entirely and having to re-take the course.

Class & Day	Topics	[Approx. Total Pages for Class Session]	Notes
[01] Tues 1/11	<b>I. Introduction</b> <b>B. Information Privacy: Origins and Types</b> <ol style="list-style-type: none"> <li>1. Common Law [10–33]</li> <li>2. Constitutional Law [33–34]</li> <li>3. Statutory Law [35–38]</li> <li>4. International Law [38]</li> </ol> <b>C. Philosophical Perspectives</b> <ol style="list-style-type: none"> <li>1. Discourse About Privacy [39–40]</li> <li>2. Definition and Value of Privacy [40–59]</li> <li>3. Critics of Privacy [59–69]</li> </ol>	[60pp]	

[02] Tues 1/18	<p style="text-align: right;">[45pp]</p> <p><b>II. Privacy and the Media</b>  <b>A. Information Gathering</b> [77-88; 92-105]  <b>B. Disclosure of Truthful Information</b> [105-112; 116-124; 131-134]</p>	
[03] Tues 1/25	<p style="text-align: right;">[49pp]</p> <p><b>B. Disclosure of Truthful Information</b>  2. First Amendment Limitations [141–157]  <b>C. Dissemination of False/Misleading Information</b>  1. Defamation  a. Introduction [173–175]  b. Defamation and the Internet [175–186]  c. First Amendment Limitations [186–196]  2. False Light  a. Introduction [196–199]  b. First Amendment Limitations [199–202]  3. Infliction of Emotional Distress [202–204]</p>	
[04] Tues 2/1	<p style="text-align: right;">[46pp + 8pp to skim]</p> <p><b>D. Appropriation of Name or Likeness</b>  1. Introduction [205–208]  2. Name or Likeness [208–212]  4. Connection to Matters of Public Interest [218–221]  5. First Amendment Limitations [224–226]</p> <p><b>III. Privacy and Law Enforcement</b>  <b>A. Fourth Amendment</b>  1. Introduction [233–241]  2. Wiretapping: <i>Katz</i> [251–256]  3. REP and Emerging Technology [262–269, 283 n.5]  4. REP and Internet Communications  a. <i>Ziegler</i> Case [WEB]  b. <i>Proetto</i> Case [WEB]  c. <i>Turner</i> Case [WEB]  d. <i>Long</i> Case [WEB]  e. <i>Hambrick</i> Case [WEB]  f. <i>Warshak</i> Case [WEB]</p>	<p><b>SKIP</b> notes p 221  <b>SKIM</b> 224-226</p> <p><b>SKIP</b> § 2 on p 241  <b>SKIM</b> 251-256</p>
[05] Tues 2/8	<p style="text-align: right;">[30pp]</p> <p><b>B. Computer Fraud and Abuse Act</b>  1. Memorandum on Cybercrime 1–5 [WEB]  2. <i>Explorica</i> Case [WEB]  3. <i>Citrin</i> Case [WEB]  4. <i>GetLoaded</i> Case [WEB]  5. <i>Millot</i> Case [WEB]</p> <p><b>C. The Wiretap Act and Stored Communications Act</b>  1. Memorandum on Cybercrime 5–8 [WEB]  2. <i>Steve Jackson</i> Case [WEB]  3. <i>Konop</i> Case [WEB]</p>	

[06] Tues 2/15	<p style="text-align: right;">[31pp + 9pp to skim]</p> <p><b>IV. Health and Genetic Privacy</b> [399–400]</p> <p><b>A. Confidentiality of Medical Information</b></p> <ol style="list-style-type: none"> <li>1. Prof. Ethics Rules and Evid. Privileges [400–406]</li> <li>2. Tort Liability for Disclosure [407–415]</li> <li>3. Tort Liability for Failure to Disclose [415–427]</li> <li>4. Statutory Reporting Requirements [427–429]</li> <li>5. State Law Protections [429–431]</li> <li>6. HIPPA [431–438]</li> </ol>	<p><b>SKIM</b> <b>SKIM</b></p>
[07] Tues 2/22	<p style="text-align: right;">[46pp + 3pp to skim]</p> <p><b>B. Constitutional Protection</b></p> <ol style="list-style-type: none"> <li>1. Constitutional Right to Privacy [447–454]</li>   <li>2. Constitutional Right to Information Privacy [470–489]</li> <li>3. The Fourth Amendment [489–492]</li> </ol> <p><b>C. Genetic Information</b></p> <ol style="list-style-type: none"> <li>1. Background [492–493]</li> <li>2. Property Rights in Body Parts and DNA [494–502]</li> <li>4. DNA Databases and Identification [512–521]</li> </ol>	<p><b>SKIM <i>Griswold</i></b> <b>SKIP n. 6 on 454</b></p> <p><b>SKIP nn. 3-6 on 521</b></p>
[08] Tues 3/1	<p style="text-align: right;">[40pp]</p> <p><b>V. Privacy of Associations, Anonymity, and ID</b> [525–527]</p> <p><b>A. Privacy of Group Associations</b></p> <ol style="list-style-type: none"> <li>1. Compelled Disclosure of Membership Lists [527–531]</li> <li>2. Interrogation About Group Associations [531–535]</li> <li>3. Surveillance of Group Activities [536–546]</li> </ol> <p><b>B. Anonymity</b></p> <ol style="list-style-type: none"> <li>1. Anonymous Speech [546–553]</li> <li>2. Anonymity in Cyberspace [553–565]</li> </ol>	
[--] Tues 3/8	Class Canceled	
[09] Tues 3/15	<p style="text-align: right;">[31pp]</p> <ol style="list-style-type: none"> <li>3. Anonymous Reading and Receiving Ideas [565–573]</li> <li>4. Anonymity and Copyright [573–577]</li> </ol> <p><b>C. Identification</b></p> <ol style="list-style-type: none"> <li>1. Devices and Techniques [577–579]</li> <li>2. Identification and the Constitution [579–586]</li> <li>3. Social Security Numbers [586–592]</li> <li>4. National Identification Systems [592–596]</li> </ol>	
[--] Tues 3/22	No Class — Spring Break	
[10] Tues 3/29	<p style="text-align: right;">[32pp]</p> <p><b>VI. Government Records and Databases</b> [597–598]</p> <p><b>A. Public Access to Government Records</b></p> <ol style="list-style-type: none"> <li>1. Public Records and Court Records [598–603]</li> </ol>	

	<ul style="list-style-type: none"> <li>2. FOIA [603–606]</li> <li>3. Constitutional Requirements [619–626]</li> <li>4. Constitutional Limitations on Public Access <ul style="list-style-type: none"> <li>a. Public Records [626–633]</li> <li>b. Police Records [635–642]</li> </ul> </li> </ul>	
[11] Tues 4/5	<p style="text-align: right;">[30pp]</p> <p><b>VII. Privacy of Financial and Commercial Data</b></p> <p><b>B. Commercial Entities and Personal Data</b></p> <ul style="list-style-type: none"> <li>1. Governance by Tort [757-765]</li> <li>2. Governance by Contract and Promises [765-777]</li> <li>5. Governance by Statutory Regulation [794-803]</li> </ul>	<b>SKIP</b> case on 777
[12] Tues 4/12	<p style="text-align: right;">[31pp]</p> <p><b>VIII. Privacy and Place</b></p> <p><b>A. Privacy at Home</b> [881–897]</p> <p><b>B. Privacy at School</b></p> <ul style="list-style-type: none"> <li>1. School Searches and Surveillance [897–902]</li> <li>3. School Records [913–921]</li> </ul>	
[13] Tues 4/19	<p style="text-align: right;">[30pp]</p> <p><b>IX. International Privacy Law</b> [995–997]</p> <p><b>A. OECD Privacy Guidelines</b> [997–998]</p> <p><b>B. The Protection of Privacy in Europe</b></p> <ul style="list-style-type: none"> <li>2. ECHR Article 8 <ul style="list-style-type: none"> <li>a. Introduction [WEB: <i>Defining Private Life</i> 156–162]</li> <li>b. Privacy and the Media [1007–1021]</li> </ul> </li> </ul>	
[14] Fri 4/22 12-1:30pm	<p style="text-align: right;">[28pp]</p> <ul style="list-style-type: none"> <li>c. Privacy and Law Enforcement [1021–1026]</li> <li>d. Privacy and Identification [1027–1031]</li> <li>e. Privacy and Gov’t Records and DBs [1031-1036]</li> <li>f. Privacy and Place [1036–1043]</li> </ul> <ul style="list-style-type: none"> <li>3. EU Data Protection Directive <ul style="list-style-type: none"> <li>a. Introduction [1043–1049]</li> </ul> </li> </ul>	