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# PRIVACY LAW AND SOCIETY

Second Edition



Anita L. Allen

**WEST**

# PRIVACY LAW AND SOCIETY

Second Edition

■ ■ ■

By

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*To Paul, Adam and Ophelia*

## PREFACE

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This textbook is a comprehensive introduction to the privacy law of the United States. Its purpose is to convey and assess the role that the concept of privacy plays in American law. Like typical textbooks geared for American law schools, it is a compilation of judicial opinions, legislated rules and commentary. Unlike typical law school textbooks, it deals with a subject matter that is inherently interdisciplinary.

The book is organized into four major chapters, representing the main legal sources of the nation's privacy law: the common law; the Constitution; and, in two chapters, federal legislation.

The book is designed primarily to support an intellectually rewarding three-credit hour law school course surveying the entire field of privacy law. It is important to note that the content of this textbook is not limited to, but includes, "information law". Information law is an important subset of privacy law. It is the component that grapples with data-protection problems facing consumers, government and business. Because the content of this book is broader than information law, students get a picture of the common values and historical connections among the various bodies of law that prominently feature the concept of privacy.

Instructors can design "perspectives" courses around this textbook. The textbook can also complement traditional law school offerings, especially torts, constitutional law and legislation. However, Privacy Law and Society offers a more detailed overview of the privacy torts than any tort law text; a fuller encounter with the Constitution's privacy jurisprudence than a typical constitutional law text; and more extensive analysis of communications, electronic and internet privacy policies than existing legislation or administrative law texts.

Each of the book's four main chapters is sufficiently self-contained, potentially to serve as a text for a seminar or two-credit hour course in a law school. For example, Chapter 1 could form the basis of an advanced torts course or seminar with invasion of privacy and confidentiality as its theme. Chapter 2 could support a thorough constitutional privacy course or seminar. Chapter 3 could support a U.S. information law course or seminar. Combined with the section of Chapter 2 that treats the Fourth Amendment, Chapter 4 could form the basis of a complete course on government surveillance.

For students of law, government, business, technology, journalism, or communications, the book provides an accessible window into the history, content, and methods of one of the most fascinating and important areas of contemporary law.

Here are a few suggestions for courses using this textbook that would work outside of a law school setting.

1. Undergraduate Constitutional Law. Chapter 2 would work well as the text for an undergraduate constitutional law course focusing on substantive protections for individual rights, including rights respecting religion, marriage, families, sex, reproduction, and death. I have enjoyed success teaching such a course to undergraduates at the University of Pennsylvania and as a freshman seminar at Princeton.

2. Personal Decision-making. A course or seminar examining constitutional protection for personal decision-making about private life, including sex, marriage, family, reproduction, lifestyles and the right to die would rely primarily on Chapter 2. The sections in Chapter 2 that cover the Fourth and Fifth Amendments should be omitted in such a course.

3. Information Society. An instructor who wished to teach a course or seminar concentrating on informational privacy and data-protection would rely primarily on Chapter 3.

4. Surveillance Society. A timely course on contemporary problems of law enforcement, national security, and surveillance, would rely on the Fourth and Fifth Amendment sections of Chapter 2, and Chapter 4.

5. Journalism and First Amendment. Materials relating to the press are scattered throughout the book. A course or seminar on the topic of privacy issues in journalism and the media, would primarily utilize Chapter 1; the section of Chapter 2 that covers the First Amendment; and sections of Chapter 3 that relate to First Amendment challenges to the application of data privacy laws, open records laws, and internet-access regulations.

I would be happy to provide prospective college, university or law school instructors with appropriate model syllabi for their courses. In addition, a Teacher's Manual that includes suggested syllabi and other pedagogical aids will be available from the Publisher.

A few additional prefatory points are in order. First, this textbook on U.S. privacy law includes international human rights and European law perspectives. Second, in the instance of the judicial opinions excerpted in the book, I have freely removed inessential case citations and footnotes. I have indicated all other elisions from excerpted materials by insertion of the notation, \* \* \*, in their places. Finally, with the exception of government documents, substantially quoted copyrighted materials appear with permission.

## ACKNOWLEDGEMENTS

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The late Professor Richard C. Turkington served on the faculty of Villanova University School of Law for many years. He was the principal author of the privacy law textbook we published jointly under our names, Richard C. Turkington and Anita L. Allen, Privacy Law: Cases and Materials (2nd ed., 2002).

“There is a lot of intellectual property in that book,” he once said to me, calling attention to the fact that Privacy Law: Cases and Materials was no mere utilitarian compilation of government documents. Professor Turkington’s textbook commentaries on privacy law were original contributions.

Left undisturbed by me, the scholarly labor Professor Turkington poured into Privacy Law: Cases and Materials will have enduring value.

Privacy Law and Society is thus a brand new privacy law textbook with a structure and content of its own. I am grateful to Greg Hall, Brielle Madje, Colleen Rutledge and Daniel Alan Spitzer, my research assistants at the University of Pennsylvania School of Law, for their help in the preparation of the manuscript. I thank Lauren Murphy Pringle for assistance with the Teacher’s Manual.

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I am greatly indebted to Dr. Rok Lampe, LL.M., Professor of Law, European Faculty of Law and Gea College, Slovenia, Director of the Human Rights Institute Maribor, Slovenia. Dr. Lampe is responsible for the selection and editing of the international human rights and European materials incorporated into the second edition.

Without the help of Erez Aloni, LL.M., SJD (candidate), a timely second edition of Privacy Law and Society would not have been possible. For his research and editing assistance, I am also greatly indebted.

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**Second Edition**

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