

WESTERN STATE COLLEGE OF LAW

PRIVACY LAW
Spring 2024
Th 12:30-2:30

SYLLABUS
Professor Eunice Park

Office: FA120
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Office Hours: Tues 12:30-2; 5:30-6; Th 2:45-4:15; Fri 2-4.

Office hours are subject to change, so please check Calendly for appointments. The Calendly link is posted on the Lexis Classroom Page under Announcements. Meetings are available both over Zoom and in-person *but will be held over Zoom unless otherwise specified*. Please note that Calendly automatically generates an individual Zoom link for each appointment (whether in-person or Zoom), which you will receive at the e-mail address under which you signed up for the appointment.

COURSE DESCRIPTION

Welcome to Privacy Law! This class will examine the dynamic area of information privacy law, focusing on the tension between legal doctrines of privacy and technology. The course will introduce and survey technology's rapidly evolving landscape; its threats to individual privacy; and legislative, regulatory, and prosecutorial responses to this threat. Because of the subject's dynamic nature topics can vary but may include government surveillance; data capitalism, including the role of social media; consumer privacy over biometric data; cybersecurity; AI and deep fakes; sector-specific responses, including the privacy of children and health care data; and Federal Trade Commission privacy regulation. In examining these topics, students will critically evaluate key principles that underlie privacy laws and the complex contemporary issues that lie at the intersection of law, technology, and policy.

Prerequisite: Torts I and II.

REQUIRED COURSE MATERIALS

- Solove & Schwartz, *Information Privacy Law* (Wolters Kluwer, 8th ed. 2023).
- Enrollment in course on the Lexis Classroom Page, titled, "Privacy Law – Spring 2024 – PARK." You are responsible for all posted handouts and materials that supplement the course, such as reports of the Congressional Research Service.

ATTENDANCE

Class attendance is mandatory. In Standard 308(a), the American Bar Association states that law schools must require regular and punctual class attendance. ***Students may not be absent for more than two classes.*** A student with absences exceeding the limit will be subject to administrative dismissal from the course per the WSCL Attendance Policy (reprinted in the Student Handbook). ***You are responsible for keeping track of the number of absences you accumulate.***

COURSE REQUIREMENTS

This class satisfies the Western State College of Law upper level writing requirement (ULWR), and follows guidelines established by the American Bar Association. Each student will earn a numeric grade for the course. You must earn a 2.0 or higher to obtain ULWR credit.

The final course grade will be based on both graded assignments and ungraded assignments comprising 3 work in progress (“wip”) assignments and the final presentation. The wip assignments and presentation will affect the P&P component of the grade (see below). Due dates are in parentheses.

P&P / Ungraded: 25%

- Wip 1: Topic approval (Week 3)
- Wip 2: Draft (Week 10)
- Wip 3: Conference (Week 10)
- Class Presentation (see below): (Weeks 13-15)

Graded: 75%

- Outline: 20% (Week 6)
- Final Paper (15-18 pages): 55% (Week 15)

The assignment schedule demonstrates that you will work on the paper throughout the semester. Instructional material regarding the ULWR and the final paper will be periodically presented. Do not plagiarize. This includes a prohibition against employing any AI tool, such as but not limited to generative AI such as ChatGPT, in any way that constitutes plagiarism. An “XF” on a transcript will represent a failing grade received due to an academic dishonesty violation.

Every student must present on a privacy topic to the class in weeks 13-15. A sign-up sheet will be circulated during the second week of class.

Participation and Professionalism (P&P)

The P&P component of your grade will depend on good faith effort and timely submission of wip assignments, preparedness for the conference, and the quality of the quality of your presentation and contributions to your classmates’ presentations.

The P&P grade will also depend on overall professionalism, including attendance and punctuality to class, office hour appointments and conferences; respectfulness in verbal and written communications; and general conduct during class.

You may ***not*** record this class without my prior approval. ***This includes taking pictures of class material.*** Students in violation of these policies may be referred to the Associate Dean for Academic Affairs.

Formatting requirements for all written assignments

- Typewritten, double-spaced, Times New Roman 12-point font.
- One-inch margins for the top, bottom, left and right margins. Note that if you are using Microsoft Word, you must set the margins to one-inch each, as the default setting for the left and right margins is 1.25 inches.
- Each page must contain a page number in the center of the footer, in Times New Roman 12-point font.
- All citations must conform to *The Bluebook* 21st edition format.

Outside Preparation

You should anticipate that, on average, preparing your weekly case reading and brief writing will take you a minimum of two hours for every one hour of class time. Since Privacy Law is a two-unit class, you should estimate your preparation for class to require four (4) or more hours outside of class to complete.

LEARNING GOALS

After completion of this course, students should be able to:

1. Understand, and think critically about, key conflicts surrounding technology's impact on issues of ownership, expectations of privacy, and regulation of personal data.
2. Understand, and think critically about, the diverse legal regimes and norms developed to guide the key conflicts surrounding technology's impact on issues of ownership, expectations of privacy, and regulation of personal data.
3. Understand, and think critically about, the economic and social policy considerations and ethics behind those substantive norms, including potentially disparate impacts on diverse populations.
4. Develop legal research, analysis, and writing skills by utilizing critical thinking to assess substantive areas of law.
5. Advocate, in both oral and written formats, the economic, societal and ethical impact of a rule of law or policy, using case law, statutes, rules and regulations, and secondary sources to critically examine and support a position.

As such, this course will develop students' abilities in the following Learning Outcomes:

- Doctrinal Knowledge
- Legal Analysis
- Legal Research
- Communication
- Advocacy of Legal Argument
- Client Sensitivity and Cultural Competency
- Legal Ethics

WEEKLY SCHEDULE

This syllabus is subject to change as topics, readings and assignments may be adapted as needed to fit the pace of our class. Supplemental readings or assignments may be posted on the Classroom Page. You are responsible for all handouts and materials.

Class Schedule	Topic	Readings	Articles/cases
	Privacy Law & ULWR	All reading assignments are to <u>Information Privacy Law</u> , Solove & Schwartz, 8th edition. Read pages in the order assigned. Readings do not include "Notes and Questions" unless specifically assigned. Supplemental readings are posted on Classroom Page under that week's module.	Assignments DUE
Unit 1 The Privacy Threats Weeks 1-7			
Week 1 Jan 18	Introduction: What is Privacy? Historical and legal background Civil Rights Perspectives on Privacy * Picking a paper topic	Read Syllabus. 1-3 65-70; 73-74	

<p>Week 2</p> <p>Jan 25</p>	<p>Invasion of Privacy Torts; federal and state const'l law</p> <p>Harassment, cyberbullying</p> <p>* Initial research, structure, preemption</p>	<p>25-26, 30-33</p> <p>97-102, 158-161, 163</p>	
<p>Week 3</p> <p>Feb 1</p>	<p>Government Surveillance</p> <p>* Developing, fine-tuning the thesis</p>	<p>235-39</p> <p>247-249</p> <p>282-288</p> <p>30 Rich. J.L. & Tech. 185 (2023): pp. 223-237</p>	<p>The 4th Amendment</p> <p><i>Katz v. United States</i></p> <p><i>Carpenter v. United States</i></p> <p>Subpoenas; reverse warrants; data collection for law enforcement</p> <p>Wip 1: Topic Due: E-mail to me before start of class</p>
<p>Week 4</p> <p>Feb 8</p>	<p>Consumer Data</p> <p>* Organizing & outlining</p>	<p>678</p> <p>30 Rich. J.L. & Tech. 185 (2023): pp. 237-248</p> <p>Congressional Research Service Report</p>	<p>Behavioral marketing; data brokers</p>
<p>Week 5</p> <p>Feb 15</p>	<p>Digitized Identifiers: Biometrics, genetics</p> <p>* Citations Review</p>	<p>502-503; 854-856</p> <p>Congressional Research Service Report</p>	
<p>Week 6</p> <p>Feb 22</p>	<p>AI</p>	<p>862-869</p> <p>Congressional Research Service Report</p>	<p>Outline Due: E-mail to me before start of class (20%)</p>

<p>Week 7</p> <p>Feb 29</p>	<p>Data Security</p> <p>* Outlines returned: General comments</p>	<p>899-901</p> <p>722-723</p> <p>30 Rich. J.L. & Tech. 185 (2023): pp. 260-263</p>	<p>Privacy Notices</p> <p>Inadequacies of privacy practices</p>
<p>Mar 3-10</p>	<p>Spring Break</p>		
<p>Unit 2</p> <p>Responses to Privacy Threats in U.S. (& abroad)</p> <p>Weeks 8-14</p>			
<p>Week 8</p> <p>Mar 14</p>	<p>General</p> <p>Sector-specific regulation</p> <p>* Revising</p>	<p>681-682</p> <p>798-800</p> <p>451-455; 456-459; 30 Rich. J.L. & Tech 185 (2023): pp. 210-221</p> <p>477-485 (including My Health My Data Act)</p>	<p>COPPA</p> <p>HIPAA</p> <p>Reproductive health data</p> <p>Wip 2: Draft of paper due: E-mail to me before start of class</p>
<p>Week 9</p> <p>Mar 21</p>	<p>Conferences in lieu of class this week</p>		<p>Wip 3: Conferences</p>

<p>Week 10 Mar 28</p>	<p>Regulatory Activity in U.S</p> <p>* Advanced Citations</p>	<p>743-746; 762-766 30 Rich. J.L. & Tech 185 (2023); pp. 248-250</p> <p>Congressional Research Service Report</p> <p>843-850</p>	<p>FTC; state AGs</p> <p>Federal privacy laws</p> <p>State privacy laws</p>
<p>Week 11 Apr 4</p>	<p>National and Foreign intelligence</p> <p>Legislative Approaches in Europe</p> <p>* Work on paper</p>	<p>398-399; 405-408</p> <p>1082-1091</p>	<p>NSA; Snowden</p> <p>GDPR</p>
<p>Week 12 Apr 11</p>	<p>Presentations</p>		<p>In-class final presentations wks 12-14 as needed</p>
<p>Week 13 Apr 18</p>	<p>Presentations</p>		
<p>Week 14 Apr 25</p>	<p>Presentations</p> <p>Future of Data Privacy Law</p>		
<p>READING WEEK 5/1-5/3</p>			<p>Paper DUE (55%): no later than Thurs May 9 at 1 p.m. PST via e-mail to me</p>

DISABILITY SERVICES STATEMENT:

Western State College of Law provides accommodations to qualified students with disabilities. The Disabilities Services Office assists qualified students with disabilities in acquiring reasonable and appropriate accommodations and in supporting equal access to services, programs, and activities at Western State College of Law.

To seek reasonable accommodations, a student must contact Senior Assistant Dean Donna Espinoza, Student Services Director and Disabilities Services Coordinator, whose office is in the Students Services Suite. Dean Espinoza's phone number and email address are: (714) 459-1117; despinoza@wsulaw.edu. When seeking accommodations, a student should notify Dean Espinoza of her or his specific limitations and, if known, her or his specific requested accommodations. Students who seek accommodations will be asked to supply medical documentation of the need for accommodation. Classroom accommodations are not retroactive, but are effective only upon the student sharing approved accommodations with the instructor or professor. Therefore, students are encouraged to request accommodations as early as feasible with Dean Espinoza to allow for time to gather necessary documentation. If you have a concern or complaint in this regard, please notify Dean Espinoza; or please notify Dean Marisa Cianciarulo at mcianciarulo@wsulaw.edu or (714) 459-1168. Complaints will be handled in accordance with the College of Law's "Policy against Discrimination and Harassment."

Western State College of Law – Programmatic Learning Outcomes

Western State College of Law’s curriculum is designed so that every student achieves a level of competency prior to graduation in each of the eight Programmatic Learning Outcomes listed below:

(1) Doctrinal Knowledge

Students will demonstrate knowledge of substantive and procedural law in the core curriculum subjects, including Contracts, Criminal Law, Criminal Procedure, Torts, Real Property, Business Association, Evidence, Civil Procedures, Constitutional Law, Estates, Community Property, Remedies, and Professional Responsibility.

(2) Practice Skills

Students will demonstrate the development of other law practice skills. Each student’s chosen outcomes within this category will be varied based on the student’s particular interests, coursework and work experiences. They may include, but are not limited to, the following topics: oral presentation and advocacy; interviewing; counseling; client service and business development; negotiations, mediation, arbitration, or other alternate dispute resolution methods; advanced legal research and writing (excluding purely academic papers and the first four units earned in introductory first-year legal research and writing class); applied legal writing such as drafting contracts, pleadings, other legal instruments; law practice management or the use of technology in law practice; cultural competency; collaboration or project management; financial analysis, such as accounting, budgeting project management, and valuation; cost benefit analysis in administrative agencies; use of technology, data analyses, or predictive coding; business strategy and behavior; pre-trial preparation, fact investigation, such as discovery, e-discovery, motion practice, assessing evidence, or utilizing experts; trial practice; professional civility and applied ethics; a law clinic that includes a classroom component; or a legal externship that includes a classroom component.

(3) Legal Analysis

Students will demonstrate the ability to identify the factual and legal issues implicated by a fact pattern and to appropriately use cases (including identifying the salient features of an appropriate precedent case, identifying legally significant similarities or differences between the precedent case and a fact pattern and explaining why those are legally significant) and rules (including the ability to connect legally significant facts in a fact pattern to the rule) to predict how a court would decide the issue. Students will also demonstrate the ability to identify and evaluate the public policies of a precedent case or rule, and be able to evaluate how public policy can impact the application of a rule to the legal issue.

(4) Legal Research

Students will demonstrate the ability to locate relevant legal authority using a variety of book and electronic resources, and to properly cite to such legal authority.

(5) Communication

Students will demonstrate the ability to communicate both orally and in writing in a manner appropriate to a particular task to effectively convey the author or speaker’s ideas. This includes audience sensitivity in written and oral communication (the ability to adopt a tone, style and level of detail appropriate to the needs, knowledge and expertise of the audience); and written communication basic proficiency (the ability to use the conventions of grammar, spelling, punctuation, diction and usage appropriate to the task and sufficient to convey effectively the author’s ideas).

(6) Advocacy of Legal Argument

Students will demonstrate the ability, in both oral and written formats, to evaluate the legal, economic and social strengths and weaknesses of a case and use case and statutory authority as well as public policy to persuade others. Making policy-based arguments includes the ability to identify and evaluate the public policies of a precedent case or rule and their implications, and be able to assert such appropriate arguments to support a particular application or distinction of a precedent case to a legal controversy or a particular resolution of the application of a rule to the legal controversy.

(7) Client Sensitivity and Cultural Competency

Students will demonstrate an awareness of clients’ needs and goals, including a sensitivity to clients’ background and circumstances (including, but not limited to, socio-economic, gender, race, ethnicity, educational, disability and/or religious background(s)), the ability to make decisions that reflect an appropriate focus on those needs and goals, and awareness that cultural issues may affect the relevance of facts and application of the law.

(8) Legal Ethics

Students will demonstrate the ability to identify ethical issues in law practice contexts and make appropriate decisions to resolve such issues.