**Seminar Syllabus—Privacy Law**

**LAW 6936, Section 14962 (in person), Section 23183 (online)**

**2 Credits, Spring 2021**

**Thursday, 10:00 AM, MLAC 106**

Professor Jon Mills

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Office hours by appointment

**COURSE DESCRIPTION**

This seminar will evaluate the development and current status of the law related to the privacy of individuals. This seminar will analyze the evolution of protection of personal information under the law and personal autonomy under the law and constitution. The course textbook is PRIVACY: THE LOST RIGHT by JON L. MILLS (Oxford Univ. Press, 2008).

Additionally, the efficacy of constitutional, tort and statutory remedies will be evaluated. Readings will include selected cases and articles.

The seminar will include a written research paper and an oral presentation to the class. We will be using guideline for Advanced Writing Certificate which is: 25 pages (exclusive of footnotes) on Letter-sized paper, 12-point Times New Roman, 1 inch margins (top, bottom & sides), and double-spaced text.

**COURSE OBJECTIVES AND STUDENT LEARNING OUTCOMES**

This seminar will provide an overview of privacy issues and laws. The students will participate in presentations on selected issues related to privacy. Students will write a paper that meets senior writing requirements on selected privacy topic.

At the conclusion of the course, you will:

1. Understand and label privacy as a constitutional principle.
2. Understand and distinguish remedies available for privacy intrusions.
3. Understand evaluate the differences in privacy laws in the U.S and other countries.
4. Understand and analyze the evolution of privacy law in the context of societal and cultural shifts.

Expectations: It is anticipated that you will spend approximately 2 hours out of class reading and/or preparing for in- class assignments. You will be devoting time to your readings for each class; please be prepared for about 70 pages of reading each week.

**Attendance and Participation**

Attendance will be taken at each class meeting. Students are allowed 6 absences during the course of the semester. Students are responsible for ensuring that they are not recorded as absent if they come in late. A student who fails to meet the attendance requirement will be dropped from the course and will not be allowed to take the final examination.

Student participation in class is encouraged, and will be considered in assigning a final grade. The degree of student participation will doubtless affect the quality and interest of class discussions. Students are expected to be prepared for each class.

Excused absences are consistent with university policies in the undergraduate catalog (https://catalog.ufl.edu/ugrad/currcnt/regulations/info/attendance.aspx) and require appropriate documentation.

**Courtesy**

Please turn off your cell phone during class. I also request that you notify me if you know you must leave class early. Please do not play computer games or surf the Internet during class. Students may not take, circulate, or post photos or videos of classroom discussions, whether they are in-person, hybrid, or completely online. Students failing to follow this rule will be referred to the College of Law Honor Code Council and the University’s Office of Student Conduct and Conflict Resolution.

**Final Examination**

The final examination will be a **4-hour take home, open book and open notes essay** exam and will be distributed **online on CANVAS** on the designated exam schedule. The exam will consist of 5 or 6 hypotheticals with limited space for answers. The instructions of the examination will be announced later in the semester. The law school policy on exam delays and accommodations can be found [here](http://www.law.ufl.edu/student-affairs/current-students/forms-applications/exam-delays-accommodations-form).

**Grades**

Your grade for this course will depend on how well you perform on your seminar paper. Each member of the class will present his or her paper to the class. Quality of participation counts. If I call on you to contribute to classroom discussion, and you decline, I will come back to you the following day and call on you again to participate.

**Evaluation of Grades**

|  |  |
| --- | --- |
| **Percentage of Grade** | **Portion of Class** |
| 70% | Seminar Paper |
| 20% | Presentation |
| 10% | Participation |

**GRADING POLICY**

|  |  |  |  |
| --- | --- | --- | --- |
| **Score** | **Percent** | **Grade** | **Grade Points** |
| 934-1000 | 93.4-100 | A | 4.00 |
| 900-933 | 90-93.3 | A- | 3.67 |
| 867-899 | 86.7-89.9 | B+ | 3.33 |
| 834-866 | 83.4-86.6 | B | 3.00 |
| 800-833 | 80-83.3 | B- | 2.67 |
| 767-799 | 76.7-79.9 | C+ | 2.33 |
| 734-766 | 73.4-76.6 | C | 2.00 |
| 700-733 | 70-73.3 | C- | 1.67 |
| 667-699 | 66.7-69.9 | D+ | 1.33 |
| 634-666 | 63.4-66.6 | D | 1.00 |
| 600-633 | 60-63.3 | D- | 0.67 |
| 0-559 | 0-59.9 | E | 0.00 |

For more details, see this information at

https://catalog.ufl.edu/ugrad/current/regulations/info/grades.aspx

**Course Evaluations**

Students are expected to provide feedback on the quality of instruction in this course by completing online evaluations at https://evaluations.ufl.edu. Evaluations are typically open during the last two or three weeks of the semester, but students will be given specific times when they are open. Summary results of these assessments are available to students at https://evaluations.ufl.edu/results/.

**Requesting Accommodations**

Students with disabilities requesting accommodations should first register with the Disability Resource Center (352-392-8565, www.dso.ufl.edu/drc/) by providing appropriate documentation. Once registered, students will receive an accommodation letter which must be presented to the instructor when requesting accommodation. Students with disabilities should follow this procedure as early as possible in the semester.

**University Honesty Policy**

UF students are bound by The Honor Pledge which states, "We, the members of the University of Florida community, pledge to hold ourselves and our peers to the highest standards of honor and integrity by abiding by the Honor Code. On all work submitted for credit by students at the University of Florida, the following pledge is either required or implied: "On my honor, I have neither given nor received unauthorized aid in doing this assignment." The Honor Code (https://www.dso.ufl.edu/sccr/process/student-conduct-honor- code/) specifies a number of behaviors that are in violation of this code and the possible sanctions. Furthermore, you are obligated to report any condition that facilitates academic misconduct to appropriate personnel. If you have any questions or concerns, please consult with the instructor or TAs in this class.

**Counseling and Wellness Center**

Contact information for the Counseling and Wellness Center: http://www.counseling.ufl.edu/cwc/Default.aspx, 392-1575; and the University Police Department: 392-1111 or 9-1-1 for emergencies.

**COVID-19**

This course will be taught in person and online. Students must adhere to the following policies to ensure safe classroom interactions:

1. Students must wear approved facial masks at all times during class and in buildings on campus. Failure to wear an approved facial covering will result in the student being reported to the Office of Student Conduct and Conflict Resolution, and the student will no longer be permitted on campus. This violation will also be reported to the relevant state bar.
2. Students must sit six-feet apart at all times while in the classroom. Students must sit in designated seats that have been made available for seating.
3. You can use the sanitizing supplies to disinfect your seating area before and after class.
4. Students must follow the TA’s instructions for entering and exiting the classroom, and students must practice social distancing when entering and exiting the classroom.
5. If you are experiencing COVID-19 symptoms, do not come to campus. I fyou are already on campus, immediately leave. This link provides a list of symptoms: <https://www.cdc.gov/coronavirus/2019-ncov/symptoms-testing/symptoms.html>.
6. Please use the UF Health Screening Questionairre and follow instructions provided by the university for determining when coming back to campus is permitted (<https://coronavirus.ufhealth.org/screen-test-protect-2/frequently-asked-questions/covid-19-exposure-and-symptoms-who-do-i-call-if/>)
7. Course materials will be provided and you will be given a reasonable amount of timet o makeup any assignments missed due to a COVID-19 related absence.

**SYLLABUS**

**Week #1—History of Defining Privacy in Today’s Society**

* Textbook: pages 1-27
* [“Right to Privacy,” Warren and Brandies (1890 Harvard Law Review)](https://groups.csail.mit.edu/mac/classes/6.805/articles/privacy/Privacy_brand_warr2.html)
* [Olmstead v. United States, 277 U.S. 438 (1928)](https://supreme.justia.com/cases/federal/us/277/438/) (Brandies, J. dissenting)
* [Griswold v. Connecticut, 381 U.S. 479 (1965)](https://supreme.justia.com/cases/federal/us/381/479/)
* [Whalen v. Roe, 429 U.S. 589 (1977)](https://supreme.justia.com/cases/federal/us/429/589/)

**Week #2—Florida Privacy Law**

* Textbook: pages 27-77
* State v. Rolling, 1994 WL 722891 (Fla. 8th Cir. Ct.)
* [Campus Communications v. Earnhardt, 821 So.2d 388 (Fla. 5th DCA 2002)](https://www.courtlistener.com/opinion/1613019/campus-communications-inc-v-earnhardt/)
* [SeaWorld Video Case](https://www.palmbeachpost.com/article/20100316/NEWS/812034932)

**Week #3—Global Privacy Issues**

* Textbook: pages 77-105
* [The EU’s General Data Protection Regulation](https://gdpr-info.eu/)
* [3 Things You Should Know About Europe’s Sweeping New Data Privacy Law](https://www.npr.org/sections/alltechconsidered/2018/05/24/613983268/a-cheat-sheet-on-europe-s-sweeping-privacy-law)
* [*R (Bridges) v. Chief Constable of South Wales Police and Others [2019] EWHC 2341 (Admin)*](https://www.judiciary.uk/wp-content/uploads/2019/09/bridges-swp-judgment-Final03-09-19-1.pdf)
* [*Google Spain SL v. Agencia Española de Protección de Datos*](https://harvardlawreview.org/2014/12/google-spain-sl-v-agencia-espanola-de-proteccion-de-datos/)
* [The Right to Be Forgotten is Taking Shape: CJEU Judgments in GC and Others (C-136/17) and Google v CNIL (C-507/17)](https://academic.oup.com/grurint/article/69/4/380/5732807)

**Week #4 Legal Tools—The Constitution**

* Textbook: pages 105-130
* [*Loving v. Virginia, 388 U.S. 1 (1967)*](https://supreme.justia.com/cases/federal/us/388/1/)
* [*Bartnicki v. Vopper*, 532 U.S. 514 (2001)](https://supreme.justia.com/cases/federal/us/532/514/) (focus on Rehnquist’s dissent)
* [*Lawrence v. Texas, 539 U.S. 558 (2003)*](https://supreme.justia.com/cases/federal/us/539/558/)
* [*Carpenter v. U.S., 138 S. Ct. 2206 (2018)*](https://www.supremecourt.gov/opinions/17pdf/16-402_h315.pdf)

**Week #5 Legal Tools—Statutes and State Protection**

* Textbook: pages 130-170
* [California’s Consumer Privacy Act (2018)](http://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?division=3.&part=4.&lawCode=CIV&title=1.81.5)
* [ABA’s Explanation of California’s Consumer Privacy Act](https://www.americanbar.org/groups/business_law/publications/committee_newsletters/bcl/2019/201902/fa_9/#:~:text=The%20California%20Consumer%20Privacy%20Act%20of%202018%20was%20approved%20by,effect%20on%20January%201%2C%202020.&text=This%20prompted%20the%20California%20legislature,control%20of%20their%20personal%20information.)
* [*The Changing Wind of Data Privacy Law: A Comparative Study of the European Union’s General Data Protection Regulation and the 2018 California Consumer Privacy Act*, Grace Park, 10 UC Irvine L. Rev. 1455 (2019-2020).](https://heinonline-org.lp.hscl.ufl.edu/HOL/Page?public=true&handle=hein.journals/ucirvlre10&div=47&start_page=1455&collection=journals&set_as_cursor=5&men_tab=srchresults)

**Week #6: Discussion on Torts**

* Textbook: pages 170-194
* Intrusion Upon Seclusion
  + *Plaxico v. Michael*, 735 So. 2d 1036 (Miss. 1999)
  + *Allstate Insurance v. Ginsberg*, 2003 WL 22145227 (Fla. 2003)
* Public Disclosure of Private Facts
  + *Cason v. Basin*, 20 So. 2d 243 (Fla. 1945)
* False Light
  + *Romaine v. Kallinge*, 537 A. 2d 284 (N.J. 1988)
* Appropriation of Name or Likeness
  + *Tyne v. Time Warner Entertainment*, 336 F. 3d 1286 (11th Cir. 2003)
  + *Carson v. Here’s Johnny Portable Toilets, Inc.*, 698 F. 2d 831 (6th Cir. 1983)

**Week #7: Other Tools**

* Textbook 194-223
* [Consumer Bill of Privacy Rights](https://obamawhitehouse.archives.gov/sites/default/files/privacy-final.pdf)

**Week #8: Why Tools are Failing and Worst Case Scenarios**

* Textbooks: pages 223-265
* [*Waits v. Frito-Lay, 978 F. 2d 1093 (9th Cir. 1992)*](https://casetext.com/case/waits-v-frito-lay-inc)
* [*Grant v. Esquire, Inc., 367 F. Supp. 876 (S.D.N.Y. 1973)*](https://law.justia.com/cases/federal/district-courts/FSupp/367/876/1425479/)
* [Facebook Faces Growing Pressure Over Data and Privacy Inquiries](https://www.nytimes.com/2018/03/20/business/ftc-facebook-privacy-investigation.html)
* [Mark Zuckerberg’s Testimony to Congress on Cambridge Analytica](https://www.politico.com/story/2018/04/09/transcript-mark-zuckerberg-testimony-to-congress-on-cambridge-analytica-509978)
* [Target Security: A Case Study of How Hackers Hit the Jackpot at the Expense of Customers](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2801762)
* [*Patco Constr. Co. Inc. v. People’s United Bank (1st Cir. July 2012)*](https://www.wired.com/images_blogs/threatlevel/2012/11/Patco-Appellate-Decision.pdf)
* [*Lone Star National Bank v. Heartland Payment Systems, Inc. (5th Cir. 2013)*](https://caselaw.findlaw.com/us-5th-circuit/1643614.html)

**Week #9: Strategies**

* Textbook: pages 269-301
* [Federal Privacy Law in Response to COVID-19 on the Rise: The COVID-19 Consumer Data Protection Act of 2020 vs. The Public Health Emergency Privacy Act](https://www.jdsupra.com/legalnews/federal-privacy-law-in-response-to-26186/)
* [COVID-19 Consumer Data Protection Act of 2020](https://www.commerce.senate.gov/services/files/A377AEEB-464E-4D5E-BFB8-11003149B6E0)
* [Public Health Emergency Privacy Act](https://epic.org/privacy/covid/Public-Health-Emergency-Privacy-Act.pdf)
* [Lessons from COVID-19 for a New US Privacy Framework, Center for Information Policy Leadership](https://www.informationpolicycentre.com/cipl-blog/lessons-from-covid-19-for-a-new-us-privacy-framework)
* [Coronavirus Demands a Privacy Law](https://www.wsj.com/articles/congress-needs-to-pass-a-coronavirus-privacy-law-11589410686)
* [COVID-19: Digital Contact Tracing and Privacy Law](https://crsreports.congress.gov/product/pdf/LSB/LSB10511)

**Weeks #10-#14: Student Presentations**