

Privacy Law

Student Number \_\_\_\_\_

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Massachusetts School of Law

Final Examination

Spring 2007

Instructions: Read Carefully

**THIS IS A CLOSED BOOK EXAMINATION**

1. You have three (3) hours to complete this exam.
2. This is a closed book exam. As such, you may not use any notes, books or other outside materials to assist you in responding to the questions. You may not speak to other students for any reason during the exam. If you have questions, I can be reached at 603-998-3896. Ask your proctor for assistance and he or she will call me with your question while you continue to work.
3. Write your answers in the blue book, or type them on your computer using the school-approved software, Extegrity's *Exam 4*. Identify which answer(s) you are responding to on the cover of each blue book.
4. Write your exam number on the top of this exam booklet and on each blue book you use including books you use for notes or outlines. If typed, note your exam number at the top of your typed pages. Do not use your name on any

exam materials EXCEPT FOR your student pledge that you are to sign and hand in SEPARATELY.

5. PLEASE WRITE LEGIBLY OR PRINT IF YOUR HANDWRITING IS DIFFICULT TO READ, WRITE ONLY ON THE FRONTS OF PAGES AND ONLY ON EVERY OTHER LINE. If I cannot read your response to a question, your grade will be adversely affected.

6. Cheating of any form will not be tolerated and will be reported to the school administration. There is a student pledge following these instructions for you to sign to acknowledge you have read the terms and agree to them.

7. This make up exam consists of one section. Each question you answer is worth 25% of your grade. You should allot your time accordingly although you should have ample time to complete the exam. Therefore, do not write a full answer for one part and a short answer for another.

8. Where appropriate, you should carefully analyze the situation and choose the best answer to each of the questions. As you think through the problem, try to think through it methodically. Consider all the elements and possible defenses or counter-arguments.

9. You should state the legal rule(s) on which your answer is based and why you think that rule or those rules apply. Answer each question as fully as you can, citing any appropriate cases, industry standards, and statutes that are relevant. Be sure to state any assumptions you make and the bases for your conclusions.

10. At the end of the exam, return all exam materials to the proctor. Do not leave the room for any reason with any exam materials. This includes blue books in which you have outlined your answers or jotted notes. You may indicate that such books are merely for your reference but you must hand them in as well.

Good luck!

## STUDENT PLEDGE

I \_\_\_\_\_ acknowledge I am aware of the Massachusetts School of Law policy on cheating and assert that I have not discussed the content or format of the final exam with any student in my class nor have I in any other way attempted to gain an unfair advantage over other students with regard to the exam.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

## **Section I: Short Essays (Recommended Time: 60 minutes)**

Select three of the questions below to answer. Write your answers in your blue books, indicating on the cover and at the beginning of each answer, which question(s) to which you are responding. This section is worth 1/3 of your grade.

1. One of Expedian Credit Assessment Company's (ECAC) sources of income is renting the lists it maintains containing financial data for millions of customers. ECAC has been approached by the Internal Revenue Service to match credit information with income tax return information for high-income taxpayers. (a) what does the IRS want by making this request? (b) Is this request allowable under the provisions of the Privacy Act of 1974 and any other applicable laws we have discussed this semester? (c) What problems and privacy issues will the IRS encounter if it goes ahead with the plan?
  
2. In order to study patterns of financial aid in higher education, the U. S. Bureau of the Census will be conducting a nationwide survey of colleges and universities. The Bureau wants information contrasting students who receive financial aid with students who do not. Included in the data requested are Social Security Number, personal and family financial information, source of financial aid, and other demographic information such as age, sex, and place of residence. Grade transcripts have also been requested. Overlord College must decide whether to provide the information or to refuse. Refusal might

result in litigation or eventually the loss of some government funding. What do you think the college should do and why? Might the request for information or the disclosure of such information be in violation of any privacy laws we have discussed this semester?

3. In the tragic aftermath of Hurricane Katrina, the Federal Emergency Management Agency (FEMA) hurriedly constructed a database of information on evacuees. In the chaos of the evacuation, privacy waivers were not offered to many evacuees, misfiled, lost, or simply not signed. About six weeks after the hurricane, FEMA announced that the database would no longer be available to individuals seeking lost family members, agencies such as the Red Cross, or even to state governments attempting to locate parolees and sex offenders. What law is FEMA's policy based on? Do you believe this privacy law should be suspended in this instance? Explain what limitations you would place on access to the database and why.

4. In February 2006, the U. S. Department of Justice sued Google for refusing to provide search engine statistics on its users. From what legislation did this case result? Briefly explain the positions taken by the opposing sides in the suit. If you were a Supreme Court justice, what would your opinion be? Why?

5. You are a member of a panel that will write policies and set standards for a new database your company is about to initiate. The database will store financial and demographic information on mortgage refinancing. In addition to commenting on the confidentiality concerns raised by the database, comment on what data may properly be shared with other businesses and governmental agencies, and under what circumstances.

## Section 2: Longer Essay Questions

Responses should include reasoned arguments, specific examples, and analogies, where appropriate, to support or illustrate your answers. Before you start each problem, take a few minutes to think and outline your ideas. Write a well-organized, coherent answer.

Choose four of the questions below to answer. You should allot 30 minutes per question. If you do not understand a question for any reason and you are unable to reach me by telephone, select another question instead. This section is worth 2/3 of your grade.

1. You are Associate General Counsel at GlobalEx, a global manufacturing company. Until recently, GlobalEx was based in the US and had 200 employees. Thanks to a turn in the stock market, GlobalEx has acquired companies and grown significantly in the past five years, and now has 20,000 employees in every region of the world. As part of the integration of all of the acquired companies and their employees, GlobalEx wants to implement a new electronic Human Resource ("HR") system that would allow the HR department in Nebraska and the Payroll department in Utah to access the personal information of all of GlobalEx's employees. The Vice President of HR tells you that BenefitsHelp, a third-party company in Nevada that administers employee benefit

information for GlobalEx would also need access to all of GlobalEx's employee information. "Actually," the VP of HR confides to you, "BenefitsHelp doesn't really need access to all of an employee's personal information, but it is easier and quicker for HR to email them the complete employee information file, rather than pick and choose the specific pieces of information that BenefitsHelp needs for its 20,000 employees." The VP of HR wants to move quickly to roll out the new HR system, but your boss, the General Counsel, has concerns about employee privacy, especially now that they have employees all over the world. "I know there are issues here," she tells you, "but I don't know privacy law very well. You took a class in Privacy Law at MSLaw so you tell me: what are the issues and risks, and what should I tell GlobalEx to do?"

2. What technologies have we discussed that exist to protect privacy (online and offline)? To what extent are they effective at protecting the individual? How do laws like Patriot, ECPA and the other privacy acts we have discussed this semester affect an individual's ability to protect their own privacy? Also, discuss the relative effectiveness of self-policing by the data collection industry.

3. Discuss the value of collecting information on Internet use to (1) the individual, (2) the government, and (3) business entities. What present and potential (future) threats to privacy from electronic data collection do you perceive? Given

the ability to access, amass and store an individual's personal information, discuss the invasion of privacy/common-law right to privacy torts that are implicated by large, cross-referenced databases, anonymous postings on the Internet and the ability to make an individual's private facts become publicly accessible via "non-traditional" media (e.g., the Internet, blogs, Wiki, listservs).

4. What do we mean by the terms privacy, anonymity and confidentiality? What are the challenges to these topics in the information age? How might it be possible to reform existing laws to simultaneously protect our privacy and allow us to enjoy the benefits of our increasingly digital world?

5. Discuss the situation in which the government, using constitutionally acceptable surveillance or data collection methods could acquire information about an individual and their activities such that, even though the individual was not engaged in illegal conduct, their liberty would be curtailed.

END OF EXAMINATION