

PRIVACY

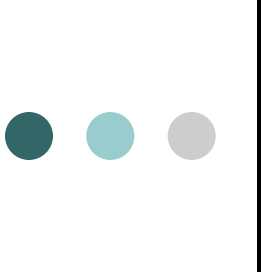


Week 5 & 6



The Need For Privacy



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- Privacy law is relatively new in common law
 - “The Right To Privacy”, by Samuel D. Warren and Louis D. Brandeis published in the 1890 Harvard Law Review, states their concern about exposure of people’s images and personal information due to the influx of technologies.
 - This did not include information that was actually of interest to the public.
 - It also did not include personal publication by the person the facts were concerned with (or with that person’s consent), as it meant that that person had given up their right to privacy by doing so.

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Appropriation

- Must be based on something that ties the exploitation to the person's identity in some concrete manner
- Example: The defendant had used an attractive woman's picture, without her consent, to advertise flour. The decision denying her recourse brought a storm of disapproval, and the legislature passed a statute making it both a misdemeanor and a tort to use any person's name, portrait, or picture in advertising or trade.



Intrusion

- Originally used to persecute anyone who wrongfully entered places where “private life was being conducted”.
- Has since been extended to include tapping into conversations and peeping through windows of a private dwelling
- Example: A man going into a room where a woman was giving birth.



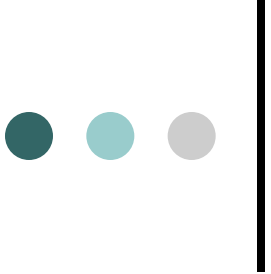
Public Disclosure Of Private Facts

- This tort is especially of concern as large amounts of personal information can be collected and distributed via digital means.
- Limitations of this tort include:
 - Disclosure must be public, not private.
 - The facts disclosed must be private facts.
 - Disclosing the facts publicly must offend a reasonable person of ordinary sensibilities.



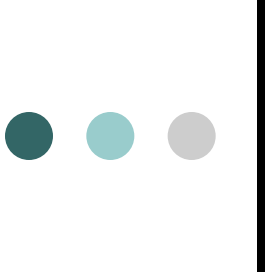
False Light

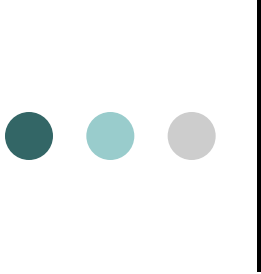
- Protects against being represented in a false light in the public eye.
- This usually arises when there are photographs about them that appear incriminating.
- Must be about publicity of negative implications that would be objectionable to a reasonable person, and not one who is overly sensitive.
- Similar to defamation, but it is more about the individual's peace of mind rather than the person's standing in community.

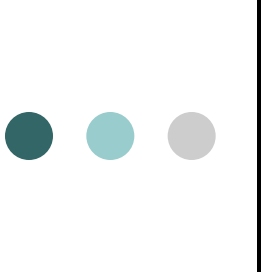


Differences between the concepts of privacy and secrecy

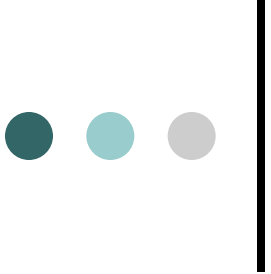


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- “Secret” information usually has grounds in protecting it for the sake of national security/defence.
 - The Official Secrets Act 1972 (Act 88), also known as the OSA, is a statute in Malaysia prohibiting the collection, possession or distribution of information marked as an official secret.

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- An 'official secret' is "...any document specified in the Schedule and any information and material relating thereto and includes any other official document, information and material as may be classified as 'Top Secret', 'Secret', 'Confidential' or 'Restricted', as the case may be, by a Minister, the Menteri Besar or Chief Minister of a State or such public officer."
 - These documents include "Cabinet documents, records of decisions and deliberations including those of Cabinet committees", as well as similar documents for state executive councils.

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- Also being practiced by large businesses
 - Example: Hazardous chemical information being withheld.

They claim by not doing so, they will make dangerous information available for those wanting to attack the nation. This means that information about the chemicals themselves, how they are transported, how governments deal with chemical spills, etc, are not publicly available.

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- Privacy law mainly deals with concepts of intrusion of an individual at a personal level – dignity and personal lives.
 - Secrecy, however, usually concerns governments (especially) and organizations at large withholding information of national importance on a large scale.