

**International Data Privacy**  
**Stetson University College of Law, Summer Program**  
**Granada, Spain**  
**June 24th - 27th, 2019**

**Professor Allyson Haynes Stuart**  
**Charleston School of Law**

**Syllabus**

**Course Description:** This course explores the increasingly important area of global data privacy – the right of individuals to control their personal information. While the United States has based its enforcement of data privacy primarily on a contract/breach of promise model enforced by the Federal Trade Commission, the sweeping European Union’s Data Protection Directive (DPD), as altered by the new General Data Protection Regulation (GDPR), which took effect in May 2018, has more specific and far-reaching requirements for gathering, using, storing, and sharing information. The jurisdiction of the DPD and GDPR extend to more than just the EU, and companies all over the world are scrambling to comply with its requirements. Companies like Google Spain and Facebook are already paying a price for failure to protect customers’ personal information. Students will learn how the US and EU treat data protection differently, and will learn the specifics of the GDPR and its international reach. They will study recent cases to understand how technology can both help and harm consumer privacy. Finally, students will apply this knowledge in a practical way to real-world scenarios involving clients who are tech start-ups, consumers facing the loss of personal data, or large international tech companies making strategic business decisions.

**Assignments:** I will provide reading assignments in advance. They will include the laws we are studying along with some law review commentary, court opinions, web site links, and the powerpoint slides I have prepared.

**Class Descriptions:**

Day 1: The United States and Data Privacy

- A. Right to Privacy in General
  - 1. Warren & Brandeis, *The Right to Privacy* (excerpt)
  - 2. Prosser’s Privacy Torts (as set forth in the Restatement (Second) of Torts)
  - 3. US Constitutional Privacy
    - a. Whalen v. Roe, 429 US 589 (1977) (excerpt)
- B. Consumer Privacy
  - 1. Privacy Policies
    - a. Haynes, Online Privacy Policies (excerpt)
  - 2. FTC Enforcement
    - a. In re Facebook (FTC Aug. 2012)
    - b. In re LabMD (11<sup>th</sup> Cir. 2018) (article description)

3. The Electronic Communications Privacy Act (Wiretap Act and Stored Communications Act)
    - a. In re Zynga Privacy Litigation (9<sup>th</sup> Cir. 2014) (edited)
  4. State Data Breach and Consumer Protection Laws
- C. Sectoral Privacy
1. Government Data Collection (Privacy Act)
  2. Children's Privacy (COPPA)
    - a. FTC v. Yelp (complaint)
  3. Health Privacy (HIPAA)
  4. Financial Privacy (FCRA and Gramm Leach Bliley)
    - a. Spokeo v. Robins (2016) (excerpt)
  5. Educational Privacy (FERPA)
  6. Workplace Privacy

## Day 2: European Union Data Privacy

- A. Introduction
1. OECD Guidelines
    - a. <https://www.oecd.org/internet/ieconomy/oecdguidelinesonthe protectionofprivacyandtransborderflowsofpersonaldata.htm>
  2. James Q. Whitman, *The Two Western Cultures of Privacy* (excerpt)
  3. European Convention on Human Rights, Art. 8
- B. EU Data Protection Directive of 1995
1. Definitions
  2. Jurisdiction
  3. Rights and Exemptions
    - a. Criminal Proceedings Against Bodil Linquist, ECHR 2003
    - b. Report of Audit: Facebook Ireland (2011)
  4. Supervisory Authority
  5. Transfers and Adequate Levels of Protection, Art. 25
    - a. Schrems v. Data Protection Commissioner (October 6, 2015)
      - i. Snowden revelations and adequate level of protection: <https://www.epic.org/privacy/intl/schrems/>
      - ii. Effect on US Safe Harbor and data transfers: <https://www.lawfareblog.com/privacy-shield-shaky-ground-whats-eu-us-data-privacy-regulations>
- C. EU GDPR 2018: <https://gdpr-info.eu/>
1. Consent
  2. Data Portability
  3. Transparency
  4. Security Breach Notification
  5. Internal Organizational Requirements

### Day 3: Case Studies

1. Google Spain and Google France: Right to Be Forgotten
  - a. Google Search Results: Buried If Not Forgotten (excerpt)
  - b. Google Spain (
2. Google US and Facebook: GDPR Forced Consents
  - a. <https://techcrunch.com/2018/05/25/facebook-google-face-first-gdpr-complaints-over-forced-consent/>
3. Facebook Sponsored Stories
  - a. Fraley v. Facebook (ND Cal. 2011) (edited)
4. Facebook: Cambridge Analytica Debacle
  - a. <https://www.nytimes.com/2018/03/19/technology/facebook-cambridge-analytica-explained.html>
  - b. Compare: October 2018 data breach: <https://www.bloomberg.com/news/articles/2018-10-01/facebook-s-latest-breach-not-the-same-as-cambridge-analytica>
5. Microsoft v. United States (2018)
  - a. Extraterritoriality of US warrant under Stored Communications Act for emails stored in server in Ireland

### Day 4: Practical Application

1. Discussion of Privacy by Design
  - a. [How to Protect Your Users with the Privacy by Design Framework](#)
2. Global Best Practices for Data Collection, Retention, and Transfer
  - a. BSA Global Privacy Best Practices (pdf)
  - b. [Mayer Brown's Employee Privacy Guide](#)
3. Counseling Clients: Group Exercises

**Class Attendance:** This class will adhere to the Stetson Study Abroad Attendance Policy. This course is 1 credit hour and will meet approximately 3 hours per day with a break in the middle.

**Course Grade:** Grades will be based on attendance and class participation (25%) and a one hour final exam (75%). The final exam will test your ability to apply the rules and concepts we have discussed in class to concrete problems. I will provide you more information about the exam in class.

**Professor/Student Conferences:** I will be available after each class to meet with students. If you have any questions about the syllabus or the course materials you can contact me at [astuart@charlestonlaw.edu](mailto:astuart@charlestonlaw.edu).