

Exam Number: _____

**GEORGETOWN UNIVERSITY LAW CENTER
EXAMINATION IN
INFORMATION PRIVACY LAW
(3 HOURS)**

Professor Rotenberg

Date of Exam: May 6, 2008

INSTRUCTIONS:

1. This is an OPEN book exam.
2. You should select three of the following four questions. Each question will receive equal weight. There will be no additional credit for answering a fourth question.
3. Use only one side of the paper. Write clearly.
4. I will consider only the material that is in the exam book or in the typed submission.
5. Please note whether you will read material which appears only on the scrap paper and is not written in the examination book or typed using laptops.
6. Laptop users: To write your exam answers, use a blank document screen to access the exam template in Word or WordPerfect as directed by the proctor(s). Laptop users are permitted to access other documents, outlines, notes, files, etc. on their hard drives and are also permitted to access the Internet. Students may not consult one another or any other person during the exam by computer or other electronic device. Personal Digital Assistants (PDA) and other electronic devices that store information may be used in the exam room.

This exam consists of 3 pages, including this cover page. Please be sure your exam is complete.

Please be sure that you use your exam number (not your student ID number or social security number).

PLEASE DO NOT TURN THE PAGE UNTIL THE PROCTOR GIVES THE SIGNAL.

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Question 1

You are an attorney in private practice.

You are approached by Mr. and Mrs. Freeman who would like you to represent their family in a case concerning a new policy at the local public high school in the township of Gattaca. The Freeman's son Vincent attends the school. In response to growing concerns about school security and in an effort to promote class attendance, as of the beginning of the next school year, all students will be required to carry an identity document with an embedded RFID tag that will allow any school administrator to determine the precise location of any student throughout the school day. The tag will transmit a unique serial number, essentially a student ID number, to readers that are located throughout the school. Students are expected to keep their identity document with them at all times they are expected to be in school. Any attempt to disable the tag, shield the tag, or trade IDs could lead to suspension or expulsion.

Briefly outline any legal arguments that could be made against the proposal and provide a rough estimate of the likelihood of success. Please include any additional thoughts that might be helpful for the Freeman family.

Question 2

You are deputy counsel to the Transportation Security Administration.

"Whole Body Imaging" is an umbrella term used to describe technologies that visually screen travelers, allowing the TSA to detect weapons, explosives and other threat items. The devices capture a detailed naked image of each traveler and then display an altered, less revealing version of the image to operators who are sitting in a room where they cannot observe individual travelers. TSA will be using two different types of passenger imaging technology during a pilot phase: backscatter and millimeter wave. The TSA policy on the retention of images is as follows:

To ensure privacy, the passenger imaging technology being tested by TSA has zero storage capability and images will not be printed stored or transmitted. Once the transportation security officer has viewed the image and resolved anomalies, the image is erased from the screen permanently. The officer is unable to print, export, store or transmit the image.

It has come to your attention that several TSA personnel, without authorization, have hacked a Whole Body Imaging device so that they are able to store and record the unaltered images of passengers on a removable USB drive. Other TSA personnel are using cellphone cameras to record the images. Some of these images have appeared on the Internet. The agency intends to take disciplinary measures against the personnel. You also anticipate that there may be lawsuits against the agency.

Briefly outline the claims that may be brought against the TSA and the prospects for success. Assuming that the program is not cancelled, what advice would you give to the Secretary regarding the future use of Whole Body Imaging?

Question 3

You are counsel for the new social network service FriendMe.

The CEO of FriendMe thinks that most social network services do not do enough to safeguard privacy. The privacy settings are too complicated. Too much personal data is collected. Advertisers build detailed profiles on users. Most users have no idea how their personal information is collected or used. At the same time, he wants to build a successful business that will be advertiser supported and to implement most or all of the features offered by competing social network sites, including third-party applications. He also wants to follow privacy standards that are generally used around the world.

Briefly outline a privacy policy for FriendMe.

Question 4

You are a clerk for a Supreme Court Justice.

Before the Court is *Herring v. United States*. According to the lower court opinion, the facts of this case present an interesting issue involving whether to apply the exclusionary rule. Officers in one jurisdiction check with employees of a law enforcement agency in another jurisdiction and are told that there is an outstanding warrant for an individual. Acting in good faith on that information, the officers arrest the person and find contraband. It turns out the warrant had been recalled. The erroneous information that led to the arrest and search is the result of a good faith mistake by an employee of the agency in the other jurisdiction.

The question now presented is:

Whether the Fourth Amendment requires evidence found during a search incident to an arrest to be suppressed when the arresting officer conducted the arrest and search in sole reliance upon facially credible but erroneous information negligently provided by another law enforcement agent.

Briefly outline for the Justice the key issues that you believe need to be considered by the Court.

END OF EXAM

WRITE NOTHING AFTER TIME IS CALLED.