LEARNING
UNIT
FIVE
INVASION OF PRIVACY
WHAT IS INVASION OF PRIVACY?

- Invasion of privacy has only recently been accepted in SA (and the world)

- Either protected by criminal or civil law

- CONSTITUTIONALLY entrenched – S14

“Everyone has the right to privacy, which includes the right not to have:
(a) Their person or home searched;
(b) Their property searched;
(c) Their possessions seized;
(d) The privacy of their communication infringed”
In the Tshabala_Msimang v Makhanya case Justice Jajbhay held: “The right to privacy entrenched in Section 14 of the Constitution; recognise that human beings have a right to have a sphere of intimacy and autonomy that should be protected from invasion. This right serves to foster human dignity.”

Invasion of privacy may thus be defined as “any intentional or unlawful interfering with another person’s right to seclusion (to shut him or herself off from other people) in his or her private life”

So privacy may be defined as “a person’s right to live his or her life in seclusion, without being exposed to publicity that has not been permitted and was not asked for in essence, a person’s right to be left alone”

In other words S14 emphasises that a person should be able to enjoy their life without any interference and a person should be able to do this physically or psychologically
THE ELEMENTS OF THE ACT OF INVASION OF PRIVACY

- The “act” = infringement of the right to privacy

- May be done in 2 ways:
  1. intrusion – obtaining information eg. hacking/ opening someone else’s mail
  2. disclosure – spreading information eg. telling someone of something private you know about someone else
### INTRUSION

- when an onlooker tries to get info regarding the personal details of another person’s life without their consent

- Forced entry into a private home;
- Spying;
- Taking photographs of a person’s private activities – papazzari;
- Listening in on private conversations – phone tapping;
- Questioning of a person by the police - unlawfully;
- Continual shadowing of a person, even if it is done in a public place - stalking;
- Making someone undergo an unlawful blood test.

### DISCLOSURE

- when an outsider who has private information about somebody makes this information known to the public
- does not matter how the outsider obtained the information
- the form of disclosure is not important

- Photographs used without permission
- Unauthorised publication of photographs
- Publication of facts of an alleged “love affair,” of photographs, of private letters or of HIV status
There must be fault before invasion of privacy is possible to prove

= intention

Tested subjectively – did a certain person intend to invade the privacy of another?

Eg. a person accidentally walking into the wrong hotel room (i.e. he or she thinks that it is his or her room) does not intentionally invade another’s privacy.
THE ABSENCE OF ANY GROUNDS OF JUSTIFICATION

- Grounds of justification = defences
- SO if there is no GoJ (defence) the conduct is unlawful/ wrong
Consent may be either EXPLICIT or IMPLICIT

Requirements:
- It must have been given voluntarily (without force);
- The invasion of privacy must take the form that was agreed to;
- Consent may not be against society’s opinion of what is right and proper.
May be ABSOLUTE or QUALIFIED

Absolute – an allegation made during a parliamentary debate

Qualified – where a person has a legal, moral or social duty to speak out (where you release info regarding an ex employee to a future employer)
Most important defence to a claim of invasion of privacy

People in the public eye cannot expect the same level of privacy as any other civilian

Must be balanced however!

Eg. Kate Middelton topless pics
EXCLUSIVITÉ MONDIALE

KATE ET WILLIAM EN PROVENCE

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The publication of information on public figures (or the limitation on their right to privacy) can be justified because:

- They chose to go into public life, and they have looked for publicity.
- Their characters and what they are involved in have become matters of public interest, and can no longer be considered private.
- The press has a prerogative and privilege (special right) to inform the public about them.
Where a court must decide whether or not something is in the public interest the court will look at the publication itself AND the circumstances surrounding it. Eg:

- The nature of the photograph
- The character of the plaintiff
- The plaintiff’s social standing
- Previous behaviour which may be relevant
- The reason for the publication

NOTE... the right of the press to publish newsworthy items does not include the right to mention unpleasant past incidents

SELF STUDY!!! Pages 106 -111 of the MM Examples from Case Law
ICE TASK

For: 2 May 2013

Section A of the Media Law and Ethics assignment

(multiple choice questions)