Privacy law in the uk

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Definition of Privacy

Judge T. Cooley provided the earliest and one of the simplest definitions of privacy, defining it as " the right to be left alone".[1]However, throughout the years, many different definitions have come about in a more positive light rather than a negative, such as, the right to be able to communicate information freely or simply, to keep such information to ourselves. The Younger Committee Report[2]followed on from Judge Cooley concluding that there was no satisfactory way of beginning to define privacy, nevertheless, the Calcutt Committee Report went further and mentioned that it would however, be possible to define it legally and went on to adopt this approach in their first report regarding privacy;

" *The right of the individual to be protected against intrusion into his personal life of affairs, or those of his family, by direct physical means or by publication of information."* [3]

The Calcutt Committee then issued a further Report in response to Lord Chancellor's Department for Infringement of Privacy to which had criticised

English Law declaring, it had not adequately protected the privacy of individuals – to which they called for an immediate need for some sort of privacy legislation in the UK.[4]The UK Government then followed on from previous attempts at defining what privacy consists of, stating;

“ *Every individual has a right to privacy comprising:*

1. A right to be free from harassment and molestation; and
2. A right to privacy of personal information, communications and documents.”[5]

Yet, in this day in age, privacy is still perhaps the most difficult to define, as the definitions of privacy can vary depending on the context and environment that it is used in. As in various countries, the concept of privacy has been merged with data protection, which can interpret privacy in the terms of a management of personal information. However, it can also be frequently seen as a way of drawing the line at how far society can intrude into a person’s affairs. Robert Ellis Smith, the editor of the Privacy Journal defined privacy as;

“ *the desire by each of use for physical space where we can be free of interruption, intrusion, embarrassment, or accountability and the attempt to control the time and manner of disclosures of personal information about ourselves.” [6]*

To which Edward Bloustein to an extent agreed with this, mentioning that privacy is an interest of the human personality, as it can protect the inviolate personality, the individual’s independence, dignity and integrity. [7]Therefore, it can be concluded that, though there are various different

interpretations of privacy, it can prove difficult to define, and get just one specific meaning for it that can relate to everyone. However, most of the definitions pay close attention to the interests of human personality, as well as, deciding where to draw the line at how far society can intrude into a person's private affairs.

Why do we need Privacy?

Every person needs some sort of privacy, whether that be for their physical, mental, emotional or spiritual wellbeing. So much so, that it is well established that everyone is actually entitled to a degree of privacy in their lifetime. Although, it has not been a fundamental and enforced right in English law, the need for some sort of individual privacy legislation has been often recognised. However, the Younger Committee concluded that a general privacy legislation would create a mass of uncertainty, so instead of developing a general right for privacy, they took the approach that;

" *[the] best way to ensure regard for privacy is to provide specific and effective sanctions against clearly defined activities which unreasonably frustrate the individual in his search for privacy."* [8]

However, it can be argued that without central rules on privacy, it would be much easier for individuals to gain private information on various others, as well as, it would also be difficult for prosecutions against individuals that invade the privacy of others.[9]

Privacy in the UK

There is no freestanding right to privacy in the UK, with the courts repeatedly stating that " English law knows no common law tort of invasion of

privacy."[10]As an alternative, the cause of action for breach of confidence has been extended to encompass misuse of wrongful dissemination of private information.[11]However, expansion of the law in this area has occurred throughout the years.

The earliest example in the UK of protecting an individual's privacy is seen in *Thompson v Stanhope,* [12]where an injunction was granted by the court preventing and restraining the publication of private letters that were sent from Lord Chesterfield to his son, by his widow. However, this case was followed by various other cases, such as *Prince Albert v Strange* ,[13]where the Prince sought to restrain publication of otherwise unpublished private etchings and other lists of works by Queen Victoria, to which were obtained by an employee to whom Price Albert had trusted. This case provides a good illustration of how the right to confidence protects privacy. Although the right to privacy was not recognised at the time, it was argued on behalf of Queen Victoria and Prince Albert that they had a right to keep private the art works that they had commissioned for their personal enjoyment. Ruling in favour of Queen Victoria and Prince Albert, the court held:

" Every man has a right to keep his own sentiments, if he pleases. He has certainly a right to judge whether he will make them public or commit them only to the sight of his friends."

Whereas the court further held that the publication of the etchings invaded the Royal Family's right to privacy, in the sense of a right to control one's possessions and enjoy them. More developments in UK privacy were issued in the case of *Malone v Metropolitan Police Commissioner,* [14]Malone held

that his right to privacy was breached by the Metropolitan Police by means of interception of his telephone calls. He claimed that the police interception of his phone calls had been unlawful on the grounds that it concerned itself with breach of confidence, trespass and an unlawful interference with his privacy. However, the case was dismissed by Sir Robert Megarry, stating:

" English law did not entertain actions for interference with privacy unless the interference amounted to one of the established causes of actions in tort or equity." [15]

Though, Malone appealed to the ECtHR that a breach of Article 8 had occurred, to which the court found in favour of Malone and this decision influenced a response by the UK Parliament in regards to Interception of Communications Act 1985 and Police Act 1997[16]which was introduced to control telephone interceptions.[17]

This decision was later echoed in the case of *Wainwright & Anor v Home Office* ,[18]where Lord Hoffmann saw a great danged in the courts attempting to fashion a tort based on the unjustified invasion of privacy. He however, preferred the idea that parliament should legislate for such protection since there will invariably be exception and defences.

How the Law has developed due to the introduction of the ECHR?

What is in the public interest is not the same as what is of interest to the public, to which, in simple terms – the court will balance a person's right to a private and family life against the media's right to freedom of expression. This is an area of the law that has developed significantly following the

incorporation of the European Convention on Human Rights into UK law in 1998.

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[10] *OBG Ltd v Allan; Douglas v Hello! Ltd* [2007] 2 WLR 920, [272]. See also *Wainwright v Home Office* [2004] 2 AC 406.

[11] *Campbell v MGN Ltd* [2004] 2 AC 457; B McDonald, ' Privacy, Princesses, and Paparazzi' (2005-2006) 50 *New York Law School Law Review* 205, 232. See also *Hosking v Runting* [2005] 1 NZLR 1, [23]-[53].

[12](1774) Amb. 737

[13][1849] EWHC Ch J20

[14][1979] Ch 344

[15]

[16]Police Act 1997 Part III

[17]Malone v United Kingdom [1984] ECHR 8691/79

[18][2003] UKHL 53