

# Contents

<b>1 Refining Privacy</b> . . . . .	1
1.1 Introduction . . . . .	1
1.2 Why Conceptualise Privacy? . . . . .	3
1.2.1 Contemporary Context and Conceptual Confusion . . . . .	3
1.2.2 To Define or to Refine? . . . . .	5
1.3 ‘Defining’ Privacy . . . . .	8
1.3.1 Reductionism . . . . .	8
1.3.2 Privacy as a Conceptually Distinct Right or Interest . . . . .	10
1.3.3 Taxonomies of Privacy Interests . . . . .	13
1.4 Refining Privacy: The Method . . . . .	18
1.4.1 The Rule of Law and Ideals of Justice as ‘Regulative Ideals’ . . . . .	21
1.5 Concluding Remarks and a Reiteration . . . . .	22
<b>2 Three Conjectures About Privacy</b> . . . . .	25
2.1 Introduction . . . . .	25
2.2 Assessing the Value of Privacy . . . . .	26
2.2.1 A World Without Privacy . . . . .	26
2.2.2 A World in Which Privacy Is the Ultimate Value . . . . .	29
2.2.3 Contrasting the Extremes . . . . .	31
2.3 Privacy and Personality . . . . .	32
2.3.1 Identity, Human Dignity and Rank . . . . .	32
2.3.2 Autonomy and Self-Realisation . . . . .	34
2.3.3 Personality, Worth and Ideal Theory . . . . .	35
2.4 Privacy as Property . . . . .	38
2.4.1 The Subject/Object Dichotomy . . . . .	39
2.4.2 Publicity as an Example of ‘Incomplete Commodification’? . . . . .	40
2.5 Privacy and Community . . . . .	42
2.5.1 Personal Honour and Esteem . . . . .	42

2.5.2	Independence and Dependence . . . . .	44
2.6	Concluding Remarks . . . . .	47
<b>3</b>	<b>A Privacy Curve . . . . .</b>	<b>49</b>
3.1	Introduction . . . . .	49
3.2	The Fall of Rome . . . . .	51
3.2.1	The Res Publica . . . . .	51
3.2.2	The Res Privata . . . . .	54
3.3	The Sacralisation of Personality . . . . .	56
3.4	The Emergence of the Individual . . . . .	59
3.4.1	The Individualisation Trend in Law and Legal Literature . . . . .	60
3.5	The Levelling-up of Rank . . . . .	66
3.5.1	Bourgeoisification . . . . .	66
3.5.2	The Scandalum Magnatum and the Closing Gap Between Classes . . . . .	68
3.5.3	The Pursuit of Das Rein Geistige . . . . .	70
3.6	Between the Home and the State . . . . .	74
3.7	The Challenges of Late Modernity . . . . .	77
3.7.1	Misuse of Private Information and Appropriation of Personality . . . . .	77
3.7.2	Totalitarianism and Its Aftermath . . . . .	86
3.8	Conclusions . . . . .	92
<b>4</b>	<b>Comparing Hard Cases . . . . .</b>	<b>95</b>
4.1	Introduction . . . . .	95
4.2	Privacy in English Tort Law . . . . .	96
4.2.1	The Unsound Doctrinal Foundations of the ‘Privacy Tort’ . . . . .	100
4.3	Misuse of Private Information . . . . .	104
4.3.1	The Hard Case: Mosley v News Group Newspapers . . . . .	104
4.3.2	How Might a German Court Decide Mosley? . . . . .	108
4.3.3	Discussion . . . . .	127
4.4	Intrusion into a Person’s Seclusion . . . . .	130
4.4.1	Hard Case: Kaye v Robertson . . . . .	131
4.4.2	How Might a German Court Decide Kaye? . . . . .	132
4.4.3	Discussion . . . . .	133
4.5	Misappropriation of Personality . . . . .	134
4.5.1	Hard Case: Douglas v Hello . . . . .	136
4.5.2	How Might a German Court Decide Douglas? . . . . .	140
4.5.3	Discussion . . . . .	144
4.6	Conclusions . . . . .	146
<b>5</b>	<b>Conclusions . . . . .</b>	<b>149</b>
5.1	Refining Privacy . . . . .	149
5.2	Privacy and Rank . . . . .	153
<b>Bibliography</b>	. . . . .	<b>159</b>
<b>Index</b>	. . . . .	<b>167</b>

# Abbreviations

§/§§	paragraph/paragraphs
a	article
ABGB	Allgemeines Bürgerliches Gesetzbuch
AC	Law Reports, Appeal Cases
ad	adversus (objection)
AfP	Archiv für Presserecht
All ER	All England Law Reports
ALR	Allgemeines Landrecht
Amb	Ambler's Chancery Reports
Art/Arts	Article/Articles
Atk	Atkyns' Chancery Reports
BAG	Bundesarbeitsgericht
Bd	Band (Volume)
BGB	Bürgerliches Gesetzbuch
BGH	Bundesgerichtshof
BGHZ	Entscheidungen des Bundesgerichtshofs in Zivilsachen
Burrow	Burrow's King's Bench Reports
BVerfG	Bundesverfassungsgericht
BVerfGE	Entscheidungen des Bundesverfassungsgerichts
C civ	Code civil
CA	Court of Appeal
Cass Civ	Cour de Cassation
Ch/ Ch D	Law Reports, Chancery Division
ch/chs	chapter/chapters
Comm	Commentary
CPD	Law Reports, Common Pleas Division
Croke Jac	Croke's King's Bench Reports tempore James
De Gex & Smale	De Gex & Smale's Chancery Reports
De GF & J	De Gex, Fisher & Jones Chancery Reports
Dyer	Dyer's King's Bench Reports

ECHR	European Convention on Human Rights and Fundamental Freedoms
ECtHR	European Court of Human Rights
edn	editor/eds editor/editors
EGStPO	edition
EHRH	Einführungsgesetz zur Strafprozessordnung
Eliz	European Human Rights Reports
EMLR	Elizabeth (Queen)
Eq	Entertainment & Media Law Reports
ER	Equity Cases, Law Reports
EWCA Civ	English Reports
EWHC	England and Wales Court of Appeal, Civil Division
EWHC (Admin)	England and Wales High Court
f/ff	England and Wales High Court (Administrative Court)
FLR	folio/folios
FSR	Family Law Reports
Gai	Fleet Street Reports
GG	Gaius
GRUR	Grundgesetz
Hare	Gewerblicher Rechtsschutz und Urheberrecht
Hen	Hare's Reports
Hil	Henry (King)
HL	Hilary Term
HL Deb	House of Lords
HLC	House of Lords Debates
HRA	Clark & Finnelly's House of Lords Reports New Series
JZ	Human Rights Act
KB	Juristen-Zeitung
Keilw	Law Reports, King's Bench
KG JW	Keilwey's King's Bench Reports
KUG	Kammergericht Juristische Wochenschrift
LG	Kunsturhebergesetz
lib	Landgericht
LJCh (NS)	liber (book)
Lofft	Law Journal Reports, Chancery (New Series)
LR	Lofft's King's Bench Reports
LT	Law Reports
LUG	Law Times Reports
m	Literatururhebergesetz
Macnaghten & Gordon	memorandum
Mer	Macnaghten & Gordon's Chancery Reports
NJW	Merivale's Chancery Reports
NJW-RR	Neue Juristische Wochenschrift
no	Neue Juristische Wochenschrift—Rechtsprechungsreport number

NZLR	New Zealand Law Reports
OLG	Oberlandesgericht
para/paras	paragraph/paragraphs
pl	plea
pt	part
Q	Question
QB	Law Reports, Queen's Bench
Rep	Report
Res	Resolution
rev	revised
RG	Reichsgericht
RGBI	Reichsgesetzblatt
RGZ	Entscheidungen des Reichsgerichts in Zivilsachen
RPC	Reports of Patent, Design and Trade Mark Cases
StGB	Strafgesetzbuch
Swanston	Swanston's Chancery Reports
T	Title
Tab	Table
Taunton	Taunton's Common Pleas Reports
tit	titulus (title)
TLR	Times Law Report
Trin	Trinity Term
Ulp D	Ulpian Digesta
VC	Vice-chancellor
Vol/Vols	Volume/Volumes
WBI	William Blackstone's King's Bench Reports
Wils KB	Wilson's King's Bench and Common Pleas Reports
WLR	Weekly Law Reports
YB	Yearbooks
ZUM	Zeitschrift für Urheber- und Medienrecht?