PRIVACY AND DIGNITY: A BALANCING ACT

Category: Commercial Law,Privacy Law, Infosec, and POPIA
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Section 16 of the Constitution

Everyone has the right to freedom of expression & the right to receive and impart information and ideas.

Section 10 of the Constitution

Everyone has the right to the protection of this dignity and reputation.

Competing Rights

Two competing rights which are upheld by the Constitution.

Section 16 of the Constitution provides a broad guarantee that everyone has a right to freedom of expression and certain expressions are specifically protected. This right however is expected to be exercised within reasonable bounds. It cannot be exercised in a manner that infringes the right of another, ie the right they have to the protection of their dignity and reputation.

It is wrong to assume that you can say / publish whatever you like about whoever you like and hide behind the right to freedom of expression

Legitimate expectation of Privacy

The Constitutional Court has developed the doctrine of legitimate expectation of Privacy.

Private facts will be protected by the courts where an individual can demonstrate a legitimate expectation of Privacy.

Limitations to the Right of Privacy

The Right to Privacy is not absolute.

There are weighing of competing interests that must take place when determining whether limitation to the right of Privacy is valid .

The legitimate interests of others and the public interest are factors that are taken into account when determining if a limitation to the right to Privacy is warranted.

Invasion of Privacy-Occurs in two ways

-Unreasonable intrusion into a person's private sphere.

-Unauthorised disclosure of private facts.

When can an invasion of privacy be justified?

-Truth for the public benefit.

Public interest justification either because facts relate to a public figure or because disclosure of private facts is in the public interest.

-The Consent Defence

An individual may consent to the disclosure of facts either expressly or impliedly.

Implied consent is inferred such as when a person is photographed at a public event.

Express consent is the best consent to obtain from an individual before publication.