Outline the development of the right to privacy in Irish Law and consider the particular challenges posed to the protection of privacy by developments in technology. (20 marks)

Challenges tech

Privacy is divided into a number of aspects: privacy of the person(bodily), personal behaviour (personal space), personal communications (interception), and personal data (info). Privacy is not an unlimited right and may be subordinate to other rights.

It is central to the protection of human dignity and forms the basis of any democratic society.

It also supports and reinforces other rights, such as freedom of expression, information and association.

DEVELOPMENT:

The Constitution of Ireland does not explicitly guarantee a right to privacy but the courts have recognised an unenumerated right to privacy as one of the personal rights in the Constitution.

Irish law provides a statutory right to data protection in the Data Protection Acts 1988 and 2003, implementing the Council of Europe Convention for the Protection of Individuals with Regard to Automatic Processing of Personal Data and EU Data Protection Directive 95/46/EC.

The ePrivacy Regulations 2011 address data protection for phone, e-mail and Internet use, and give effect to the EU ePrivacy Directive 2002/58/EC.

The European Convention on Human Rights has been brought into force in Ireland with the adoption of the European Convention on Human Rights Act 2003.

That Act gives effect to Article 8 of the European Convention on Human Rights which provides: “1. Everyone has the right to respect for his private and family life, his home and his correspondence. 2. There shall be no interference by a public authority with the exercise of this right except such as it is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic wellbeing of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

Ireland is a signatory to the Universal Declaration of Human Rights (‘UDHR’).

Ireland is a party to the European Convention on Human Rights, which, as has already been noted, has been incorporated into domestic law. In matters within the scope of European Law, Ireland is bound by the Charter of Fundamental Rights of the European Union, Articles 7 and 8 of which relate to the right to privacy and the protection of personal data respectively.

Ireland has ratified the Council of Europe Convention for the Protection of Individuals with Regard to Automatic Processing of Personal Data.

* *The right to privacy is our right to keep a domain around us, which includes all those things that are part of us, such as our body, home, property, thoughts, feelings, secrets and identity. The right to privacy gives us the ability to choose which parts in this domain can be accessed by others, and to control the extent, manner and timing of the use of those parts we choose to disclose.*

Yall Onn: Privacy in the Digital Environment

How often is your privacy subject to interference:

Activities that restrict the right to privacy, such as surveillance:

Throughout the day if you use your computer(IP address, privacy policy you accept), phone, drive through tollbooths, cctv at work/college, atm/visa card transactions, loyalty cards, etc you are under surveillance. All information is being stored and may be accumulated to create a case against you if you are under suspicion.

Identified problems with Irish law in relation to regulation of state surveillance

Privacy - The Constitutional position:

The case of Kennedy v Ireland [1987] IR 1 is a seminal case in Irish privacy law and, notably, related to phone hacking. Between May and November 1982, the private telephones of two political journalists were tapped by authority of a warrant issued by the Minister for Justice. In January 1983, the Minister for Justice issued a public statement in which he admitted to the tapping. The two journalists brought proceedings for damages for the unlawful tapping of their telephones and claimed that there was a breach of their personal right to privacy and freedom from unlawful and unwarranted intrusion guaranteed by Article 40 of the Irish Constitution. The defendants admitted the fact of the tapping, but denied that there had been any infringement of the plaintiffs’ constitutional rights.

The High Court held in favour of the plaintiffs stating:

• That the right to privacy, though not specifically guaranteed by the Constitution, was one of the personal rights of the citizen which flowed from the Christian and democratic nature of the State;

• That the constitutional right to privacy included the right to hold private telephone conversations without deliberate, conscious and unjustified intrusion by servants of the State; • That the right to privacy was not an unqualified right but was subject to the constitutional rights of others and to the requirements of public order, public morality and the common good; and

• That the tapping of the Plaintiffs’ telephone had been deliberate, conscious and unjustifiable, and was an actionable infringement of their Constitutional rights. The defendants were awarded damages for the breach of their constitutional rights.

Technology poses particular privacy challenges due to the vast amount of details about people stored on computers that are accessible at the touch of a keyboard.

As innovations in information technology have enabled previously unimagined forms of collecting, storing and sharing personal data, the right to privacy has evolved to encapsulate State obligations related to the protection of personal data.

A number of international instruments enshrine data protection principles, and many domestic legislatures have incorporated such principles into national law.