



# Identity theft in South Africa

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# Privacy and E-commerce

## **A. Identity theft**

Definition, forms and methods

## **B. Legal regulation**

Common law, legislation, prosecution

## **C. Evaluation**

# Definition

- All types of crime in which someone wrongfully obtains and uses another person's personal data in some way that involves fraud or deception, typically for economic gain
- The unauthorised use of personal information to commit fraud or theft

# Methods

 Phishing

 Spyware

 Bin-raiding

 Telephone calls

 Hacking

 Looking over shoulders

 Camera phones

# S14 Constitution

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; or
- (d) the privacy of their communications infringed.

 *Mistry v Interim Medical and Dental Council of South Africa and others 1998*

# Other legislation

- X ID theft legislation
- X Privacy legislation
- ✓ s86 Electronic Communications & Transaction Act
- 1. Interception of data
- 2. Modification or destruction of data
- 3. Making or dealing in devices or programs that compromise data security
- ✓ s88 Promotion of Access to Information Act : Correction of personal data

# Common law: theft

- ❏ *Unlawful appropriation* of another's moveable corporeal property with the intention to permanently *deprive* them of the benefits of their *ownership rights*.
- ✓ credit: X deposits money into Y bank and becomes Y's creditor.
- ✓ electronic data and money: S v Harper 1981 (shares), R v Sibbiya 1955; economic impact
- ? passwords , credit card info
- ? Identity: all economically relevant information

## Common law: fraud

- Unlawful and intentional misrepresentation that causes actual prejudice or is potentially prejudicial to another
- Hacker misrepresents that he is authorised to withdraw money
- ABSA hacker who used spy-ware to steal log in info charged with fraud and theft



# Initiatives

- 🌿 National directorate of public prosecutions  
cyber-forensic unit
- 🌿 ECTA : cyber inspectorate
- 🌿 Credit bureaux: consumers' unlimited  
access to credit records
- 🌿 Banks: real time sms alerts on account  
activity, unique number for internet  
transactions

# Evaluation

- Common law not clear and has not yet been successfully used against ID theft perpetrator
- Statutory law also inadequate
- Special units have not yet been seen in action

# Reform

-  Specific legislation
-  Training of justice personnel and police
-  Public education