

SOLUTIONS FOR EEE222 Spring Semester 2011/12

Q1.

- (a) (i) Common law principle of the secrecy of commercially sensitive information (applies also to private information and matters of state). Confidentiality is established automatically in the case of information which has a quality of confidentiality. Can also (often usually) be established by formal agreement. [2]
 - (ii) Any written document produced by a human author, whether an internal report, memo or letter other creative piece of work. No formal application. Copyright exists immediately. [2]
 - (iii) Any idea which is new, involves an inventive step and industrially applicable. Formal application via Patents Office. [2]
 - (iv) Businesses are protected in a commercial environment by others impersonating them or adopting the same business name in the same market of commercial activity. [2]
- (b) (i) Not immediately. He almost certainly owns this IPR. Because the company he works for designs baby-feeding utensils, they may have a weak case for claiming ownership in this situation. I would advise him to seek independent legal advice from a patent agent or lawyer. [3]
- (ii) File a patent, if the patent agent above is of the opinion that he does own the patent. [2]
- (iii) Patent agent or IPR lawyer. [1]
- (iv) Since there are likely to be big players in the field already (Pampers, etc), his best strategy would be to seek a licensing agreement (or sale) of the patent with a big company already trading in this big market. A start-up company is possible but probably inadvisable in these circumstances: he has no knowledge of the market. [3]

Marks gained for relevant arguments and corresponding precautionary principles. Eg for start-up, an excellent business plan is needed, ie market knowledge. For licensing he needs to talk to a number of existing operators in the market, under confidentiality agreements. [3]

Precautions: ensure other parties first sign a comprehensive confidentiality agreement. This should include a clause requiring the return of all materials he sends them. He could obtain this from the lawyer/patent agent referred to above. [2]

Q2.

- (a) (i) Release of the information would injure the owner of the information or benefit others. [1]
- (ii) The owner must believe the information to be secret and not already in the public domain. [1]
- (iii) The owners belief in 1 and 2 must be reasonable. [1]
- (iv) The information must be judged in the light of usages and practices of the particular trade or industry concerned. [1]
- (b) Damages agreed by both parties to be paid in the event of a breach. [1] Liquidated damages usually apply in situations where the actual damage to business would be hard to quantify. Nevertheless, they must represent a 'reasonable' (not a 'punitive') estimate of the money-value of the effect of a breach. [1]
- (c) How information is to be passed on to other employees of each organisation (i.e. only to those involved in the project and only after they understand all the terms of the particular agreement). [1] How 'materials' (drawings, data, printed manuals, etc) should be stored (i.e under lock and key). [1] How/when all materials will be returned and/or destroyed after the run of the project. [1] Other: Requirements to inform parties of any infringement that occurs, even if not as a result of their own actions, and to conform to the law of the land (if, for example, the information is requested by a legal authority). Requirement to inform of the use of consultants, even if each is subject to a further confidentiality agreement, etc.
- (d) (i) Yes. [1] Richard has mostly been stupid, but he has clearly breached a written confidentiality agreement and is hence liable for a legal action from his employer. [1] Clive has behaved very badly both ethically and professionally: apparently leading Richard 'up the garden path' in order to obtain information that clearly was of a confidential nature. He should have immediately informed Richard of the danger of the situation to maintain professional standards of confidentiality, before he revealed anything of commercial value. Clive, however, has no legal liability (remotely, he could be construed as having acted fraudulently). [1]
- (ii) Whatever he does, he should act as quickly as possible [1], preferably that very night. The best route would probably to ask the host for Clive's telephone number and phone him immediately. By informing him, even retrospectively, that the information was confidential he could prevent further disclosures, at least if Clive is remotely professional. If Clive does not respond favourably, this is a clear breach of professional ethics. [1] However Clive reacts, Richard should confess to his boss [1]: Richard's company lawyer could quickly draft a letter of acknowledgement (to be signed by Richard) that he understands a mistake was made (in unexpected circumstances) and that the information is confidential to him and him alone (not the company that he works for). Once all such actions have been pursued, AASL would do well to contemplate carefully in view of the outcomes whether to inform XYANT plc, and would almost certainly seek legal advice. Richard should certainly not contact XYANT plc on his own without the permission and knowledge of his employer. [1]
- (iii) Seek a Court injunction to stop Clive revealing the information to anyone else. [1] This is possible, despite Clive not being party to a formal confidentiality agreement. Sue for damages from Richard. [1] The first course of action is over-kill unless Clive refuses to accept the professional constraints that he should have (and should in future) observe under these circumstances. If Clive is not willing to behave reasonably, the chances of a court order being truly effective are low, although he

does become liable if he breaches a court order. [1] Richard, (a 'junior consultant') is almost certainly not wealthy, so any payable damages to AASL would unlikely to be worthwhile. [1]

Q3.

- (a) (2 of) Emergency fire procedures, computer screen regulations, electrical testing regulations of mains operated equipment, (other items, e.g. COSHH, could be also be justified in answer).
- (b) Look for hazards
Decide who might be harmed and how
Evaluate risks and decide if more needs to be done
Record your findings
Review your assessment and revise if necessary
Make arrangements for implementing health and safety measures
Appoint competent people (for example, a qualified engineer) to help the employer implement the arrangements.
Set up emergency procedures
Provide clear information and training to employees
Work together with other employers sharing the same work place to coordinate matters such as fire evacuation procedures.
Other components could include engendering a culture of safety [8]

- (c) (i) The company is certainly acting negligently. The guns are clearly dangerous, even when handled in competent hands (the quality control testing engineer), and so if one such gun did cause injury (which, say in the case of an eye wound, could be serious), the company would be liable [1]. Health and Safety law has also clearly been breached in that no account has been taken of this obvious hazard [1]. Mr Lake, being fully aware of the problem, is potentially criminally liable. [1] Under Health and Safety law, Susan has an obligation towards her fellow workers to bring the problem to light, irrespective of the fact that she does not work in this section. [1]

Candidates could further discuss the effects of the commercial pressures to cut costs, to which Mr Lake may have to be answerable to management, perhaps (very marginally) mitigating less-than-ethical actions.

- (ii) No. Liability for death or injury caused by negligence (as here) cannot be excluded or limited in any commercial contract. [2]

- (iii) Relevant clauses in the IET rules of conduct would be:

In the case of Susan:

“Members whose professional advice is *not accepted* shall take all reasonable steps:

- a. to ensure that the person overruling or neglecting that advice is aware of any danger or loss which may ensue [1]; and
- b. in appropriate cases, to inform that person’s employers of the potential risks involved.” [1]

In the case of Mr Lake:

“Members shall at all times take all reasonable care to limit any danger of death injury or ill health to any person that may result from their work and the products of their work.” [1]

“Members shall accept personal responsibility for all work done by them or under their supervision or direction.” [1]

Marks are allocated here as examples, individual answers may raise other points worthy of marks.

Q4.

- (a) Data Controller - a person who (alone or with others) determines the purposes for which and the manner in which the Personal Data is to be processed. [1]
Data Processor - a person (other than an employee of the Data Controller) who processes Personal Data on behalf of the Data Controller. [1]
Data Subject - an individual who is the subject of Personal Data. [1]
- (b) (2 from:)
Compiling and maintaining a register of persons who hold personal data;
Serving notices to those who contravene the Act;
Ensuring that requests for information from individuals to persons that hold data about them are honoured. [2]
- (c) (i) In addition to knowing what is being held about him and why it is being held (he already knows these two things) he has a right
to know whom it is being disclosed to
to know the logic involved in the automatic assessment system
the right to request that the assessment not be carried out purely by automatic means [3]
- (ii) Both companies must be registered with the Commissioner
AIEngineers must ensure that MatchEng has adequate security measures in place
Both companies must comply with the data protection principles (some discussion of these is required)
Both companies must indicate to the Commissioner that data is being transferred between them
They must have a formal contract between them concerning the transfer of the data
If either company is holding manual records in such a way that an individual can be readily identified from them – then this manual data must be registered in addition to their computer data [7]
- (d) (i) Examples of the sort of activity would include: learning in depth about developments in a technical field, learning about new specialist areas, the taking on of management responsibility, publication of books or articles, development of project management skills and/or financial management skills, establishment of quality control systems, etc. [3]
- (ii) Evidential records such certificates of attendance at advanced training courses, publications, internal reports, reports for clients, evidence of achievement in, say, the management of significant projects. I.e. a portfolio of evidence, perhaps put together under the auspices of a suitable mentor. Attend an interview. [2]