

Exam – NWI-IMC006
Law in Cyberspace
20 January 2020

Dear student,

Put your name and student number on each page that you hand in.

You are NOT allowed to use books, notes, phones, or similar devices.

You can use the excerpt of the GDPR that is provided with this exam.

You are not allowed to take the exam questions with you after the exam.

Read each question carefully.

Write clearly.

Each question indicates how many points it is worth. You can obtain 100 points in total.

Good luck!

PART I, MULTIPLE CHOICE QUESTIONS

(2 points each) Answer the following questions. No explanation is needed.

1. Is the following sentence true or false?

All treaties are binding for states and citizens.

2. Is the following sentence true or false?

While customary law was important in the middle ages, it does not play a role anymore in modern legal systems.

3. Is the following sentence true or false?

EU law does not protect people's metadata, because metadata do not concern the content of communications.

4. Is the following sentence true or false?

The European Court of Human Rights is the highest authority on explaining EU law.

5. Is the following sentence true or false?

Criminal law cases are always between individuals: the victim and the defendant.

6. The government presents a proposal for a constitutional amendment to the Parliament for voting.

Is the following sentence true or false?

The situation (described in the first sentence) falls within public law.

7. Is the following sentence true or false?

Property law defines under which conditions somebody who suffered damage can claim compensation for the damage from somebody else.

8. Alice is a student. She is subscribed to Netflix and therefore has a contract with Netflix.

Is the following sentence true or false?

Even though Netflix is richer and more powerful than Alice, legal scholars would say their relation is a 'horizontal' relation.

9. Is the following sentence true or false?

Freedom of contract is not absolute in the European Union.

10. Is the following sentence true or false?

The main rule in tort law is that people can always obtain compensation for damages that they suffered.

11. Is the following sentence true or false?

Currently, all EU member states have a written constitution.

12. Is the following sentence true or false?

Procedural criminal law describes, among other things, the powers and competences of the police.

13. Is the following sentence true or false?

The European Convention of Human Rights and the related case law of the European Court of Human Rights do not protect the confidentiality of people's emails, because email did not exist yet when the Convention was adopted.

14. Is the following sentence true or false?

Copyright does not protect ideas; only their expression.

15. Is the following sentence true or false?

The European Court of Human Rights gives equal weight to the right to freedom of expression and the right to privacy.

16. Is the following sentence true or false?

The right to freedom of expression in the European Convention on Human Rights can, under certain conditions, be restricted by national lawmakers.

PART II, OPEN QUESTIONS

Read each question carefully.

You can answer questions in English or in Dutch.

Ensure that you do not forget any steps in your argumentation. Do not forget to explicitly answer the question. The number of points depends, in part, on the clarity of your argumentation.

You can use the excerpt of the GDPR that is provided with this exam. If you refer to a GDPR provision; mention which provision (e.g. 'Article X of the GDPR').

Write clearly.

Good luck!

1. **(6 points)** In 2017, the European Commission published a proposal for an ePrivacy Regulation, which concerns the respect for private life and the protection of personal data in electronic communications. The ePrivacy regulation should replace the current ePrivacy Directive.

Large companies generally said that, if the EU adopts ePrivacy rules, a Regulation would be better than a Directive.

Explain why many large companies prefer a Regulation.

You do not need more than four sentences.

2. **(6 points)** The company Nile.com offers an online store for printed books. The company has the street address of many customers, as the company has sent packages with books to those customers.

Does the GDPR allow Nile.com to send those customers paper direct marketing for its products, without the prior consent of those customers?

Briefly explain your answer. You do not need more than two sentences.

3. **(6 points)** A university uses a 'tracking wall', also called 'cookie wall', on the website for students that provides the lecture times.
Website visitors see the following message:

'Click here to allow us, advertising network DoubleClick, and social network MyFace, to place tracking cookies on your computer, for marketing.'

If the website visitor can only enter the website after clicking 'I agree'.

Does the university's consent request meet the GDPR's requirements for valid consent?

Briefly explain your answer.

You can assume that the consent request given sufficient information. You do not need more than three sentences.

4. A question on applying article 6 of the GDPR.

Personews offers an online service for personalised news: news items adapted to the user's interests. People can add the Personews plug-in to their browser. The plug-in registers the news that people read on the web. On the basis of those data, Personews offers a webpage and an app with a personalised news selection.

People can subscribe to the service for 5 euro per year.

- (a) **(8 points)** Which legal basis for processing is most appropriate for the processing of the user's personal data by Personews in connection with the service?

Briefly explain your answer.

You do not need more than five sentences. In your answer, you can ignore the ePrivacy Directive, and you can ignore the personal data related directly to the payment, such as credit card information.

- (b) **(6 points)** Personews publishes a new version. Now Personews also reads the location data from the user's device, to adapt the news to the user's location too. For example, if a user is in Nijmegen, the app mentions the weather, traffic jams, and train delays in that area.

Is the ePrivacy Directive relevant to the aforementioned processing of location data?

Briefly explain your answer. You do not need more than three sentences.

(c) **(6 points)** Personews rolls out an update again. Now Personews amends its business model. From now on, Personews will also display personalised advertisements (behavioural targeting).

Which legal basis is most appropriate for personal data processing for showing personalised advertising?

Briefly explain your answer. You do not need more than three sentences.

5. **(5 points)** Somebody wrote:

'At the heart of data protection legislation is the concept that it is possible to do almost anything with personal data if the relevant consent to the relevant purpose has been obtained from the relevant individual.'

Is that sentence correct? Briefly explain why (not).

You do not need more than three sentences.

6. **(5 points)** Alice buys a book in an online store. On the website of the store she provides her name and address for delivery of the package. That same web page states:

'Tick this box if you do not want us to sell your name and address to Dan's Marketing Company, which uses that information to send you targeted advertising.'

Alice does not tick the box.

Did the online store obtain valid consent under the GDPR?

Briefly explain your answer. You do not need more than two sentences.

7. **(5 points)** Behavioural targeting involves monitoring people's online behaviour, for instance with tracking cookies, and using the collected information to show people individually targeted advertisements.

The Interactive Advertising Bureau, a trade organization, writes on one of its websites:

'The information collected and used for customising adverts is not personal, in that you – the user – cannot be identified.'

The question to you is as follows.

Are individual profiles for behavioural targeting, tied to a tracking cookie, personal data under the GDPR?

Briefly explain your answer. You do not need more than three sentences.

8. In 1967, Westin defined privacy as follows: 'Privacy is the claim of individuals (...) to determine when, how and to what extent information about them is communicated to others.'

Westin's definition can be seen as an example of the perspective of privacy as individual control over personal information, or, in short, privacy as control.

- (a) **(4 points)** Provide two examples of GDPR rules that illustrate the influence of the privacy as control perspective on the GDPR.

Briefly explain your examples.

You do not need more than four sentences in total.

- (b) **(6 points)** Give a critical analysis of the privacy as control approach, in particular in the light of modern data processing.

You do not need more than five sentences.

9. **(5 points)** The emission of greenhouse gases must be reduced by at least 25% by the end of 2020 compared to the level of 1990. That has been ruled in 2018 by a Dutch Court of Appeal in the case between Urgenda and the Dutch State. The Dutch Supreme Court has decided in December 2019 that the court order for the Dutch State to reduce Dutch greenhouse gas emissions by 25% by the end of 2020 remains in force. In short, the Dutch State lost its case at the Supreme Court.

Some people, invoking the idea of the 'trias politica', say that the Dutch courts decided wrongly in this case.

The question to you is as follows.

Explain briefly why the decisions in the Urgenda case can be seen as controversial, considering the idea of the trias politica.

You do not need more than four sentences.

* * *