

A decorative graphic consisting of blue circuit-like lines with small circles at the ends, extending horizontally from the left and right sides of the central black box.

RESPONSIBLE DATA SCIENCE

WEEK SEVEN TUTORIAL

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A NOTE ON LEGAL AMBIGUITY

- Legal issues can be complex and unsettled, and sometimes the answer to a particular legal question is not clear (and may depend on a judge's interpretation of the issue)
- In these answers I have noted where this ambiguity exists
- Unambiguous legal questions will be used for the final quiz

QUESTION 1

- You find a useful piece of code on GitHub, for automatically converting the formatting of a particular kind of data. This is a common operation in the field.
- What types of property rights are likely to exist in this code? No licence file is included.

1. Patent
2. Copyright
3. Contract
4. Trade mark
5. Trade secret
6. Database Rights

QUESTION 1 ANSWER

- Patents will probably not exist over this code, as it deals with a common operation in the field
- **Copyright** covers all creative works, including code, so this code **will have copyright**
- There are no contracts associated with this code (and contracts are not really a property right)
- There is no evidence of trade marks being attached to this code
- The code is not secret, so cannot be a trade secret
- The code is not a database, so it has no database rights (these legal rights also do not exist in Australia)

QUESTION 2

- Can you use the code in question 1 without breaking intellectual property laws?
 1. Yes, you are free to use it
 2. Only if you rewrite the same ideas in your own code
 3. No, you must obtain consent

QUESTION 2 ANSWER

- Copyright only covers specific expressions, not the underlying ideas
- Therefore you are free to use this code **only if you rewrite the same ideas in your own code**, so that a substantial part of the original code has not been copied

QUESTION 3

- A government department puts out a call for tenders for a new project, stating they are seeking to pay the lowest possible cost. Only one tender is placed. Has a contract been formed?

1. Yes

2. No

QUESTION 3 ANSWER

- Advertisements, price lists, product displays, announcements, catalogues, and so on are not contractual offers
- The call for tenders is a call for offers, not an offer itself
- The tender is an offer
- There is **no contract**, as the offer has not been accepted

QUESTION 4

- Companies can (choose all that apply):

1. Enter contracts
2. Own property
3. Be a copyright author
4. Be listed as a patent inventor

QUESTION 4 ANSWER

- Companies can **enter contracts** and **own property**
- Companies can own patents and copyright, but they cannot be the inventor or the author
- Employment contracts often have a term stating that all intellectual property created by individuals on company time is automatically transferred to the company

QUESTION 5

- Copyleft operates through (select all that applies):

1. Contract law
2. Patent law
3. Copyright law
4. Trade mark law

QUESTION 5 ANSWER

- **Contract law** is used to create copyleft licences (which are a type of contract), that require subsequent users to also include the copyleft licence
- **Copyright law** provides the basis for copyleft, by creating property rights in the code/work, which then allows the author to attach a licence to the code/work

QUESTION 6

- A member of an alternative religious group signs a contract selling their house to the leader of the group for a price below market rate. This is an example of:

1. Mistake
2. Misrepresentation
3. Duress
4. Undue influence
5. Unconscionable dealing
6. No vitiating factor

QUESTION 6 ANSWER

- There is no evidence of mistake, misrepresentation, or duress in this question
- **Undue influence** is the most likely answer, as it concerns situations where there is a power imbalance between the parties
- Unconscionable dealing could also be applicable, as 'special disability' has been widely interpreted and could possibly include this religious membership
- If evidence showed that the contract was the free exercise of independent will, there would be no vitiating factor

QUESTION 7

- A company uncovers a statistical connection between obesity and the use of certain pharmaceuticals. Can this invention receive intellectual property protection?
1. Yes, from copyright and patents
 2. Yes, from copyright alone
 3. Yes, from patents alone
 4. No

QUESTION 7 ANSWER

- Copyright covers works that are recorded and original (author exercised control over the material form of the work). It also covers expressions, not abstract ideas.
- Therefore there is **no** copyright
- Patent law covers inventions which result in some 'concrete effect or phenomenon or manifestation or transformation'. They do not cover abstract ideas, facts, discoveries, ect.
- Therefore there are **no** patent rights

QUESTION 8

- Shopping in a store, you see a shirt advertised for \$60. When you take it to the counter, the cashier tells you this was a mistake, and the product is actually \$70. Can you correctly argue that a contract had already been made?

1. Yes

2. No

QUESTION 8 ANSWER

- Advertisements, price lists, product displays, announcements, catalogues, and so on are not contractual offers
- Therefore they cannot be accepted to form a contract
- Consumer law (a different area of law not discussed in this course) may require the store to sell you the product at the price advertised, but **no contract has been formed**

QUESTION 9

- A company develops software for detecting systematic errors in data transmissions.
Can this invention receive intellectual property protection?
1. Yes, from copyright and patents
 2. Yes, from copyright alone
 3. Yes, from patents alone
 4. No

QUESTION 9 ANSWER

- All original code has automatic copyright protection, so the invention is **definitely protected by copyright**
- Software patents are an ambiguous area. Even if the software has an inventive step, the invention may be too abstract to be patentable – the use of the computer must add something to the invention, and it must result in some ‘concrete effect or phenomenon or manifestation or transformation’.
- The invention **may or may not be patentable**

QUESTION 10

- Thomas listed his Wirraway Australian Warbird Aircraft on eBay, with a minimum bid of \$150,000. Roshan placed a bid of \$150,000, and won the auction. Thomas did not want to sell the aircraft for this price, and argued that no contract had been created. Has a contract been formed?

1. Yes

2. No

QUESTION 10 ANSWER

- There has been an offer (Roshan's bid), and the rules of auctions (set out in eBay's terms of service) mean that Thomas is obligated to accept that offer
- Since all other contract requirements have also been met, a **contract has been formed**