

Tips exam:

- When you don't know a case name, just describe it and you will get full points
 - Naming examples is helpful when answering questions
 - Identify area of private law (contract, tort, property)
 - List and describe relevant rules (Consequences, remedies)
 - Combine with relevant facts: what is the outcome of each rule?
 - Conclude (always think: what (remedies) does the victim want?)
 - In case of multiple steps, name all the steps!
 - Don't start citing cases or laws when talking about ethics
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CLUSTER 1 INTRODUCTION

Absolute rights: Can be exercised against all others (like a property right)

Relative rights: Can only be exercised against 1 or more specifically determined persons (like a loan)

Purposes and function of law:

- Establishing standards
 - Maintaining order
 - Resolving disputes
 - Protecting liberties and rights
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Rule of law: All people are equal under the law. No one is above the law. This is the Trias politica (see below)

Rule by law: Governing authority exists above the law

!! Trias politica (the three branches of governance): It's a system of **checks and balances** (separation of power to avoid one entity wielding too much power):

1. **Judicial function:** Adjudicates disputes, decides how a disagreement should be settled, the court
 2. **Legislative function:** Determine the rules that will govern the process of adjudication. Legislation tells the judicial function HOW to adjudicate, the parliament
 3. **Executive function:** Ensure, first, that the disputing parties submit to adjudication in the first place, and second, that they actually comply with the settlement eventually reached through the judicial process, the police
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Sources of law:

- **Treaties:** bind states that have signed and ratified them
 - **Legislation** (including a constitution): imposes legal norms on those within a given jurisdiction
 - **Case law / judicial decisions:** Higher courts have precedent over lower courts
 - **Customary law (in absence of written law):** – general practice accepted as law – obligatory rules of conduct
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Interpretation of principles and rules

- **Grammatical / Linguistic interpretation:** Literal meaning
 - **'The man on the Clapham Omnibus' (1903):** The reasonable, rational person
 - **Historical interpretation:** Using legislative history to reveal intent of legislator
 - **Systematic interpretation:** Considering broader context of legal framework in which a provision is listed
 - **Teleological interpretation:** Focus on the purpose of the law
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Argumentation of judge

It is grounded on

- **Ratio decidendi:** Judge must provide the argumentation of the verdict
- Legal equality & legal certainty
- **Nulla poena sine lege:** No punishment without law

Types of arguments

- **Analogy:** A similarity between two or more things that are otherwise dissimilar
 - **Argumentum e contrario:** X is correct or true because it can't be disproven. If the legislator wished to say something, they would do so expressly
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EU law

- **Primary law:** Treaties
- **!! Secondary law**
 - **Decisions:** Specifically targeted at specific parties, such as individuals, companies or member states. They must be followed as specified
 - **Directives:** Only imposes the requirement of a result. They are free to choose the form and the means to apply the directive. A directive must also be first be transposed by the Member States. E.g. Consumer Rights Directive
 - **Regulations:** The promulgation of rules by government accompanied by mechanisms of monitoring and enforcement. They provide a set of rules that must be followed without deviation. Is immediately applicable in Member's States after its entry into force

!! Lessig's Regulatory Modalities: Solutions to regulatory problems

- **Market:** Economic forces, such as excise duties on cigarettes
- **Norms:** Such as ads dissimulating smoking behaviour, industry standards, Creative Common Licenses
- **Law:** E.g. privacy laws
- **Architecture:** Speed bumps, speed cameras

CLUSTER 2 – PRIVATE LAW

2.1 PROPERTY LAW

The laws differ per country: a broad separation is:

	Common law (England and former colonies (Incl. USA))	Civil law (rest of the world)
Contract	Buyer beware	A duty to disclose. Requires explicit representations
Remedies in contract	Requires specific terms and clauses to have a right to a remedy	All clauses that impose an obligation allows for a remedy in case of breach
Fault liability	No general rule	The rules of causality, harm and damage apply to all forms of fault: <ul style="list-style-type: none">• Infringement of right• Or statutory duty• Or negligence
Pure economic loss	Usually not recoverable	Sometimes recoverable

Overview laws: Note that this is but a subset of all the laws

- **Public law**
 - Criminal law
 - Administrative law
 - Constitutional law
- **Private law**
 - Law of obligations
 - Contract law
 - Tort law: Not to be confused with criminal law. Criminal law seeks to protect all citizens from wrongdoing. Tort only seeks to compensate a particular victim
 - Property law
 - Movables/goods
 - Land/immovables
 - Intangibles
 - Intellectual property rights (IPR)
 - Claims
 - Business law
 - Family law etc.

The rules are the sources of law. The judge looks at the facts (what makes the case unique) and the law (the **doctrines**: the rules with the relevant criteria and exceptions). These two combined makes the case, and as a consequence, this is the source of an obligation.

- **Source of law:** State law (code) or case law
 - **Source of obligation:** Reasons or grounds that give rise to legal obligations/duties. Enforcement by court (remedies). It's an unconditional imperative: You have to do/must refrain
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Ownership

Characteristics ownership rights

- **Erga omnes:** Property rights protect against everyone
- **There are limited forms of property (numerus clausus):** Lease, patents etc. all refer to restricted ownership rights. Note that these needs to be settled in a contract. It has two aspects (kind and content):
 - **Kind:** The type of ownership right
 - **Content:** The rights associated with a certain property right, such as possession, use, transfer etc.

Enforcement:

- Property and Tort law
 - Trespass
 - Nuisance etc.
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!! Becoming an owner (mention these two at exam!)

- **Possession:**
 - Creation
 - Finding
 - Registration
 - **Transfer:** This can be a specific transfer of good or a general transfer (Inheritance, merger etc.). This can be done via a contract. Requirements (mention these!):
 - Title: Refers to legal ownership or the right to ownership of a product
 - Power to dispose: The legal capacity to sell, transfer, or otherwise convey the property to another party
 - Delivery: This requires willing acceptance of the other person (e.g. dumping trash in front of someone's house is not a delivery). Kinds of deliveries:
 - movables: possession (sometimes deed + registration)
 - immovables: deed (+ registration)
 - claims: notification, or deed + registration
 - IP rights: deed (+ registration)
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Insolvency

The claims are pooled, but only those on own property (so no lease etc.). Leased objects need to be given back to the lessor. Some parties have precedence with security rights (by deed), such as mortgages with pledges. These pledges will need to be sold and given to mortgagees.

2.2 CONTRACT LAW

Clauses: Defines the right and responsibilities of each party.

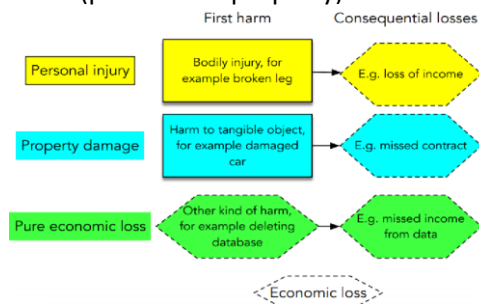
- Warranties
 - Limitation of remedies
 - Liquidated damages
 - Penalties: Prohibited in some countries
 - Termination clauses
 - IP clauses
 - Jurisdiction clause/choice of law
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Good faith in contracts:

- **Supplementation (gap-filling):** Gaps in the contract are filled in by court on the basis what is reasonable
 - **Interpretive (intentions):** Since it can be subjective, the interpretation of the contract is guided by what reasonable parties are supposed to have intended
 - **Corrective:** Unreasonable behaviour is not allowed, even when it is included in the contract. Unfair clauses are not binding (EU Directive 93/13)
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!! Steps to invoke a remedy (Name these steps on exam!)

1. **Breach:** A party fails to fulfil its contractual obligations. Important to first look at whether it is an obligation of means (contractual agreement of HOW it should be done) instead of obligation of result (WHAT should be the result) to see if there is an actual breach
2. **Default:** The breached party must be in default. In some cases, a notice of default is required to be able to proceed. Not always necessary, such as when fulfilment is impossible or time is of the essence
3. **Attributable:** No force majeure (when non-performance is caused by a factor not attributable, does not come at the risk and account of party in breach).
4. **Remedy:** Note that there can be time limits in the statute of limitations (i.e. a limited period to complain and claim remedies)
 1. **Specific performance:** A court can give this order. The party at fault needs to do something. This is the primary remedy in civil law, but in practise it is damages in both common and civil law
 2. **Damages:** serve the aim of compensation of the aggrieved party: the award of damage is assessed at the amount of damage suffered. There must be a sufficiently close causal connection between the breach and the damage, and foreseeability (see Hadley v Baxendale case). May be limited by limitation clause by the amount (such as liquidated damages, meaning a fixed amount) and kind of damages. Pure economic loss is usually not recoverable (especially not in USA). Claim when physical harm (personal or property) is the cause of the economic loss



3. **Termination:** Breached party may need a notice and can only terminate of the notice period, or court decision to do this. The way how to do this can be captured in termination clauses. Survival clauses (e.g. confidentiality) are still in effect even after termination

Case Hadley v Baxendale – Foreseeability

Hadley had a mill that needed repairment. Baxendale did, due to negligence not deliver a repaired item on item, resulting in loss of income for Hadley. The court made an important distinction between first harm and consequential losses. Since Baxendale could not have know time was of the essence, he could not foresee the consequential losses. The breaching party is only liable for the losses that he could have foreseen on the information available to him

2.3 TORT LAW

Tort law: The part of private law concerned with non-contractual liability, such as trespass, negligence, fraud etc. For every kind of tort, there is a different regime. Torts can be broadly perceived as more detailed categorization of fault. It is the prohibition of harming others, and aims for compensation if that is the case.

!! In order for liability to be the case. The three basic elements of fault liability (Name these on exam!):

- 1) **Fault:** Categorization in Dutch law (Art. 6:612 section 2 Dutch Civil Code):
 - a. Infringement of right
 - b. Breach of statutory duty
 - c. Negligent conduct: No undue risks for the other's interests. An open norm (broad, so it is open for case-specific implementation. It is sometimes not completely prohibited to avoid harming other's interest, e.g. rescuing a drowning person when you can't swim). The reasoning of a reasonable man is used. Pure omissions refer to not taking an action, whereas an act is taking an action. Three requirements:
 - i. Duty of care (reasonable man test)

- ii. Breach of duty
- iii. Harm as consequence
- 2) **Causality:** Attributability
 - a. Factual causation: Establishing a causal connection. **Conditio sine qua non** (but for test): Would it have happened if an earlier event didn't happen?
 - b. Legal causation: Limiting extent of liability. Not all factual causations require legal action (e.g. blaming school for having classes when causing an accident on your way to school). Again, remoteness and attributability play a role (see remedies part)
- 3) **Harm/damage:** Problem of proof (can be challenging to support this claim), and not all kinds of damages are always compensated.
 - a. Material damage (physical injury, property damage etc.)
 - b. Immaterial damage (privacy, slander etc.). In common law, there is a punitive element (so not only compensation, but part of the compensation is also punishment)

Other forms of liability:

- **Strict liability:** Fault or negligence is not a prerequisite (e.g. when mountain climbing, where the dangers are known)
- **Liability based on duty of care of the guardian:** Parents can be liable when harm comes to their child
- **Vicarious liability:** In the case of an employee, the employer will have to pay
- **Liability for objects:** e.g. manufacturers can be liable for a defective product, or a pet owner of a dangerous dog

Data related issues may refer to other law, not tort law:

- Intellectual Property infringement: statutory law (IP-law)
 - Privacy violation: privacy law
 - Destroying data: criminal law
 - Internet Services Providers (ISP): Digital Services Act and Digital Single Market Directive. Sometimes exemptions apply. When that's not the case, liability is determined by national law (i.e. negligence, defamation, IP infringement)
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CLUSTER 3 - INTELLECTUAL PROPERTY RIGHTS

Intellectual property (IP): Has both elements of property law and contract law. It is an incentive to innovate, create and share. It gives the creator control and the ability to reap financial rewards. It artificially creates rivalrous and exclusivity

Subject matter of IPRs are:

- **Non-rivalrous:** If one can use it, someone else can too
- **Non-exclusionary:** No one is excluded from using it

	Trademark	Trade secret	Patent
Definition	Developed as a badge of origin and a verification of quality. Needs to be registered. It is broad, including words, personal names, designs, letters, numerals, shape and colors (but only in combination with shape and design, such as a red sole). Infringement is the case when consumers are misled and misidentify	Protection against improper appropriation, use or disclosure. Not the protection of an idea or data per se. It is mainly usable if a secrecy barrier is difficult to take or infringement is difficult to detect. From a societal perspective, this may hamper innovation as products such as algorithms can not be improved by others.	The rules are documented in the European Patent Convention (EPC)

Requirements	1. Sign 2. Capable of being represented graphically : Sounds can be represented via notes (Coca cola jingle), but not smell (although if very distinct, such as tennis balls smelling like freshly mown grass, it is allowed) 3. Sign needs to be distinctive : Consumer shouldn't get confused	1. It is a secret , in the sense that it is not well known to people familiar within circles that normally deal with that kind of information 2. It has commercial value because it is secret 3. Subject has taken reasonable steps to keep it secret (such as with non-disclosure agreements)	1. Invention : Not naturally occurring 2. Novelty : Not obvious to a Person Skilled In The Art (PSITA), so not trivial patents. This may give rise to issues in software, which is patentable but may have little no inventive steps 3. Industrial application : Commercial value and useful
Time period	No time limit	No time limit	20 years (but may differ per jurisdiction)
Registration	Optional	Optional. Can be useful as evidence	Required at a patent office. First come, first serve
Cost	Varies	Cheaper	More expensive

Copyright

Literary and artistic works are protected, as decided in the Berne Convention. Think of paintings, print, sculptures, photograph, movies, architecture, computer programs (software) and original collections such as poems and perhaps databases. It is not a protection of ideas, but a protection of the expression of a creation (the author's own intellectual creation). Considered in isolation, it may not be original, but the choice, sequence and combination of it may be considered an intellectual creation.

Exclusive rights: A bundle of rights that only the owner of the copyrighted work, and those authorized, may use for exploitation. Exclusive rights:

- **Exploitation rights:**
 - Reproduction rights: direct or indirect, temporary or permanent reproduction by any means and in any form, in whole or in part (InfoSoc Article 2). Private use back-up copies are an exception (Art 5). See also ACI Adam case
 - Making it public: There is communication to the public when:
 - There is an act of communication: Such as a hyperlink, which is allowed to publicly available copyrighted material (Svensson case)
 - To a (new) public: The Svensson case is not applicable when the content is for only a selected public (e.g. subscribers)
 - Adaptation, translation and arrangement
- **Moral rights:** The right to be recognized as the author of a creation or work

Exceptions: There are many exceptions in Art 5 InfoSoc, such as making caricatures. On the exam, if it is widely done, it is probably an exception

Text mining: It is allowed for scientific research when the matter can be lawfully accessed (Art 3)

Infopaq case – Summaries on copyrighted material

Infopaw was scanning newspaper articles to create summaries and sending it via email to customers. The plaintiff, Danske Dagblades Forening accused, successfully, of Infopaq infringing copyright for not obtaining copyright holder's consent and using it for commercial purposes.

ACI Adam and Others case – Private use

The private use exception cannot be used as a defense for downloading unlawfully uploaded content

Software

These types of copyrights have a special software directive. Art. 4 of the directive forbids reproduction, translation, adaption etc. **First sale exhausts the distribution right**, meaning that the original owner cannot sell that particular sale again

Decompilation (Art 6): Reproduction and translation of code allowed, provided it is to achieve interoperability (ability of software to work together). It can not be used for further purposes or shared with others. It also cannot be used to create a similar program (**reverse engineer**)

Microsoft case – Selling backup copies

Consumers are not allowed to sell a back-up copy, unless it is for private use

SAS v WLP case – Decompilation

The programming language, functionality of the program and file format is not protected. A licensee is allowed to make the program interoperable.

Database

This has a special directive as well: the database Directive. It defines it as a collection of independent works, data or other materials arranged in a systematic or methodical way and individually accessible by electronic or other means. It can include literary, artistic, musical or other collections of works or collections of other material such as texts, sound, images, numbers, facts. Database must be original

Protection requirements (Art. 7): Your database has sui generis rights (See BHB/William Hill case) when one of the following applies: Note that this does not include the investment used for the creation of the materials (e.g. computers) which make up the contents of the database):

- **Quantitative investment:** How much data? So the volume of the data in relation to the total volume of the database
- **Qualitative investment:** How important is the data? Requires one of the following:
 - Obtaining: Collection of data. Only the resources used to seek out existing independent materials and collect them in the database count as investment
 - Verification: Accuracy and reliability. The resources used for verification for the creation of the materials (so not the database) are not taken into account
 - Presentation: Layout and structuring

Lawful user (Art. 8): May extract and/or re-utilize insubstantial parts of the contents, evaluated qualitatively and/or quantitatively, for any purposes whatsoever of a database which is made available to the public in whatever manner, as long as it doesn't conflict with normal exploitation/unreasonably prejudice legitimate interests of maker. However, repeated and systematic extraction and/or reutilization of insubstantial parts is still infringement

BHB/William Hill case – Sui generis rights

BHB compiled and managed a database concerning horse races. William Hill published a small portion of the data on his website. The judge clarified what is meant with sui generis rights, ruling that a 3rd party is allowed to have the same database as long as it didn't extract a substantial part of the original database

CLUSTER 4 - PRIVACY AND DATA PROTECTION

Right to privacy: Right to be let alone is conceived as the freedom from any unauthorized intrusion or interference by public and private bodies into private life

Right to data protection: It is based on the concept of personal data, requires that the (authorized) use of the same by private and public bodies is made in accordance with specific legal standards

General Data Protection Regulation (GDPR): Regulation about the processing of personal data. Not applicable when outside the EU (See Google Spain case for nuance), by a natural person in the course of a purely personal or household activity, or for authorities for safety

Google Spain case – The right to be forgotten

The plaintiff, a Spanish national, argued that Google should remove outdated search results regarding his home on an auction on the basis of the right to be forgotten. The court ruled that the GDPR was still relevant when a company is operating in the EU, even when the processing of data finds place outside the EU. This to avoid multinationals avoid the GDPR rules by processing it in another country. Since Google is the controller in this case, it can be required to remove these links, but this not an absolute right. Court ruled that that there should be a

balance between privacy rights and the public's interest in accessing information. With this in mind, the judge said that Google had the right to publish information, as the auction has the right secure as many bidders as possible

Actors in data protection law:

- **Controller:** A natural or legal person who determines the purposes and means of the processing of personal data. Must comply with GDPR. E.g. a telecommunication provider is only a controller for the traffic and billing data, but not for any data transmitted. If any, (sub-) controllers need to be appointed
- **Processor:** Processes data on behalf of the controller. Must maintain documentation, conduct assessments and pay the necessary fines as well
- **Data protection officers (DPO):** Needs to be appointed
- **Data protection authorities (DPA):** Controllers need to cooperate
- **Data subject:** The person whose data is processed

Data protection principles:

1. **Lawfulness, fairness and transparency:**
 - a. Lawful: A legal ground to justify the processing of personal data
 - b. Transparency: Data subjects need to be informed
 - c. Fairness: Transparent and ethical
2. **Purpose limitation:** Controller needs to determine the purpose in advance. It needs to be specific and clear so data subjects know what to expect. If not, it is unlawful and any data may not be further processed if it is incompatible with these initial purposes. Some purposes are always compatible (so you don't need permission for all data subjects here):
 - a. Archiving purposes in public interest
 - b. Scientific or historical research purposes
 - c. Statistical purposes
3. **Data minimisation:** Controller must use as few personal data as possible. Excessing data must be deleted immediately. So it must be:
 - a. Adequate
 - b. Relevant
 - c. Limited to what is necessary
4. **Accuracy:** Accurate and up-to-date. It must reflect reality. The importance depends on sector (e.g. creditor card history may be more relevant here). Steps must be taken to ensure it can be erased or rectified without delay
5. **Storage limitation:** Only saved as long it is necessary for the purpose. Controller needs to establish time limits and erase them after the limits
6. **Integrity and confidentiality:** Controller needs to ensure adequate security. In case of a data breach, the Supervisory Authority must be notified within 72 hours. If this breach also imposes high risks to the rights and freedoms of natural persons, these subjects need to be informed. By default, processors need to take the following two measures to ensure purpose limitation, period of their storage, accessibility (without the individual's intervention):
 - a. **Technical measures:** e.g. encryption, pseudonymization
 - b. **Organizational measures:** e.g. locking important data away and manage access
7. **Accountability:** Controllers need to be able to demonstrate compliance with data protection rules. It must maintain a record of all processing activities (e.g. purposes, time limits, transfers, categories, technical and organizational measures), and the valid consents etc. This also involves a risk-based approach by doing risk analyses and objective risk assessments, and adopt risk-measured responses on a case-by-case basis. In case of high risk, a Data Protection Impact Assessment (DPIA) and prior consultation of supervisory authority

Legitimate grounds to process data:

- Consent by data subject. It's valid according to GDPR when it is:
 - **Freely given.** Imbalance of power may result in invalid consent
 - **Specific** for purpose of processing in clear and unambiguous language. Also granular, need consent for every other purpose
 - **Informed:** Subject has an understanding of events, implications and consequences of refusal
 - **Unambiguous:** No reasonable doubt on intention to consent. No answer is not consent

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- **Provable:** Controller can proof consent
 - **Contract:** Processing is objectively necessary for performance contract, including pre-contractual relationship (i.e. checks needed before entering contract).
 - **Legal obligation:** For compliance with the law
 - Vital interests of the data subject
 - Public interests by an official authority
 - **Legitimate interest:** Three important questions need to be answered affirmatively:
 1. Is your interest legitimate (security, research etc.)?
 2. Is the processing of data necessary to achieve the legitimate interest?
 3. Is your interest overridden by the rights/interests of data subject?
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Special personal data (Art. 9 GDPR): Data that reveal religious beliefs, political beliefs, health etc. They pose a heightened risk when processed. Is prohibited, unless exception apply (e.g. explicit consent)

Data subject rights:

- **Right to be informed:** When the data is collected and their intended use in a clear and concise way. The controllers identity, purposes, categories, recipients, ways to exercise rights of data subjects, transferred to a third country or international organization, time limit, existence of automated decision-making and their right to lodge a complaint
 - **Right to access:** Subject must be able to get confirmation whether the data has been processed and the information concerning the processing, with a copy of the personal data
 - **Right to rectification** of incorrect/incomplete data without undue delay
 - **Right to be forgotten:** Erasure of data if:
 1. Request is on specific grounds
 - No longer necessary for the purpose of collection
 - Withdraws consent
 - Objects to processing
 - Unlawful processing
 - For compliance with a legal obligation
 - The collected data was in relation to the offer of information society services (service via electronic means, such as web shops)
 2. Exceptions: Request is not successful when:
 - Exercise of the right of freedom of expression and information
 - Compliance with a legal obligation which requires processing
 - Protecting of public interest in the area of public health
 - Archiving purposes in the public interest, scientific, historical or statistical research purposes
 - For the establishment, exercise or defence of legal claims
 - **Right to restrict processing:** Such data will no longer be processed for a while, except for storage. Cases:
 1. Accuracy is contested
 2. Processing is unlawful, but subject doesn't want erasure
 3. Controller no longer needs personal data, but the data subject has to for legal purposes
 4. There is a pending request whether legitimate ground of controller override those of data subject
 - **Right to data portability:** Subject can receive a structured, machine-readable format of personal data, and transmit this to another controller (e.g. a competitor). This to prevent a lock-in where a consumer is always stuck with a company who has their personal data. Two conditions for this right:
 1. Processing is based on the consent legal grounds or on the contract legal ground
 2. The processing is carried out by automated means
 - **Right to object** to processing on grounds relating to his/her particular situation, unless the controller demonstrates compelling legitimate grounds for the processing which overrides the interest of data subject
 - **Right in relation to automated decision making** (solely by automatic means without any human intervention) and profiling (automated process to analyze and predict personal aspects)
 1. Decisions with legal effects: E.g. social benefit grants
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2. Decision with significant effect: E.g. decision over employment, access to health services
3. Exceptions:
 - Necessary for performance in contract
 - Authorized by Union or Member State law and has suitable measures to safeguard subject's right, such as algorithmic auditing and a trigger for a human review
 - Explicit consent of subject

International data transfer: Preventing from data being unprotected in another country, free flow of data is only allowed when there is at least one of the following:

1. **Adequacy decisions:** When country has law essentially equivalent to EU law
2. **Appropriate safeguard:** When the party has binding corporate rules, standard data protection clauses (SCCs), approved code of conducts and approved certification mechanism
3. **Derogation:** As a last resort, data transfer is still allowed when there is a legitimate ground (see earlier). Even if none of these apply, a transfer can still occur if it is not repetitive, concerns only a limited number of subjects and is necessary for the purposes of legitimate interest. Controller must provide safeguard and inform supervisory authority

CLUSTER 5 – ETHICS

Garbage in-Garbage out: Refers to the fact that biased training data will lead to a biased algorithm

Collingridge dilemma: Controlling or influencing the development of the technology is difficult because of two reasons:

1. Power problem: Control or change is difficult when the technology has become entrenched
2. Information problem: Trying to do this before the technology is entrenched is difficult, because its impact cannot be easily predicted until the technology is extensively developed and widely used

Positive discrimination: Instead of giving a particular group less rights, you give them more rights. Not always allowed

Difference law and ethics

Concept	Law	Ethics
Meaning	Systematic set of rules that govern society as a whole and its members	Ethics is a branch of philosophy
Content	Set of rules (directives, regulations, national laws...)	Guidelines, principles, values
Who is in charge?	Government	Individuals (professionals), companies
Goal / Objective	Maintain social order and provide protection	Assists people in their everyday moral conduct
Expression	Explicit and transparent. Written down	Implicit and opaque. Abstract
Binding?	Legally binding. Punishment (fine, jail,...)	Not legally binding, but social repercussions

Layers:

- **Values:** which values are embedded in the technology? What did the inventors / developers have in mind?
- **People:** which virtues should be developed?
- **Organisation:** how can the company / team / organization be structured so as to maximally comply with the values that the people have, and that are intrinsic to the functioning of the company?

⚠ Ethical theories: Also sometimes referred to as **theories of justice**. These might be hard to implement since people have clashing values and have different views of what is right and good.

	Virtue Ethics	Deontological Ethics	Consequentialism
Inspired by	Aristotle	Emmanuel Kant	Bentham and others
Main question	What should I, as a person of virtue, do?	What if everyone behaved this way? (Kant's Categorical Imperative, maxim)	What is the net value of the good and the bad consequences?
What is important?	Introspection and inward reflection	Aims and duties	Consequences
Description	By being honorable, practicing honorable things, and thinking honorable thoughts, we become those characteristics. One could describe feelings and actions on an interval going from excess (vice) to deficiency (vice), with mean (virtue) in the middle	Morality of an action can be found in its intention, rather than the consequences. Ethical actions should follow universal dogmas or laws. People should follow these rules (see maxim)	It quantifies the good and bad consequences. It does the action if the good outweighs the bad. How the net value can be quantified depends on the form. Utilitarianism looks at happiness over a long period of time, hedonism at pleasure
Flip the switch in the trolley dilemma?	Depends, would a person of virtue sacrifice one person to save five? The answer varies per person	Depends, what if everyone started sacrificing persons to save others? An absolute deontologist might not flip the switch	Yes, one person dead outweighs five persons dead

Data security: Concerns the protection of information from unauthorized access, disclosure, alteration, or destruction

Data privacy: Concerns the right of individuals to keep their personal information and activities confidential. Note that there are multiple definitions of privacy, such as privacy as control or privacy as contextual integrity (it is not an absolute right, but depends on the context, according to Helen Nissenbaum)

Responsibility: Task oriented. A sphere of duty or obligation assigned to a person by the nature of that person's position, function, or work.

Accountability: Outcome oriented. Implies answerability for the outcome of the task or process.

Transparency: Refers to the openness and accessibility of information or process

Explainability: Refers to the translation of complex processes, such as code, how algorithms come to decisions etc., to an understandable explanation for non-experts, without losing crucial details

Equality: Everyone has equal opportunities, rights and status, free from discrimination. So in the example of watching a match, everyone has the same number of crates to stand on

Equity: Some groups need more support than others. It's about fairness in the distribution of opportunities. So in the example of watching a match, a tall person doesn't require a crate whereas a small person has two

Autonomy: The independence and authenticity of the desires (values, emotions, etc.) that move one to act in the first place

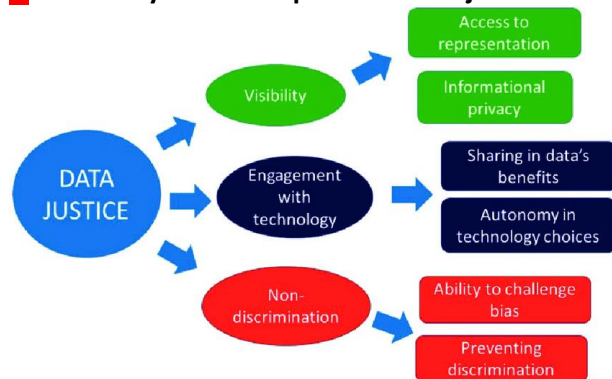
Freedom: The ability to act without being dominated and constrained

- **Negative freedom:** Freedom from constraints. It is the absence of obstacles on one's actions, such as freedom of speech
- **Positive freedom:** Freedom to fulfil one's potential and achieve self-determined goals, such as education and healthcare. For example, citizens of a country with a non-interfering government can lack the resources to make something of their lives and therefore lack this freedom

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- **Liberal freedom:** Autonomy. The focus is on limiting the power of the state and other authorities to ensure that individuals have the space to pursue their own goals and happiness without undue interference
 - **Neo-republican freedom:** Not only the absence of interference from the state, but also the absence of domination by others. For example, a slave who has everything wants but has a boss who can take his freedom at any moment, does not have this freedom
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Veil of ignorance: A thought experiment by John Rawls to address social injustice. Imagine if you do not know your gender, race, sexual orientation and you had to make a decision about the principles that govern a society (you are in the original position). This experiment helps shape a society that is just and fair for everyone

Linnet Taylor's three pillars of data justice: A theory of justice applied in the context of data



Ethical white washing: Companies have their own private objectives, such as making profits and maximising market value. However, society demands that they are also ethical. They then pick the ethical model which is easiest to integrate to give a positive image to the public and also avoid regulation
