

## Example of Final Test PrivLaw\_EN

1. **Explain in short the difference between compliance and law.** (5 points)
2. **Please explain why in risk management a collaborative risk map is in many cases usefuller than the classic „top-down“-approach. Name at least 3 reasons.** (5 points)
3. **What are upon the GeBüV the main principles of an archiving process?** (5 points)
4. The MeiCo AG - a Swiss trading company - uses for the job applications the online-service from yourdreamjob24.ch. Candidates have to upload all their application information as CVs, job references etc. directly to that platform. Yourdreamjob24 ask you further about your family members (name, age, address), your relationship status, former employers, reasons of termination, your health status, hobbies and your former salary. You only can finish your application if you answer all the requested question.

Question:

**Check whether data protection principles (upon the new Swiss Data Protection Law) are affected here and, if so, which ones.** (10 points)

5. Hotel "Astoria" in Lucerne uses a guest-database (CRM - CustomerRelationshipManagement) to collect centrally all guest information (name, address, family members, card-numbers, wishes, experiences etc.). The guest-database is also accessible by a mobile-App. The employees have access to the system with the user-ID "Astoria" and their three-figure personal-number as password (example: "Astoria" & "456").

Alfredo who lives just the opposite side of the Hotel "Astoria" accidentally found out that he has over WiFi access to the guest database. He "played" a bit with the user-IDs and the passwords and easily got access to the system. As he informed Astoria's manager about the hotel/manager filed a criminal complaint against him by the police.

Questions:

**a.) Advise Alfredo about his risks to be sentenced for "hacking"? Name the correct articles.** (5 points)

**b.) What if the Hotel Astoria publicly accuses Alfredo of stealing data in violation of the facts? Name the correct articles.** (5 points).

6. Linda - CIO of the Pasadena AG found out today (23.06.23) that the former employee Thomas started an own website (pasadena.sucks). There Thomas complains about his "absolute disastrous" time at Pasadena AG. He blames his superior Cathrine for beeing "selfish, rude, incompetent and ugly". He publishes further internal papers that should prove that the company cheated him about paying his bonus. In reality he got the first year a fair bonus but the second year he

didn't reached the milestones. Linda's investigation shows that Thomas already started his allegations already this January 2023.

Question:

**Check whether the a.) Pasadena AG and b.) Catherine can take legal (including criminal) actions against Thomas or not. Which ones? (10 points)**

7. The restaurant "Galmihorn" sits in the mountains high above the village of Münster/VS. Owner is Franz Bregy. His brother Ferdy is the mayor of Münster/VS. Due to an old contract - stated also in the property-registry ("Grundbuch") - between the "Galmihorn" and Münster/VS a water pipe that delivers water to the village belongs the restaurant "Galmihorn" but the maintaining-costs have to be payed by Münster/VS.

During an inspections Franz sees that the water pipe has a big hole. He organize the plumber to repair. Finally - 100m of the water pipe had to be replaced - quite costly. Ferdy Bregy is very upset because of the unexpected high costs for his municipality.

Question:

**a.) Explain whether for the repair of the water pipe public law or private law is applicable. (5 points)**

**b.) If the village of Münster/VS refuses to pay - what possibilities has Franz to proceed? (5 points)**

8. **State whether the following statements about criminal law are true. (8 points)**
- a. Only those who are proven (cumulatively) to have acted culpably, unlawfully and in accordance with the offence can be criminally sentenced.
  - b. The police are always responsible for criminal investigations. After completion of the investigation (report with criminal complaint), they refer the case to the public prosecutor for assessment.
  - c. If the offence is not reported within 3 months, the offender usually goes unpunished.
  - d. Facebook, Twitter or Clubhouse are American companies. There, the principle of freedom of expression strictly applies. Therefore, Swiss criminal prosecution for defamation is out of the question.
  - e. As a "private criminal prosecutor" (Privatstrafkläger) you get additional rights in the criminal proceedings, ~~but may also bear the costs.~~
  - f. Swiss criminal law is characterised by the so-called "talion principle", i.e. the "reprehensibility" (Art. 47 Abs. 2 StGB) of an act is essentially decisive for punishment.
  - g. It is possible in Switzerland for the convicted person to continue to be locked away despite serving the sentence.
  - h. Fines ("Bussen") are adjusted to the amount of income and/or assets.
  - i. The punishment of data damage (Art. 144bis StGB) requires that they were specially secured and that the perpetrator overcame this protection.
  - j. The local jurisdiction of the prosecution authorities results from the domicile/registered office/residence of the perpetrator.
  - k. In the case of criminal offences committed by employees on the instructions of the company, always the company is punished (instigation).

9. Mercedes launches a car sharing service under the label "Car2Go" and uses Smart and Mercedes models for car sharing. Car2Go is a free-floating service with minute-by-minute rental billing. Mercedes has registered the name "Car2Go" as trademark in Switzerland.

Audi Switzerland likes the brand and would like to use it for itself. Audi would like to register "Cars2go" as a trademark with the Swiss Federal Institute of Intellectual Property (IPI).

Questions

**a.) When registering a new trademark, does the IPI check whether the new trademark can be confused with an already registered trademark? (2 points)**

**b.) Based on the criteria used by the Swiss courts: Where do you see a likelihood of confusion between the two trademarks "Car2Go" and "Cars2go"? (6 points)**

10. The "Whyze GmbH" offers his customers an AI-driven service for marketing-optimization. Their AI-system learn from many datapoints of a company, its customers and their behaviour. As result the customers website, the wording and design there and even the price is dynamically and individually adapted for every customer. The Whyze GmbH promises an increase of 20%/year of the sellings due to their sophisticated AI-marketing-optimization.

The "Zetta AG" is one of the first customers of the "Whyze GmbH". The contracts with them exclude any liability. After 9 month of using the "Whyse-system" Zetta AG recognize unexpected a decrease of 40% of their sellings. The feedback of their customers is very negative. By investigation the case together with the Whyze GmbH, Zetta AG found out that the AI-driven service had a major failure that was obvious and should have been easily recognized during the testing phase of Whyze GmbH.

Questions:

**a.) The Whyze GmbH refuses to pay the damage of Zetta AG - pointing to their contract that exclude any liability? Advice Zetta AG about the legal situation. (10 points)**

**b.) The Zetta AG ask you, wheather Whyze GmbH is a Contract Data Processor or not. If so - what would be the legal consequences? (5 points)**