

UNIVERSITY OF CALIFORNIA  
LOS ANGELES  
SCHOOL OF LAW

Prof. SELBST

Law 484 § 1. Information Privacy and Data Protection

May 2, 2024

**Final Examination**  
**OPEN BOOK**  
**FULLY SECURE**  
(3 hours)

*Be sure to avoid making any remarks that will jeopardize your (or anyone else's) anonymity either on the exam or in any other context, before the exam grades are posted. Any questions during or after the exam should be addressed to the Records Office or Dean Martí.*

Exam Instructions

1. Please write your blind ID in the top right corner of this page.
2. This is an open book, fully secured examination. You may use your casebook, assigned course materials, class PowerPoints, and any printed notes and outlines you have prepared. You may not use electronic materials outside of the exam software.
3. The word limit for the entire exam is **4000** words. I will not read past that number of words. Do not waste words restating the facts or the exam question!
4. The exam has two fact patterns and three questions. I recommend you allocate your time according to the percentage indicated in each question/part.
5. Your answers will be evaluated according to responsiveness to the question, familiarity with relevant law, clear expression of your analysis, reliance on appropriate authority, and discussion of policy considerations where appropriate. **Do not skip steps in your analysis.** I want to see that you understand the relevant steps and considerations in answering each question, and that you have the ability to work through a problem by identifying and citing the correct sources of law.
6. You may leave the room to use the restroom or for an emergency, but you may not take anything out with you, or bring anything in with you, or consult anyone or anything while you are outside the room.
7. If you finish the examination early (up until the 5 minute warning is given), you may bring your exam materials to the front of the room and quietly leave the room. All of these materials must be turned in, or you will receive no credit for the examination.
8. Exam answers must be entered in the exam software, not on this question booklet.
9. If you feel that there has been a typographical error or other mistake on the exam, identify the error and answer the question as you think it should be corrected to read.

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**Select your answer choice** by clicking on the answer choice bar.

Click the **cross-out icon** to narrow down answers

1 OF 20 QUESTIONS VERSION 2M.8.0

Next

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**Click Toolkit to Access:**

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11 OF 20 QUESTIONS VERSION 2M.8.0

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- Click "Exam Controls" then "Submit Exam"
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UCLA School of Law

### **FANTASTIC FLOWERS SUBSCRIPTIONS**

For the last ten years, Beatriz Braga Borges has run a flower shop called Flores Fantásticas, in Lisbon, Portugal, which specializes in exotic flowers. Because of her specialization, she has a loyal and dedicated set of regulars that come back frequently, often asking her if she can surprise them with another flower that they had not seen or smelled before. Her shop is doing well and she is looking for ways to expand the business. She currently offers online ordering and delivery services, and decides to expand her internet presence by offering a monthly exotic bouquet subscription. She projects that subscriptions will offer both greater overall revenue and greater stability in costs and revenue over time. Beatriz is also passionate about flowers, and loves when she is able to help people find just the flowers they want, so she plans to offer three different subscription tiers and personalized flower recommendations. The tiers are based on how rare the flowers are that they will receive (and how much effort goes into finding them). Beatriz will also offer discounted rates for half-year and annual subscriptions, and free three-month subscriptions as a thank-you gift to her most loyal regulars.

Beatriz has put together a survey that she plans to ask customers to complete as part of the subscription signup process. It asks for their name, address, age, marital status, number of children in the household, number and type of pets in the household, as well as payment information, delivery preferences, and whether the delivery is going to their home, their office, or somewhere else. The survey also asks about the kinds of flowers they have enjoyed in the past, whether they are more interested in visual aspects or scents, what other types of scents they tend to enjoy, as well as spaces to describe their happiest and worst memories. (Beatriz believes this last bit of information will truly give her preferences a competitive edge, as scent is our sense most connected to memory.) Finally, she plans to ask each customer signing up for the highest subscription tier to either undergo a comprehensive allergy screen at their doctor and send in the results, or for an additional fee, she can send them a kit, where they can send back a vial of saliva that she will have tested for allergies.

Beatriz has kept logs of all her customer orders since opening the business, including name, payment, and address information for delivery customers. If someone becomes a repeat customer, she keeps notes on preferences from conversations with them. That way, when regulars ask for surprises or recommendations, she can consult the logs to see what they have ordered and liked in the past. Though Beatriz has been mostly successful at these predictions so far, she knows that she does not have the capacity to do this at the larger scale necessary for internet-based subscription services, so Beatriz plans to use AI tools to generate her flower recommendations. Lacking any technical training, she has found a niche data analytics firm in Brazil called Análise de Aroma (Aroma Analysis, in English) that claims expertise in discovering people's preferred scents from data, and she has been discussing her expansion plans with them. Beatriz intends to hire them, sending them the survey data to start. She hopes to use the free three-month subscription for regulars as a trial run, so she will also send all her log data from the past ten years.

#### **Question 1. (40 percent)**

You are an associate in the data protection practice of a mid-size Lisbon firm, and Beatriz has hired your firm to advise her business. A partner asks you to draft a memo analyzing Beatriz's plan. He wants you to discuss what Beatriz would have to do to ensure that her expansion plan meets the requirements of EU law, including any disclosures she must make or limitations on data processing she must comply with. He would also like you to note where the plan might not currently comply with EU law, and in those cases, to suggest changes to the plan to make it comply with the law. He says that you should also flag those issues that seem to raise data protection concerns but are actually not a problem.

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After some initial research, you discover that Brazil has a data protection law that went into effect in 2020, called the General Personal Data Protection Act (LGPD). The LGPD differs in some ways from the GDPR, but aims to be similarly comprehensive. You also discover that Brazil does not have an adequacy decision with the EU—only 16 countries have one as of yet—but news reports show that as of March 21, 2024 the EU and Brazilian governments were in discussions for just such a possibility. You should not assume anything else about the workings of the Brazilian government.

Please write the memo.

### **DETECTIVES DON'T ALWAYS MAKE GOOD CRIMINALS**

Chris Campbell lives in Massachusetts and until recently, worked as an insurance investigator at a company called Diagnostic Detectives, which provides investigative services for medical insurance companies. Campbell is divorced and owes a large amount of child support for his three kids, who live with his ex-husband. Diagnostic Detectives recently laid Campbell off without severance pay. Campbell worried that he would not be able to pay rent, let alone the child support.

Desperate, Campbell devised a plan. He remembered several cases where Diagnostic Detectives was hired by an insurance company, Ignoble Insurance, to look into claims made by doctors in a boutique medical center called Magnificent Medical. When Ignoble Insurance hired Diagnostic Detectives, the contract included a clause that required Diagnostic Detectives to “comply with all relevant privacy and security laws and regulations.” The database containing this data is password-protected, with the password updated every six months, and all the investigators at the company are told the password. On his last day at Diagnostic Detectives, Campbell downloaded all the data related to the Magnificent Medical cases onto a USB drive, dropped the thumb drive in his bag, and headed home.

The information provided by Ignoble Insurance included patients’ biographical information, payment information, contact information, medical histories, blood test results, diagnoses, and treatments, as well as the medical staff’s contact information and some other employment information. The database included dossiers on the doctors that were purchased through a third party internet-based people search service (a Spokeo competitor). There were also documents that came from Diagnostic Detectives’ investigations themselves. These included photographs of doctors entering and leaving their homes, their office, and other assorted places outdoors. There were also audio recordings, some of which are labeled in a way that associated them with the photographs—likely taken with company-issued long-range microphones per company policy—and others that were labeled only with dates.

Over the next week, Campbell examined all the information he downloaded. He discovered that the unlabeled files were recordings of people speaking in doctors’ offices. Campbell knew that sometimes, he and his colleagues would sign up as patients and plant bugs in a doctor’s office to find out more information for a case, but he did not personally work these cases and does not know how the recordings were obtained. Listening to the recordings, Campbell discovered that as of one year ago, Dr. Elise Evans appeared to be having an affair with a patient, Frank Foster, whose voice does not appear on the recordings, but whose medical record is in the files. Some quick web searching suggested that Evans is married and Foster is not, while both have lucrative careers. Campbell decided that he could use this information to get money out of them. But before he could do so, he wanted to determine whether the affair was ongoing.

Over the next week, he followed both Evans and Foster. Limiting himself to visual surveillance, he took many photos of each at their homes, offices, and assorted other commercial and residential locations, following them each for at least three hours each day that week. As far as Campbell could tell, Evans and Foster did not meet any time during the week, so he concluded that their affair had ended. During the week, Campbell saw that Evans lives in an apartment building and could not see more, because he did not follow her in. Foster, however, lives in a house with big picture windows facing the street. One night during the week, Campbell followed Foster to a restaurant, where he met another woman for a meal, before they eventually both returned to Foster’s house. Campbell proceeded to take pictures of both, as they engaged in intimate activities in full view of the picture window, easily seen by any passerby.

After the week of surveillance, Campbell decided first to extort Evans by threatening her medical

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license. He called her office from a hidden number and informed her about the recording that shows she had an affair with her patient. He said that unless she paid him \$100,000 by the following weekend, he would report the affair to the Massachusetts medical board. He said he would follow up with instructions for where to send the money. When he called back in two days, Evans did not pick up. He tried again an hour later, and again Evans did not answer. Frustrated, he decided that he would punish her for disobeying, by sending copies of the recording to the medical board and to Evans' home, addressed to her husband.

Deciding to try another plan, Campbell realized that because he had nearly all of Foster's personal information, biographical information, and employment information, he could take out a loan in Foster's name. Because he only possessed the last 4 digits of Foster's social security number in the file, Campbell went to a site he knew on the dark web and paid \$30 for Foster's information, which was easy for them to locate given Foster's name and birth date. Campbell then proceeded to create fake identification documents, going to a local bank to take out a loan. The bank processed the loan application and told him that he will hear back within a few weeks.

Not being a very experienced or talented criminal, it did not occur to Campbell until it was too late that Evans had called the police as soon as she received Campbell's threat. After the medical board contacted Evans about the recording, she updated the local police, who then alerted the local FBI field office because they suspected that the recording constituted cybercrime that the FBI was better equipped to address. Separately, the bank also felt that there was something suspicious with the loan and had sent a query to the corporate office, who alerted the FBI. After getting access to the recording from the medical board, the FBI realized the cases were related and the combined case was assigned to Special Agent Gabriel Gomez.

### **Question 2 (25 percent)**

After a relatively brief investigation, Gomez arrested Campbell in his home before he was scheduled to hear from the bank. The FBI arrived with an arrest warrant, and a search warrant for "materials related to the attempted extortion of Elise Evans and/or the fraudulent impersonation of Frank Foster." The FBI seized all of Campbell's electronics, including his computer and his phone. (Assume that the evidence was not in arm's reach such that it would constitute a search incident to an arrest.) They also seized a book that was turned over to an open page, so that only the cover showed. The book's title was "How to Build a Bomb: A Detailed Instruction Manual." Later analysis of the computer showed that the hard drive contained a copy of the recording in question as well as all the photos that Campbell took, and the phone itself contained the history of the call to Dr. Evans.

A few weeks later, the United States prosecuted Campbell for various federal crimes. During discovery, Campbell learned that Gomez found Campbell through data acquired via Section 702 of FISA. The dark web location where Campbell purchased Foster's social security number seems to be run out of Missouri, but has financial ties to a Russian cybercrime organization that the FBI monitors regularly. Gomez was able to find Foster's name by querying a database of foreign surveillance communications, which then showed that Campbell had communicated with them to purchase Foster's social security number. Gomez then sent a subpoena to Campbell's email provider for the contents of all emails sent by Campbell for the last three months. He next sent a subpoena to Campbell's cell phone provider for all of his phone logs over the same time frame, and cell site location data for the month before Campbell called Evans and two weeks after. The email and phone companies provided the requested materials.

Before trial, Campbell files a motion to suppress all evidence acquired from the search of his electronics, book, communications, location data, arguing that each was either illegal or fruit of the poisonous tree. You are a clerk for the judge who is overseeing *United States v. Campbell*. Please write a memo advising the judge how she should rule on this motion and why.

**Question 3 (35 percent)**

You are a well-regarded local plaintiff-side privacy attorney. During the criminal trial, which ends up covered extensively on local news, you learn about the extent of Campbell's conduct toward Evans and Foster, and start thinking about whether to approach them to file suit. Being somewhat familiar with the medical industry, you also recognize that Ignoble Insurance and Magnificent Medical may have relevant claims as well. You decide that you need to convince your partner that this case is worth pursuing and that you should offer services to one or more of them.

Please write a memo analyzing what claims each party has available against Campbell and/or Diagnostic Detectives, and the relative strength of each claim. You should also analyze claims where you cannot, yourself, file a lawsuit, but where another entity could instead enforce the law, because you believe that if official authorities investigate it will help your potential clients' settlement position.

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**Good luck with the rest of your exams!**

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