

# 1 JUS5630 assignment V21

**Please answer all questions. The questions do not have equal weight in the marking of the answers. Question 1 accounts for 40% of the final mark, question 2 for 10% of the final mark, question 3 for 10% of the final mark, question 4 for 10% of the final mark, and question 5 for 30% of the final mark. The word length for the entire answer is 3,000 words.**

1. Brusque Business (BB) is a 'gig economy' company that, somewhat similar to Uber, operates a digital platform to connect car drivers with potential passengers in order to offer the latter cheaper and more efficient transportation than a traditional taxi service offers. BB has its head office in Frankfurt am Main and conducts its operations across Germany. As part of the 'Terms of Service' that are included in the agreement between BB and the drivers who use its platform there is provision for the payment of monthly 'bonus' amounts of money to drivers who meet certain Key Performance Indicators (KPIs). The KPIs include criteria such as number of passenger rides per hour and customer satisfaction ratings. Calculation of the bonus payments is done by a computer program. Staff working in BB's payments department carry out sporadic checks of the computer calculations to make sure that the latter are roughly in line with the reported KPI measurements, and each bonus payment is accompanied by an email from BB's CEO, Mark Macho, to the driver concerned in the following terms: "Hi [name of driver]! You're doing really well and I have therefore decided that you deserve a bonus of [amount in Euros] for this past month's performance. Keep up the great service! Regards, Mark Macho". Do you think that the bonus payments system falls within the scope of Article 22 of the EU General Data Protection Regulation (GDPR), and if it does, what consequences does this entail for the ability of BB to keep the system operating? Provide reasons for your answer.

2. Consider the following variation on the scenario described in question 1. In order to help prevent instances of unruly, rude or violent passenger behaviour, BB decides that all drivers who use its platform must install a camera-like device in their cars. The device consists of a 5cm wide bulbous lens that is inserted into the foam layer on the ceiling of the car just above where passengers are usually seated. There is no sign posted in the car to alert passengers to the device, but the lens is clearly visible for passengers—and is meant to be so. However, the device does not have any function for recording or otherwise monitoring passenger behaviour—it is, in effect, a 'dummy' or 'fake' camera. After BB's decision is implemented, several passengers who take rides in cars with the devices installed react negatively to the devices. Believing that the instalment of the devices breaches the GDPR, the passengers request their local data protection authority to ban the use of the devices. Do you think that the instalment of the devices contravenes the GDPR? Provide reasons for your answer.

3. Consider the following variation on the scenario described in question 1. An Indian company, Remote Control (RC), which has its head office in Mumbai, acquires 60 percent of BB's shares and thereby takes control over BB. RC decides to continue BB's driver service operations in Germany, using the platform developed by BB and retaining BB's staff. Do you think that RC is now subject to the requirements of the GDPR by virtue of Article 3(1) GDPR? Give reasons for your answer.

4. In the context of measures to combat the ongoing COVID-19 pandemic, the respective data protection authorities of the Scandinavian countries have stated that information that someone is in quarantine is not "data concerning health" in the meaning of Article 4(15) GDPR when there is no further information provided on the cause of quarantine. The same applies in respect of information that someone has been in or returned from a "risk area" (i.e. an area where there is a relatively

high degree of virus transmission). Do you think the authorities' viewpoint is correct? Give reasons for your answer.

5. Consider the following claim: "The Court of Justice of the European Union has expanded the definition of 'controller' in the GDPR to such a degree that the definition has lost connection with the core concept of control". Discuss the validity of the claim in light of the Court's jurisprudence on joint controllership, focusing on its rulings in Cases C-210/16, C-25/17 and C-40/17.



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