

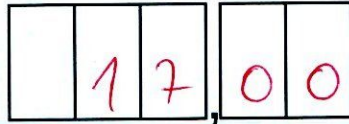
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Promo T1 SE

Date 15/12/16

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M1 - 2016

## MATIÈRE It law & Ethics

### IT Law

7,5/8.

① Under EU law, Kevin has a "cooling off" 14 calendar days period that starts from the moment he placed his order when he can return his goods without justification. Since he was not informed of his rights, this period is 1 year + 14 days "cooling off".

However, not all goods are eligible to this.

His concert ticket will not be refunded, as well as the online antivirus software. The first is provided on a specific date while the second, if it has been provided, is not refundable since downloading it makes him lose his right to cancel (digital content).

As for the DVDs, he can return them if their seals are not broken.

He can return the digital games if he wants.

The printer has a 2-year warranty under EU law, not 6 months as explained by the trader.

In this period, a faulty item must be repaired or replaced free of charge by the trader (legal guarantee).

However, he cannot ask for a full refund of his faulty cartridge. He must accept a replacement or a repair.

Six months is an additional commercial warranty given by the retailer

A partial or full refund is only possible if it is not possible to repair or replace the goods. ✓

Under the Article 11(2) of the E-commerce Directive, Kevin should have been able to correct his order before placing it - He should not have been charged of any fee he was not informed about: he could have set his delivery option to a lower option, corrected his double DVD request. ✓

Moreover, since he paid for an express delivery it is considered as essential and he should have gotten his items in 24 hrs, not 10 days. He could have cancelled the whole order because of that. ✓

Finally, there was no "click wrap" agreement but a "browse wrap" agreement. It is legal, but more likely to be rejected by courts. ✓

b) The retailer should not have refused the return of the cartridge. However, he is right to refuse the DVDs if they are not sealed, the concert ticket and the antivirus if downloaded.

The retailer should be aware that the printer has a 2 year warranty under EU laws.

The retailer can repair or replace the cartridge and not provide a full refund.

It cannot invoke an illegal term in the contract, because this term is null and void. unfair term.

The website is legally constructed, but not as strong as if he had used a "click-wrap" agreement and not a browse-wrap agreement, which is an implicit consent that is more likely to be rejected by courts. ✓

If the "cooling off" period was not mentioned in the "Terms & Conditions" page, it is increased to 1 year + 14 days. ✓

Finally, the website should have given Kevin the possibility to review and edit his order before placing it (double click validation).

He cannot pre-tick box to overcharge Kevin. ✓

~~1052/2~~

d) Even if the trader is based in France, since it <sup>carries</sup> directs commercial activities to the UK where Kevin

lives, the applicable law will be the law of the country in which the consumer is habitually resident. ✓ The U.K.

In this case, the UK law will be applicable. ✓

Unless, in the "Terms & Conditions" the trader has specified that French law should apply - which does not appear to be the case. ✓

## Ethics

4, 9/6.

First of all, she should mention her concerns with her advisors. She should try to tell them to make sure that each person has given his full consent, or their relatives if they are in charge of them.

Maybe she could come up with a simple explanation of what the device does and how it does it to make them understand.

The data collected by the system should be stored with very high level of security and not used without consent of the person. It should not collect more info than needed.

The persons should be allowed to review the data collected on them. The strictest confidentiality should be applied. \*

All this should be written in the contract they sign.

IF all the above is done and she stills not feel comfortable or her advisors do not agree, she should leave her job, no matter how interesting it is.

More arguments were needed.

\* The info should be displayed to nobody except the proper authorities.

## Practical exercise

2/2.

I think John should not accept to appear as an expert witness if he cannot inspect the system deeply.

As he says, he only has suspicions that could be very bad for the company.

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## MATIÈRE IT Law & Ethics

If he accepts to testify despite not having inspected the system as he wanted, he should really insist on the fact that his opinion is not based on solid facts but rather a suspicion, and more information are definitely needed to close the case.

### Practical exercise

1/2.

Currently, we do not have enough data to determine if there is a conflict of interest. For example, if Robert recommends an equipment he sales as an employee, does he get a percentage of the sale? If yes, there is a conflict of interest.

As a consultant, does he inform his clients of his other activity when he has to recommend an equipment? If yes, I would say that it is not a problem since the client knows Robert's advice on equipment might be biased. If not, there is definitely a conflict of interest (no "informed consent").

I think he should tell his employer about his other activity and make a decision if the Employer does not accept it.

He should disclose the conflict of interest to all involved parties

Another option could be to refuse to recommend any equipment

and leave this task to another person. This way, nobody  
would be ~~flawed~~ flawed.

More analysis was needed.

