

LAW 270/IT 870
“eDiscovery, Digital Evidence and Computer Forensics”

Outline and Syllabus – Fall 2009

Class Schedule:

Class meets Mondays, **(3 Hours) from 6:00 – 9:00 p.m.** Classroom assignment will be announced by the school. Class begins Monday, September 14, 2009. **We will meet on Mondays for a total of ten sessions.** Professors reserve the right to re-schedule a class, or change the order of class subject matters.

Case Book: **Electronic Discovery and Digital Evidence**, Cases and materials, Shira A. Scheindlin, Daniel J. Capra, The Sedona Conference, West Publishing 2009.

Course Professors:

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NOTE: When contacting us, we prefer email. Please place the words “eDiscovery Course” in the subject line. It will help prevent us from inadvertently deleting an email because we do not recognize the sender of the email.

Attendance:

Pursuant to JMLS policy, students are required to attend all classes scheduled. A student absent for more than 25 percent of the total number of class meetings, with the exception of excused religious observance, will not be allowed to write the examination and will receive a grade of WF (withdraw/fail) for the course.

Grading:

30% - Class Participation. **Class readings are critical.** Excessive absences will result in a reduction of the participation grade up to one full letter grade.

70% - TAKE HOME EXAM.

Exam

The take home examination will be anonymously graded. Exams must be submitted as a MS Word document containing no identifying information except the student examination number. Exam documents must be submitted by the due date via email to itcenter@jmls.edu and must contain the phrase “e-Discovery Exam” in the subject line.

Details of the exam will be discussed in class.

Additional Classroom Issues:

We will not distribute copies of power point presentations that are used for classroom instruction.

We generally will not allow our lectures to be recorded via any medium. If you have questions about this policy or need accommodations under the ADA or for religious observance, please contact the professors.

Course Readings:

The casebook Electronic Discovery and Digital Evidence will be **available in the book store**. The case book may periodically be supplemented with additional materials distributed via email

Course Schedule:

I. Class 1 (September 14): Carlson

- A. Introduction to Electronic Media / eDiscovery (Ch. I – pp. 1-66)
 - 1. eDiscovery in the Headlines
 - 2. Primer on Electronic Data
- B. Preservation and Discoverability of ESI (Ch. III – pp. 186-202;)
 - 1. History and Development of eDiscovery in the Federal Rules
 - 2. Discoverability of Electronic Data
 - a. Rule 26 Conference (Ch. III - pp.186 – 202)
 - b. Rule 16 Scheduling Conference (Ch III - pp. 186 – 202)
 - c. Rule 33 Interrogatories
 - d. Rule 34 Request for Production
 - e. Inspection of Hard Drives (Ch. V - pp. 267-275)
 - f. 30(b)(6) Witnesses (Ch. V - 276-283)
 - g. Not Reasonably Accessible ESI (Ch. V - 284-299)
 - 3. Subpoenas for Non-Parties (Ch. V - 325-343)
 - 4. Local Rules vs. Federal Rules vs. State Rules

II. Class Two (September 21): Zeller

- A. Privilege Issues from eDiscovery (Ch VIII – pp. 486-517)
 - 1. Risks of waiver
 - 2. Agreements between parties
 - 3. What precautions should be applied
- B. Ethics Issues Unique to eDiscovery (Ch. VII – pp. 443-485)
 - 1. Ethics
 - 2. Malpractice concerns
 - a. Standards of Legal Malpractice

- b. Cases involving paper discovery
- c. Obligations of Outside Counsel in Discovery
- d. Zubulake V implications on standard of care
- e. Vendor Negligence

III. Class Three (September 28): Chval

- A. “The” e-Discovery Process (Ch. V – pp. 218 – 248)
 - 1. Processing of ESI
 - 2. Culling/Searching/De-duplication
 - 3. Attorney Review
 - 4. Vendors and their role in eDiscovery
- B. Attorney Review Demonstration

IV. Class Four (October 5): Carlson

- A. Document Retention Policies (Ch. II – pp. 67 – 77)
- B. Implementing the Duty to Preserve (Ch. II – pp. 78 to 164)
 - 1. Commencement of the Duty to Preserve Data
 - a. Scope of the Duty
 - 2. Fulfilling the Duty to Preserve
 - 3. Preservation Orders (Court Ordered and Agreed)
 - 4. Litigation Tips
 - a. Dealing with the “Preserve Everything Letter”
 - b. Sending an Useful Preservation Letter
- C. Possession, Custody and Control Issues (Ch. II – pp. 164-185)

V. Class Five (October 12): Zeller

- A. Sanctions (Ch. VI – pp. 362-443)
 - 1. Plaintiff and Defendant Issues
 - 2. Good Faith vs. Intent

3. Sources of Sanctions
 - a. Rule 11 Sanctions
 - b. Rule 37 Discovery Sanctions
 - c. Inherent Powers of the Court
4. Rule 37 “Safe Harbor” Provision
5. Case Examples
6. Spoliation as a Separate Cause of Action

VI. Class Six (October 19): Chval

- A. Computer Forensics and Forensically Sound Collection (Ch. IV – pp. 203 – 218)
- B. Computer Forensic Investigations
- C. Understanding the Role of Computer Forensics in eDiscovery
 1. Distinguishing “Forensically Sound” measures from “Forensic” measures
 2. Understanding Preservation and Collection of ESI
- D. Metadata Issues (Ch. V. – pp.249-266)

VII. Class Seven (October 26): Carlson

- A. Costs Associated with E-Discovery (Ch. V – pp. 300-336)
- B. What are the Costs Involved?
 1. Attorney Review Time
 2. Preservation Costs
- C. Cost-Shifting Options
 1. Traditional View
 2. Rowe Decision
 3. Zubalake Decision

VIII. Class Eight (November 2): Chval

- A. Evidence Issues Associated with eDiscovery (Ch. IX – pp. 517-547)
- B. Authentication of ESI Generally

- C. Specific Examples of Evidentiary Issues
- IX. Class Nine (November 9): Chval (guest lecturers)**
- A. International Data Protection Issues (Ch. V – 344-359)
 - 1. Data Export Issues
 - 2. Data Privacy Issues
 - 3. Potential Criminal Issues
 - 4. EU / USDOJ Safe Harbor
- X. Class Ten (November 16): Zeller**
- A. Experts as it Relates to eDiscovery (Ch. IX – 548-560)
 - 1. Consulting vs. Testifying Experts
 - 2. Certification of Experts
 - a. Value of “Credentials”
 - b. Daubert Challenges
 - 3. Variety of Opinion Testimony Available
 - a. Existence of a particular piece of data.
 - b. Origin of Email
 - c. Questioned Document Analysis
 - B. What the future holds.
 - C. Final Exam (take home)
- XI. Extra dates (November 23 & 30)** may be needed if a class is cancelled

NOTE: This document supersedes all previous handouts and class information.