

Law 270/IT 870

eDiscovery, Digital Evidence, and Computer Forensics

Outline and Syllabus

Summer 2010

Class Schedule:

Class meets Mondays, **(4 Hours) from 2:00 – 6:00 p.m.** Classroom assignment will be announced by the school. Class begins Monday, June 7th 2010. **We will meet on Mondays for a total of seven sessions.** Professors reserve the right to re-schedule a class, or change the order of class subject matters.

Casebook: **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 “LLM 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.

Grading:

30% - Attendance and Class Participation- **Class readings are critical and may include a Quiz at each class.** Missing more than one class will result in a full grade reduction.

70% - EXAM

Exam

Details of the exam will be discussed in class

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

Additional Classroom Issues:

We will not distribute copies of power point presentations that are used for classroom instruction. We also will not allow our lectures to be videotaped or audio recorded. If you intend to miss a class we would suggest you contact a classmate to obtain notes from the missed class.

Course Readings:

The Casebook is available in the bookstore and supplemented via email

Course Schedule:

I. Class 1 (June 7): Carlson

A. Readings: Introduction, Chapter I (Pages 1-56), Chapter III (Pages 186-202), & Chapter V (Pages 276-283 & 337-344)

B. Introduction to Electronic Media / eDiscovery

1. eDiscovery in the Headlines
2. Scope of the eDiscovery Issue
3. Primer on Electronic Data

C. Discovery of “Electronically Stored Information”

1. History and Development of eDiscovery in the Federal Rules

2. Discoverability of Electronic Data
 - a. Inspection of Hard Drives
 - b. Request for Production
 - c. Interrogatories
 - d. 30(b)(6) Witnesses
3. Preservation Orders (Court Ordered and Agreed)
4. Subpoenas for Non-Parties
5. Local Rules vs. Federal Rules vs. State Rules
6. Subpoenas in the Criminal Context
 - a. “Custody and Control” Issues

II. Class Two (June 14): Chval

- A. **Readings: Chapter IV (Pages 203-218)**
- B. Introduction to Computer Forensics and Forensically Sound Collection
 1. Understanding the Role of Computer Forensics in eDiscovery
 2. Distinguishing “Forensically Sound” measures from “Forensic” measures
 3. Understanding Preservation and Collection of ESI

III. Class Three (June 21): Carlson

- A. **Readings: Chapter II (Pages 67-185), Chapter V (276-300, 337-343) & Chapter VI (Pages 362-390)**
- B. Costs Associated with E-Discovery
 1. What are the Costs Involved?
 - a. Attorney Review Time
 - b. Preservation Costs
 2. Cost-Shifting Options
 - a. Traditional View

- b. Rowe Decision
 - c. Zubalake Decision
 - 3. Case Studies
- C. Data Preservation / Anti-Spoliation
 - 1. Commencement of the Duty to Preserve Data
 - a. Scope of the Duty
 - 2. Spoliation as a Separate Cause of Action
 - 3. Fulfilling the Duty to Preserve
 - 4. Agreed Preservation Orders / Protective Orders
 - 5. Litigation Tips
 - a. Dealing with the “Preserve Everything Letter”
 - b. Sending an Useful Preservation Letter
 - 6. Document Retention Policies

IV. Class Four, (June 28): Zeller

A. Readings: Chapter VII (Pages 443-479) Chapter VIII (Pages 486-517), & Chapter VI (Pages 390-442)

- B. Sanctions
 - 1. Plaintiff and Defendant Issues
 - 2. Sources of Sanctions
 - a. Rule 11 Sanctions
 - b. Rule 37 Discovery Sanctions
 - c. Inherent Powers of the Court
 - 3. Good Faith vs. Intent
 - 4. Case Examples
- C. Privilege Issues from eDiscovery
 - 1. Risks of waiver

2. Agreements between parties
3. what precautions should be employed
- D. Ethics and Future Issues in eDiscovery
 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
- V. **Class Five, (July 12): Chval**
 - A. **Readings: Chapter V (Pages 218-275) & Chapter IX (Pages 517-547)**
 - B. Management of Electronic Data
 1. Processing of ESI
 2. Culling/Searching/De-duplication
 3. Attorney Review
 4. Vendors and their role in eDiscovery
 - C. Evidence Issues Associated with eDiscovery
 1. Authentication of ESI Generally
 2. Specific Examples of Evidentiary Issues
 - a.
- VI. **Class Six, (July 19th): Zeller**
 - A. **Readings: Chapter V (Pages 344-359) & Chapter IX (Pages 548-560)**
 - B. International Data Protection Issues
 1. Data Export Issues

2. Data Privacy Issues
 3. Potential Criminal Issues
 4. EU / USDOJ Safe Harbor
- C. Experts as it Relates to eDiscovery
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
- D. What the future holds.

VII. **Class Seven (July 26th)**

- A. **FINAL EXAM**
- B. **May have a take home exam assigned on July 19**