The assigned texts are Discovery Problems and Their Solutions, Third Edition, Grimm, Fax and Sandler (ABA Publ. 2013), and Managing E-Discovery and ESI: From Pre-Litigation Through Trial, Berman, Barton, and Grimm, eds. (ABA Publ. 2011). Although the first text includes, as an appendix, the federal civil discovery rules as codified at the date of publication of the text, there have been several amendments since then; thus you should always check the rules online to insure that you are relying on the current language. You are also responsible for having a hard copy of, or electronic access to, the Maryland Rules. The Federal and Maryland Rules of Civil Procedure are a litigator’s bible. It is critically important for you to read and understand them (and the assigned text) before class.

Half of your grade will be based on the discovery portion of the class and half on the ESI portion. Prof. Fax’s 50% will be based on a take-home exam at the end of the semester that will pose several “real life” discovery problems for your analysis. Professor Berman’s 50% will determined as follows: (1) 20% based on one “canned” writing project requiring no legal research; (2) 10% based on two short, ten-question, open book, true-false quizzes; and, (3) 70% based on a practical exercise at the end of the semester.

The practical exercise will be held on a Saturday or Sunday after the last day of class. Tentative dates are December 5 or 6. Students will participate in a mock Fed.R.Civ.P. 26(f) “Conference of the Parties” based on a canned fact pattern. No legal research will be required. This will be a team exercise and you will be encouraged to speak with your other team member and the opposing team prior to the conference. One team will represent ABC and the other team will represent XYZ.

- You may select your own team member. IF YOU DO NOT HAVE A PARTNER BY SEPTEMBER 14, 2015, please let Prof. Berman know.
- You may select the opposing team. IF YOU DO NOT HAVE AN OPPOSING TEAM
BY SEPTEMBER 21, 2015, please let Prof. Berman know.

If you do not provide notice, we will assume that you have selected team members and opposing teams.

All grading of written submissions will be anonymous. Please use your Student ID, not your name, on all submittals.

Because this class is a workshop, attendance is required. More than one unexcused absence may affect your grade, but will not reduce it below a C. If you cannot attend class for good cause, please email one of the instructors prior to class. While not formally graded, participation in class discussions is encouraged. Past experience demonstrates that students who do not participate in class frequently do not perform as well in the in final exercises.

OFFICE HOURS: We will meet with you before class on request. Given the late hour, it is more difficult to meet after class; however, we will make every reasonable effort to meet with you upon request. Telephone conferences can also be arranged on request. We prefer that requests be made by email if possible.

First class – Monday, August 17, 2015

READING ASSIGNMENT TO BE COMPLETED BEFORE FIRST CLASS:

1. DISCOVERY PROBLEMS AND THEIR SOLUTIONS, pp. xvii- xxvii
2. MANAGING ESI at 1-10, 13-22, 225-34, 247-64, 673-81.
4. Md. Rules 2-401, 2-402 and 2-403
5. Md. U.S. District Court Discovery Guideline 1, found at DISCOVERY PROBLEMS AND THEIR SOLUTIONS, Appendix 2, pp. 451-53.

MATERIAL WE WILL DISCUSS TONIGHT (Professor Berman/Professor Fax):

1. Introduction to course (Prof. Fax)
2. Pre-litigation duty to preserve, including cooperation – under federal law and Maryland law (Prof. Berman)

Second class – Monday, August 24, 2015

READING ASSIGNMENT TO BE COMPLETED BEFORE SECOND CLASS:

1. Maryland Rule 2-421
2. Federal Rule of Civil Procedure 33
3. DISCOVERY PROBLEMS AND THEIR SOLUTIONS, pp. 4-48
MATERIAL WE WILL DISCUSS TONIGHT (Professor Fax):

1. Interrogatories – Theory and Practice

Third class – Monday, August 31, 2015

READING ASSIGNMENT TO BE COMPLETED BEFORE THIRD CLASS:

1. Maryland Rule 2-422
2. Federal Rule of Civil Procedure 34
3. DISCOVERY PROBLEMS AND THEIR SOLUTIONS, pp. 50-58

MATERIAL WE WILL DISCUSS TONIGHT (Professor Fax):

1. Interrogatories – Theory and Practice
2. Requests for Production – Theory and Practice


Fourth class – Monday, September 14, 2015

READING ASSIGNMENT TO BE COMPLETED BEFORE FOURTH CLASS:

2. Review chapters in DISCOVERY PROBLEMS AND THEIR SOLUTIONS on interrogatories and requests for production

MATERIAL WE WILL DISCUSS TONIGHT (Professor Fax):

1. Requests for Production – Theory and Practice

Fifth class – Monday, September 21, 2015

READING ASSIGNMENT TO BE COMPLETED BEFORE FIFTH CLASS:

1. MANAGING ESI at Chaps. 4 and 14.
2. C. Ball, Introduction to Data Storage Media (2011)¹

MATERIAL WE WILL DISCUSS TONIGHT (Professor Berman/Craig Ball):

1. IT Forensics – deleting, recovering, storing, preserving, processing, etc.

Sixth class – Monday, September 28, 2015

READING ASSIGNMENT TO BE COMPLETED BEFORE SIXTH CLASS:

1. MANAGING ESI at 97-102, 110-48, 158, Chap. 21

MATERIAL WE WILL DISCUSS TONIGHT (Professor Berman):

1. Information Governance & How Businesses Organize Their Data
2. Search Technology – from keywords to TAR

Seventh class – Monday, October 5, 2015

READING ASSIGNMENT TO BE COMPLETED BEFORE SEVENTH CLASS:

1. Md. Rules 2-411 – 2-419
3. DISCOVERY PROBLEMS AND THEIR SOLUTIONS, pp. 171 – 219

MATERIAL WE WILL DISCUSS TONIGHT (Professor Fax):

1. Depositions, Theory and Practice

Eighth class – Monday, October 12, 2015

READING ASSIGNMENT TO BE COMPLETED BEFORE EIGHTH CLASS:

1. Review Deposition Rules Assigned Last Week
2. DISCOVERY PROBLEMS AND THEIR SOLUTIONS, pp. 220 – 271

MATERIAL WE WILL DISCUSS TONIGHT (Professor Fax):

1. Depositions – Practice
Ninth class – Monday, October 19, 2015

READING ASSIGNMENT TO BE COMPLETED BEFORE NINTH CLASS

1. DISCOVERY PROBLEMS AND THEIR SOLUTIONS, pp. 80 – 134; 143 – 156
2. MANAGING ESI at 37, Chaps. 15, 18; Optional: Chaps. 16-17

MATERIAL WE WILL DISCUSS TONIGHT (Professor Berman):

1. Clawback Privilege
2. Privilege Logs
3. Discovery of Social Media

Tenth class – Monday, October 26, 2015

READING ASSIGNMENT TO BE COMPLETED BEFORE TENTH CLASS:

1. Md. Rules 2 – 401; 2 – 402; 2 – 403; 2 – 432; 2 – 433
2. Federal Rules of Civil Procedure 26 and 37
3. DISCOVERY PROBLEMS AND THEIR SOLUTIONS, pp. 325 – 401
4. MANAGING ESI at 234-46; Optional: Chap. 10

MATERIAL WE WILL DISCUSS TONIGHT (Professor Berman/Professor Fax):

1. Spoliation (Prof. Berman)
2. Protective Orders (Prof. Fax)
3. Motions to Compel (Prof. Fax)
4. Motions for Sanctions (Prof. Fax)

Eleventh class – Monday, November 2, 2015

READING ASSIGNMENT TO BE COMPLETED BEFORE ELEVENTH CLASS:

1. MANAGING ESI at Chaps. 6, 24, 29; Optional Chaps. 22-23

MATERIAL WE WILL DISCUSS TONIGHT (Professor Berman):

1. Ethics, Including Metadata Opinions, Use of ESI in motions and
depositions, and admissibility

Twelfth class – Monday, November 9, 2015

READING ASSIGNMENT TO BE COMPLETED BEFORE TWELFTH CLASS:

1. Federal Rules of Civil Procedure 16 and 26
2. Md. Rule 16-205 (Business and technology case management program)
3. MANAGING ESI at Chap. 19; Review Chap. 30

MATERIAL WE WILL DISCUSS TONIGHT (Professor Berman/Professor Fax):

1. Duty to Cooperate and How That Works
2. Rule 26(f) conferences

Thirteenth class – Monday, November 16, 2015

READING ASSIGNMENT TO BE COMPLETED BEFORE THIRTEENTH CLASS:

1. Federal Rules of Civil Procedure 34, 35, 36 and 45
2. Md. Rules 2-422; 2-423; 2-424; and 2-510
3. DISCOVERY PROBLEMS AND THEIR SOLUTIONS, pp. 157 - 169

MATERIAL WE WILL DISCUSS TONIGHT (Professor Fax):

1. Entering onto land for inspection and other purposes
2. Physical and Mental Examinations
3. Requests for Admission
4. Subpoenas

Final class – Monday, November 23, 2015

READING ASSIGNMENT TO BE COMPLETED BEFORE FINAL CLASS:

1. MANAGING ESI at 723-25; Optional: Apx. E
2. Proposed Amendments to Federal Rules

MATERIAL WE WILL DISCUSS TONIGHT (Professor Berman/Professor Fax):

1. Wrap-up; questions