ELECTRONIC EVIDENCE & DISCOVERY WORKSHOP 872.512
University of Baltimore School of Law
Spring 2019, Section 512, Room AL 109
SYLLABUS AND CLASS SCHEDULE

Instructor: Michael D. Berman, Rifkin Weiner Livingston, LLC
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1. COURSE TITLE: Electronic Evidence and Discovery Workshop
2. CREDIT HOURS: 3
3. TYPE OF COURSE: Workshop/Seminar

Course Description: Email, Word Processing, Text Messages, Spreadsheets, Databases, Mobile Devices, and Social Media platforms are some of the sources of electronically stored information (ESI) used in modern business and litigation. The preservation, searching, discovery, production, and management of ESI has become central to litigation and business governance. In this course, students will learn how to manage and exchange ESI, identify and resolve ethical issues, design and defend searches using keywords and technology-assisted review, and employ ESI in depositions, motions, and at trial. Students will analyze the leading cases and existing rules, prepare several short drafting assignments, and participate in a final discovery conference exercise pursuant to the Federal Rules of Civil Procedure. Prerequisite: Civil Procedure I; Prerequisite or Co-requisite: Evidence. [Limited Enrollment]

Learning Objectives: By the end of the course, you should:

- Understand how ESI is distinct from other forms of information and why those differences are significant to lawyers, including the duty to cooperate;
- Understand when a legal hold is triggered and be able to define its scope and limits;
- Be able to prepare a litigation hold notice and preservation letter, and know how and when to respond to a preservation letter;
- Understand metadata and its uses and dangers;
- Identify the issues in the preservation, collection, review, production, and use in discovery, motions, and trial of ESI;
- Understand how to comply with counsel’s responsibilities in advising clients on each of the foregoing topics;
- Participate in a Rule 26(f) Conference of Parties to negotiate a “discovery plan”;
- Be familiar with key Federal and Maryland Rules, as well as Local Rules, Guidelines, and Principles in the District of MD all of which relate to ESI;
- Address spoliation allegations;
• Be familiar with and use litigation review software, and know how to set it up in a lawsuit;
• Understand how to design a legally-defensible search;
• Master basic contours of Computer Fraud and Abuse Act and Stored Communications Act;
• Be familiar with unique ethical issues related to ESI, such as metadata and search.

4. ASSESSMENT:
There will not be a final exam. Instead, the final exercise is described, below.

PAPERS
Students will participate in two short drafting assignments. No research will be required for these assignments and they will be open book, but they are to be your own work. Your time investment will be limited - - these are “canned” projects. You will be analyzing fact patterns, not doing legal research.

All grading will be anonymous so please use your student identification number and do not put your name on the paper. In addition to your student ID number, please identify your client and the assignment, i.e., Client: John, Assignment No. 2, Duty to Preserve. Please place this information at the top left of the first page. I ask that you do this because it assists me in grading and record keeping.

Student ID No. ____________
Client: __________________
Assignment No. ___________

Assignments will be discussed in class, often on the day that they are due. All papers should be submitted in Microsoft Word or an equivalent word processor, using Times New Roman12-point font, double spaced, with 1” margins and page numbers at the bottom of each page. Upon request and for good cause, extensions may be granted; however, all papers must be turned in by the last day of class, absent exigent circumstances.

QUIZZES
There will be three short quizzes (ten true-false or multiple-choice questions). They will be “take home,” and open book, but they are to be your own work. The purpose of the quizzes is to provide you with feedback so that you may evaluate your understanding of the materials. Upon request and for good cause, extensions may be granted; however, all quizzes must be completed by the last day of class, absent exigent circumstances.

There will be guest lecturers and, as a courtesy to them, attendance is requested. The quizzes will be based in substantial part on guest lectures and assigned readings.

MOCK CONFERENCE OF THE PARTIES
Students will participate in a mock Fed.R.Civ.P. 26(f) “Conference of the Parties.” This will be a team exercise and you will be permitted (and encouraged) to both speak with your other team
member and the opposing team prior to the conference. You will be provided a fact pattern describing a commercial dispute and will be asked to negotiate a Fed.R.Civ.P. 16 “discovery plan,” sometimes called an “ESI Protocol.”

Generally, I try to schedule the exercise on a Sunday after the end of classes and prior to exams. I always make an accommodation for anyone with a personal, family, or religious conflict with a Sunday morning meeting. Because the last day of class is April 22, 2019, and exams will begin on Monday, April 29th, Sunday, April 28th is in the exam study period. April 23-24 are designated make-up days. We will discuss scheduling early in the semester. You will be given the opportunity to select your own teams and opponents.

**ATTENDANCE and PARTICIPATION**

Class participation is requested, but not graded. In close to a decade of teaching this course, I have learned that students who participate obtain feedback that is invaluable and generally do much better on the final exercise. The choice, however, is yours. Please read the assignments before class. Consistent participation will demonstrate that you have done so.

I am required by the law school to take attendance. I will follow the law school attendance policy. Please refer to Chapter 3 of the U.B. School of Law Student Handbook.

UB policy states: Class attendance is a primary obligation of each student whose right to continued enrollment in the course and to take the examination is conditioned upon a record of attendance satisfactory to the professor. A student who exceeds the maximum allowed absences (generally 20% of class sessions) as illustrated below may be compelled to withdraw from the course, or may be barred from sitting for the final exam. Students who are forced to withdraw for exceeding the allowed absences may receive a grade of FA (failure due to excessive absence). This policy is consistent with American Bar Association Standards for Law Schools.

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The workload will be reasonable. In the last nine or ten years, no student has objected to the amount of work. American Bar Association Standards for Law Schools establish guidelines for the amount of work students should expect to complete for each credit earned. Students should expect approximately one hour of classroom instruction and two hours of out-of-class work for each credit earned in a class, or an equivalent amount of work for other academic activities, such as simulations, externships, clinical supervision, co-curricular activities, and other academic work leading to the award of credit hours.
GRADING

The Grading Scale is set out in Chapter 6 of the U.B. School of Law Student Handbook. The grading weights will be:

Mock Conference of the Parties: 45%
Papers: 40% (20% per paper)
Quizzes: 15% (5% per quiz)

5. CONTACT POINTS:

If you need to contact me, and if time permits, please use my email. There are two addresses above. The office email is checked more frequently but it is not private. If you do not receive a response within 24 hours, please send a reminder, or please send a text or call my cell phone: 410-206-5049.

I do not have regular office hours at the law school; however, if you would like to meet, I will arrange times, likely on evenings prior to class. Given the late hour of class, it is more difficult to meet after class. Telephone conferences can be arranged as needed. The preferred method of arranging such a meeting is via email.

6. READING MATERIALS:

You have been asked to purchase S. Scheindlin and D. Capra, ELECTRONIC DISCOVERY AND DIGITAL EVIDENCE: CASES AND MATERIALS (3rd ed.).

I will be using TWEN as soon as credentials are provided by the law school. Some assignments on the syllabus link to other web sites and You Tube. Please self-enroll in TWEN and check it regularly for course information.

I assume that you have online access to the:

- Federal Rules of Civil Procedure,
- Federal Rules of Evidence, and
- Maryland Rules.

Please visit the web site of the United States District Court for the District of Maryland. Please download (free):

- Principles for the Discovery of Electronically Stored Information in Civil Cases; and,
- The Local Rules, especially the Court’s Discovery Guidelines and its form interrogatories and requests for production of documents.

You will be receiving a free book on “predictive coding.”

The library has been asked to place M. Berman, C. Barton, and P. Grimm, eds., “MANAGING E-DISCOVERY AND ESI” (ABA 2011), on reserve. Used copies are available through sites such as Amazon. I have also put J. Baron, R. Losey, and M. Berman, eds., PERSPECTIVES ON PREDICTIVE CODING (ABA), P. Sandler, et al., Model Witness Examinations (ABA, 3rd ed., 2010), and S. Nelson, et al., THE ELECTRONIC EVIDENCE AND DISCOVERY HANDBOOK: FORMS, CHECKLISTS, GUIDELINES (ABA 2006), on reserve. The latter is a form book. Please exercise great care in using any formbook.
7. ACCOMODATION and NON-DISCRIMINATION

I will follow the University of Baltimore General Nondiscrimination Statement. I do not discriminate on the basis of sex, gender, race, religion, age, disability, national origin, ethnicity, sexual orientation, gender identity or other legally protected characteristics in this course. Any student requesting or requiring an accommodation for a disability or religious observance may contact me or the appropriate law school personnel. Please refer to Chapters 3 and 5 of the U.B. School of Law Student Handbook. I will also make every reasonable effort to accommodate family, personal, or other academic conflicts. Please refer to Chapter 3 of the U.B. School of Law Student Handbook. If such a conflict arises, please let me know.

Disability Policy:

If you are a student with a documented disability who requires an academic accommodation, please contact Karyn Schulz- Director, Center of Educational Access in the Office of Disability and Access Services at 410-837-4141 or kschulz@ubalt.edu.

Title IX Sexual Misconduct and Nondiscrimination Policy:

The University of Baltimore’s Sexual Misconduct and Nondiscrimination policy is compliant with Federal laws prohibiting discrimination. Title IX requires that faculty, student employees and staff members report to the university any known, learned or rumored incidents of sex discrimination, including sexual harassment, sexual misconduct, stalking on the basis of sex, dating/intimate partner violence or sexual exploitation and/or related experiences or incidents. Policies and procedures related to Title IX and UB’s nondiscrimination policies can be found at: http://www.ubalt.edu/titleix.

8. SYLLABUS:

Due to the nature of scheduling guest presenters, there may be changes in the dates of particular presentations. Please see attached pages.

9. MISCELLANEOUS

Computers:

Students may use laptop computers for class related purposes. Neither audio nor visual recording is permitted.

Class Cancellation:

If the instructor must cancel a class, notices will be sent to students via email and posted on the classroom door. If there is inclement weather, students should visit the University of Baltimore web site or call the University's Snow Closing Line at (410) 837-4201. If the University is open, students should assume that classes are running on the normal schedule.

Academic Integrity:

Students are obligated to refrain from acts that they know or, under the circumstances, have reason to know will impair the academic integrity of the University and/or School of Law. Violations of academic integrity include, but are not limited to: cheating, plagiarism, misuse of


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materials, inappropriate communication about exams, use of unauthorized materials and technology, misrepresentation of any academic matter, including attendance, and impeding the Honor Code process. The School of Law Honor Code and information about the process is available at http://law.ubalt.edu/academics/policiesandprocedures/honor_code/.