

## LAW386N: Electronic Discovery and Digital Evidence Cross-Listed as INF385T and CS395T

Spring 2024 (Law#29105, Inf#28445, CS#52610)

This is **Syllabus ver. 24.0117** in conjunction with **Workbook ver. 24.0117**

Please use the latest version of the Syllabus paired with the latest version of the Workbook

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Welcome! I am humbled and grateful that you've enrolled in this course. Information technology has been my joy and passion since long before I became a lawyer and law professor. I'm thrilled to share that excitement with you. I aspire to broaden and refine the ways you think about digital information and the law, and for us to exchange ideas as we navigate the semester. Bon voyage!

### Contact Info

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I commute from New Orleans to teach this course and, as an adjunct professor, I'm not supplied an office at the law school from which to offer fixed office hours; however, I'm pleased to set up a mutually convenient time for a conference, in person or via Zoom. **I'm here to help you succeed**, and you should please not be reluctant to reach out to me to seek assistance, guidance and support. *My time is your time.*

### Class Meetings

#### Meets:

Wednesday 2:30 - 5:15 pm (TNH 3.126)

Final exam on Tuesday, May 7.

### Class Overview

The trial lawyer's craft lies in marshaling the evidence. Evidence is merely trusted information; and oral testimony aside, nearly all modern information is created, collected, communicated and stored digitally. Thus, the ability to identify, preserve, interpret, assess, authenticate and challenge electronically stored information is a crucial advocacy skill.

My students explore information technology (IT) and digital evidence through the lens of trial practice. You will learn the language of IT and acquire hands-on training in the terminology and tools of electronically stored information (ESI), and digital forensics. We will explore information governance and storage and the myriad forms ESI takes as they bear on emerging standards of lawyer competency. You will use online tools and industry-standard software for electronic evidence preservation, processing and analysis. We will cover the challenges of acquisition, authenticity and admissibility unique to modern digital evidence. You will read, write and work hard to succeed in this course, but with as much assistance as you seek. I will answer your questions, happily go over material you find unclear, supply review sessions and study guides and offer the access and support you desire to aid your efforts to excel.

**Workload:** This course complies with the [Law School's Credit Hour Policy](#) and will require at least 42.5 hours of total student work **per credit** during the semester. Some students struggle with the workload in this class, so let me be up front about that: *This isn't like other law school classes.* There is work to do for every class. There are multiple moving parts in terms of the readings, lectures, exercises and semi-weekly quizzes. **More than half of your final grade is earned before our last class and the final exam;** so, if your schedule demands that you coast then cram, this is not the class for you. On the other hand, if you stay on top of things each week, the workload is manageable and you'll always know where you stand.

**Prerequisites:** Law students must have completed Federal Civil Procedure to take this course. Students from other schools will gain a basic grasp of the scope of discovery and discovery procedure under the Federal Rules of Civil Procedure (FRCP) as amended effective December 1, 2015. I supply the relevant provisions of the FRCP in your Workbook. All students must have access to a computer **with a USB-A port or dongle** and the internet to complete the exercises. *The course will have a substantial information technology component, but you do not need any prior background in technology or computer science to succeed.* Some of my most successful students weren't remotely tech savvy when they enrolled.

**Note to Non-Law Students:** Non-law students may worry that the law-centric aspects of the course put you at a disadvantage. Certainly, you'll need to learn some law, just as the law students must learn some tech. *Law and technology enjoy equal stature in this course, so you may have a leg up for the tech material. But rest assured that I will endeavor to make all the material accessible to all the class.* If you worry about your writing skills being inadequate, I assure you that I can help with that, too. Clear, concise thought tends to produce clear, concise communication.

## Learning Outcomes

I aspire to help you acquire the practical and analytical skills that will equip you to:

1. Appreciate the challenges and advantages distinguishing conventional paper documentary evidence from the myriad forms of electronic evidence
2. Know the stages of the Electronic Discovery Reference Model
3. Identify sources of potentially responsive electronically stored information (ESI) and create a data map
4. Understand the crucial role metadata plays in organizing, culling and authenticating ESI
5. Gauge the importance and suitability of the form or forms of production

6. Scope and implement a defensible legal hold while guarding against undue expense or burden
7. Apply the e-discovery caselaw and Rules of Evidence and Procedure as effective advocacy tools
8. Prepare to participate in a FRCP Rule 26(f) conference (“meet and confer”)
9. Recognize the shortcomings of conventional electronic search techniques and consider remedies
10. Anticipate issues that commonly prompt sanctions and learn how to guard against them
11. Deal with privileged content and inadvertent disclosure (*e.g.*, FRE 502)
12. Grasp the framework of cost-shifting and -allocation
13. Assert and defend challenges grounded on privacy and proportionality
14. Analyze, search, process and produce electronically stored information in litigation
15. Use visual persuasion effectively
16. Assess the impact of AI on issues of evidence integrity and the e-discovery process, and
17. Be undaunted by the variety, complexity and numerosity of big data and new sources of e-evidence in litigation, instead learning to cull, sample, test and challenge ESI in ways that will afford you the confidence to secure the many benefits of digital evidence and the competence to deploy discovery sensibly, ethically, economically and strategically.

E-discovery is an area where veteran attorneys have modest experience and so have little to pass on to young lawyers. Skilled litigators are often overwhelmed and need help when it comes to e-discovery. They expect young lawyers to be more tech-savvy and fluent in information technology, and they esteem such knowledge and skills in their hiring decisions. Likewise, law firms, corporations and governments have come to rely upon information technologists and other non-lawyer professionals to cope with electronic evidence. We will look at how the law and litigation are adapting to a digital metaverse, and where information technology fits and frustrates in the justice system.

## Assigned Materials

There is no required commercial text for this class. Your readings will be supplied to you in the Files area of Canvas. Our principal text is something I wrote for you called *Electronic Evidence Workbook 2024*. Accordingly, you should incur no expense unless you elect to print the class materials. You may print anything for your personal use. Readings may be added or substituted over the course of the semester as new decisions and commentaries emerge or as other considerations (like new tools or exercises) dictate; so, *remember to check the Class Announcements and the latest Syllabus*. I will endeavor not to make material changes to the Syllabus.

## Grading and Assessment Methods

Plus and minus grades will be employed.

1. **Attendance, Preparation and Participation (5%).** I strongly encourage regular classroom attendance and make it a component of your grade. You are required to complete and turn in assignments before class begins and be prepared for and participate in class discussions and class exercises. I will strive to arrive prepared and engaged with respect to the material, and I ask the same of you. If you know you’re going to be absent, I appreciate your letting me know so that I can help you keep up with what you miss.

*We won't do much via Zoom this year, but to be deemed "in attendance" via Zoom, you should have your camera on. I understand there may be occasions when you cannot turn on your camera, and in those exceptional instances, I will endeavor to call on you to ascertain that you are present and engaged. This is not punitive; it's intended as accommodation.*

**Visiting Professor Presentations:** The Latin maxim *docendo discimus* means "by teaching, we learn." You will learn some of the material we cover by teaching it to your classmates.

In most classes later in the semester, one or two students will be assigned to instruct the class as "Visiting Professors" respecting particular exercises, cases or readings. Visiting professor duties are assigned in the Syllabus but may be changed with reasonable notice. *The constructive and creative use of supporting visuals (i.e., effective PowerPoint presentation) is strongly encouraged;* however, the most important consideration is the substantive content and clarity of your presentation in conveying the topic only insofar as it bears on electronic evidence. These presentations generally last no longer than 15 minutes exclusive of discussion and dependent upon the complexity of the topic. You are encouraged to involve your classmates in discussion, and I typically question you or offer observations to ensure that the takeaways I deem essential are covered.

2. **Exercises (25%).** There will be frequent exercises assigned as homework assignments or as in-class activity during the semester. *These are important differentiating features of this course,* and some are demanding. Accordingly, they factor heavily into your final grade. **You must turn in each exercise** required to be submitted in a timely manner to get credit for the assignment.
3. **Self-administered Quizzes (30%).** There will be **five** floating, **closed book** multiple choice quizzes that you will take online throughout the semester (governed by the Honor Code, one attempt only). The quizzes are 2-3 weeks apart and each is administered in the same way: The quiz goes live on Canvas on a Thursday at noon central and may be taken at your convenience so long as the quiz is completed no later than the following Monday at noon. All quizzes are 25 multiple choice questions to be completed in 25 minutes.

**Final Examination (40%).** The final exam is a timed exam administered by the Student Affairs Office on May 7, 2024, covering the reading assignments, exercises, lectures and class discussions. The exam is closed book and will contain multiple choice and essay questions. The exam will be administered using Extegrity's Exam4 software in closed mode. Please note that ALL students--including those in the non-Law cross-listed sections--will be required to pay for the Exam4 software (\$20 fee). Cell phones, smart watches, tablets and other electronic devices or AI may not be used during the exam for any reason. You will have three (3) hours to complete the final exam.

#### Artificial Intelligence Policy: Use of Generative Large Language Models to Assist with Exercises

##### 1. **Explicit Disclosure Requirement**

It is a violation of the honor code to misrepresent work by characterizing it as your own if it is not. Students may use generative LLMs, such as ChatGPT or Bard, for assistance in completing Workbook exercises; however, they must explicitly disclose the use of these tools by providing a brief note or acknowledgment in their submissions. Transparency is mandatory.

## 2. Verification and Cross-Checking

Students may utilize generative LLMs during Workbook exercises but are required to *independently verify and cross-check* the information generated by these models through additional research using alternate, reliable sources.

## 3. Accountability

While generative LLMs are permitted tools, students are held accountable for the accuracy and completeness of the information obtained from these models. Any errors or omissions resulting from the use of LLMs are considered the responsibility of the student. This policy underscores the importance of independent verification and personal accountability.

## 4. Prohibited for Quizzes and Exams

Notwithstanding the foregoing, you may not consult any source of information, including AI resources, when completing quizzes or the final exam.

## Attendance Policy

Regular and punctual attendance is required in all courses pursuant to the [Law School's Attendance Policy](#). As noted above, attendance, preparation and participation factor into your grade. The Law School Administration, in accordance with American Bar Association requirements, has limited the use of Zoom for remote attendance to two classes, of which I know one will be needed on February 14, and in light of my flying into Austin for each class day, the other must be reserved for travel disruption. Accordingly, I won't be able to offer the option of your attending a class session remotely if I am present in the classroom. Classes are not routinely recorded, so if you must be absent, please ask a classmate to take notes on your behalf.

## Classroom Safety and COVID-19

The University provides [guidance and information](#) to help us preserve our in person learning environment.

## Accessibility Statement

The Law School is committed to creating an accessible and inclusive learning environment consistent with university policy and federal and state laws. If you are a student with a disability, or you think you may have a disability, and may need academic accommodations, please contact the [Division of Diversity and Community Engagement, Disability and Access \(D&A\)](#) for information and assistance. If you are already registered with D&A, please deliver your Accommodation Letter to the Student Affairs Office as early as possible in the semester to arrange your approved accommodations. If you have accommodations for exams, arrangements must be made with the Student Affairs Office at least a week before the exam.

Because the Law School operates primarily on an anonymous grading system where possible, academic accommodations are coordinated through the Student Affairs Office. Faculty members are included in the process only when needed to implement classroom accommodations.

### **Names and Pronouns**

Professional courtesy and sensitivity are especially important with respect to individuals and topics dealing with differences of race, culture, religion, politics, sexual orientation, gender, gender variance, and nationalities. Class rosters are provided to the instructor with the student's legal name. I will gladly honor your request to address you by an alternate name or pronoun. Please advise me of this early in the semester so that I may make appropriate changes to my records. If I mistakenly mispronounce your name or fail to use your pronoun, please don't hesitate to correct me as I want to get it right.


### **Social Evenings**

I like to get to know my students and help them get to know one another. It's been my custom over the course of the last dozen years to invite all students (and their 'plus ones') to be my guests for drinks and dinner at a local restaurant. The pandemic and commuting from New Orleans made that challenging and the size of the class has grown; but if the opportunity to do so manifests, I hope your schedule allows you to join. These evenings are solely for your enjoyment; so, participation in a social evening is entirely optional.

## Course Requirements and Assignments

The assignments below list readings and exercises in the weekly reading folders on Canvas and in the Workbook, unless otherwise indicated. Students are expected to read each assignment carefully before class, complete each exercise, timely submit your work via Canvas (except where expressly advised otherwise) and be prepared to discuss the salient points of covered concepts and cases. Yes, you turn in your answers to exercises.

#	Class Date	Topics	Required Reading and Assignments
1	Zoom Class January 17	<b>Convene by Zoom</b> You may attend in our classroom if convenient to you, but you are not required to do so. Meeting ID: 936 8569 2394 URL: <a href="https://utexas.zoom.us/j/93685692394">https://utexas.zoom.us/j/93685692394</a>  Tools of Discovery Competency Introduction to EDRM Data Storage Media	<b>Workbook:</b> a. Read pp. 1-57 <b>Complete Exercise 1, p. 58</b> Once you complete your Workbook reading, please watch the ten-minute video here: <a href="https://www.youtube.com/watch?v=oyWsdS1h-TM">https://www.youtube.com/watch?v=oyWsdS1h-TM</a> and the four-minute video here: <a href="https://d34zi8nxray0rk.cloudfront.net/102695601-240.mp4">https://d34zi8nxray0rk.cloudfront.net/102695601-240.mp4</a>
2	January 24	Metadata <i>Green v. Blitz</i> Sedona Principles	<b>Workbook:</b> Read pp. 59-96. <b>Complete Exercises 2, 3 and 4</b> <b>Canvas:</b> <i>Green v. Blitz</i> w/ Preface (14 pp.); THE SEDONA PRINCIPLES: THIRD EDITION, <i>pages 51-54</i>
3	January 31	Computer Forensics Processing and Encoding <i>In Re: Weekley Homes</i>	<b>Workbook:</b> Read pp. 97-160 <b>Complete Exercises 5 and 6</b> <b>Canvas:</b> <i>In Re: Weekley Homes</i>
	Noon 2/1/24 – noon 2/5/24	<b>FIRST QUIZ</b>	First self-administered quiz goes live at NOON (CST) Thursday, February 1, 2024. You may take the quiz online at any time you prefer beginning from noon 2/1/24 through 11:30am on Monday, February 5, 2024. It is a CLOSED BOOK, CLOSED NOTES, NO INTERNET, NO HELP quiz. <b>Do not to click outside of the test window once you begin.</b>
4	February 7	Encoding Steganography Processing, part 2 Deduplication	<b>Workbook:</b> Read pp. 161-224 <b>Complete Exercises 7, 8, 9 and 10</b> You will submit screenshots for Ex. 7 and a table of file signatures for Exercise 8. <b>No submissions sought for Exercises 9 and 10.</b>  <b>Watch the 5-minute video here:</b>

#	Class Date	Topics	Required Reading and Assignments
			<a href="https://www.youtube.com/watch?v=enQ-zrNSSM4">https://www.youtube.com/watch?v=enQ-zrNSSM4</a> <b>Read this animated graphic:</b> <a href="https://animagraffs.com/hard-disk-drive/">https://animagraffs.com/hard-disk-drive/</a>
5	February 14 <b>Zoom Class Today!</b> 	<b>Convene by Zoom</b> You may attend in our classroom, if convenient to you, but you are not required to do so. Meeting ID: 944 4161 8216 URL: <a href="https://utexas.zoom.us/j/94441618216">https://utexas.zoom.us/j/94441618216</a> Big Six Preservation Letters Checklist of Sources The <i>Zubulake</i> Decisions	<b>Workbook:</b> Read pp. 225-251 <b>Complete Exercise 11</b>  <b>Watch this 18-minute video:</b> <a href="https://www.youtube.com/watch?v=5Mh3o886qpg">https://www.youtube.com/watch?v=5Mh3o886qpg</a> I won't hold you responsible for technical minutiae, but please absorb the general way in which data is stored as charges, the use of massive arrays interrogated as pages and the nanoscale of the entire assembly. <b>Canvas:</b> <i>Zubulake</i> Cases I-V with Preface, <i>focus on decisions I and III</i>
	Noon 2/15/24 - noon 2/19/24	<b>SECOND QUIZ</b>	Second self-administered quiz goes live at NOON (CST) Thursday, February 15, 2024. You may take the quiz online at any time you prefer beginning from noon 2/15/24 through 11:30am on Monday, February 19, 2024. It is a CLOSED BOOK, CLOSED NOTES, NO INTERNET, NO HELP quiz.
6	February 21	Data Mapping Backup Systems Databases	<b>Workbook:</b> Read pp. 252-306 <b>Complete Exercise 12</b>
7	February 28 HALFWAY!	E-Mail The <i>Zubulake</i> Decisions	<b>Workbook:</b> Read pp. 307-357 <b>Complete Exercises 13-14</b>
	Noon 2/29/24 - noon 3/4/24	<b>THIRD QUIZ</b>	Third self-administered quiz goes live at NOON (CST) Thursday, February 29, 2024. You may take the quiz online at any time you prefer beginning from noon 2/29/24 through 11:30am on Monday, March 4, 2024. It is a CLOSED BOOK, CLOSED NOTES, NO INTERNET, NO HELP quiz.
8	March 6	Forensic Imaging Preserving: Mobile Evidence	<b>Workbook:</b> Read pp. 358-379 <b>Complete Exercise 15 Part 1 and Exercise 16</b>
	March 11-17		<b>SPRING BREAK</b>
9	March 20	Legal Hold Hold Trigger Events Ephemeral Data	<b>Workbook:</b> Read pp. 380-405 <b>Complete Exercises 15 Part 2 and 17</b>  <b>Canvas:</b>



#	Class Date	Topics	Required Reading and Assignments
		Possession Custody or Control <i>Columbia Pics v. Bunnell</i> <i>In Re: NTL</i> <i>Rambus v Hynix</i>	<i>Columbia Pictures v. Bunnell</i> with Preface; <i>In Re: NTL Securities Litigation</i> (pp. 17-20 only re: control) <i>Hynix v. Rambus</i> w/ Preface The Sedona Conference Commentary on Rule 34 and Rule 45 “Possession, Custody, or Control” (pp. 475-527 only) <b>Bradley Anderson will be visiting prof. for <i>Columbia Pictures v. Bunnell</i></b> <b>Catie Choi will be Visiting professor on <i>Rambus v Hynix</i></b>
10	March 27	Social Media Content Search and Review <i>U.S. v O'Keefe</i> <i>Victor Stanley I</i> <i>Maurer v. Sysco Albany LLC</i>	<b>Workbook:</b> Read pp. 406-437 <b>Complete Exercises 18 (all parts) and 19</b> <b>Canvas</b> <i>U.S. v O'Keefe</i> <i>Victor Stanley I</i> Fordham JOLT article re keyword search issues <i>Maurer v. Sysco Albany LLC</i> w/Preface <b>Giovanna Dinapoli will be Visiting professor on <i>Maurer v Sysco Albany</i></b>
	Noon 3/28/24-noon 4/1/24	<b>FOURTH QUIZ</b>	Fourth self-administered quiz goes live at NOON (CST) Thursday, March 28, 2024. You may take the quiz online at any time you prefer beginning from noon 3/28/24 through 11:30am on Monday, April 1, 2024. It is a CLOSED BOOK, CLOSED NOTES, NO INTERNET, NO HELP quiz.
11	April 3	Search and Review (Cont.) Processing Forms of Production <i>Anderson Living Trust</i> <i>In re: State Farm Lloyds</i>	<b>Workbook:</b> Read pp. 438-483 <b>Complete Exercises 20A, 20B and 21</b> <b>Canvas:</b> <i>Anderson Living Trust</i> <i>In re: State Farm Lloyds</i> Kessler, The Myth of Native Production with Ball Preface <b>Hannah Fassler will be Visiting Professor for <i>In re: State Farm Lloyds</i></b>
12	April 10	ESI Protocols Spoliation and Sanctions <i>Fast v. GoDaddy.com</i> <i>Brookshire Brothers</i>	<b>Workbook:</b> Read pp. 484-519 <b>Canvas:</b> <i>Fast v. GoDaddy.com</i> <i>Brookshire Brothers</i> decision (TxS.Ct.) Rodriguez_Brookshire Bros. Article <b>Tofigh Hasen Nezhad Nisi will be visiting professor for <i>Fast v. GoDaddy</i></b>

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#	Class Date	Topics	Required Reading and Assignments
			<b>Abigail Hermes will be Visiting Professor for Brookshire Brothers.</b>
13	April 17	Authentication Admissibility Privilege and FRE Rule 502 <i>Judge Paul Grimm to speak to us today.</i>	<b>Complete TAR Exercise 22 (to be furnished)</b> <b>Canvas:</b> Grimm, Capra, Joseph, <i>Authenticating Digital Evidence</i> , pp. 1-55 FRE Rule 502
	Noon 4/18/24-noon 4/22/24	FIFTH QUIZ	Fifth and last self-administered quiz goes live at NOON (CST) Thursday, April 18, 2024. You may take the quiz online at any time you prefer beginning from noon 4/18/24 through 11:30am on Monday, April 22, 2024. It is a CLOSED BOOK, CLOSED NOTES, NO INTERNET, NO HELP quiz.
14	April 24	TAR and Predictive Coding <i>Rio Tinto v. Vale</i> <i>DaSilva_Moore</i> Rule 26(f) Conferences <i>Prof. Maura Grossman to speak to us today</i>	<b>Workbook:</b> Read pp. 515-526 <b>Canvas:</b> TAR_Cormack_Grossman_Practical Law article <i>Rio Tinto v. Vale</i> <i>DaSilva_Moore_11_civ_1279_Opinion_20120224</i>
	May 7, 2024	FINAL EXAM	PROCTORED FINAL at LAW SCHOOL