

PACIFIC McGEORGE SCHOOL OF LAW

COMPUTER-ASSISTED LITIGATION
FALL, 2009
MID-TERM#1

PROFESSORS GALVES, PIGANELLI
FRIDAY, OCTOBER 2, 2009
1:00 P.M. - 2:30 P.M.

MID-TERM EXAM INSTRUCTIONS

1. This is a (90) NINETY minute exam, although you probably will not need the full (90) NINETY minutes to complete the exam. Please write your **ANONYMOUS exam number**: on this Mid-Term Exam, and on your bluebooks.
2. This is a three-part exam:
 - Part One consists of **TWENTY (20) SHORT ANSWER QUESTIONS**
 - Part Two consists of **TEN (10) MULTIPLE CHOICE QUESTIONS**, and,
 - Part Three consists of **ONE (1) ESSAY QUESTION with (2) TWO SUBPARTS.**You should spend about FIFTY (50) minutes on the short essay question section, about TEN (10) minutes on the multiple choice questions, and about THRITY (30) minutes on the essay question. Be sure to **KEEP AND BUDGET YOUR TIME.**
3. You have an average of (2-and-a-1/2) TWO-AND-A-HALF minutes per question for the short answer portion, and about (1) ONE minute for each of the multiple choice questions, but they should take less time to answer. You may be able to answer some of the short answer questions in as little as 20 seconds, but others may take a few minutes to answer (so use your judgment). None of the short answer questions requires much more than a paragraph of explanation.
4. For the multiple choice portion, select the best answer for each question from among the stated alternatives. The best answer among the stated alternatives is not necessarily the best possible answer or the best expression of the correct answer. Sometimes the best answer will be arrived at by a process of elimination (something clearly wrong with the other choices.) Choose only one answer for each question. Mark it in your bluebooks (and on your Mid-Term so you can later check your answers against the key).
5. This is a closed-book, closed-note exam, so you may NOT consult the CASEBOOK, the Flinder's Aluminum case file, the Supplemental Readings, the Handout Materials, or your notes/computer.
6. This Mid-Term Exam is worth 20% of your final grade.

B DO NOT BEGIN UNTIL YOU ARE INSTRUCTED TO DO SO B

PART ONE OF THREE PARTS
(Short answer questions)

1. In a trial team meeting, one of the partners suggests that the team should “OCR everything.” In the case documents, there are blueprints, as well as many handwritten documents. The partner says some guy came to the firm and said, “Once you OCR your case documents you can search for any word in any document.” The partner says, “So I guess if we OCR everything we will be able to find whatever we need.” What do you tell him?
2. What are the key differences between a Rule 26(f) meet and confer meeting, and a Rule 16 pretrial conference?
3. If an adversary refuses to produce requested e-mails because they have been deleted, what procedural moves can and should you make in order to address the problem?
4. Your firm has decided to use Summation in managing a very large, document intensive case. The lead attorney indicates that since the amount of documents is very large, she has decided to Aoutsource@ (pay someone to perform a task) some of the coding/data entry to a database-coding firm. What suggestions do you make regarding the “objective” and “subjective” coding?
5. How can technology save money for a law firm if all the technology does is save time in performing tasks resulting in less time that can be billed to the client?
6. If an attorney spends thousands of dollars reviewing ESI that is produced by an opponent, should the attorney essentially double the client’s discovery costs by reviewing all of the back up tapes of all of the same data, that is to say, is it worth it to review everything twice?
7. If “not reasonably accessible” information does not have to be preserved to the same extent as “reasonably accessible” information, why don’t attorneys simply advise clients who may want to destroy documents to simply make those documents “not reasonably accessible” instead, and thereby achieve the same result?
8. What is the difference between: (1) a “trigger date;” (2) a “preservation order;” (3) the “duty to preserve;” and (4) a “litigation hold”?
9. What are two common ways to get a third-party witness to preserve ESI in their “possession, custody, or control” for a litigant/party involved in a lawsuit?

B CONTINUE PART ONE OF THE EXAM B

10. Your clients want to get rid of all of their “old” electronic data, so they ask you if they can delete any document that is more than 5 years old. They ask for your legal advice and input in this matter. How would you advise?
11. A lawyer in your firm tells you that because your opponents have produced e-discovery on CD’s, all you have to do now is download them and search them and it is not necessary to convert or process them anymore because they are already digitized – is that correct?
12. If computer technology makes discovery more efficient, and makes documents easier to search and retain electronically, then why has e-discovery ended up increasing, rather than decreasing, litigation costs when compared to traditional paper discovery?
13. What is “ephemeral” data, and is there a duty to preserve it for discovery once litigation has begun?
14. How is e-discovery/ESI changing, if at all, the culture of lawyers’ traditional adversarial approach to discovery?
15. Is it possible for a defendant’s and a plaintiff’s trigger dates to be different in the very same lawsuit, and if not, why are they always on the same date?
16. If storing ESI is relatively inexpensive compared to storing paper documents, then what is the justification for clients still destroying their “old” electronic data, and do those reasons for the destruction of that electronic data outweigh the possible spoliation of evidence allegations?
17. Has a lawyer fulfilled all of her preservation of ESI duties as long as she issues a litigation hold on the trigger date directing preservation of evidence?
18. What tool in Summation would you use to find specific language within a document that you were looking for?
19. If you receive e-mails that contain hyperlinks and those hyperlinks contain relevant data to the case, is there a duty to preserve the hyperlinked data?
20. What are the three factors that courts use in order to decide a motion to preserve ESI?

B CONTINUE PART TWO OF THE EXAM B

PART TWO OF THREE PARTS
(Multiple Choice Questions)

1. The largest hurdles to overcome in using computer software by lawyers are:
 - (A) initial investment & (2) time learning the software
 - (B) judicial resistance & (2) opposing counsel
 - (C) strategic misapplication & (2) over reliance on technology
 - (D) loss of support staff jobs & (2) expensive hardware

2. A Document database, as defined in Computerized Document Management and in this class, is:
 - (A) The testimonial evidence in the case
 - (B) OCR'd documents
 - (C) The summarization of case related documents
 - (D) Both case documents and the depositions

3. Issue field, Attorney Notes field and Description field are what type of fields (as discussed in class and used in Summation)?
 - (A) Subjective
 - (B) Objective
 - (C) Preliminary
 - (D) Real

4. OCR (Optical Character Recognition) is the process of:
 - (A) Scanning in the documents to an image
 - (B) Translating the image file to a text file
 - (C) Searching the text in deposition notes
 - (D) Translating the text file into an image file

5. In searching for key documents and specific testimony in your case, which headings would you check in the Case Explorer?
 - (A) The Transcripts, Core Document Database, and OCR base
 - (B) The Core Document Database and the OCR Base Notes
 - (C) The Core Document Database and the Transcript Notes
 - (D) The Core Document Database, Image Database, and OCR Database

B CONTINUE PART TWO OF THE EXAM B

6. Loading documents into a computer as “full text” OCR documents makes it unnecessary to code and index scanned documents into the database:
- (A) because all relevant documents can be located with a full text OCR word search (assuming all search phrases are typed in correctly)
 - (B) is a not true because it is still helpful and often necessary to code and index
 - (C) because the coding is just a way for attorneys to leave notes regarding the documents
 - (D) none of the above
7. In the *Flinder’s Aluminum* case, if plaintiff asks defendant to produce all of the company’s e-mail messages, the defendant’s attorney should object:
- (A) because all such e-mail messages are privileged, except the irrelevant information
 - (B) because all such e-mails are work-product
 - (C) as “overbroad” but still produce all relevant documents
 - (D) because they will be inadmissible at trial, even though they are all discoverable
8. “Meta data” is helpful in discovery because
- (A) it provides the organizational structure of all of the documents for easy retrieval
 - (B) it provides additional information as to the creation and receipt of e-mail
 - (C) it provides the image link to the document coding
 - (D) it provides a way to see the path of creation for every digitized document.
9. Which field, as discussed in class, would you go to find the analysis written by one of the trial team members and inputted into the database?
- (A) “Summary”
 - (B) “Attorney Notes”
 - (C) “Issue”
 - (D) “Description”
10. In response to a Rule 33 interrogatory, an answering party can produce electronic data/documents instead of an answer
- (A) as long as they are all accessible on the Internet
 - (B) as long as they are all in PDF format
 - (C) as long as they are kept in the same format as found in the company files
 - (D) as long as they are rearranged and organized in an easily retrievable format.

B CONTINUE PART THREE OF THE EXAM B

PART THREE OF THREE PARTS
(Essay Question)

Assume you are the attorney for defendant Mismo Insurance in the *Flinder's Aluminum* case. Your law firm is considering using technology in the pre-trial aspects of the litigation – CaseMap and/or Summation – but is concerned about the cost, practicality, value, and time loss regarding getting up to speed with the technology.

- (1) **Convince the firm that it should use technology extensively in the pre-trial phase of the case. Provide arguments that are *supported by specific examples* of how the use of technology in the case would assist you in better representing the client and why it would be worth it.**

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Assume Mismo responds to Flinder's Rule 34 Request for Production of Documents by producing a CD full of e-mails and other electronic files. Flinder's argues that Mismo has failed to produce because Flinder's asked for paper documents not electronic files in its request. In response, Mismo sends printed paper documents of the files. A new lawyer for Flinder's takes a look at the paper documents produced and compares them with the original CD submitted and finds that the printed documents do not contain any "metadata" that were produced with the electronic documents, nor do the printed documents include some privileged documents that were accidentally included on the CD in electronic form.

- (2) **Can Flinder's now use the privileged information and the metadata on the CD or is Flinder's limited to the printed paper documents because that is what they demanded in their Rule 34 Request for Production of Documents? How should a judge rule?**

В END OF THE EXAM В