

credit Professor(s): Rishi Chhatwal & Robert Keeling

WED. 6:00-7:50 pm | Final Exam: WED. JULY 16, 6:00 pm

Contact Information

Rishi Chhatwal: rchatwa@gmu.edu

Robert Keeling: rkeeling@gmu.edu

Reading(s) & Supplemental Material

To be provided via TWEN

COURSE DESCRIPTION

The exchange of information between adverse parties in litigation—*i.e.*, Discovery—has become more complex than ever in the digital age. With the expanded business use of social media platforms like Facebook, X, and Instagram, instant messaging tools like WhatsApp and Signal, and collaboration tools like Slack and Teams, modern litigation requires an attorney to understand not only the legal framework, but also the role of modern communications and data systems to their case.

Broadly speaking, “eDiscovery” includes the identification, preservation, collection, review/analysis, and production of electronically stored information (“ESI”). The vast expansion and predominance of data in modern litigation brings challenges that have led to changes in the Federal Rules of Civil Procedure and the way in which courts, scholars, and legal practitioners view eDiscovery.

Although there was a time when “eDiscovery” was seen as a discipline separate and apart from general case discovery, in the modern era where all communications and documents are electronic, the evidence of the case will necessarily be electronic as well. Thus, all discovery now involves eDiscovery, and it is critical that attorneys—and particularly young attorneys who often handle the nuts and bolts of discovery—are knowledgeable about how modern communications will impact their case.

In the modern era, attorneys routinely work with consultants and vendors who provide technology-focused solutions to meet these eDiscovery challenges. To become effective lawyers, attorneys will need to be familiar with how technology impacts their clients and their practice. This includes using cutting-edge tools to find relevant evidence. Lawyers are now using machine learning (“ML”), artificial intelligence (“AI”), and technology-assisted review (“TAR”) to make the review of millions of documents more manageable and cost-effective; and advanced data analytics to help attorneys efficiently organize and review massive amounts of data.

COURSE OBJECTIVES

This course will provide students with a comprehensive understanding of the legal, practical, and technical parameters of mastering the various stages of eDiscovery, and will offer students the opportunity to apply that knowledge to a hypothetical case that mirrors the experience they will have as real-world litigators engaged in eDiscovery practice in the modern digital world.

In this course, students will learn:

- The applicable rules and law governing eDiscovery in federal court, including the Federal Rules of Civil Procedure, Federal Rules of Evidence, ABA Model Rules of Professional Conduct, and relevant caselaw, as well as authoritative legal scholarship on eDiscovery

- The stages of the eDiscovery process, including identification, preservation, collection, review/analysis, production, and case closure
- Practical steps to effectively navigate and comply with eDiscovery obligations throughout the various stages, including opportunities for students to explore the issues based on a detailed hypothetical
- Best practices at each stage of the eDiscovery process
- How to leverage technology to more efficiently and effectively comply with eDiscovery obligations
- The technological components of managing the eDiscovery process and working with eDiscovery consultants and vendors

GRADING & PARTICIPATION

Class Structure

Lecture and guest speakers with participation encouraged

Grading

Students will be evaluated on the following criteria and a letter grade will be assigned.

Final Examination (85%): The Final Exam will consist of essay questions designed to test students' knowledge of the topics covered in this course and will be based on a detailed hypothetical.

Participation (15%): Attendance and active participation in class discussions are crucial. Students are expected to contribute thoughtfully to conversations and engage with course materials both during and outside of class hours.

Grading Criteria: The Final Exam will be graded based on the student's demonstration of critical thinking and analysis, substantive support for arguments, organization, clarity of writing, and appropriate legal citation.

Attendance

Is required per GMU Law guidelines

Exams

One final exam

Written Assignment(s)

None

COURSE SCHEDULE & ASSIGNED READINGS

Announcement(s): The course readings will be distributed via TWEN before each class session.

Session No.	Date	Class Topic	Assignments
1	May 21	Introduction to Modern Discovery; the Rules of Engagement (FRCP); Information Governance	TBD
2	May 28	Legal Holds; Duty to Preserve; Planning Discovery	TBD
3	June 4	Requests for Production of Documents; Collecting Relevant ESI; Processing ESI	TBD
4	June 11	Reviewing ESI; Analytics; Producing ESI; Confidentiality	TBD
5	June 18	Motions to Compel; Privilege and Privilege Logs; Privacy	TBD
6	June 25	Protecting Privilege; Cyber Security; Social Media; and Other Kinds of eDiscovery; eDiscovery in the Media	TBD
7	July 2	Case Closure; Emerging ESI; and Ethical Issues	TBD

ACADEMIC STANDARDS & COURSE POLICIES

Academic Integrity:

Each student at Antonin Scalia Law School (“Scalia Law”) is expected to behave honorably and with the highest personal integrity toward other law students, toward the law school and university, and toward other members of the legal profession.” (Preamble to the Honor Code.)

The Honor Code prohibits a student from lying, cheating, or stealing, to include plagiarism and the use of any prohibited resource in an exam, coursework, or course paper. The full Honor Code can be accessed here: https://www.law.gmu.edu/academics/academic_standards

Recording Class Sessions:

Recording of class sessions by any means is prohibited. See AR 4-2.2: “Unless expressly permitted in writing by an instructor, no portion of a class session or an examination may be preserved by means of a recording device (such as an audio recording device or a camera).”

Use of Technology:

The use of Artificial Intelligence (“AI”), generative AI, and other technology assistance is not allowed during the exam.

University Email:

Students must use their Mason email account to receive university or law school information, including communications related to this class.

Use of Generative Artificial Intelligence (GAI) in Academic Work:

Use of Generative Artificial Intelligence in the drafting or writing of papers or any other course work or assignments in this class is prohibited. According to AR 4-3: “Generative artificial intelligence (GAI) is a type of artificial intelligence that uses algorithms to generate new content, such as text or images, based on the data it has been trained on. For purposes of this regulation, GAI is not intended to encompass legal research databases and word processing applications that, while incorporating AI- based elements or enhancements, do not generate novel text.” Use of GAI in a course that prohibits the use of GAI, constitutes an academic integrity violation.

Use of Electronic Text Books During Exams:

Students are permitted one laptop computer for exam taking purposes. Additional laptop computers or any other electronic data storage devices are not allowed in an exam room, unless permitted by the course instructor's written exam instructions. Electronic text books (e-books) may be used during exams that are designated as open book by the instructor and the instructor allows text books to be used during the exam and allows access to a student's computer files during the exam (open exam). E-books may not be used in exams where the instructor does not allow students to access their computer files during the exam (secure exam) even if the instructor permits access to text books. If the instructor has blocked access to the internet or computer files, you must bring a hard copy of the allowed text book(s) you wish to consult. Students will need to borrow or otherwise locate a hard copy of the e-book or print resources needed from the e-book to take into the exam room. The instructor determines the length of the examination and whether or not it is secure or open and what, if any, study materials are permitted during the exam. Students are responsible for adhering to the instructor's standards for all examinations, which are included in the examination materials.

Accommodations for Students with Disabilities:

Disability Services at George Mason University is committed to upholding the letter and spirit of the laws that ensure equal treatment of people with disabilities. Disability Services implements and coordinates reasonable accommodations and disability-related services that afford equal access to university programs and activities. For further information and to register for services, please refer to <https://ds.gmu.edu/law-school/>, or call (703) 993-2474.

Name and Pronoun Use:

Students are encouraged to share their name and gender pronouns with me and indicate how best to address them in class and via email. Further information can be obtained at GMU's Chosen Name and Pronoun Policy, <https://universitypolicy.gmu.edu/policies/chosen-name-pronouns-policy/>

Covid Protocols:

Please refer to GMU's *Safe Return to Campus* web site for information regarding GMU's safety protocols. The site can be accessed at: <https://shs.gmu.edu/services/covidservices/>.

Notice of Mandatory Reporting of Sexual Assault, Sexual Harassment, Interpersonal Violence, and Stalking:

As a faculty member, I am designated as a "Non-Confidential Employee," and must report all disclosures of sexual assault, sexual harassment, interpersonal violence, and stalking to Mason's Title IX Coordinator per University Policy 1202. If a student wishes to speak with someone confidentially, please contact one of Mason's confidential resources, such as Student Support and Advocacy Center (SSAC) at 703-380-1434 or Counseling and Psychological Services (CAPS) at 703-993-2380. Students may also seek assistance or support measures from Mason's Title IX Coordinator by calling 703-993-8730, or emailing titleix@gmu.edu.

University Resources:

- Counseling and Psychological Services: <https://caps.gmu.edu/>
- Student Health Services: <https://shs.gmu.edu/>
- Mason Square Campus Clinic: After-Hours Nurse Advice – 703-991-2831
- Mason Square Campus Clinic Location: Van Metre Hall, Room B102.
- Student Support and Advocacy Center: <https://ssac.gmu.edu/>
- Police: Emergency - Dial 911; 703-993-8070, Van Metre Hall, Room 110.
- Police escort services: 703- 993-8370.
- Sexual Assault Services: 703-993-8186, Van Metre Hall, Room 222D.
- Mason Square information: <https://masonsquare.gmu.edu>