PACIFIC McGEORGE SCHOOL OF LAW

COMPUTER-ASSISTED LITIGATION   **PROFESSORS GALVES, PIGANELLI**
SPRING, 2011   **THURSDAY, MARCH 10, 2011**
MID-TERM #1   **1:00 P.M. - 2:30 P.M.**

MID-TERM EXAM INSTRUCTIONS

1.   This is a 1 1/2 hour examination (90 minutes). Please write your **ANONYMOUS exam number**: on your exam answer responses; please make sure your exam number is contained on the top sheet of your exam answer document that you will upload to the Sakai site when you are done and also please e-mail a copy to wowens@pacific.edu so that we can make sure that, between the two, we receive a copy of your exam answer. Put "**CAL Mid-Term**" in the subject line.

2.   This is a three-part exam. Part One consists of TEN **(10) SHORT ANSWER QUESTIONS,** Part Two consists of SIX **(6) MULTIPLE CHOICE QUESTIONS,** and Part Three consists of ONE **(1) ESSAY QUESTION with 3 three short subparts.** You should spend about FORTY-FIVE (45) minutes on the 10 short answer questions, only about FIVE (5) minutes on the multiple choice questions, and about FORTY (40) minutes on the essay question. Please *__KEEP AND BUDGET YOUR TIME__*. **Please upload/send BEFORE 2:40 (10 extra minutes)**

3.   You have MORE THAN (4) FOUR minutes per question for the short answer portion (and about 1 minute for each of the very short multiple choice questions). You may be able to answer some 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 long paragraph of explanation.

4.   For the multiple choice portion (very short, one-sentence questions), please 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. Make sure your choice is clearly stated ("A" "B" "C" etc.) on Your Exam answer.

5.   This is an open-book, open note exam, so you may consult ANYTHING you choose in formulating your answers.

6.   When you are done, please upload your exam answer to the Sakai drop box (like last time) AND e-mail a copy to wowens@pacific.edu. – "CAL Mid-Term")

7.   This Mid-Term Exam is worth 15% of your final grade.

1.   What is the number one cause of legal malpractice lawsuits and how can technology help attorneys solve the problem?

2.   In an e-discovery team meeting, one of the partners suggests that the team should "OCR everything." You note that there are blueprints, as well as many handwritten, documents, but the partner says, "once we OCR all of the documents, we can search for any word in any document and find whatever we need, right?" What should you suggest and why?

3.   Assume I receive a Facebook post of a friend's "Totally Gnarling Reno Road Trip." Assume there are various photos in there that would be relevant to a legal dispute that I am involved in. Would I have a duty to preserve those pictures, and, if so, would I have to produce them, and if so, when, and in what form, and why?

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 decision to have the coding of all of the documents done by a computer data entry firm?

5.   Your client wants to get rid of all of its "old" electronic data so it asks you if they can erase any document that is more than 5 years old because it is "legacy data". The client asks for your legal advice and input in this matter. How would you advise?

6.   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?

7.   In CaseMap, why, as a strategic litigation matter, might you want to populate the fields "Disuputed/Undisputed Facts" and all the Facts that are "Heavily For Us" or "Heavily Against Us?"

8.   Explain how the concern for "proportionality" should affect, if at all, a duty to produce not reasonably accessible metadata.

9.   In an employment gender discrimination case, during the Rule 26(f) Meet & Confer meeting, the parties cannot agree on search terms and search protocols. If the plaintiff then makes a Rule 34 Request For Production for all documents that contain the name of the plaintiff as a search request, that are both in the defendant's database, and all documents in all of the jump drives of all employees, what should the defendant do?

10.   Assume that your client is involved in a breach of contract lawsuit as the defendant. The plaintiff wants to physically inspect defendant's hard drive for all documents relating to the contract. What objections should the defendant make and what, if anything, must the

defendant produce in these circumstances, and what alternatives might you suggest?

PART TWO OF THREE PARTS
(Multiple Choice Questions)

1.   A party:
   (A)   does not have to receive a subpoena to be forced to attend a deposition
   (B)   has to receive a subpoena to be forced to attend a deposition
   (C)   has to receive a subpoena to be forced to attend a deposition, but only if it is
          before the lawsuit is filed
   (D)   None of the above

2.   Why is the initial coding of documents and exhibits so important?
   (A)   Because it is the means by which you later search for the documents
          and exhibits
   (B)   Because the data has to interface correctly with the software to be
          recognized by the computer
   (C)   Because the lawyer must recognize the search options in order to use
          the software correctly
   (D)   Because the documents coded are always protected by the work product
          doctrine if done by a lawyer

3.   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 really 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

4.   In the *Scruggs v. Snyder* 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

5.   On-Line Dispute Resolution ("ODR") goes beyond traditional Alternative Dispute
       Resolution ("ADR") because
   (A)   it allows litigants and attorneys to solve the dispute outside the normal litigation
          court systems
   (B)   it solves the personal jurisdiction and conflicts of law problems
   (C)   it solves the personal jurisdiction and conflicts of law problems, but ADR allows
           for disputants to agree to a forum and agree on applicable law so this is not much
           of an innovation

6.   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.

PART THREE OF THREE PARTS
(Essay Question)

        Assume you are the attorney for defendant Scruggs in the _Scruggs v. Snyder_
case. Your law firm is considering using technology in all of the pre-trial aspects of the
litigation but is concerned about the cost, practicality, and time loss regarding getting up
to speed with the technology. One attorney argues that it actually wouldn't be a good
idea in this case.

(1)   Discuss whether the firm 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 either assist you in
         better representing the client and why it would be worth it, or why it would not.

*   *   *

        Assume Snyder responds to Scruggs Rule 34 Request for Production of
Documents by producing a CD full of e-mails and other electronic files. Scruggs argues
that Snyder has failed to produce because Scruggs asked for paper documents not
electronic files. In response, Scruggs then sends printed paper documents of the files.
A new lawyer for Scuggs 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 Scuggs now use the privileged information and the metadata on the CD
         or is Scruggs limited to the printed paper documents because that is what
         they requested?

*   *   *

(3)   Would "sampling" be justified in this case, why or why not?

ʙ END OF THE EXAM ʙ