

Western State College of Law

Information Law, 380A

Spring 2019

Tuesday & Thursday, 3:30pm – 5:00 pm

Professor Sarah Eggleston

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Office Hours:

Tuesday & Thursday: *By Appointment*

Required Text

Due to the varied and practical nature of the topic, no formal text required. A supplemental packet of materials, including specific cases, statutes, law reviews and other relevant sources, is provided by Professor first week of class.

Course Overview

Information is a crucial asset in society today. Every person, government department, or legal entity produces information of some kind. Whether for ensuring access to justice, guarding against the misuse of information, combating crime and terrorism or for meeting customer needs, both the public and private sector recognize its value. At the same time, there is widespread acceptance that the use of information needs to be governed by a robust legal framework. This course introduces and surveys the legal framework pertaining to information law, as it applies to various sectors of society. Topics include different types of information and classification (government, health, financial, and personal), public access to information, information privacy, the ethical use of information, information sharing, information algorithms, data mining, litigation and legal practice issues.

Learning Goals

- (1) To understand the doctrinal approaches taken to “information” in various areas of law such as administrative law, contracts, criminal procedure, employment, trade secrets, and privacy.
- (2) To understand the interplay among public policy and technological advances with respect to information access and legal doctrine.
- (3) To develop a non-technical, conceptual understanding of the technologies underlying big data, machine learning, and artificial intelligence in order to understand the effects of these changes on litigation, discovery, and our judicial system.
- (4) To advocate, in both oral and written formats, the legal, economic, and social policy strengths and weaknesses of a rule, or proposed rule, and to use case law, statutes, and policy to persuade others.
- (5) To utilize written analytical and advocacy skills, in conjunction with advanced legal research sources, in a legal research paper of publishable quality.

Attendance and Grading

Class attendance is important, and it is mandatory. Per the Western State Attendance Policy (as found in the current Student Handbook), a student who misses more than four (4) class sessions may be dismissed from the class and thus receive a “o” for the course.

This class is designed to satisfy the Western State College of Law upper level writing requirement (ULWR), which is based on the guidelines established by the American Bar Association. Your final grade will be based on a full first draft of the final paper (10%), class participation (20%) and a final paper, 17-20 pages in length of publishable quality (70%).

You will work on the research paper throughout the semester. In a Western State UWLR course, you must earn a 2.0 or higher on the research paper to obtain ULWR credit.

Class Participation

Students are expected to be present and ready to participate at each class. The class is more productive, fun, and fast-paced if you have thought about the material and are willing to discuss it. I will be providing a few guest speakers throughout the course which will allow you to actively engage with practitioners in the field. We are fortunate to have a relatively small number of students which will allow this seminar to incorporate a great deal of participation and flexibility in attaining our objectives.

Class participation grade is based on a brown bag presentation, quality and quantity of contributions to class discussion, quality of work on several in-class assignments, and overall professionalism. It is estimated that, on average, the assigned reading, other classroom preparation, and research/writing assignments, should require six or more hours outside of class.

Western State College of Law Programmatic Learning Outcomes

Western State College of Law’s curriculum is designed so that every student achieves a level of competency prior to graduation in each of the eight Programmatic Learning Outcomes listed below:

(1) Doctrinal Knowledge

Students will demonstrate knowledge of substantive and procedural law in the core curriculum subjects, including Contracts, Criminal Law, Criminal Procedure, Torts, Real Property, Business Association, Evidence, Civil Procedures, Constitutional Law, Estates, Community Property, Remedies, and Professional Responsibility.

(2) Practice Skills

Students will demonstrate the development of other law practice skills. Each student's chosen outcomes within this category will be varied based on the student's particular interests, coursework and work experiences. They may include, but are not limited to, the following topics: oral presentation and advocacy; interviewing; counseling; client service and business development; negotiations, mediation, arbitration, or other alternate dispute resolution methods; advanced legal research and writing (excluding purely academic papers and the first four units earned in introductory first-year legal research and writing class); applied legal writing such as drafting contracts, pleadings, other legal instruments; law practice management or the use of technology in law practice; cultural competency; collaboration or project management; financial analysis, such as accounting, budgeting project management, and valuation; cost benefit analysis in administrative agencies; use of technology, data analyses, or predictive coding; business strategy and behavior; pre-trial preparation, fact investigation, such as discovery, e-discovery, motion practice, assessing evidence, or utilizing experts; trial practice; professional civility and applied ethics; a law clinic that includes a classroom component; or a legal externship that includes a classroom component.

(3) Legal Analysis

Students will demonstrate the ability to identify the factual and legal issues implicated by a fact pattern and to appropriately use cases (including identifying the salient features of an appropriate precedent case, identifying legally significant similarities or differences between the precedent case and a fact pattern and explaining why those are legally significant) and rules (including the ability to connect legally significant facts in a fact pattern to the rule) to predict how a court would decide the issue. Students will also demonstrate the ability to identify and evaluate the public policies of a precedent case or rule, and be able to evaluate how public policy can impact the application of a rule to the legal issue.

(4) Legal Research

Students will demonstrate the ability to locate relevant legal authority using a variety of book and electronic resources, and to properly cite to such legal authority.

(5) Communication

Students will demonstrate the ability to communicate both orally and in writing in a manner appropriate to a particular task to effectively convey the author or speaker's ideas. This includes audience sensitivity in written and oral communication (the ability to adopt a tone, style and level of detail appropriate to the needs, knowledge and expertise of the audience); and written communication basic proficiency (the ability to use the conventions of grammar, spelling, punctuation, diction and usage appropriate to the task and sufficient to convey effectively the author's ideas).

(6) Advocacy of Legal Argument

Students will demonstrate the ability, in both oral and written formats, to evaluate the legal, economic and social strengths and weaknesses of a case and use case and statutory authority as well as public policy to persuade others. Making policy-based arguments includes the ability to identify and evaluate the public policies of a precedent case or rule and their implications, and be able to assert such appropriate arguments to support a particular application or distinction of a precedent case to a legal controversy or a particular resolution of the application of a rule to the legal controversy.

(7) Client Sensitivity and Cultural Competency

Students will demonstrate an awareness of clients' needs and goals, including a sensitivity to clients' background and circumstances (including, but not limited to, socio-economic, gender, race, ethnicity, educational, disability and/or religious background(s)), the ability to make decisions that reflect an appropriate focus on those needs and goals, and awareness that cultural issues may affect the relevance of facts and application of the law.

(8) Legal Ethics

Students will demonstrate the ability to identify ethical issues in law practice contexts and make appropriate decisions to resolve such issues.

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Institutional Learning Outcomes

(1) Analytical Reasoning

Analyze issues objectively, interpret and synthesize data and ideas, and develop feasible, flexible, and creative solutions to real world problems

(2) Effective Communication

Identify audiences, assess information provided, interpret needs, and present relevant information using appropriate written, oral, and listening skills and media to meet the needs of the situation

(3) Information Competency

Gather, evaluate, and ethically use information from a variety of relevant technological and library resources to make decisions and take action

(4) Interpersonal Effectiveness

Develop individual and group interpersonal skills to improve and foster participation and interaction critical for achieving individual and group goals

(5) Personal and Professional Integrity and Ethical Behavior

Demonstrate a multidimensional awareness of individual and social responsibility to act ethically and with integrity in a diverse, global society.

(6) Professional Competence

Apply skills appropriate to program objectives and employ critical reasoning to contribute to one's field and profession

DISABILITY SERVICES STATEMENT

Western State College of Law provides accommodations to qualified students with disabilities. The Disabilities Services Office assists qualified students with disabilities in acquiring reasonable and appropriate accommodations and in supporting equal access to services, programs, and activities at Western State College of Law.

To seek reasonable accommodations, a student must contact Senior Assistant Dean Donna Espinoza, Student Services Director and Disabilities Services Coordinator, whose office is in the Students Services Suite 119. Dean Espinoza's phone number and email address are: (714) 459-1117; despinoza@wsulaw.edu. When seeking accommodations, a student should notify

Dean Espinoza of her or his specific limitations and, if known, her or his specific requested accommodations. Students who seek accommodations will be asked to supply medical documentation of the need for accommodation. Classroom accommodations are not retroactive, but are effective only upon the student sharing approved accommodations with the instructor or professor. Therefore, students are encouraged to request accommodations as early as feasible with Dean Espinoza to allow for time to gather necessary documentation. If you have a concern or complaint in this regard, please notify Dean Espinoza; or please notify Dean Allen Easley at aeasley@wsulaw.edu or (714) 459-1168. Complaints will be handled in accordance with the College of Law’s “Policy against Discrimination and Harassment.”

Week	Dates	Course Topics / Readings
01	T: 01-15-19 TH: 01-17-19	<p>Topics: Introduction to the Course & Topics Covered; Sources of Information (Government Data; Health Information; Financial Records; Consumer Financial Information); Freedom of Information Act; HIPAA; Information Privacy; Machine Learning/AI; Litigation Issues</p> <p>Readings: None</p>
02	T: 01-22-19 TH: 01-24-19	<p>Topics: Paper Topic introduction; Paper Process & Components; Government Information; Legislative History; CRS;</p> <p>Research Session: Government Information ULWR: Paper Topic Intro / Selection; Paper Components</p> <p>Readings: Kosar, Kevin, <i>The Atrophying of the Congressional Research Service's Role in Supporting Committee Oversight</i>, 64 Wayne L. Rev. 149 (2018), pgs. 149-162</p>
03	T: 01-29-19 TH: 01-31-19	<p>Topics: Government Information; FOIA; California Public Records Act; Special Considerations; Health Information; HIPAA</p> <p>Guest Speaker</p>

		<p>Readings: Kwoka, Margaret, <i>First-Person FOIA</i>, 127 Yale L. J. 2204 (2018), pgs. 2204-2269.</p>
04	<p>T: 02-05-19 TH: 02-07-19</p>	<p>Topics: Business Entity & Financial Information; 1933/1934 Acts; Trade Secret Act</p> <p>Research Session: Business Information & Due Diligence ULWR: Paper Proposal & Literature Review Due</p> <p>Readings: None.</p>
05	<p>T: 02-12-19 TH: 02-14-19</p>	<p>Topics: Consumer Information; Personally Identifiable Information; Personal Health Information; Financial Information; Social Media Tracking</p> <p>Readings: Hutchinson, Eugene, <i>Keeping Your Personal Information Personal: Trouble for the Modern Consumer</i>, 43 Hofstra L. Rev. 1151 (2015), pgs. 1151-1188.</p>
06	<p>T: 02-19-19* TH: 02-21-19</p>	<p>Topics: Right of Privacy (Introduction)</p> <p>*Tuesday, 02-19-19: Legislative Day – NO CLASS ULWR: Paper Outline & Research Log Due</p> <p>Readings: None.</p>
07	<p>T: 02-26-19 TH: 02-28-19</p>	<p>Topics: Privacy Foundations - Constitutional & Tort</p> <p>Readings: <i>United States v. Jones</i>, 565 U.S. 400, 134 S.Ct. 2473 (2014) <i>Anderson v. Mergenhagen</i>, 642 S.E. 2d 105 (Ga. App. 2007)</p>
08	<p>T: 03-05-19 TH: 03-07-19</p>	<p>SPRING BREAK</p>

09	T: 03-12-19 TH: 03-14-19	<p>Topics: Privacy and the Media; Privacy and Law Enforcement</p> <p>Readings: Park, Eunice, <i>Protecting the Fourth Amendment After Carpenter in the Digital Age: What Gadget Next?</i>, Orange County Lawyer, May 2018, pgs. 34-36.</p>
10	T: 03-19-19 TH: 03-21-19	<p>Topics: Privacy in Government Data Collection, Financial Information & Records</p> <p>ULWR: 5-page Summation Due</p> <p>Readings: <i>Tabet v. U.S. S.E.C.</i>, 2012 WL 3205581 (S.D. Cal., 2012). <i>Electronic Privacy Information Center v. Internal Revenue Service</i>, 910 F.3d 1232 (D.C. Cir., 2018)</p>
11	T: 03-26-19 TH: 03-28-19	<p>Topics: Privacy in Health / Genetic Information, Educational Records, & Employment Records</p> <p>Readings: <i>Hernandez v. Hillside, Inc.</i>, 211 P. 3d 1063 (Cal., 2009)</p>
12	T: 04-02-19 TH: 04-04-19	<p>Topics: Algorithms & Machine Learning; COMPAS; SB 10 (CA); Webscraping; Data Aggregation/Mining;</p> <p>Guest Speaker</p> <p>Readings: Azadian, James S. and Garrett M. Fahy, <i>Artificial Intelligence and the Law: Navigating “Known Unknowns</i>, Orange County Lawyer, vol. 59, #10 (October 2017), pgs.22-29.</p>
13	T: 04-09-19 TH: 04-11-19	<p>Topics: Rules of Professional Conduct; Information Ethics; GDPR; Right to be Forgotten</p> <p>Readings: None.</p>

14	T: 04-16-19 TH: 04-18-19	<p>Topics: Litigation Issues –General Practice Issues; Experts; E-discovery; Judicial Opinions; Access-to-Justice.</p> <p>Guest Speaker</p> <p>Readings: Parness, Hillel, <i>Toward a Social Networking Law?</i>, <i>Landslide</i>, vol. 10, no. 1, 26-29</p> <p>Krause, Jason, “... <i>But They’re Emails! Some of the Most Contentious Political Issues are at their Root, E-Discovery Disputes</i>, <i>ABA Journal</i>, December 2018, pgs. 46-51.</p>
15	T: 04-23-19 TH: 04-25-19	<p>Topics: ULWR: Paper Presentations</p> <p>Readings None.</p>
16	T: 04-30-19	<p>Topics: Class Review / Wrap-Up</p> <p>Readings: None.</p>

Final Paper Due by Friday, May 10, 2019. All papers must be emailed to me (at seggleston@wsulaw.edu) by 12 Midnight.