

FUNDAMENTALSPRETRIALLITIGATION.COM
Ninth Edition

Roger S. Haydock, David F. Herr, Jeffrey M. Stempel

This website—FundamentalsPretrialLitigation.com—contains a variety of electronic documents that were involved in litigation and that form the bases for e-discovery course problems. The historic Enron litigation is the source of these documents. They have become public and can now be searched, identified, and analyzed as ediscovery materials. (This website contains only a small subset of the documents produced in the Enron litigation.) These documents reflect the type of documents that can be discovered as electronically stored information (ESI). No other law school text provides this type of opportunity and experience.

We have created additional practice problems on this website to provide the real world context of e-discovery problems encountered in modern litigation. These problems can be assigned to augment the assignments that appear at the end of our book chapters. We invite you to comment about your experiences with these problems and the website electronic documents. You may well have suggestions about how to improve these practice problems or additional problems we can add to this website.

FUNDAMENTALS OF PRETRIAL LITIGATION, NINTH EDITION

Chapter 2 Investigation Practice Problems

The following practice problems involve electronically stored information that appears at FundamentalsPretrialLitigation.com.

60. The website FundamentalsPretrialLitigation.com contains numerous documents involved in the Enron litigation. Presume you were representing a party with potential litigation claims against Enron.

(a) Be prepared to discuss in class how you have planned to conduct an investigation locating and identifying potentially relevant ediscovery documents.

(b) Plan how you would go about planning investigative efforts to locate and identify potentially relevant discovery documents.

Chapter 5 Scope Practice Problems

The following practice problems involve electronically stored information that appears at FundamentalsPretrialLitigation.com.

46. Use the search term “work product” to locate potentially discoverable electronic documents. Review the e-documents to determine which, if any, category of work product may protect them from discovery

(a) Presume you were representing Enron. Be prepared to argue why these documents are not discoverable.

(b) Presume you were representing a party in litigation with Enron. Be prepared to argue why these documents are discoverable.

(c) You are the judge, decide if the documents are discoverable and why or why not.

47. Use the search term “trial preparation material” and “trial preparation materials” to locate potentially discoverable electronic documents. Review the e-documents to determine if they may be trial preparation materials as explained in Section 5.7 of the Text.

(a) Presume you were representing Enron. Be prepared to argue why these documents are not discoverable.

(b) Presume you were representing a party in litigation with Enron. Be prepared to argue why these documents are discoverable.

(c) You are the judge, decide whether the documents are discoverable and why or why not.

48. Use the search term “confidential information” to locate potentially discoverable electronic documents. Review the e-documents to determine if they may or may be discoverable.

(a) Presume you were representing Enron. Be prepared to argue why these documents are not discoverable.

(b) Presume you were representing a party in litigation with Enron. Be prepared to argue why these documents are discoverable.

(c) You are the judge, decide whether the documents are discoverable and why or why not.

49. Use the search terms “attorney client privilege” and “attorney client privileged” to locate potentially discoverable electronic documents. Review the e-documents to determine if they may be discoverable or privileged documents as explained in Sections 5.5.1 and 5.5.6 of the Text.

(a) Presume you were representing Enron. Be prepared to argue why these documents are not discoverable.

(b) Presume you were representing a party in litigation with Enron. Be prepared to argue why these documents are discoverable.

(c) You are the judge, decide whether the documents are discoverable and why or why not.

50. Use the search term “trade secret” and “trade secrets” to locate potentially discoverable electronic documents. Review the e-documents to determine if they may be discoverable.

(a) Presume you were representing Enron. Be prepared to argue why these documents are not discoverable.

(b) Presume you were representing a party in litigation with Enron. Be prepared to argue why these documents are discoverable.

(c) You are the judge, decide whether the documents are discoverable and why or why not.

51. Use the search term “protective order” to locate potentially discoverable electronic documents. Review the e-documents to determine if they may or may not be discoverable as explained in Section 5.10 of the Text.

(a) Presume you were representing Enron. Be prepared to argue why these documents are not discoverable.

(b) Presume you were representing a party in litigation with Enron. Be prepared to argue why these documents are discoverable.

(c) You are the judge, decide whether the documents are discoverable and why or why not.

52. Use the search term “expert” and “experts” to locate potentially discoverable electronic documents. Review the e-documents to determine what type of expert is involved and what is discoverable from or about this expert as explained in Section 5.8 of the Text.

53. Use the search term “insurance” and “insurance coverage” to locate potentially discoverable electronic documents. Review the e-documents to determine if they are or are not discoverable.

Chapter 8 ESI Practice Problems

The following practice problems involve electronically stored information that appears at FundamentalsPretrialLitigation.com.

31. Before Enron has been served with any lawsuit by any plaintiff, the General Counsel retains you to advise the company about certain policies and procedures:

(a) Be prepared to discuss in class the major provisions of a company wide document retention/destruction policy that would meet legal standards and balance the needs and interests of the company.

(b) Outline the provisions of a document retention/deletion policy.

(c) Be prepared to discuss in class the four policies of cooperation, accessibility, affordability, and proportionality as explained in Section 8.24 of the Text as applied to the electronically stored information appearing at FundamentalsPretrialLitigation.com website.

(d) Be prepared to discuss in class ESI cost shifting proposals Enron could discuss with opposing parties in litigation.

(e) Outline a presentation you would make to Enron staff regarding their duty to preserve ESI and avoid spoliation sanctions as explained in Section 8.26 of the Text.

(f) Be prepared to discuss in class major provisions of an ESI Protocol for the e-documents appearing in the [FundamentalsPretrialLitigation](http://FundamentalsPretrialLitigation.com) website as explained in Section 8.20 of the Text.

(g) Outline the terms of an ESI Protocol for the e-documents appearing in the [FundamentalsPretrialLitigation](http://FundamentalsPretrialLitigation.com) website as explained in Section 8.20 of the Text.

32. The Federal Government sues Enron for deceptive trade practices and similar claims.

(a) You represent the Federal Government. Be prepared to discuss in class how you would plan to seek the discovery of electronically stored information from Enron.

(b) You represent the Federal Government. Outline a plan to seek the discovery of electronically stored information from Enron.

(c) You represent Enron. Be prepared to discuss in class how you would plan to defend against the discovery of Enron's electronically stored information.

(d) You represent the Enron. Outline a plan to seek defend against the discovery of Enron's electronically stored information.

33. The Federal Government sues Enron for deceptive trade practices and related claims.

(a) You represent the Federal Government. Be prepared to discuss in class the requests for ESI you would submit to Enron.

(b) You represent the Federal Government, draft document discovery requests seeking ESI from Enron.

34. During litigation with the Federal Government for deceptive trade practices and related claims, Defendant Enron receives a document request "Seeking all documents including electronically stored information relevant to the claims and defenses of the case." How would you respond to this request by the Plaintiff regarding the discovery of ESI that appears at FundamentalsPretrialLitigation.com?

(a) You decide to respond as follows: "The documents you request appear at EnronDocuments.com. You may review all relevant documents at that website."

(1) Presume you represent the Federal Government, how would you reply to this response?

(2) You are the judge. Decide whether the response or the reply is the most appropriate and correct response/reply.

35. During litigation with the Federal Government for deceptive trade practices, the judge, during the initial Discovery Conference, orders the attorneys for Enron and the attorneys representing the Federal Government to meet and confer and submit a proposed protocol order regarding the discovery of electronically stored information relevant to the case.

(a) As the attorney for Enron, what are the major provisions you would propose for this protocol?

(b) As the attorney for the Federal Government, what are the major provisions you would propose for this protocol?

(c) As the attorney for Enron, outline the major provisions you would propose for this protocol.

(d) As the attorney for the Federal Government, outline the major provisions you would propose for this protocol.

(e) As the attorney for Enron, draft the terms of the protocol proposed order you would submit to the court.

(f) As the attorney for the Federal Government, draft the terms of this protocol proposed order you would submit to the court.

(g) As the judge, what are the major provisions for this protocol you would include in your ESI order?