

# Technology and Confidentiality

## Hypothetical

*From: Santa Clara Law's Entrepreneurs' Law Clinic Coursebook: Law for Startups Through an Empathetic Lens*

### “A DAY IN THE LIFE OF CLINICAL STUDENTS, AVERY AND JORDAN”

Avery and Jordan are enrolled in the Entrepreneurs' Law Clinic. They both are excited to put all that they have been learning into practice. In their third year of law school, they are more than ready to feel like “real lawyers.” They are assigned to work together on their client's case. They are happy that the ELC embraces the use of technology because that will make it easier for them to work on client projects while still enjoying the summer sun. They won't have to be “cooped up” in a clinic office every day; they can work on client cases from the beach, the pool, Starbucks, or even the Giant's game!

During the first week of clinic, Avery and Jordan are assigned a startup company of an SCU business student, called “BeerMe.com.” BeerMe's founder, Lane, suggests that they hold their first meeting at Lane's favorite afternoon hangout, The Hut. They set the meeting time for 5pm on Thursday. When Avery and Jordan arrive for their meeting, Lane has already arrived and bought them all beer, and reserved a table. Good thing Lane got there early; the place was packed!

Lane immediately hands Avery and Jordan a copy of a patent application that was filed last week, figuring that was the best way for Avery and Jordan to get up to speed on what BeerMe's product is all about. Jordan takes the copy and puts it in a backpack so they can review it later and upload it to Clio, the ELC's case management system. Remembering that they need to fill out an intake form, Avery pulls up the intake form on an iPhone and starts asking Lane questions. Avery sometimes needs to yell in order for Lane to hear; there are quite a few groups of students standing around their table that are making a lot of noise. Jordan opens a laptop and begins to take notes. Jordan is sitting closest to the crowd of students, so it's hard to hear.

On Friday morning, Jordan sends Avery the meeting notes so Avery can finish filling out the intake form. Jordan is already on a personal Gmail account checking emails from high school friends, so Jordan sends the notes to Avery from there. Avery

receives the email on an iPad, and saves a copy of the attachment to Evernote to review it and mark up later.

The following week, Avery needs to get some information from Jordan to get started on drafting BeerMe's bylaws, but Jordan is not answering the phone. Avery figures Jordan is in class, so knows Jordan will be on social media Avery sends the following direct message to Jordan: "Hey Jordan, I need some info on BeerMe. I can't get ahold of Lane. Can you get back to me ASAP?" Jordan replies, "I'll call you after IP Survey." Jordan noticed in the following weeks that the social media platform pushed ads to her for BeerMe's competitor, TapToday.

Later that week, Avery finishes the bylaws and tweets "Done working on bylaws 2night! #overworked #startupace." She writes her memo that explains the bylaws by using an operating agreement memo she finds in Clio and using "find/replace" function to change the client name to BeerMe. There are a few places where the previous client name is still showing up, but she figures she or Jordan can catch those later.

Avery runs into Jordan on campus the following day. Jordan has been in the library all morning, working on incorporating Avery's edits, into the BeerMe shareholder agreement. He used ChatGPT to get a start on the shareholder agreement – it is looking great! Talking to Avery reminds Jordan that he printed a copy of the BeerMe shareholder agreement and left it on the library printer. Jordan runs back to the library to find the agreement in the recycling bin next to the printer.

Between classes, Avery will wrap up the shareholder agreement on a laptop at Starbucks. When Avery is just about finished with the edits to the agreement, Avery realizes they have had too much coffee. Avery asks a friendly looking middle-aged gentleman at the table to watch the laptop and notes while Avery quickly goes to the bathroom.

Avery emails the completed shareholder agreement to Jordan that evening, for one last review before turning it in at midnight. Jordan opens the document on a smartphone while at a Mountain Winery concert. Jordan reviews the attachment - it looks great. Perfect. Jordan tosses the phone back in a backpack and stashes it back under the seat. When Jordan gets home that night, she realizes she can't find her phone. She calls the Mountain Winery the next morning, and they said there was a phone they found when cleaning up, and they'd hold it until she can pick it up. Unfortunately, when she got there, she discovered it was not her phone. She immediately got on her computer and disabled access to her phone.

The next week, Avery and Jordan meet with Lane to have Lane review the bylaws and shareholder agreement. The client requests to make it a Zoom meeting, so Avery and Jordan set up a Zoom meeting and send Lane the link. On the day of the meeting, Avery is stuck at home in a 2-bedroom apartment with three roommates. Avery doesn't want the roommates to disturb the Zoom call, so decides to do the Zoom call with noise-cancelling headphones in a corner of the kitchen table. One of the

roommates is busy cooking pancakes, but promises to be quiet while Avery completes the wrap-up call.

Lane is so grateful for their hard work and the students feel proud of their first real accomplishment. Jordan snaps a “Brady Bunch Style” photo of the three of them while on the Zoom call, and promptly uploads it to LinkedIn, tagging each of them and putting in the caption, “BeerMe lawyers a success.”

## Questions for Consideration:

1. Is the Hut an acceptable place for a client intake meeting?
2. Is the Hut (or a bar in general) an acceptable place for a meeting with a client – ever?
3. What things did the students do wrong at the client intake meeting? How could they have alleviated some of these issues?
4. Is Avery’s use of Facebook to communicate with Jordan appropriate? If not, is there an appropriate manner to use Facebook relating to the ELC?
5. Should client documents or emails be printed on a shared printer? Should they be printed at all? What obligations does an ELC student have with respect to printing and printed client documents?
6. How can an ELC student look at client documents or emails at Starbucks, or a concert, and maintain their professional duties?
7. When holding conference calls or Zoom calls, what consideration should an ELC student take into account regarding location of the call?
8. Is there anything wrong (as per Professional Responsibility rules and the State Bar Opinions) with Jordan’s post on LinkedIn?
9. Does Jordan have an obligation to notify the client about losing her phone?
10. Can Avery use a previous memo done for another client that she found on Clio for her own client?
11. What should Jordan think about when using ChatGPT for his project?