

University of California, Berkeley
School of Law (Boalt Hall)

Depositions (Law 246.3)
Syllabus: Second Edition (Subject to Change)

Spring 2012

Professor Hecht

Class #	Class Date	Topics	Assignments (to be completed <u>before</u> class)
1	1/11	Introduction to the Course and to Depositions	No reading assigned
2	1/18	Case Analysis	Prepare Assignment #1 (case analysis) and Assignment #2 (Initial Skills Inventory) Guest speaker: Joel ben Izzy Reading: Hecht Chapters 1, 2 & 4; and <i>Scoops</i>
3	1/25	Witness Preparation: Procedural and Ethical Considerations	Prepare Assignment #3 (survey on the ethics of witness preparation) Read Assignment #4, Instructions for the Witness Preparation and Deposition Role Plays Exercises Reading: Hecht Chapters 5, 7 & 8; and Appendix #4: Guide to Witness Preparation Recommended reading: Hecht Chapter 10
4	2/1	Witness Preparation: Substantive	Assignment #5 (witness preparation exercise) and Assignment #6 (selection of topics for the next two weeks of witness preparation role plays) Reading: Reread Hecht Chapter 8, pages 185 to 204; and read Chapter 11, pages 260-278
5	2/8	Witness Preparation, Round One	Prepare Assignment #7 (witness preparation role play) Observed by attorneys from Arnold & Porter LLP Reading: Hecht Chapters 6 & 9

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6	2/15	Witness Preparation, Round Two	Prepare Assignment #7 (witness preparation role play continued) Observed by attorneys from Farella Braun + Martel LLP Recommended reading: Hecht Chapter 3; Appendix #1, Deposition Notice; and Appendix #2: Federal Form of a Subpoena
7	2/22	Defending the Deposition	Prepare Assignment #8 (debrief of the witness preparation role plays) and Assignment #9 (exercises in defending the deposition) Reading: Hecht Chapter 14, and Appendix #8: Objections at a Deposition in Federal Practice
8	2/29	Taking the Deposition	Prepare Assignment #10 (exercises in taking the deposition), Assignment #11 (discovery exercise), and Assignment #12 (selection of topics for the next two weeks of deposition role plays) Reading: Hecht Chapters 11 & 12; Appendix #6: Model Questions About a Conversation; and Appendix #7: Model Questions About a Document
9	3/7	Depositions, Round One, Focus on Discovery	Prepare Assignment #13 (deposition role play) Observed by attorneys from Weil, Gotshal & Manges LLP Reading: Hecht Chapter 13; Appendix #3: Supplies to Take to a Deposition; and Appendix #5: Starting the Deposition
10	3/14	Depositions, Round Two, Focus on Discovery (continued)	Prepare Assignment #13 (deposition role play continued) Observed by attorneys from Wilmer Cutler Pickering Hale and Dorr LLP No reading assigned

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11	3/21 NOTE: No class on 3/28, due to Spring Break	Dealing with Problem Counsel	Prepare Assignment #14 (debrief of the deposition role plays) and Assignment #15a (exercises in dealing with problem counsel) Guest speaker: former Magistrate Judge and current Professor from Practice Wayne Brazil Reading: Hecht Chapters 15, pgs. 387-405 & 16 Recommended reading: Hecht Chapter 21
12	4/4	Deposing for Objectives In Addition to Discovery Dealing with Problem Witnesses	Prepare Assignment #15b (exercises in dealing with problem witnesses); Assignment #16 (exercise in gaining an admission); and Assignment #17 (selection of problems for the next two weeks of deposition role plays) Reading: Read Hecht Chapter 15, pgs. 405-413; reread Hecht Chapter 11, 260-278; and read Hecht Chapter 25, and Appendices #10 & #11: Using Depositions at Trial
13	4/11	Depositions, Round Three, Focus on Gaining an Admission	Prepare Assignment #18 (deposition role play) Observed by attorneys from Wilson Sonsini Goodrich & Rosati PC Reading: Hecht Chapter 23, and Appendix #9: Adjourning the Deposition
14	4/18	Depositions, Round Four, Focus on Gaining an Admission (continued) Using Depositions at Trial	Prepare Assignment #18 (deposition role play continued) Observed by attorneys from Kasowitz Benson Torres & Friedman LLP Reading: Reread Hecht Chapter 25 Recommended reading: Hecht Chapters 17 & 18

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		Final Paper	Assignment #19, Final Paper, and Assignment #20, Final Skills Inventory distributed at the last class of the semester on 4/18, and due on or before noon on Thursday, 5/10, the last hour and day of examinations for the spring 2012 semester

Required Texts:

Hecht, Effective Depositions 2nd ed. (ABA 2010) ["Hecht"]

NOTE: I arranged with my publisher, the American Bar Association (ABA), for a 40% discount for purchases by my students of the text from the Law School bookstore. The Law School bookstore adds its own mark up to the discounted price of the text.

Hecht, Scoops v. Business-Aide-Inc.: A Liability and Damages Case File 5th ed. (2009) ["*Scoops*"]

NOTE: The Scoops case file will be provided by the instructor in class. Due to budget constraints, large volume copying is no longer provided by the Law School at no cost to students. "Hard" copies of the Scoops case file are being provided to each student at my actual cost of copying (without the mark up charged by the Law School bookstore for course readers). The cost per student is \$20.00. Payment either in cash or by a check, made to the order of Henry L. Hecht, should be made by no later than the fourth class of the semester on Wednesday, 2/1/2012.

2011 Federal Rules of Civil Procedure 2011-2012 ed. (LexisNexis 2011) and Restyled 2012 Federal Rules of Evidence 2012 ed. (effective 12/1/2011) (LexisNexis 2011)

NOTE: These pocket editions will be provided by the instructor at no cost, compliments of LexisNexis.

On-line Resources:

Federal Rules of Civil Procedure: <http://www.law.cornell.edu/rules/frcp/overview.htm>

Federal Rules of Evidence: <http://www.law.cornell.edu/rules/fre/overview.html>

Grading:

The course will be graded using the standard Berkeley Law curve. Grading will be based on class participation (25%); three short written assignments (1. the debrief of the witness preparation role plays, 2. the debrief of the deposition role plays, and 3. your self-critique for the video review) (25%); and the Final Paper (50%).

Your final grade will depend on your attendance and participation in both class and the individual video review session with the instructor, described below, as well as the quality of your

written work. The quality of your preparation and effort in both the exercises and the simulation role plays as well as the insightfulness of your post-role play analysis will be considered and will affect your grade. The course is not “blind graded.”

Class Hours, Attendance Policy, and Drop/Add Period:

The class meets on Wednesdays, from 3:35 p.m. to 6:15 p.m., in the Boalt Hall room 115, unless otherwise announced.

Due to the use of role play exercises (simulations) throughout the semester, which depend on each student playing an assigned role, class attendance is mandatory. Absences and/or lateness will be noted and may result in a lower grade. If you are going to be absent or late for any reason, please notify me as soon as possible before class so that I may plan accordingly.

In addition, due to the use of role play exercises throughout the course and the need to determine the members of the class as soon as possible, the usual provisions of "Drop/Add" do not apply. You must decide whether you will enroll by no later than Friday afternoon, January 13, 2012, the last day of the first full week of classes for the spring semester.

Individual Video Critiques:

Each week when a deposition role play is conducted, takers and defenders will be video recorded and the videos will be posted on the course bSpace page for your review. You will be expected to review your own video in order to prepare a written self-critique. (I will provide instructions before the recordings begin.) I will then meet with the takers and defenders in a private review session. By the end of the semester, I will have met with each student for a video review session at least one time.

Undergraduates and/or 1Ls to Play the Roles of the Witnesses:

In order to make the witness preparation and deposition role plays as realistic as possible, I am trying to arrange for undergraduate Legal Studies majors and/or 1Ls to play the witness roles. I will let you know before the first role play if they are available. If not, students on each side of the case will rotate in the role of the witness.

Computers in the Classroom:

This class is an interactive one. Critical to the pedagogy is the active participation of everyone. The expectation in this class is that if you are using a computer in the classroom, you are using it in “good faith” to enhance your learning experience in this class and not for any other purpose.

Journals:

I recommend that you keep a personal journal during the semester. You will find that journal writing is an important way to enrich your learning experience. Much of your learning in this class will be through self-critique—reflecting on your subjective experience in a structured learning environment. A journal will help you to facilitate the integration of subjective experience with the

content of the course. A journal will also allow you to follow your progress and may be useful to you in practice as you look back on your experience in this class.

There is no one way to keep a journal, and you do need not spend excessive time writing. Entries can be short. Track your attitudes about your lawyering skills—the theories, the practice, your style, and that of your classmates. It is best to record your thoughts as soon as possible after completing a role play so that the experience is fresh in your mind. Your journal will assist you in "learning by doing." Journals are personal and confidential and, thus, will not be collected.

Finally as a practical note, I recommend that you keep your journal in a three-ring notebook. The notebook can also be used to hold the Scoops case file and the numerous other handouts distributed during the semester.

Instructor Biography:

My Berkeley Law faculty profile is found at <http://www.law.berkeley.edu/php-programs/faculty/facultyProfile.php?facID=48>

Office Hours and Assistant:

Date and Time: Wednesday, 11:00 a.m. to 12:00 noon, or by appointment

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