

University of California, Berkeley  
Berkeley School of Law

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

Fall 2018

Professor Hecht

Class #	Class Date	Topics	Assignments (to be completed <u>before</u> class)
1	8/21	Introduction to the Course and to Depositions	No reading assigned
2	8/28	Case Analysis	Prepare Assignment #1 (case analysis) and Assignment #2 (Initial Skills Inventory)  Guest: Nasrina Bargzie, Boies Schiller Flexner LLP  Reading: Hecht Chapters 1, 2 & 4; and the
3	9/4	Witness Preparation: Procedural and Ethical Considerations	Prepare Assignment #3 (survey on the ethics of witness preparation), and read Assignment #4 (Instructions for the Witness Preparation and Deposition Role Plays)  Reading: Hecht Chapters 5, 7 & 8; Appendix #4, Guide to Witness Preparation; and Chapter 11, pages 260-284  Recommended reading: Hecht Chapters 10
<b>4</b> <b>*No class on 9/18; next class on 9/21</b>	9/11	Witness Preparation: Substantive	Assignment #5 (outlining and witness preparation exercise), and read Assignment #6 (selection of topics, assumptions, and ground rules for the role plays)  Reading: Re-read Hecht Chapter 8, pages 185-204; and re-read Chapter 11, pages 260-284 Recommended reading: Hecht Chapter 14
<b>5</b> <b>*Make up class (1 p.m. to 3:40 p.m.)</b>	9/21* (Friday)	Witness Preparation, Round One	Prepare Assignment #7 (witness preparation role plays)  Observed by attorneys from Fenwick & West LLP  Reading: Hecht Chapters 6 & 9

Class #	Class Date	Topics	Assignments (to be completed <u>before</u> class)
<b>6</b> <b>*No class on 10/2; next class on 10/9</b>	9/25*	Witness Preparation, Round Two	Prepare Assignment #7 (witness preparation role plays continued)  Observed by attorneys from Arnold & Porter LLP and Crowell & Moring LLP  Reading: Hecht Chapter 3; Appendix #1, Deposition Notice; and Appendixes #2-A & 2-B, Federal Form of a Subpoena
7	10/9*	Debrief of the Witness Preparation Role Plays  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 <b>*Make up class (1 p.m. to 3:40 p.m.)</b>	10/12* (Friday)	Taking the Deposition  Court Reporters and the Preparation of a Final Transcript	Prepare Assignment #10 (exercises in taking the deposition), prepare Assignment #11 (outlining and discovery exercise), and read Assignment #12 (selection of topics, assumptions, and ground rules for the role plays)  Guest: Ana Fatima Costa, AFC Consulting  Reading: Hecht Chapters 11 & 12; Appendix #6, Model Questions About a Conversation; and Appendix #7, Model Questions About a Document
9	10/16	Depositions, Round One, Focus on Discovery	Prepare Assignment #13 (deposition role plays), and read Assignment #14 (Instructions for the Video Reviews)  Observed by attorneys from Boies Schiller Flexner LLP  Reading: Hecht Chapter 13; Appendix #3, Supplies to Take to a Deposition; and Appendix #5, Starting the Deposition

Class #	Class Date	Topics	Assignments (to be completed <u>before</u> class)
10	10/23	Depositions, Round Two, Focus on Discovery	Prepare Assignment #13 (deposition role plays continued)  Observed by attorneys from Littler Mendelson P.C. and King & Spalding LLP  Reading: Chapter 18
11	10/30	Debrief of the Witness Deposition Role Plays  Dealing with Problem Counsel and Problem Witnesses	Prepare Assignment #15 (debrief of the deposition role plays) and Assignment #16 (exercises in dealing with problem counsel and problem witnesses)  Guest: Sonal Mehta, Durie Tangri LLP  Reading: Hecht Chapters 15 & 16  Recommended reading: Hecht Chapter 21
12	11/6	Deposing for Objectives in Addition to Discovery  Communication Skills	Prepare Assignment #17 (outlining and gaining an admission exercise), Assignment #18 (communication observation exercise), and Assignment #19 (selection of topics, assumptions, and ground rules for the role plays)  Reading: Re-read Hecht Chapter 11, pages 260-292; Chapter 25; and Appendices #10-A, #10-B, & #11, Using Depositions at Trial
13	11/13	Depositions, Round Three, Focus on Gaining an Admission	Prepare Assignment #20 (deposition role plays)  Observed by attorneys from Lief Cabraser LLP and Weil, Gotshal & Manages LLP  Reading: Hecht Chapter 23, and Appendix #9, Adjourning the Deposition
14 <b>*Last Class</b>	11/20*	Depositions, Round Four, Focus on Gaining an Admission	Prepare Assignment #20 (deposition role plays continued)  Observed by attorneys from Latham & Watkins LLP  Reading: Hecht Chapter 17

Class #	Class Date	Topics	Assignments (to be completed <u>before</u> class)
		Final Paper	Assignment #21, Final Paper, and Assignment #22, Final Skills Inventory, will be distributed on the next business day after the last class of the semester. They are both due on or before 5:00 p.m., Thursday, December 13, 2018

### Berkeley Law Learning Outcomes:

The Law School has identified five competencies that students will develop by the conclusion of their legal education. Consistent with that objective, students in this course will be expected to achieve the following Berkeley Law Learning Outcomes: 1. knowledge and understanding of substantive and procedural law; 2. legal analysis and reasoning, legal research, problem-solving, and written and oral communication in the legal context; 3. exercise of proper professional and ethical responsibilities to clients and the legal system; 4. other professional skills needed for competent and ethical participation as a member of the legal profession; and 5. using the law to solve real-world problems and to create a more just society.

### Required Texts:

Hecht, Effective Depositions 2<sup>nd</sup> ed. (ABA 2010) ["Hecht"]

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 check, made to the order of Henry L. Hecht, should be made by no later than the fourth class of the semester on Tuesday, September 11, 2018.

2018 Federal Rules of Civil Procedure (LexisNexis) and 2018 Federal Rules of Evidence (LexisNexis)

Note: The "pocket" editions will be provided by the instructor at no cost to you, compliments of LexisNexis.

### On-line Resources:

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

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

### Grading:

The course is graded using the standard, mandatory Berkeley Law curve. Grading is based on the following: 1. class participation (50%), as described below; and 2. the Final Paper (50%).

The components of class participation include: 1. your attendance; 2. your preparation for, and active participation in, class, including three short in-class witness preparation and deposition exercises, six longer in-class deposition role plays, a number of problem sets on witness preparation and deposition practice, two post-role play debriefings, and two video review meetings per student with me; 3. the timely receipt and the quality of two written self-critiques, one of your video recorded performance as a taker and one of your video recorded performance as a defender; 4. the timely receipt and the quality of your Initial and Final Skills Inventories; 5. the timely receipt of your Final Paper; and 6. following the format detailed in Assignments when submitting papers. In addition, throughout the semester, you will be evaluated on your demonstration of an understanding of and ability to use effective deposition skills, including preparing a witness and yourself for a deposition as well as taking and defending a deposition. (Note: This course is not “blind graded.”)

The Final Paper asks you to critique the performance of both the taker and also the defender based on your review of two separate deposition transcripts.

#### Class Credits and Hours, Attendance Policy, and the Drop/Add Period:

This course is for 3 credits. The course meets on Tuesdays from 3:35 p.m. to 6:15 p.m., unless otherwise announced.

Attendance at the first class is mandatory for all students seeking admission. Students who are not present at the first day of class without prior permission of the instructor will be dropped from the class.

Due to the use of role play exercises (simulations) throughout the semester, which depend on each student playing an assigned role, class attendance and thorough preparation are mandatory. Unexcused absences and/or lateness will be noted and will 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 plays 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. If admitted, you must let me know whether you will enroll by no later than Friday afternoon, August 24, 2018, the last day of the first full week of classes for the spring semester.

#### Prerequisites or Co-requisites:

US Civil Procedure at a US Law School. Although not required, completion of, or concurrent enrollment in, Evidence is recommended.

#### Berkeley Law Policy re Credit Hours:

A “credit hour” at Berkeley Law is an amount of work that reasonably approximates three to four hours of work per week for 15 weeks, including: 1. classroom time; 2. time spent preparing for

class; 3. time spent studying for, and taking, final exams; 4. time spent researching, writing, and revising papers and other written work; and 5. time spent preparing for and completing any other final project, presentation, or performance. For the purposes of these calculations, 50 minutes of classroom instruction counts as one hour, and the 15 weeks includes the exam period. You should expect to spend this amount of time per credit hour per week on out-of-class, course related work, as described above.

#### Berkeley Law Policy re Exam and Classroom Accommodations:

Student Services schedules all exams, including accommodated exams, because the Law School is committed to anonymous grading. Any student who seeks an accommodated or rescheduled exam for documented medical reasons or for religious observance should contact Kyle Valenti, Director of Student Services ([kvalenti@law.berkeley.edu](mailto:kvalenti@law.berkeley.edu)). (Note: As noted above, this course has a final paper, not a final exam.)

In addition, students who need classroom accommodations or who want to discuss implementation of their accommodations in this class should also contact Kyle Valenti as soon as possible.

#### Individual Video Critiques:

During the deposition role plays, pairs of takers and defenders will be video recorded; and their videos will be posted on bCourses for their review and written self-critique. I will then meet with pairs of takers and defenders in a private video review session. By the end of the semester, I will meet with each student two times, once for a video review session with each student in his, her, or their role as a taker and once in his, her, or their role as a defender.

#### Court Reporters and Transcripts of Your Depositions:

Through arrangements with Ana Fatima Costa Consulting ([www.anafatimacosta.com](http://www.anafatimacosta.com)), student court reporters will attend the four deposition role plays and transcribe the testimony. The court reporters will then provide you with a rough (aka “dirty ASCII”) transcript of your depositions at no cost to you. By the end of the semester, you will receive eight (8) transcripts, four (4) in your role as a taker and four (4) in your role as a defender.

You will find reading your transcripts yet another important way to learn effective deposition practice. I encourage you to read your transcripts with care as soon as possible after you receive them.

#### Undergraduates to Play the Roles of the Witnesses:

In order to make the witness preparation and deposition role plays as realistic as possible, I am working hard to recruit undergraduate Legal Studies majors to play the roles of the witnesses. If I am unsuccessful, students on each side of the case will rotate in the role of the witness.

#### Personal Electronics in the Classroom:

This class is an interactive one. Critical to its pedagogy is the active participation of every student. The expectation in this class is that if you are using any electronics, including computers, tablets, cell phones, or other handheld devices during class, you are using them in “good faith” to enhance your learning experience in this class and not for any other purpose. If it turns that the use of personal electronics is interfering with the quality of class, we will need to revisit their use in the classroom.

### Journals:

I recommend—but do not require—that you keep a personal journal throughout the semester. You will find that journal writing is yet another 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 as a practicing attorney as you look back on your experience in this class.

There is no one way to keep a journal, and you do not need to 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 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 other handouts.

### 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: Tuesday, 11:00 a.m. to 12 noon, or by appointment

Room: 340D North Addition

Telephone: 510-642-1787

Fax: 510-642-3856

E-mail: [hhecht@law.berkeley.edu](mailto:hhecht@law.berkeley.edu)

NOTE: Please use e-mail to contact me, and I will do my best to respond to messages within one business day of receipt. Please do not use the bCourses messaging interface to contact me.

Faculty Support Assistant: Stephanie Dorton

Room: 325A Boalt Hall

Tel: 510-643-2256

Fax: 510-642-3856

E-mail: [dorton@berkeley.edu](mailto:dorton@berkeley.edu)