

University of California, Berkeley
 Berkeley School of Law
 Depositions (Law 246.3)
 Syllabus: First Edition for In-Person and for Remote Classes (Subject to Change)
Note: Zoom links found on page 9 below.

Fall 2022

Professor Hecht

Class #	Class Date	Topics	Assignments (to be completed <u>before</u> class)
1	8/23	Introduction to the Course and to Depositions	No reading assigned
2	8/30	Case Analysis in Preparation for a Deposition	Prepare Assignment #1 (case analysis) and Assignment #2 (Initial Skills Inventory) Guest: Joel ben Izzy (https://www.storypage.com/) Reading: Hecht Chapters 1, 2 & 4; and the <i>Scoops</i> case file
3	9/6	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 Chapter 10
4	9/13	Witness Preparation: Substantive Preparation	Prepare Assignment #5 (outlining and witness preparation exercise), and read Assignment #6 (selection of topics, assumptions, and ground rules for the witness preparation role plays) Reading: Re-read Hecht Chapter 8, pages 185-204; and re-read Chapter 11, pages 260-284
5	9/20	Witness Preparation, Round One	Prepare Assignment #7 (prepare for the witness preparation role plays) Observed by guest attorneys TBA Reading: Hecht Chapters 6 & 9

Class #	Class Date	Topics	Assignments (to be completed <u>before</u> class)
6	9/27	Witness Preparation, Round Two	Prepare Assignment #7 (prepare for the witness preparation role plays) Observed by guest attorneys TBA Reading: Hecht Chapter 3; Appendix 1, Deposition Notice; and Appendices 2-A & 2-B, Federal Form of a Subpoena
7	10/7* Make-up class. (2:30 p.m. to 5:10 p.m.) No class on 10/4	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	10/11	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 deposition role plays) Guest: Ana Fatima Costa (https://www.anafatimacosta.com/) Reading: Hecht Chapters 11 & 12; Appendix 6, Model Questions About a Conversation; and Appendix 7, Model Questions About a Document
9	10/18	Depositions, Round One, Focus on Discovery	Prepare Assignment #13 (prepare for the deposition role plays), and read Assignment #14 (Instructions for the Video Reviews) Observed by guest attorneys TBA Reading: Hecht Chapter 13; Appendix 3, Supplies to Take to a Deposition; and Appendix 5, Starting the Deposition

Class #		Topics	Assignments (to be completed <u>before</u> class)
10	10/25	Depositions, Round Two, Focus on Discovery	Prepare Assignment #13 (prepare for the deposition role plays) Observed by guest attorneys TBA Reading: Hecht, Chapter 18
11	11/1	Debrief of the Deposition Role Plays Deposing for Objectives in Addition to Discovery	Prepare Assignment #15 (debrief of the deposition role plays) and Assignment #16 (outlining and gaining an admission exercise) Reading: Re-read Hecht Chapter 11, pages 260-284; Chapter 25; and Appendices 10-A, 10-B & 11, Using Depositions at Trial
12	11/8	Dealing with Problem Counsel and Problem Witnesses Communication Skills	Prepare Assignment #17 (exercises in dealing with problem counsel and problem witnesses) and Assignment #18 (communication observation exercise) Plaintiffs read Assignment #19A, and Defendants read Assignment #19B Guest attorney TBA Reading: Hecht Chapters 15 & 16; and re-read Chapter 11, pages 284-292
13	11/15	Depositions, Round Three, Focus on Gaining an Admission	Prepare Assignment #19A or #19B (prepare for the deposition role plays) Observed by guest attorneys TBA Recommended reading: Hecht Chapter 17
14	11/22* *Last Class	Depositions, Round Four, Focus on Gaining an Admission	Prepare Assignment #19A or #19B (prepare for the deposition role plays) Observed by guest attorneys TBA Reading: Hecht Chapter 23, and Appendix 9, Adjourning the Deposition

Class #	Class Date	Topics	Assignments (to be completed <u>before</u> class)
		Final Paper	Assignment #20, the Final Paper, will be posted on the next business day after the last class of the semester. The Final Paper is due on or before Wednesday, December 14, 2022, at 5:00 p.m. Pacific Time.

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/Course Materials:

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

A hardcopy of Effective Depositions 2nd ed., the textbook for the course, can be purchased from either the Law School bookstore or directly from the publisher, the American Bar Association (ABA), at a 25% discount from the list price. (The discounted price of the hard copy from the ABA is \$112.46 plus tax and shipping.)

The textbook can be purchased as an eBook directly from the ABA at a 25% discount. (The eBook is not available from the Law School bookstore at a discount.) Students can order from the ABA by calling the ABA service center (800-285-2221, M - F, 9 a.m. – 6 p.m. Eastern Time). When calling, no discount code is needed to purchase from the ABA, but mention you are a student in Depositions with Professor Henry Hecht at Berkeley Law School. To order online, you will need to create a webstore account at <https://www.americanbar.org/products/>

You can also purchase Effective Depositions 2nd edition in eBook format from LexisNexis at a 20% student discount plus free shipping, but only if you place your order directly order through Cherry Montes, Sales Account Manager – Print and Digital Solutions, Lexis Nexis. (Email:cherry.montes@lexisnexis.com; Direct Dial: 937-247-3252). (The LexisNexis price for the eBook edition is List Price \$149.95 - 20% student discount (\$29.99) = \$119.96 before tax.)

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

Separate editions of the *Scoops* case file for the Plaintiff's attorneys and for the Defendant's attorneys will be posted on bCourses under Files/Readings as PDF files at no cost to students. Each

student is expected to respect the confidential, privileged nature of the case file and not look at the opposing side's edition throughout the semester.

On-line Resources:

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

Federal Rules of Evidence: <https://www.law.cornell.edu/rules/fre>

Grading:

The course is graded using the standard, mandatory Berkeley Law curve. Grading is based on the following: 1. class participation (35%), as described below; and 2. the Final Paper (65%).

The components of class participation include: 1. your attendance, unless excused due to an illness or emergency; 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 quality of your two written self-critiques, one of your video recorded performances as a taker and one of your video recorded performances as a defender; 4. the timely receipt and the quality of your Initial Skills Inventory; 5. the timely receipt of your Final Paper; and 6. following the format detailed in Assignments when submitting papers. Unexcused absences and late assignments will result in reduced points from your participation grade. 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 Video Self-Critique assignment asks you to the self-critique in writing one of your video-recorded performances as a taker and one of your video-recorded performances as a defender. The maximum word count for each of the two self-critiques is 1,000 words.

The Final Paper asks you to critique the performance of both the taker and the defender based on your review of two (2) separate deposition transcripts. The maximum word count for each of the two critiques of the two deposition transcripts is 1,000 words. Assignment #20, the Final Paper, will be posted on the next business day after the last class of the semester. The Final Paper is due on or before Wednesday, December 14, 2022, at 5:00 p.m. Pacific Time.

Class Credits and Hours, Real-time Attendance Policy, and the Drop/Add Period:

This course is for three (3) credits. The course meets on Tuesdays from 3:35 p.m. to 6:15 p.m., in Room 115, unless otherwise announced. (Note: Given the close proximity to others in the classroom, I will wear a mask; and I strongly encourage each of you to do the same.)

Due to the use of role play exercises throughout the semester, which depend on each student playing an assigned role, Real-time Attendance is required without an alternative way to earn equivalent credit except in cases of illness or emergency.

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

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 12 noon Pacific Time, Friday afternoon, August 26, 2022, the last day of the first full week of classes for the fall semester.

Unexcused absences and/or lateness to class will be noted and will result in a lower grade. Two or more unexcused absences and/or lateness to class will endanger your passing the course. 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.

Recording of Classes:

Given the Real-time Attendance requirement for this course, I still do not want any student to feel it necessary to attend class if they are quarantining after exposure to COVID or if they are ill. For that reason, I will record classes where appropriate. Because of the different pedagogies used to teach deposition practice, including the use of role play simulations, not every class is appropriate for recording. If a class has been recorded and if a student lets me know they will miss or have missed a class that has been recorded, I will arrange for the recording to be uploaded to our bCourses website.

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 can 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 Accommodations:

Students who need accommodations for disability or pregnancy or who want to discuss implementation of their accommodations, including accommodated exams, should contact Kyle Valenti, Senior Director of Student Services (kvalenti@law.berkeley.edu) or Chelsea Yuan, Assistant Director of Student Services & Accessible Education (cdyuan@berkeley.edu) 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 of their performance both as a taker and also as a defender.

Court Reporters and Transcripts of Your Depositions:

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

Reading your deposition transcripts is 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.

Best Practices for Remote Learning:

This class is an interactive one. Critical to its pedagogy is the active participation of every student. If we need to pivot from in-person classes to remote classes, understand that the relevant skills to participate in remote instruction are not only technology skills. You also need to exercise good communication, judgment, and professionalism. To that end, please follow these recommendations for conduct in remote classes on Zoom:

- Your ability to engage meaningfully with your instructor and classmates, exercising the full range of your communication skills, will be enhanced if you can talk to each other and see each other. For this class, you are expected to have your video on unless I give other instructions. I realize that this will not always be possible for a variety of reasons, but video on is our goal.
- The benefits of video will be compromised if your background is distracting. If you can't avoid being in a place with distractions in the background, consider using a virtual background if your hardware will support a virtual background. See instructions for virtual backgrounds here: <https://support.zoom.us/hc/en-us/articles/210707503-Virtual-Background>
- Along the same lines, try to present yourself with the same professionalism you bring to in-person classes. In other words: wear appropriate clothes; and sit upright facing your screen as you would face the instructor in class.
- Note that recordings of Zoom classes typically capture images of participants, screen-shared material, and a transcript of all chats that are displayed to the meeting host. For that reason, (1) all of your participation, including your chats, will be recorded; and (2) you must not distribute class

recordings (including video, audio, or screenshots) per Berkeley Law Academic Rule 7.

- Keep yourself on “mute” when you are not speaking. This will help to minimize background noise for everyone.
- When you would like to speak in class, use the “raise hand” function in the “participants” pane. Then please wait for me to call on you before speaking.
- As a general policy, I do not read “chat” comments during class because I find it distracting. If you have a point you want to make or a question you want to ask that you feel applies to everyone, please use the “raise hand” function; and I will call on you.

Technology Help for Students:

If technical difficulties prevent you from completing course work, please let me know as soon as possible. However, understand that I cannot assist you with technical problems. Please use the technical support resources described below. Be sure to document (save emails and transaction numbers) for all interactions with tech support.

Berkeley Law students are entitled to general software support for their computers from the law school, and certain free software downloads from UC Berkeley, while enrolled. If you have issues with internet access or computer equipment required to participate in classes remotely, you should contact studentcomputing@law.berkeley.edu. Information, links, and instructions for many common computer/technical questions can be found in the law library's online computing guide: <https://libguides.law.berkeley.edu/computing/home>.

For bCourses, Zoom, and technical support questions, please email studentcomputing@law.berkeley.edu; or you can use the Student Computing chat function: <https://www.law.berkeley.edu/library/dynamic/internal/techChat.php>. In both cases, someone will respond to you during regular business hours.

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 your 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 for that reason will not be collected.

Instructor Biography:

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

My Contact Information:

E-mail: hhecht@law.berkeley.edu

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

Berkeley Law Tel: 510-642-1787

Note: I will do my best to respond to your voicemail message within one business day of receipt.

My Faculty Support Assistant:

Monique Sanchez

E-mail: msanchez@law.berkeley.edu

Berkeley Law Tel: 510-643-4653

bCourses site for Depositions (Law 246.3) Fall 2022:

<https://bcourses.berkeley.edu/courses/1515965>

Zoom Site for Class (if needed):

<https://berkeley.zoom.us/j/99693879638?pwd=MUU4N3FhN0xsdllsWEZBWUVxNm5udz09>

Office Hours:

Date and Time: Every Tuesday from August 23, 2022, through November 22, 2022, from 11:00 AM to 12 noon Pacific Time (US and Canada) by Zoom, or by appointment, or in person if agreed to in advance

Zoom Site for Office Hours (to be used for the first office hours on Tuesday, August 23, 2022, and then by agreement in advance for other days)

<https://berkeley.zoom.us/j/95820949881?pwd=QnJ4VnpkeWNBUEHB3SHIURDB1SWJpUT09>

Academic Honor Code:

The [Academic Honor Code](#) governs the conduct of all students during examinations and in all other academic and pre-professional activities at Berkeley Law. We expect students to adhere to this code scrupulously. If you have any questions about whether your conduct may violate the code, please contact Dean of Students Annik Hirshen (ahirshen@law.berkeley.edu) or me before you act. You may

face severe consequences, including a failing grade in this class or removal from the program, and the Bar will receive notification of your conduct.

Economic, Food, or Housing Support:

If you are in need of economic, food, or housing support, you can find basic needs information [here](#). You may be eligible for money to buy groceries via [CalFresh](#) or our UC Berkeley's Food Assistance Program. If you need food immediately, please visit the [UC Berkeley Food Pantry](#).

Sexual Violence and Sexual Harassment Policy:

The University of California is committed to creating and maintaining a community dedicated to the advancement, application, and transmission of knowledge and creative endeavors through academic excellence, where all individuals who participate in University programs and activities can work and learn together in an atmosphere free of harassment, exploitation, or intimidation. Every member of the community should be aware that the University prohibits sexual violence and sexual harassment, retaliation, and other prohibited behavior ("Prohibited Conduct") that violates the law and/or University policy. The University will respond promptly and effectively to reports of Prohibited Conduct and will take appropriate action to prevent, correct, and when necessary, to discipline behavior that violates this policy. For the complete UC Policy, definitions, compliance, and procedures, please access the [Sexual Violence and Sexual Harassment Policy](#).

If you have further questions or concerns about reporting behavior related to sexual harassment, sexual violence, and/or protected category discrimination, please contact the Office for the Prevention of Harassment and Discrimination (OPHD) by phone 510-643-7985 or email ask_ophd@berkeley.edu.

[Path to Care Center](#) Confidential Advocates provide affirming, empowering, and confidential support for those that have experienced gendered violence, including sexual harassment, emotional abuse, dating, and intimate partner violence, sexual assault, stalking, and sexual exploitation. Advocates bring a non-judgmental, caring approach to exploring all options, rights, and resources. They can be reached by phone at (510) 642-1988.

UC Berkeley Law Land Acknowledgment:

We take a moment to recognize that UC Berkeley sits on the territory of xučyun (Huichin - Hooch-yoon), the ancestral and unceded land of the Chochenyo (Cho-Chen-yo) speaking Ohlone (Oh-low-nee) people, the successors of the sovereign Verona Band of Alameda County. This land was, and continues to be, of great importance to the Muwekma (Muh-wek-ma) Ohlone Tribe and other familial descendants of the Verona Band.

We recognize that every member of the Berkeley community has benefitted, and continues to benefit from, the use and occupation of this land since the institution's founding in 1868. Consistent with our values of community, inclusion, and diversity, we have a responsibility to acknowledge and make visible the University's relationship to Native peoples. As members of the Berkeley community, it is vitally important that we not only recognize the history of the land on which we stand, but also that we recognize that the Muwekma Ohlone people are alive and flourishing members of the Berkeley

and broader Bay Area communities today.

This statement was developed in partnership with the Muwekma Ohlone Tribe and the Berkeley Law Native American Law Students Association (NALSA) and is a living document.