

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

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

Fall 2013

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 speaker: Joel ben Izzy Reading: Hecht Chapters 1, 2 & 4; and <u>Scoops</u> case file
3	9/4 NOTE: To be rescheduled due to Jewish holiday.	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) Reading: Hecht Chapters 5, 7 & 8; and Appendix #4: Guide to Witness Preparation Guest speaker: George Donaldson, Esq. Recommended reading: Hecht Chapter 10
4	9/11	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	9/18	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	9/25	Witness Preparation, Round Two	Prepare Assignment #7 (witness preparation role play continued) Observed by attorneys from Simpson Thacher & Bartlett LLP Recommended reading: Hecht Chapter 3; Appendix #1, Deposition Notice; and Appendix #2: Federal Form of a Subpoena
7	10/2	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	10/9	Taking the Deposition Court reporters and the preparation of a final transcript	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) Guest speaker: Ana Costa Fatima, Barkley Court Reporters 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 play) and read Assignment #14 (Video Reviews) Observed by attorneys Weil, Gotshal & Manges LLP Reading: Hecht Chapter 13; Appendix #3: Supplies to Take to a Deposition; and Appendix #5: Starting the Deposition

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10	10/23	Depositions, Round Two, Focus on Discovery (continued)	Prepare Assignment #13 (deposition role play continued) Observed by attorneys from Fenwick & West LLP Recommended reading: Chapter 18
11	10/30	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 speaker: Pending Reading: Hecht Chapters 15 & 16 Recommended reading: Hecht Chapter 21
12	11/6	Deposing for Objectives In Addition to Discovery	Assignment #17 (communication observation exercise); Assignment #18 (exercise in gaining an admission); and Assignment #19 (selection of problems for the next two weeks of deposition role plays) Reading: Reread Hecht Chapter 11, 260-278; and read Hecht Chapter 25 and Appendices #10 & #11: Using Depositions at Trial
13	11/13	Depositions, Round Three, Focus on Gaining an Admission	Prepare Assignment #20 (deposition role play) Observed by attorneys from Boies, Schiller & Flexner LLP Reading: Hecht Chapter 23, and Appendix #9: Adjourning the Deposition
14	11/20	Depositions, Round Four, Focus on Gaining an Admission (continued) Using Depositions at Trial	Prepare Assignment #20 (deposition role play continued) Observed by attorneys from Wilmer Cutler Pickering Hale and Dorr LLP Reading: Reread Hecht Chapter 25 Recommended reading: Hecht Chapter 17

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		Final Paper	Assignment #21, Final Paper, and Assignment #22, Final Skills Inventory distributed one day after the last class of the semester and due on or before noon on December 13, 2013, the last hour and day of examinations for fall 2013 semester

Required Texts:

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

NOTE: I have arranged with my publisher, the American Bar Association (ABA), for a 30% discount for purchases by my students of the text from the Law School bookstore. (Note: The Law School bookstore then 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 check, made to the order of Henry L. Hecht, should be made by no later than the fourth class of the semester, currently set for Wednesday, September 11, 2013.

2013 Federal Rules of Civil Procedure (LexisNexis 2013) and 2013 Federal Rules of Evidence (LexisNexis 2013)

NOTE: These 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.htm>

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

Grading:

The course will be graded using the standard, mandatory Berkeley Law curve. Grading will be based on the following: 1. class participation (30%); 2. a written self-critique of one of your video recorded deposition performances (20%); and 3. the Final Paper (50%).

Class participation, which includes your attendance and your active participation in class, the individual video review session(s), the short class exercises, the longer simulation role plays, and the

post-role play debriefings, will be considered and will affect your grade. (NOTE: This 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 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 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. You must decide and let me know whether you will enroll by no later than Tuesday afternoon, August 27, 2013, the last day of the first full week of classes for the fall semester.

Individual Video Critiques:

Each week when a deposition role play is conducted, pairs of takers and defenders will be video recorded and their videos will be posted on the course web page for their review and written self critique. I will then meet with pairs of takers and defenders in a private review session. By the end of the semester, I will have met for a video review session with each student in his or her role as a taker at least one time.

Court Reporters and Transcripts of Your Depositions:

Through arrangements with Ana Fatima Costa Consulting, in collaboration with Barkley Court Reporters (www.barkley.com), student court reporters will attend each of the deposition role sessions and transcribe the testimony. The court reporters will then provide you with a rough draft transcript (aka "dirty ASCIIs") of your depositions at no cost to you.

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 your depositions.

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 arrange for 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.)

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 during class, you are using it in “good faith” to enhance your learning experience in this class and not for any other purpose.

Journals:

I recommend—but do not require—that you keep a personal journal throughout 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 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 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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