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

Depositions, including Intensive Workshops (Law 246.3) Syllabus: First Edition (subject to change)

Spring 2014 Professor Hecht

Class #	Class Date	Topics	Assignments (to be completed <u>before</u> class)
1	1/7	Introduction to the Course and to Depositions	No reading assigned
2	1/14	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 the <i>Scoops</i> case file
3	1/21	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 Exercises)
			Guest: George Donaldson, Esq.
			Reading: Hecht Chapters 5, 7 & 8; Appendix #4: Guide to Witness Preparation; and Chapter 11, pages 260-278 Recommended reading: Hecht Chapter 10
4	1/28 NOTE: No class on Tues.,	Witness Preparation: Substantive	Assignment #5 (witness preparation exercise) and Assignment #6 (selection of topics for the upcoming two rounds of witness preparation role plays)
	2/4		Reading: Re-read Hecht Chapter 8, pages 185 to 204; and re-read Chapter 11, pages 260-278
5	2/8 NOTE: Saturday class	Witness Preparation, Rounds One and Two	Prepare Assignment #7 (witness preparation role plays)
			Observed by attorneys from Latham & Watkins LLP and Weil, Gotshal & Manges LLP
M·\COU	RSES\DEPOSITIONS	\Syllabus S14 First Edition.doc	Reading: Hecht Chapters 6 & 9; and Recommended reading: Hecht Chapter 3; Appendix #1 & #2 (Sample Notice and Subpoena); and Appendix #2
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Class #	Class Date	Topics	Assignments (to be completed <u>before</u> class)
6	2/11	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
7	2/18 NOTE: No class on Tues., 2/25	Taking the Deposition	Prepare Assignment #10 (exercises in taking the deposition); Assignment #11 (discovery exercise); and Assignment #12 (selection of topics for upcoming two rounds of deposition role plays) Guest speaker: Ana Fatima Costa, Barkley Court Reporters Reading: Hecht Chapters 11 & 12; Appendix #6: Model Questions About a Conversation; and Appendix #7: Model Questions About a Document
8	3/1 NOTE: Saturday class	Depositions, Rounds One and Two, Focus on Discovery	Prepare Assignment #13 (deposition role plays), and read Assignment #14 (Video Reviews) Observed by attorneys from Arnold & Porter LLP, Fenwick & West LLP, and Simpson Thacher & Bartlett LLP Reading: Hecht Chapter 13; Appendix #3: Supplies to Take to a Deposition; and Appendix #5: Starting the Deposition Recommended reading: Chapter 18

Class #	Class Date	Topics	Assignments (to be completed <u>before</u> class)
9	3/4	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: Jon B. Streeter, Esq., Keker & VanNest
			LLP, and former President of the State Bar of California
			Reading: Hecht Chapters 15 & 16
		D ' C Ol' ' I	Recommended reading: Hecht Chapter 21
10	NOTE: No class on Tues., 3/18	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 last two rounds of deposition role plays)
			Reading: Re-read Hecht Chapter 11, 260-278 and 284-292; and read Hecht Chapter 25 and Appendices #10 & #11: Using Depositions at Trial
11	3/22 NOTE: Saturday class	Depositions, Rounds Three and Four, Focus on Gaining an Admission Using Depositions at Trial	Prepare Assignment #20 (deposition role plays)
			Observed by attorneys from Nixon Peabody LLP and Wilmer Cutler Pickering Hale and Dorr LLP
			Reading: Hecht Chapter 23, and Appendix #9: Adjourning the Deposition; re-read Hecht Chapter 25
			Recommended reading: Hecht Chapter 17
		Final Paper and Final Assignment	Assignment #21, Final Paper, and Assignment #22, Final Skills Inventory, both distributed the next business day after the last class of the semester and due by 5:00 p.m., on Tuesday, April 22, 2014, the last day of classes for the spring semester

Required Texts:

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

Hecht, <u>Scoops v. Business-Aide-Inc.: A Liability and Damages Case File</u> 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, January 28, 2014.

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

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.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 (50%), as described below; and 2. the Final Paper (50%).

The components of class participation include: 1. your attendance; 2. your active participation in class, the role plays, and your two video reviews; 3. two written self-critiques, one of your video recorded performance as a taker and one as a defender; 4. short in-class witness preparation and deposition exercises; 5. the post-role play debriefings; and the Initial and Final Skills Inventories. (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 deposition transcripts. The word limit for the Final Paper is 2,250 words.

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

As detailed in the syllabus above, the class meets on eight Tuesday afternoons, from 3:35 p.m. to 6:15 p.m., and on three Saturdays, from 9:00 a.m. to 4:00 p.m., as detailed above, in Boalt Hall room 115, unless otherwise announced. (NOTE: The first class of the semester is on Tuesday, January 7, 2014; and the last class of the semester is on Saturday, March 22, 2014.)

Due to the use of role play exercises (simulations) throughout the semester, which depend on each student playing an assigned role, class attendance and participation is <u>mandatory</u>. 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 <u>before</u> 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 decide and let me know whether you will enroll by no later than Friday afternoon, January 10, 2014, the last day of the first full week of classes for the spring semester.

<u>Individual Video Critiques</u>:

During the deposition role plays on Saturdays, 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 at least once for a video review session with each student in his or her role both as a taker and as a defender

Court Reporters and Transcripts of Your Depositions:

Through arrangements with Ana Fatima Costa Consulting (www.anafatimacosta.com), 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, undergraduates will play the roles of the witnesses.

Electronics in the Classroom:

This class is an interactive one. Critical to the pedagogy is the active participation of students. The expectation in this class is that if you are using any electronics, including computers and tablets, 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 your use of computers 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 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 <a href="http://www.law.berkeley.edu/php-programs/faculty/faculty/faculty/faculty-facil-edu/php-programs/faculty/faculty-facil-edu/php-facil-edu/php-programs/faculty-facil-edu/php-fa

Office Hours and Assistant:

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

Room: 340D North Addition Telephone: 510-642-1787

Fax: 510-642-3856

E-mail: hhecht@law.berkeley.edu

NOTE: I will do my best to respond to all messages within 24 hours of receipt.

Faculty Support Assistant: Nancy Donovan

Room: 325A Boalt Hall Tel: 510-642-0503 Fax: 510-642-3856

E-mail: ndonovan@law.berkeley.edu