

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

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

Fall 2014

Professor Hecht

Class #	Class Date	Topics	Assignments (to be completed <u>before</u> class)
1	8/27	Introduction to the Course and to Depositions	No reading assigned
2	9/3	Case Analysis	<p>Prepare Assignment #1 (case analysis) and Assignment #2 (Initial Skills Inventory)</p> <p>Guest speaker: Joel ben Izzy</p> <p>Reading: Hecht Chapters 1, 2 &amp; 4; and the <i>Scoops</i> case file</p>
3	9/10	Witness Preparation: Procedural and Ethical Considerations	<p>Prepare Assignment #3 (survey on the ethics of witness preparation), and read Assignment #4 (Instructions for the Witness Preparation and Deposition Role Plays)</p> <p>Guest speaker: Bruce Budner, Esq.</p> <p>Reading: Hecht Chapters 5, 7 &amp; 8; and Appendix #4: Guide to Witness Preparation; and Chapter 11, pages 260-278</p> <p>Recommended reading: Hecht Chapter 10</p>
4	9/17	Witness Preparation: Substantive	<p>Assignment #5 (witness preparation exercise) and Assignment #6 (selection of topics for the next two weeks of witness preparation role plays)</p> <p>Reading: Re-read Hecht Chapter 8, pages 185-204; and re-read Chapter 11, pages 260-278</p>
5	9/24 <b>NOTE: Make up class TBD</b>	Witness Preparation, Round One	<p>Prepare Assignment #7 (witness preparation role plays)</p> <p>Observed by attorneys from Farella Braun + Martel LLP</p> <p>Reading: Hecht Chapters 6 &amp; 9</p>

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6	10/1	Witness Preparation, Round Two	<p>Prepare Assignment #7 (witness preparation role plays continued)</p> <p>Observed by attorneys from Arnold &amp; Porter LLP</p> <p>Reading: Hecht Chapter 3; Appendix #1, Deposition Notice; and Appendix #2: Federal Form of a Subpoena</p>
7	10/8	Defending the Deposition	<p>Prepare Assignment #8 (debrief of the witness preparation role plays) and Assignment #9 (exercises in defending the deposition)</p> <p>Reading: Hecht Chapter 14, and Appendix #8, Objections at a Deposition in Federal Practice</p>
8	10/15	<p>Taking the Deposition</p> <p>Court Reporters and the Preparation of a Final Transcript</p>	<p>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)</p> <p>Guest speaker: Ana Costa Fatima, Barkley Court Reporters and Ana Fatima Consulting</p> <p>Reading: Hecht Chapters 11 &amp; 12; Appendix #6, Model Questions About a Conversation; and Appendix #7, Model Questions About a Document</p>
9	10/22	Depositions, Round One, Focus on Discovery	<p>Prepare Assignment #13 (deposition role plays) and read Assignment #14 (Instructions for the Video Reviews)</p> <p>Observed by attorneys from Weil, Gotshal &amp; Manges LLP</p> <p>Reading: Hecht Chapter 13; Appendix #3, Supplies to Take to a Deposition; and Appendix #5, Starting the Deposition</p>

Class #	Class Date	Topics	Assignments (to be completed <u>before</u> class)
10	10/29	Depositions, Round Two, Focus on Discovery (continued)	<p>Prepare Assignment #13 (deposition role plays continued)</p> <p>Observed by attorneys from Wilmer Cutler Pickering Hale and Dorr LLP (WilmerHale)</p> <p>Reading: Chapter 18</p>
11	11/5	Dealing with Problem Counsel and Problem Witnesses	<p>Prepare Assignment #15 (debrief of the deposition role plays) and Assignment #16 (exercises in dealing with problem counsel and problem witnesses)</p> <p>Guest speaker: Jon Streeter, Esq., Keker &amp; Van Nest LLP, and past President of the State Bar of California</p> <p>Reading: Hecht Chapters 15 &amp; 16</p> <p>Recommended reading: Hecht Chapter 21</p>
12	11/12	Deposing for Objectives In Addition to Discovery	<p>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)</p> <p>Reading: Re-read Hecht Chapter 11, pages 260-278; and read Hecht Chapter 25, and Appendices #10 &amp; #11, Using Depositions at Trial</p>
13	11/19	Depositions, Round Three, Focus on Gaining an Admission	<p>Prepare Assignment #20 (deposition role plays)</p> <p>Observed by attorneys from Nixon Peabody LLP</p> <p>Reading: Hecht Chapter 23, and Appendix #9, Adjourning the Deposition</p>
14	11/26 <b>NOTE</b> <b>Make</b> <b>up</b> <b>class</b> <b>TBD</b>	<p>Depositions, Round Four, Focus on Gaining an Admission (continued)</p> <p>Using Depositions at Trial</p>	<p>Prepare Assignment #20 (deposition role plays continued)</p> <p>Observed by attorneys from Latham &amp; Watkins LLP</p> <p>Reading: Hecht Chapter 17</p>

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 one business day after the last class of the semester, and are both due on or before 5:00 p.m., on Friday, December 12, 2014.

### 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 Wednesday, September 17, 2014.

2014 Federal Rules of Civil Procedure (LexisNexis 2014) and 2014 Federal Rules of Evidence (LexisNexis 2014)

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 is 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 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; and 5. the timely receipt and the quality of your Initial and Final Skills Inventories. In addition, throughout the

semester, you will be evaluated on your demonstration of an understanding of, and ability to perform, effective deposition techniques. (Note: This course is not “blind graded.”)

The Final Paper asks you to critique the performance of the taker and the defender based on your review of two separate deposition transcripts. The word limit for the Final Paper is 2,000 words.

#### 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 and participation 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. If admitted, you must decide and let me know whether you will enroll by no later than Friday afternoon, August 29, 2014, the last day of the first full week of classes for the fall 2014 semester.

#### Individual Video Critiques:

During the deposition role plays, 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 with each student at least two times, once for a video review session with each student in his or her role as a taker and once in his or her 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)), in collaboration with Barkley Court Reporters ([www.barkley.com](http://www.barkley.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 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.

#### Personal Electronics in the Classroom:

This class is an interactive one. Critical to the pedagogy is the active participation of every student. The expectation in this class is that if you are using any electronics, including computers, tablets and phones, 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 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 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 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, 10:30 a.m. to 11:30 a.m., 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 all messages within one business day of receipt. Please do not use the bCourses messaging interface.

Faculty Support Assistant: Sean Hill

Room: 325A Boalt Hall

Tel: 510-642-9001

Fax: 510-642-3856

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