

# **Securities Regulation**

## **Syllabus**

**Spring 2024**

**LAW 550-2 § 951**

**Wednesday 5:30-7:15 pm**

**Location: ONLINE via Distance Education**

**Professor David Lourie**

**Office: Room 252**

**Office hours: Tuesdays and Thursdays, 10-11; or by appointment**

**Email: david.lourie@siu.edu**

### **What is this course about?**

This course covers the issues raised by government regulation of the capital market, the process of financing business and the trading of stocks, bonds, and other interests in business. Topics include disclosure requirements, insider trading, and the definition of “security.”

### **How are you evaluated?**

There will be a final, three-hour exam, during the period devoted to final exams - scheduled from April 30 to May 10. I will provide more details on the final examination as the semester progresses.

### **Class Participation**

Numerous studies have demonstrated that active learning and participation are critically important for success in law school and as a lawyer. Further, I value all of you as individuals and believe it is important for the class to hear your perspectives. Therefore, I take the following approach to class participation:

- I will typically randomly “cold call” a few students in each class to discuss issues related to the course readings, lectures, and practice questions. Of course, everyone in this course is valued and is free to contribute, not just those that are called on.
- I do not call on students to demonstrate superiority or pick on people but rather to help the class learn the material and demonstrate learning in a way that will lead to more successful outcomes on law school examinations and legal practice.
- Speaking in class is an opportunity, not a burden. The types of thinking we do in class together are what is valuable for your success.

- If you are unprepared for a particular class, please advise me of that fact by the evening before class. By letting me know in advance that you are not prepared, I will not call on you during that class period. However, do not let this happen often or I will revoke your privilege.
- If a student is not prepared to discuss the assigned materials when called upon, the student will be marked as absent for that class and the student's grade may be lowered.
- ***Please remember – You do not have to be perfect. You do need to be prepared and put in the effort required to succeed in law school – doing the readings, actively listening to lectures, and coming to me if you have questions or concerns. I am here to help - thanks for your hard work!***

### **Casebook**

Securities Regulation: Cases and Materials (Aspen Casebook) 10th Edition by James D. Cox (Author), Robert W. Hillman (Author), Donald C. Langevoort (Author), ISBN: 9781543838473

### **Citizenship**

Citizenship has to do with attendance as well as how you treat others. I am a big fan of respect – and will do my best to show it to you. Respect builds a safe learning community, even if we disagree. Please show respect to your classmates.

### **Laptops**

I permit the responsible use of computers in class. By this, I mean using your laptops to take notes. I expect you to listen, participate, remain engaged with the material, and avoid the distractions caused by misusing computers and electronic devices in a professional environment.

### **Attendance Policy**

Attendance will be taken at the beginning of each class. Our class time is vitally important for you to understand the material needed to be successful in this course and in legal practice. Accordingly, you should not miss any classes. However, I understand uncontrollable circumstances may come up and will allow a maximum of two (2) absences, no questions asked. If you miss more than two classes, I will lower your course grade one half a letter grade (i.e., B+ to B) for each additional class missed.

### **Recording of Classes**

Classes may be recorded by the instructor for ADA compliance purposes. No recordings should be used or disseminated without the professor's permission.

### **Writing Assignments**

We will have a writing assignment to comply with the writing-across-the-curriculum requirement and the requirement to have a Bar exam-type assessment. Satisfactory completion of this assignment is required to be eligible to take the final exam and complete the course.

### **Workload Expectation**

You might be interested to know that the ABA standards incorporate out-of-class work in the calculation of credit hours. Under the ABA standards, you should plan to spend at least **6 hours per week (2 in class and 4 preparing for class) on course-related work.**

### **Plagiarism**

Plagiarizing another's work, in whole or in part, is a violation of the Honor Code and can lead to serious penalties, including expulsion. An Honor Code investigation must also be reported to the Bar Examiners, even if you are cleared of any violation. The Honor Code defines plagiarism as: passing off another's ideas, words, or work as one's own, including written, oral, multimedia, or other work, either word for word or in substance, unless the student author credits the original author and identifies the original author's work with quotation marks, footnotes, or other appropriate designations in such a way as to make clear the true author of the work.

### **Ban on Collaboration/AI in Writing Assignment**

You are not allowed to obtain help from any other person (including any other student) or from generative artificial intelligence (including, but not limited to, ChatGPT) on the writing assignment in this course. This ban on collaboration includes obtaining written materials from any other person or generative artificial intelligence and communicating with any other person about the assignment. If you violate the ban on collaboration policy, you will fail to successfully complete the assignment and will not be entitled to take the final exam in the course. You also may be found in violation of the Honor Code, which can lead to serious penalties, including expulsion. An Honor Code investigation must also be reported to the Bar Examiners, even if you are cleared of any violation. When in doubt about how to proceed, ask me.

### **Ban on Collaboration/AI on Exams**

Both the midterm exam and the final exam for this course are closed book. You may NOT consult materials of any kind, with any person other than the proctor, nor access any other resource, including, but not limited to generative artificial intelligence. Failure to comply with this rule will result in a

failing grade on the exam. You also may be found in violation of the Honor Code, which can lead to serious penalties, including expulsion. An Honor Code investigation must also be reported to the Bar Examiners, even if you are cleared of any violation.

### **Student Learning Objectives**

At the end of this course, students will be able to:

- Recognize the implications of being a security.
- Recognize the factors courts and regulators consider in determining what is a security.
- Explore the basics of securities registration under the Securities Act and what it means for securities to be registered with the SEC.
- Recognize the registration process, including an examination of the principal actors in an underwriting and the role of nonlawyers.
- Examine the role of continuous reporting by public issuers and what triggers those requirements, as well as the role of continuous reporting in an issuer's shelf registration.
- Explore transactional exemptions to securities registration.
- Examine secondary and securities-related exemptions.
- Explore ways to anticipate liabilities relating to material misstatements or omissions that can arise under the securities laws, along with potential defenses.
- Recognize the key elements of insider trading.
- Analyze whether various securities law doctrines and systems provide investors and others with appropriate access to justice when they are aggrieved.

### **Class Schedule**

Each week, I will confirm the following week's reading assignment during Wednesday's class.

Please complete the assigned reading in advance of each class. Please bring your casebook to every class for reference during each class session.

### **Projected Schedule (subject to change)**

#### **Weeks 1 to 3 – Defining Security**

#### **Wednesday, January 17, Wednesday, January 24, Wednesday, January 31**

Overall Objectives:

- Recognize the implications of being a security
- Recognize the factors courts and regulators consider in determining what is a security

Description:

Whether or not a security is being offered or sold is a foundational question in securities regulation. In general, if it's not a security, the transaction is not subject to the securities laws. There are several factors to consider when determining what constitutes a security.

In this unit, you will discover how courts and regulators define “security,” even as new instruments and transactions emerge, such as digital tokens and other assets. You will consider cases and examples that highlight how nontraditional forms of investment can be considered securities, subject to the securities laws, and you will join your peers in discussions on topics that include how securities laws may be outdated and why ambiguity in defining what is or isn’t a security can be beneficial.

### **Weeks 4 to 6 – Securities Registration and Reporting**

**Wednesday, February 7, Wednesday, February 14, Wednesday, February 21**

#### Overall Objectives

- Explore the basics of securities registration under the Securities Act and what it means for securities to be registered with the SEC.
- Recognize the registration process, including an examination of the principal actors in an underwriting and the role of nonlawyers.
- Examine the role of continuous reporting by public issuers and what triggers those requirements, as well as the role of continuous reporting in an issuer’s shelf registration.

#### Description:

In securities regulation, it is important to understand what needs to be reported publicly in filings with the SEC and when those requirements are triggered. In this unit, you will explore the SEC’s reporting requirements and examine the types of information that must be provided publicly to regulators and investors.

### **Weeks 7-9 - Registration Requirement Exemptions**

**Wednesday, February 28, Wednesday, March 6, Wednesday, March 20**

#### Overall Objectives:

- Explore transactional exemptions to securities registration
- Examine secondary and securities-related exemptions

#### Description:

In some cases, the offer and sale of securities are exempt from SEC registration. Knowing these exemptions can be critical: first, so that you are versed (in cooperation with your legal counsel) in how to comply with them; and second, because knowing what exemptions are available — and deciding to rely on an exemption from SEC registration — may significantly reduce the cost of raising capital. In this unit, you will examine different types of exemptions as well as the requirements of each.

### **Weeks 10-12 - Key Securities Law Liabilities and Principal Underwriting Documents**

### **Wednesday, March 27, Wednesday, April 3, Wednesday, April 10**

#### Overall Objectives:

- Explore ways to anticipate liabilities relating to material misstatements or omissions that can arise under the securities laws, along with potential defenses.
- Recognize the key elements of insider trading.

#### Description:

Much of securities regulation is focused on public disclosure — providing accurate information for investors to decide whether to purchase or sell a security. The affirmative obligations to disclose information are principally set out in the SEC’s registration and continuous reporting requirements. It is important, however, to ensure that the information that is provided is materially accurate; i.e., that there are no material misstatements or omissions.

In this unit, you will consider some of the principal securities law liabilities to which certain actors in an offering may be exposed when disclosure is problematic. In addition, you will explore how the securities laws can impose liability when a person breaches a duty by trading securities based on material, nonpublic information, known as “insider trading,” as well as in certain cases when a company insider engages in “short-swing” trading of the company’s shares. You will also consider some of the principal agreements and other documents in a public offering of securities.

### **Week 13 – Current Securities Trends**

#### **Wednesday, April 17**

#### Overall Objectives:

- Understand Environmental, Social, and Governance (“ESG”) Investment.
- Understand SEC enforcement priorities.

#### Description:

We will examine current, pressing issues and trends in securities regulation and enforcement, and the growth of certain types of investment and their implications.

### **Week 14 – Course Recap and Final Exam Review Session**

#### **Wednesday, April 24**

#### **Final Exam**

- Specific exam time to be announced (to be scheduled by the law school). Final exams will take place from April 30 to May 10.