SYLLABUS

FRAUD AND FIDUCIARY DUTIES
UNDER THE FEDERAL SECURITIES LAWS

GEORGETOWN UNIVERSITY LAW CENTER

POLICIES

Preparation and participation:

We expect that you will come to class each week having done the reading, and that throughout the class each of you will participate in class discussions. Engaging with the material is critical to understanding it. To that end, Georgetown permits class participation to positively impact your grade and we will consider your participation throughout the semester as we determine final grades.

COURSE OUTLINE AND READING ASSIGNMENTS

WEEK ONE:

I. UNIT ONE: FRAUD AND FIDUCIARY DUTIES: AN INTRODUCTION

A. Policies Underlying the Securities Laws


B. The Principal Anti-Fraud Provisions

   2. Securities Act of 1933 (“Securities Act” or “‘33 Act”), § 17(a)
   3. Securities Exchange Act of 1934 (“Exchange Act” or “‘34 Act”), §§ 9(a), 10(b), 14(a), 14(e) and 15(c), Rules 10b-5, 14a-9 and 14e-3
   4. Investment Advisers Act of 1940, § 206
   5. SEC Rule 10b-5

C. The Elements of a Claim Under Section 10(b)

   Private Actions:

**SEC Enforcement Actions:**

7.  Exchange Act § 21(d)

8.  *SEC v. Rana Research, Inc.*, 8 F.3d 1358 (9th Cir. 1993)

**WEEK TWO:**

II.  **UNIT TWO: OVERVIEW OF THE EXPRESS REMEDIES FOR “FRAUD”**

A.  **Elements and Scope**

9.  Securities Act §§ 11 and 12

*The Due Diligence Defense under § 11 of the Securities Act:*

10.  *In re Software Toolworks, Inc. Securities Litigation*, 38 F.3d 1078 (9th Cir. 1994)

*The “Seller” Requirement of § 12 of the Securities Act:*  


*The Scope of §12(a)(2):*


**Remedy for False Statements in SEC Filings:**

13.  Exchange Act § 18


**WEEK THREE**

III.  **UNIT THREE: THE ELEMENTS OF THE 10b-5 CAUSE OF ACTION**

A.  **Fraud**

*False Statement:*


Non-Disclosures and the Duty Requirement:


Statements of Opinion or Belief:


WEEK FOUR

A. Projections and Forward-Looking Statements

22. Exchange Act § 21E

B. Materiality


C. Scienter

26. Sundstrand Corp. v. Sun Chemical Corp., 1033 (7th Cir. 1977)

D. “In connection with”


WEEK FIVE

E. The Purchaser/Seller Requirement

29. O’Brien v. Continental Illinois Bank & Trust Co., 593 F.2d 54 (7th Cir. 1979)
F. Reliance


31. *Carr v. Cigna Securities, Inc.*, 95 F.3d 544 (7th Cir. 1996)

G. Loss Causation


H. Damages and Other Remedies

33. Exchange Act § 28(a)

34. Exchange Act § 29(b)


WEEK SIX

IV. UNIT FOUR: WHO IS LIABLE?

A. Primary Liability


B. Aiding and Abetting

39. *Securities & Exchange Commission v. Fehn*, 97 F. 2d 1276 (9th Cir. 1997)

WEEK SEVEN

C. Controlling Person Liability and Agency Theories

40. Securities Act § 15

41. Exchange Act §§ 20 and 21A

43.  

**Hollinger v. Titan Capital Corp.**, 914 F. 2d 1564 (1990)

D.  

**Contribution**

44.  


VI.  

**UNIT FIVE: FRAUD IN IMPERSONAL MARKETS – “FRAUD ON THE MARKET” THEORY AND DUTIES TO DISCLOSE**

A.  

**Fraud on the Market**

45.  


46.  


47.  

**In re PolyMedica Corp. Sec. Litig.**, 432 F.3d 1 (1st Cir. 2005)

48.  


**WEEK EIGHT**

B.  

**Duties to Disclose: Duty to Correct and Duty to Update**

49.  

**Backman v. Polaroid Corporation**, 910 F. 2d 10 (1st Cir. 1990) (en banc)

50.  

**In re Time Warner Securities Litigation**, 9 F.3d 259 (2d Cir. 1993)

C.  

**Defenses – “Truth on the Market,” “Bespeaks Caution” and other Defenses**

51.  

**In re Apple Computer Litigation**, 886 F. 2d 1109 (1989)

52.  

**Grossman v. Novell, Inc.**, 120 F.3d 1112 (10th Cir. 1997)

53.  

**In re Merck & Co. Inc., Securities Litigation**, 432 F.3d 261 (3d Cir. 2005)

**WEEK NINE**

D.  


54.  


55.  

VII. UNIT SIX: MARKET ABUSE – INSIDER TRADING AND MANIPULATION

A. Insider Trading: “Disclose or Abstain,” Temporary Insiders, Misappropriation and Tipping

60. United States v. Newman, 773 F.3d 438 (2d Cir. 2014)

WEEK TEN

Other Requirements – Relationship of Trust and Confidence; “Use” versus Possession:

61. Securities & Exchange Commission v. Adler, 137 F. 3d 1325 (11th Cir. 1998)
62. SEC Rule 10b5-1
63. Securities & Exchange Commission v. Mark Cuban, 620 F.3d 551 (5th Cir. 2010)
65. Securities & Exchange Commission v. Dorozhko, 574 F.3d.42 (2d Cir. 2009)

Prophylactic Provisions:

67. Exchange Act § 16(b)

WEEK ELEVEN

Selective Disclosure and Analysts:

68. Regulation FD

70. *In re Presstek, Inc.*, Rel. No. 34-39472 (SEC 1997) (presstek.cs)

**B. Market Manipulation**

71. Exchange Act § 9


**WEEK TWELVE**

**C. Fraud by Market Participants and Fiduciaries**

*Scalping:*

71. Zweig *v. The Hearst Company*, 594 F. 2d 1262 (9th Cir. 1979) DROP?

*Best Execution:*


*Excessive Mark-Up:*

73. Grandon *v. Merrill, Lynch & Co., Inc.*, 147 F. 3d 184 (2d Cir. 1998)

*Unsuitability:*

74. Brown *v. E.F. Hutton Group*, 991 F. 2d 1020 (2d Cir. 1993)

*Churning:*

75. Hotmar *v. Lowell Listrom & Co.*, 808 F. 2d 1384 (10th Cir. 1987)

*“Sales Practice” Cases:*


*Interpositioning:*