

SECURITIES LAW ENFORCEMENT

COMPRESSED COURSE

LAW 6930, SECTION 20349

University of Florida, Levin College of Law

Spring 2023

In person and virtual

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Class Time: January 9 – 12, 2023 (9:30 a.m. – 12:20 p.m.) and January 13, 2023 (10 a.m. – 11:50 a.m.)

Office Hours: Please contact professors via e-mail to schedule appointment.

Course Website: <http://elearning.ufl.edu/> Students are responsible for reviewing the Canvas page for course updates.

Required Text: No textbook is required for this course. All materials will be provided in PDF format. See the Canvas page to access reading materials.

Pre-Requisite: As a general pre-requisite to the course, we recommend that students take the course Corporations which includes the study of certain aspects of corporate law that are germane to this course.

Course Overview: This course is dedicated to the study of the U.S. Securities and Exchange Commission (“SEC”), its history, functions, and divisions including its Enforcement and Examination Programs. The material covered in this compressed course is supplemental to the material you will or have learned in the securities regulation class(es) taught at University of Florida, Levin College of Law.

Course Description: In this course you will study federal statutes, case law, and regulations, which are designed to protect investors from fraud. The course focuses on SEC investigations, examination process, and the antifraud laws governing public and private actors that issue, trade, provide advice about and regulate investments in securities. These actors include: public companies, broker-dealers, investment advisers, regulators, gatekeepers, investors and others.

COURSE OBJECTIVE AND GOALS:

Upon completion of the course, students should be able to:

1. Demonstrate an understanding of the SEC's Enforcement and Examination Programs.
2. Demonstrate an understanding of the jurisdiction of the SEC, to include the definition of a "security."
3. Describe the basis for liability under the federal securities laws, including the elements of a claim under the registration and antifraud provisions.
4. Provide advice to future clients on basic questions regarding the jurisdiction of the SEC and the applicability of the U.S. federal securities laws.
5. Understand the importance of saving and investing and how to secure your financial well-being.

It is anticipated that you will spend approximately 2 hours out of class reading and preparing for in class assignments for every 1 hour in class.

COURSE EVALUATIONS:

Students are expected to provide professional and respectful feedback on the quality of instruction in this course by completing course evaluations online via GatorEvals. Guidance on how to give feedback in a professional and respectful manner is available at <https://gatorevals.aa.ufl.edu/students/>. Students will be notified when the evaluation period opens and can complete evaluations through the email they receive from GatorEvals in their Canvas course menu under GatorEvals OR by logging into UF [here](#). Summaries of course evaluation results are available to students at <https://gatorevals.aa.ufl.edu/public-results/>.

ATTENDANCE POLICY:

This is a compressed course and therefore daily attendance is required. Attendance will be taken during each class period. **Missing more than one class hour may result in a reduction of your final grade. Missing more than two hours will result in a failing grade in the course.**

Excessive tardiness will also result in a grade penalty.

GRADING/EXAM POLICY:

There will be one writing assignment at the end of the course which will test students' comprehension of the information and materials discussed during the course. The exam will consist of 3 short answer questions. The short answers should each be a maximum of 2 pages double spaced. The exam is open book.

ASSIGNMENT POLICIES:

Class Participation

Class preparation and class participation will be taken into account in calculating your final grade. We may raise or lower your grade by a third of a letter grade (e.g., from B to B+ or B -) based on exemplary or poor class participation. Exemplary participation means offering a few thoughtful comments or questions in more than half of all classes, listening to and engaging with ideas raised by other students, and exercising judgment to foster participation by your classmates.

Professionalism

We expect professionalism at all times.

Recording class lectures

Students are allowed to record video or audio of class lectures. However, the purposes for which these recordings may be used are strictly controlled. The only allowable purposes are (1) for personal educational use, (2) in connection with a complaint to the university, or (3) as evidence in, or in preparation for, a criminal or civil proceeding. All other purposes are prohibited.

Specifically, students may not publish recorded lectures without the written consent of the instructor.

A “class lecture” is an educational presentation intended to inform or teach enrolled students about a particular subject, including any instructor-led discussions that form part of the presentation, and delivered by any instructor hired or appointed by the University, or by a guest instructor, as part of a University of Florida course.

Plagiarism

All work in this class must be your own. Plagiarism is a very serious offense. There are detailed policies regarding what constitutes plagiarism in your student handbook. Ignorance of the policies is not a defense to a charge of plagiarism.

UF POLICIES:

UNIVERSITY POLICY ON EXAM DELAYS AND ACCOMMODATING STUDENTS WITH DISABILITIES:

Students requesting accommodation for disabilities must first register with the Dean of Students Office (<http://www.dso.ufl.edu>). The Dean of Students Office will provide documentation to the student who must then provide this documentation to the instructor when requesting accommodation. You must submit this documentation prior to submitting assignments or taking the quizzes or exams. Accommodations are not retroactive, therefore, students should contact the office as soon as possible in the term for which they are seeking accommodations. The law school policy on exam delays and accommodations can be found [here](#).

UNIVERSITY POLICY ON ACADEMIC MISCONDUCT: Academic honesty and integrity are fundamental values of the University community. Students should be sure that they understand the UF Student Honor Code found [here](#).

NETIQUETTE: COMMUNICATION COURTESY: All members of the class are expected to follow rules of common courtesy in all email messages, threaded discussions and chats. <http://teach.ufl.edu/docs/NetiquetteGuideforOnlineCourses.pdf>.

GETTING HELP:

Resources are available at <http://www.distance.ufl.edu/getting-help> for:

- Counseling and Wellness resources
- Disability resources
- Resources for handling student concerns and complaints
- Library Help Desk support

Should you have any complaints with your experience in this course please visit <http://www.distance.ufl.edu/student-complaints> to submit a complaint.

GRADING SCALE:

Grades are recorded permanently by the Office of the University Registrar. The grade point average (GPA) is determined by computing the ratio of grade points of semester hours of work attempted in courses in which letter grades are assigned. Students receive grade points according to the following scale:

Grade	Points
A (Excellent)	4.0
A-	3.67
B+	3.33
B (Good)	3.0
B-	2.67
C +	2.33
C (Satisfactory)	2.0
C-	1.67
D+	1.33
D (Poor)	1.0
D-	0.67
E (Failure)	0.0

COURSE SCHEDULE:

Assignments and Course Schedule (subject to change)

January 9 (9:30 a.m. – 12:20 p.m.)

Approaching the U.S. federal securities laws

- Overview of the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Advisers Act of 1940 and the Investment Company Act of 1940
- Organization of the SEC focusing on the Division of Enforcement and the Office of Compliance and Examinations
- Subject Matter Jurisdiction

Reading:

- Overview. Brief history of the SEC its purposes and organization topic on SEC website www.sec.gov ("About the SEC" [What We Do])
<https://www.sec.gov/Article/whatwedo.html>
- (SEC's Enforcement Division) <https://www.sec.gov/page/enforcement-section-landing>
- (SEC's Division of Examinations) <https://www.sec.gov/exams>
- Securities & Exchange Commission's Enforcement Manual Sections 1, 2, 3 and 4 (pp. 1-81)
<https://www.sec.gov/divisions/enforce/enforcementmanual.pdf>

January 10 (9:30 a.m. – 12:20 p.m.)

Definitions of "security" from the Securities Act of 1933 ("Securities Act") and the Securities Exchange Act of 1934 ("Securities Exchange Act")

- Statutory definitions of a "security?"
 - Investment Contracts (*SEC v. W.J. Howey Co.*, 328 U.S. 293 (1946))
 - Notes (*Reves v. Ernst & Young*, 494 U.S. 56 (1990))
- Study of cases involving different types of securities. These cases will provide examples of financial instruments that have been deemed to constitute securities including offering fraud matters and matters involving digital assets and initial coin offerings.

Reading:

- Definition of a security: *15 U.S.C. § § 77(b) and 78(c)*
- *SEC v. W.J. Howey Co.*, 328 U.S. 293 (1946)
- *Reves v. Ernst & Young*, 494 U.S. 56 (1990)
- *SEC v. JCS Enterprises, Inc. et al.* (Complaint) (will be provided on Canvas)
- *SEC v. JCS Enterprises, Inc. et al.* (Memo of Law) (will be provided on Canvas)
- *SEC v. Woodbridge et al.* (Complaint) (will be provided on Canvas)
- *SEC v. Woodbridge et al.* (Memo of Law) (will be provided on Canvas)
- <https://www.sec.gov/spotlight/cybersecurity>

January 11 (9:30 a.m. – 12:20 p.m.)

The SEC's Investigative Process

- The staff's investigative tools
 - i.e. subpoenas – SEC Form 1662
 - “Target” or “Subject”
 - Sources of SEC investigations
 - The “informal inquiry”
 - The formal investigation
 - Action Memorandum
- Document Production
- Investigative Testimony
- The Wells Notice
- Commencing the Enforcement Action
- Litigating SEC Injunctive Actions
- Remedies (disgorgement, penalties, officer and director bars, penny stock bars and other administrative bars)
- Parallel proceedings <https://www.justice.gov/jm/organization-and-functions-manual-27-parallel-proceedings>

Reading:

- Authority of the Staff §20 Securities Act of 1933
- §21(a) Securities Exchange Act of 1934; Securities & Exchange Commission's Enforcement Manual Sections: 3.2.3.1; 3.3.1; 2.3.3; 2.5.1; 3.2.6; 3.3; 2.4; 2.5; 5.2.1
<https://www.sec.gov/divisions/enforce/enforcementmanual.pdf>
- <https://www.justice.gov/jm/organization-and-functions-manual-27-parallel-proceedings>

Recommended Reading:

- *Kokesh v. SEC*, 137 S. Ct. 1635 (2017)
- *SEC v. Liu*, 140 S. Ct. 1936 (2020)
- *Gabelli v. SEC*, 568 U.S. 442 (2013)

January 12 (9:30 a.m. – 12:20 p.m.)

Common SEC Enforcement Claims: Violations of the registration and antifraud provisions of the federal securities laws through a survey of cases.

- Sections 5(a), 5(b) and 5(c) of the Securities Act of 1933
- Section 17(a) of the Securities Act and Section 10(b) and Rule 10b-5 of the Securities Exchange Act
- Misrepresentations, Omissions, and Schemes
- Materiality
- In Connection with the Purchase or Sale of a Security
- Scierter
- Common types of cases: Ponzi schemes, pump and dump schemes, unregistered securities brokers, unregistered sales of securities and insider trading

Reading:

- Sections 5(a), 5(b) and 5(c) and 17(a) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. §§77e(a), 77e(b), 77e(c) and 77q(a)], and Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. § 78j(b)], and Rule 10b-5 thereunder [17 C.F.R. §240.10b-5]

Recommended Reading:

- Misrepresentations, Omissions, and Schemes / *Janus Capital Group, Inc. v. First Derivative Traders*, 564 U.S. 135 (2011)
- Materiality/ *Basic Inc. v. Levinson*, 485 U.S. 224 (1988); *Asher v. Baxter International, Inc.*, 377 F.3d 727 (7th Cir. 2004)
- In Connection with the Purchase or Sale of a Security / *Chemical Bank v. Arthur Anderson & Co.*, 726 F.2d 930 (2nd Cir. 1984); *SEC v. Zandford*, 535 U.S. 813 (2002)
- Scierter / *Ernst & Ernst v. Hochfelder*, 425 U. S. 85 (1976)

January 13 (10:00 a.m. – 11:50 a.m.)

- The Importance of Saving and Investing for Students.
- Final Exam Review

Reading:

- Review earlier reading assignments
- <https://www.investor.gov/additional-resources/general-resources/publications-research/publications/saving-investing-students>
- <https://www.investor.gov/additional-resources>
- <https://www.investor.gov/additional-resources/information/youth/students>