LAW 255.5 – securities regulation

Professor Robert Bartlett

**Administrative Matters:**

Instructor Name: Robert Bartlett (he/him)

Email address:  [rbartlett@berkeley.edu](mailto:rbartlett@berkeley.edu)

Class Meeting Times: M/T/W from 2:15 pm to 3:25 pm

Classroom: 132

Zoom classroom (if necessary): <https://berkeley.zoom.us/j/97274904310>

Office Hours: 9 am to 11 am Wednesdays and by appointment

Please sign up for office hours in advance by using the calendar in bCourses. When signing up for an appointment, you may request a virtual meeting, in which case we will meet in this Zoom Room: <https://berkeley.zoom.us/j/93437465922>

*Note: All office hours through the end of August are required to be virtual.*

**Course Description:**

This course provides an overview of the regulation of securities offerings and trading under the Securities Act of 1933 and the Securities Exchange Act of 1934. The course explores the elaborate disclosure obligations that this country imposes on the distribution and trading of investment securities as well as the role of the Securities Exchange Commission and private plaintiffs in shaping and enforcing these disclosure obligations. Topics to be covered include: public offerings of securities and the registration process under the Securities Act of 1933, exemptions from these registration requirements and the role of exemptions in the financing of private and public firms, and the disclosure obligations of publicly-traded issuers. The course will also examine the role of anti-fraud rules in the issuance and trading of securities as well as liability for insider trading.

## **Learning Outcomes:**

By the end of the semester, students should be able to:

* Describe and apply to real and hypothetical facts:
  + the legal rules for determining when a financial transaction involves a “security”;
  + the legal rules that determine whether the purchase or sale of a security is in compliance with the anti-fraud rules of the Securities Act of 1933 and the Securities Exchange Act of 1934;
  + the legal rules for offering and selling a security in compliance with the registration requirements of the Securities Act of 1933;
  + the legal rules that determine whether a company is subject to the mandatory disclosure rules required by the Securities Exchange Act of 1934;
  + the consequences for firms, investors and other participants in the capital markets of running afoul of the anti-fraud regime or the disclosure obligations of the Securities Act of 1933 and the Securities Exchange Act of 1934;
  + the legal rules that allow companies and other private firms to avoid the registration and disclosure requirements of the Securities Act of 1933 and the Securities Exchange Act of 1934;
  + the legal rules that govern “insider trading” of securities and the resale of securities by corporate directors, executives, and certain other investors.
* Describe the underlying polices informing these rules and use them when applying the law;
* Describe the structure and content of the primary disclosure documents required of private firms by the Securities Act of 1933 and the Securities Exchange Act of 1934;
* Understand where to locate and find these disclosure documents.

**Required Materials:**

The required texts for this course are:

- Stephen Choi & A.C. Pritchard, *Securities Regulation: Cases and Analysis* (5th. ed. 2019)

- Stephen Choi & A.C. Pritchard, *Securities Regulation: Statutory Supplement* (2020)

While not required, I would also recommend that you obtain a subscription to the *Wall Street Journal* for the semester. For student subscriptions, the Journal has a student price of $4 per month (a *very* good price). You can register [here](https://store.wsj.com/v2/shop/US/US/wsjstudentsummer18?trackingCode=aaqro03a&cid=WSJ_SCH_GOO_ACQ_NA&ef_id=W0bQIwAAAI1nFwIT:20180815172119:s).

**bCourses; Reading Assignments:**

I manage course announcements and assignments through bCourses. You should already be enrolled in the course bCourse website located at:

<https://bcourses.berkeley.edu/courses/1506355>

If you are unable to access the bCourse site, please contact me as soon as possible. A copy of the syllabus, reading assignments, and copies of class materials can be found on the bCourse website. Reading assignments for each week will be posted on or before the preceding Thursday. Class slides and class recordings will be posted to bCourses after class.

**Policy on Class Recordings:**

Barring any changes to campus attendance policies, all classes will be held in person and attendance will be required for each class. However, all classes will be recorded to accommodate students who are unable to attend class for any number of reasons related to the current public health situation. Given the attendance requirement, please see the following section on Grading to ensure that your grade is not adversely affected in the event you are not able to attend a class.

Class recording will be automatically posted to the “Media Gallery” in bCourses following each class. Please feel free to view any class recordings that are posted there even if you attended that day’s class. Please note that sharing or redistributing any class recordings is prohibited by the Law School’s Academic Rules (Rule 7).

**Grading:**

Your grade in the course will be comprised of the following components: performance on the final in-class exam and in-class participation.

*Exam.* Subject to any upward or downward adjustment described below, your final grade for this course will be based on a three-hour, in-class exam to be administered on Monday, December 13, 2021. You may use any written materials (e.g., notes, books, outlines, Tarrot cards, etc.) that you bring with you to the exam room. You may not, however, use any information or materials in digital or electronic form. I will provide more information regarding the format of the exam later in the semester.

*Class attendance and participation.* Much of our class discussion will be driven by the numerous “hypothetical” scenarios in the Casebook, and I will generally call on students to work through these hypotheticals in class. To ensure robust class discussion, we will use a “panel system” in which approximately 3-4 randomly-selected students must be prepared to discuss the hypotheticals assigned in the readings. These panels will commence in Week 2. I will announce the names of these students when I post the Reading Assignments each week on bCourses. Please be advised that your assignment to a panel does not necessarily mean that I will call on you; it is instead a system for me to know that students are available to engage in discussion promptly. Likewise, your assignment is to a “day”; therefore, you should be prepared to discuss on your “panel day” any hypotheticals that were in the prior day’s reading assignment but were not discussed in the prior class due to time constraints.

**Failure to be prepared for discussion on your assigned “panel day” (or being absent when called upon without providing prior notice to me, as noted below) is highly likely to result in a downward adjustment of your grade**. *If you are unable to attend class and have been assigned to a panel for that day, please notify me of your expected absence in advance of class, if possible*. If you are unable to provide advance notice due to an emergency, please contact me as soon as possible with an explanation for the lack of advance notice so that it does not adversely affect your grade. Students who miss their assigned panel will be re-assigned to a later panel.

Please be advised that I reserve the right to reduce the final raw score that I use for determining grades by up to 5% (per incident) for any student who misses an assigned “panel day” without advance notice or without otherwise securing my agreement that the missed class will not adversely affect the student’s grade. Please keep in mind that the basis for this policy is to minimize the disruption to the learning environment that occurs when a student on panel is not present when called upon to discuss the assignment materials.

**Technological Assistance:**

If technical difficulties prevent you from completing course work, please alert me immediately. However, understand that I cannot assist you with technical problems. Please use the technical support resources described below. Be sure to document all interactions with tech support (e.g., save emails and transaction numbers). The following instructions have been provided to me by the law school:

*“Berkeley Law students are entitled to general software support for their computers from the law school, and certain free software downloads from UC Berkeley, while enrolled.  If you have issues with internet access or computer equipment required to participate in classes remotely, they should contact* [*studentcomputing@law.berkeley.edu*](mailto:studentcomputing@law.berkeley.edu)*. Information, links, and instructions for many common computer/technical questions can be found in the* [*law library's online computing guide*](http://libguides.law.berkeley.edu/computing/home)*.*

*For bCourses, Zoom, and technical support questions, please email* [*studentcomputing@law.berkeley.edu*](mailto:studentcomputing@law.berkeley.edu) *or you can use the* [*Student Computing chat*](https://www.law.berkeley.edu/library/dynamic/internal/techChat.php)*. In both cases, someone will respond to you during our regular business hours.*

*If you have research-related questions, please contact the reference librarians by filling out the* [*reference request form*](https://www.law.berkeley.edu/library/dynamic/students/researchRequest.php)*. You can also reach reference librarians during business hours by using the* [*law library’s chat service*](https://www.law.berkeley.edu/library/dynamic/internal/chat.php)*.”*

## **School-wide Policies**

1) A “credit hour” at Berkeley Law is an amount of work that reasonably approximates three to four hours of work per week for 15 weeks, including a) classroom time, b) time spent preparing for class, c) time spent studying for, and taking, final exams, d) time spent researching, writing, and revising papers and other written work, and e) time spent preparing for and completing any other final project, presentation, or performance. For the purposes of these calculations, 50 minutes of classroom instruction counts as one hour, and the 15 weeks includes the exam period. You can expect to spend this amount of time per unit per week on in-class and out-of-class, course-related work as described above.

2) Students who need classroom accommodations or want to discuss implementation of their accommodations, including accommodated exams, in this class are advised to contact Kyle Valenti, Associate Director of Student Services ([kvalenti@law.berkeley.edu](mailto:kvalenti@law.berkeley.edu)) or Kyle Kate Dudley, Assistant Director of Student Services, Accessible Education ([kylekatedudley@law.berkeley.edu](mailto:kylekatedudley@law.berkeley.edu)) as soon as possible.

3) The [Academic Honor Code](https://www.law.berkeley.edu/academics/registrar/academic-rules/academic-honor-code/) governs the conduct of all students during examinations and in all other academic and pre-professional activities at Berkeley Law. We expect students to adhere to this code scrupulously. If you have any question about whether your conduct may violate the code, please contact your professor or the Dean of Students before you act. You may face severe consequences, including a failing grade in this class or removal from the program, and the Bar will receive notification of your conduct.

4) If you are in need of economic, food, or housing support, you can find help at [basicneeds.berkeley.edu](https://basicneeds.berkeley.edu/) You may be eligible for money to buy groceries via [calfresh.berkeley.edu](http://calfresh.berkeley.edu/) or our Food Assistance Program. If you need food immediately, please visit our UC Berkeley Food Pantry at [pantry.berkeley.edu](https://pantry.berkeley.edu/)

5) The University of California is committed to creating and maintaining a community dedicated to the advancement, application and transmission of knowledge and creative endeavors through academic excellence, where all individuals who participate in University programs and activities can work and learn together in an atmosphere free of harassment, exploitation, or intimidation. Every member of the community should be aware that the University prohibits sexual violence and sexual harassment, retaliation, and other prohibited behavior (“Prohibited Conduct”) that violates law and/or University policy. The University will respond promptly and effectively to reports of Prohibited Conduct and will take appropriate action to prevent, to correct, and when necessary, to discipline behavior that violates this policy. For the complete UC Policy, definitions, compliance and procedures, please access the full text: <http://policy.ucop.edu/doc/4000385/SVSH>

Resources: If you have further questions or concerns about reporting behavior related to sexual harassment, sexual violence, and/or protected category discrimination, please contact the Office for the Prevention of Harassment and Discrimination (OPHD) by phone 510-643-7985 or email [ask\_ophd@berkeley.edu](mailto:ask_ophd@berkeley.edu).

Path to Care Center Confidential Advocates provide affirming, empowering, and confidential support for those that have experienced gendered violence, including: sexual harassment, emotional abuse, dating and intimate partner violence, sexual assault, stalking, and sexual exploitation. Advocates bring a non-judgmental, caring approach to exploring all options, rights, and resources. They can be reached by phone (510) 642-1988 or email <http://sa.berkeley.edu/dean/confidential-care-advocate>.

**Class Outline (subject to change):**

The following outline provides a general overview of the topics we will cover throughout the semester. Reading assignments for each class will be posted on bCourse approximately one week in advance.

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| **Date** | **Class #** | **Topic** |
| 8/16 | 1 | Introduction |
| 8/17 | 2 | Materiality |
| 8/18 | 3 |
| 8/23 | 4 |
| 8/24 | 5 |
| 8/25 | 6 |
| 8/30 | 7 | Definition of “Security” |
| 8/31 | 8 |
| 9/1 | 9 |
| 9/6 | Labor Day  (No Class) |  |
| 9/7 | 10 | Disclosure & Accuracy |
| 9/8 | 11 |
| 9/13 | 12 |
| 9/14 | 13 | 10b-5 |
| 9/15 | 14 |
| 9/20 | 15 |
| 9/21 | 16 |
| 9/22 | 17 |
| 9/27 | 18 |
| 9/28 | 19 |
| 9/29 | 20 | Insider Trading |
| 10/4 | 21 |
| 10/5 | 22 |
| 10/6 | 23 |
| 10/11 | 24 | Public Offering Regulations |
| 10/12 | 25 |
| 10/13 | 26 |
| 10/18 | 27 |
| 10/19 | 28 |
| 10/20 | 29 |
| 10/25 | 30 |
| 10/26 | 31 | Public Offerings: Liability Regime |
| 10/27 | 32 |
| 11/1 | 33 |
| 11/2 | 34 |
| 11/3 | 35 |
| 11/8 | 36 | Exempt Transactions |
| 11/9 | 37 |
| 11/10 | 38 |
| 11/15 | 39 |
| 11/16 | 40 | Secondary Sales |
| 11/17 | 41 |
| 11/22 | 42 |