

Consumer and Investor Protection

**Department of Economics
College of Liberal Arts and Sciences**

Economics 490 - Fall 2021

**Economics Elective Course (3 Credits)
Tuesday and Thursday, 3:30 am – 4:50 pm
Online by Zoom**

Instructor: Martin K. Perry, Ph.D., J.D. (Call me Marty)
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Questions: By email
Appointments by arrangement over Zoom or at Room 205A on MW

Course Packet of Lecture Slides: There is no required or recommended textbook. Instead, we will use readings that I have developed from statutes and legal cases. I will email these readings to everyone as we prepare for each new topic.

Course Information: This is a three-credit elective course. The prerequisite is Intermediate Microeconomic Theory (Econ 302). This course contributes to the Economics Learning Outcomes of (i) Critical Thinking and (ii) Specialized Knowledge and Practical Application.

Course Description: The topics are divided into eight sections listed below. The first section provides the Constitutional authority for the regulation of business by federal and state governments, and the limitations on that regulation derived from specific provisions in the Bill of Rights. The second section introduces Common Law fraud by sellers of goods and then discusses the modern regulation of false and misleading advertising by the Federal Trade Commission. The third section examines product liability, an important area of the Common Law of torts. In particular, we examine the duty of manufacturers to provide products free of manufacturing or design defects that would harm consumers, and the duty of manufacturers to warn consumers about the unavoidable side effects of their products. In do so, we will introduce class action lawsuits. The fourth and fifth sections then discuss the federal regulation of product safety by the National Highway Traffic Safety Administration (automobiles) and the Consumer Product Safety Administration. The course then shifts to investor protection. In the sixth section, we will discuss the Securities and Exchange Commission rules against false and misleading statements by corporations to their shareholders and investors in general. We discuss famous cases concerning different types of corporate statements. The seventh section illustrates various types of accounting fraud using famous cases. Finally, we will talk briefly about insider trading. There are many other statutes and regulations governing other types of consumer and investor protection, but these topics are some of more important and interesting.

Grading: Two Research Papers

Instead of having exams, I will ask you to write TWO modest-length research papers, approximately 8 pages with 1.5 line spacing and cited references. I did this last spring, and it worked well. The papers were well done and the students enjoyed their research. The topic of the first paper will be from the sections on consumer protection, and the topic of the second paper will be from the sections on investor protection.

The topics of the papers will be legal cases or settled complaints with particular corporations over their products or statements. In the sections of consumer protection, the plaintiffs in these cases may be consumers (Section 3 on product liability) or federal agencies (Section 2 on false and misleading statements or Sections 4 and 5 on product safety). In the sections on investor protection, the plaintiffs may be investors (Section 6 on corporate statements) or federal agencies (Sections 7 and 8 on fraud).

I will provide lists of cases that can be topics. You can also find cases from the webpages of the federal agencies. And there will surely be some new cases show up in the business news.

Academic Assistance

Students are encouraged to utilize the many resources we have throughout campus to assist with academics. We recommend that you seek them out starting early in the semester, not just in times of academic need, in order to develop good study habits and submit work which represents your full academic potential. Many resources are found on the Economics Website including details about the Economics Tutoring Center, Academic Advising, and other academic support options:

<https://economics.illinois.edu/academics/undergraduate-program/academic-student-support>

Academic Integrity

According to the Student Code, 'It is the responsibility of each student to refrain from infractions of academic integrity, from conduct that may lead to suspicion of such infractions, and from conduct that aids others in such infractions.' Please know that it is my responsibility as an instructor to uphold the academic integrity policy of the University, which can be found here: <https://studentcode.illinois.edu/article1/part4/1-401/>

Academic dishonesty may result in a failing grade. Every student is expected to review and abide by the Academic Integrity Policies. It is your responsibility to read this policy to avoid any misunderstanding. Do not hesitate to ask the instructor(s) if you are ever in doubt about what constitutes plagiarism, cheating, or any other breach of academic integrity.

Read the full Student Code at <https://studentcode.illinois.edu/>

Students with Disabilities

To obtain disability-related academic adjustments and/or auxiliary aids, students with disabilities must contact the course instructor and the Disability Resources and Educational Services (DRES) as soon as possible. To contact DRES you may visit 1207 S. Oak St., Champaign, call 333-4603 (V/TTY), or e-mail a message to disability@illinois.edu. DRES Website: www.disability.illinois.edu/

Community of Care

As members of the Illinois community, we each have a responsibility to express care and concern for one another. If you come across a classmate whose behavior concerns you, whether in regards to their well-being or yours, we encourage you to refer this behavior to the Student Assistance Center (217-333-0050 or <http://odos.illinois.edu/community-of-care/referral/>). Based on your report, the staff in the Student Assistance Center reaches out to students to make sure they have the support they need to be healthy and safe. Further, we understand the impact that struggles with mental health can have on your experience at Illinois. Significant stress, strained relationships, anxiety, excessive worry, alcohol/drug problems, a loss of motivation, or problems with eating and/or sleeping can all interfere with optimal academic performance. We encourage all students to reach out to talk with someone, and we want to make sure you are aware that you can access mental health support at the Counseling Center (<https://counselingcenter.illinois.edu/>) or McKinley Health Center (<https://mckinley.illinois.edu/>).

For mental health emergencies, you can call 911 or walk into the Counseling Center, no appointment needed.

Disruptive Behavior

Behavior that persistently or grossly interferes with classroom activities is considered disruptive behavior and may be subject to disciplinary action. Such behavior inhibits other

students' ability to learn and an instructor's ability to teach. A student responsible for disruptive behavior may be required to leave class pending discussion and resolution of the problem and may be reported to the Office for Student Conflict Resolution for disciplinary action.

Emergency Response Recommendations

Emergency response recommendations can be found at the following website:

<http://police.illinois.edu/emergency-preparedness/>. I encourage you to review this website and the campus building floor plans website within the first 10 days of class. <http://police.illinois.edu/emergency-preparedness/building-emergency-actionplans/>.

Religious Observances

The Religious Observance Accommodation Request form is available at <https://odos.illinois.edu/community-of-care/resources/students/religious-observances/>. Submit the form to the instructor and to the Office of the Dean of Students (helpdean@illinois.edu) by the end of the second week of the course; in the case of exams or assignments scheduled after this period, students should submit the form to the instructor and to the Office of the Dean of Students as soon as possible.

Family Educational Rights and Privacy Act (FERPA)

Any student who has suppressed their directory information pursuant to Family Educational Rights and Privacy Act (FERPA) should self-identify to the instructor to ensure protection of the privacy of their attendance in this course. See <http://registrar.illinois.edu/ferpa> for more information on FERPA. Student information and records will not be released to anyone other than the student unless the student has provided written approval or as required by law.

Sexual Misconduct Reporting Obligation

The University of Illinois is committed to combating sexual misconduct. Faculty and staff members are required to report any instances of sexual misconduct to the University's Title IX and Disability Office. In turn, an individual with the Title IX and Disability Office will provide information about rights and options, including accommodations, support services, the campus disciplinary process, and law enforcement options. A list of the designated University employees who, as counselors, confidential advisors, and medical professionals, do not have this reporting responsibility and can maintain confidentiality, can be found here: <http://www.wecare.illinois.edu/resources/students/#confidential>. Other information about resources and reporting is available here: <http://wecare.illinois.edu/>.

Student Support

The Counseling Center is committed to providing a range of services intended to help students develop improved coping skills in order to address emotional, interpersonal, and academic concerns. Please visit their website to find valuable resources and services: <https://counselingcenter.illinois.edu/>.

Counseling Center Information: 217-333-3704

Location: Room 206, Student Services Building (610 East John Street, Champaign IL)

McKinley Mental Health Information: 217-333-2705

Location: 3rd Floor McKinley Health Center 1109 South Lincoln, Urbana, IL

Emergency Dean: The Emergency Dean may be reached at (217) 333-0050 and supports students who are experiencing an emergency situation after 5 pm, in which an immediate University response is needed and which cannot wait until the next business day. The Emergency Dean is not a substitute for trained emergency personnel such as 911, Police or

Fire. If you are experiencing a life threatening emergency, call 911. Please review the Emergency Dean procedures: <http://odos.illinois.edu/emergency/>

Academic Dates and Deadlines

Students should make note of important academic deadlines for making changes to their courses (add, drop, credit/no-credit, grade replacement, etc.).

<https://registrar.illinois.edu/academic-calendars>

Please check with your academic department regarding specific procedures and policies.

Topics on Consumer Protection

Section 1

Introduction – Law and Cases

Constitutional Limits on the Regulation of Corporations

U.S. Constitution – Selected Provisions	Page 2
United States Federal Courts	Page 6
Delaware Incorporation Law – Selected Provisions	Page 11
Smyth v. Ames (1898)	Page 16
Due Process and State Regulation of Prices	
West Coast Hotel Co. v. Parrish (1937)	Page 20
Due Process and State Regulation of Labor Contracts	
U.S. v. Carolene Products (1938)	Page 26
Rational Basis Test and Federal Regulation under Commerce Clause	
Virginia State Board v. Council (1976)	Page 32
First Amendment Protection for Corporate Commercial Speech	
First National Bank v. Bellotti (1978)	Page 44
First Amendment Protection for Corporate Political Speech	

Section 2

False Advertising – Law and Cases

Common Law Fraud and Caveat Emptor

FTC False and Misleading Advertising

Common Law Fraud – Legal Formulations	Page 2
Uniform Commercial Code: Contract Warranties and Remedies	Page 4
Laidlaw & Co. v. Organ (US Supreme Court, 1817)	Page 9
Caveat Emptor – Buyer Beware	
Barnard v. Kellogg & Co. (US Supreme Court, 1869)	Page 13
Custom Among Merchants and Caveat Emptor	
Johnson v. Davis (Florida Supreme Court, 1985)	Page 17
Duty to Reveal Latent Defects in Home Sales	
Federal Trade Commission Act (1914)	Page 22
Federal Trade Commission Statement on Deception (1983)	Page 33
Sterling Drug, Inc. v. FTC (US Ninth Circuit, 1984)	Page 49
False and Misleading Claims about Aspirin Products	
Kraft, Inc. v. FTC (US Seventh Circuit, 1992)	Page 65
Misleading Claims about Cheese Products	

Section 3
Product Liability – Law and Cases
Negligence and Strict Liability
Duty to Warn
Class Action Mass Torts
Volkswagen Class Action

Negligence - Duty for Manufacturing Defects and Inspection of Components		
MacPherson v. Buick Motor (NY Appellate Division, 1912)		Page 2
MacPherson v. Buick Motor (NY Court of Appeals, 1916)		Page 4
Strict Liability – New Duty for Manufacturing Defects		
Suvada v. White Motor (Illinois, 1965)		Page 9
Negligent Design – Automobile Safety Design		
Larsen v. General Motors (MI, 1968)		Page 14
Young v. Volkswagon (MD, 1974)		Page 23
Duty to Warn - Side Effects of Medical Products		
MacDonald v. Ortho Pharmaceutical (MA, 1985)		Page 35
Vassallo v. Baxter Healthcare (MA, 1998)		Page 46
Ideus v. Teva Pharmaceuticals USA, Inc. (2021)		Page 54
Consumer Class Action Lawsuits		
Class Actions – Rule 23		Page 60
Multidistrict Litigation		Page 62
Volkswagen Class Action Transfer Order		Page 64
Racketeer Influenced and Corrupt Organizations (RICO)		Page 67
Mail and Wire Fraud		Page 71
Volkswagen “Clean Diesel” Sales and Marketing Practices		PDF Attachment
Amended Consolidated Consumer Class Action Complaint (August 2, 2016)		
Introduction:	Pages 1-6	16-21
Factual History	Pages 134-204	149-219
Class Certification	Pages 206, 212-215	221, 227-235
Defendants	Pages 216-220	227-236
RICO Claim	Pages 227-238	242-253
Fraud Claim	Pages 241-243	256-258

Topics on Consumer Product Safety

Section 4 Automobile Safety – Law and Cases

National Highway Traffic Safety Administration Statutory Authority	Page 2
Volkswagen “Clean Diesel” Marketing Settlement False Advertising and Deception on Emissions	Page 13
Takata Airbag Products Liability Settlement Design Defect	Page 19
Firestone Tires Engineering Analysis Report and Recall Design Defect	Page 22
California v. EPA (October 25, 2019) Fuel Economy and Emission Standards	PDF Attachment

Section 5 Consumer Product Safety – Law and Cases

Consumer Product Safety Administration Statutory Authority	Page 2
Regulation - Ban of Lead-Containing Paint Product Bans	Page 27
Regulation - Requirements for All Terrain Vehicles Industry Standards	Page 30
The Consumer Product Safety Act: A Legal Analysis (2018) Congressional Research Service	PDF Attachment
In the Matter of Zen Magnets (October 26, 2017) Small Rare Earth Magnet Sets Read Sections I, II, V, and VI Skim Section III on Evidence Skip Section IV	PDF Attachment
Zen Magnets v. CPSC (Tenth Circuit, August 4, 2020) Read Section I Skip Sections II and III Skim Section IV on the Commissioner Statements Read Section V	PDF Attachment
Texas Association of Manufacturers v. CPSC (March 1, 2021) Phthalates in the Plastics for Children Toys Read Section I, pages 2-9 Section II, pages 17-19 Section III, pages 24-28 Section IV and V, pages 30-31	PDF Attachment

Topics on Investor Protection

Section 6 Corporate Statements – Law and Cases

SEC Statutes and Regulations (1934 and Williams Act 1968) False and Misleading Statements or Omissions	Page 2
Basic, Inc. v. Levinson (U.S. Supreme Court, 1988) Announcements about Merger Negotiations	Page 8
Trump Casino Securities Litigation (Third Circuit, 1993) Statements in the Prospectus for Bond Issue	Page 20
Hewlett v. Hewlett-Packard (Delaware, 2002) Statements in a Proxy Contest for Shareholder Merger Vote	Page 29
Matrixx v. Siracusano (U.S. Supreme Court, 2011) Announcements about Potential Product Defects	Page 43
Hess v. Alibaba (Southern District of New York, 2021) Class Action Complaint	PDF Attachment
Announcements in an Initial Public Offering for ANT Group	

Section 7 Corporate Statements – Accounting Fraud Law and Cases

SEC Regulations (Staff Accounting Bulletin #104) Revenue Recognition	Page 2
In the Matter of The Coca-Cola Company (Complaint, 2005) Channel Stuffing	PDF Attachment
SEC v. Worldcom Inc. (Complaint, 2002) Capital Expensing	Page 4
SEC v. Xerox Corporation (Complaint, 2002) Allocation of Lease Revenue	Page 13
SEC v. Enron (Ken Lay and Jeff Skilling) Special Purpose Entities and Other Fraudulent Practices	PDF Attachment
Sarbanes-Oxley Act (2002)	

Section 8 Ponzi Schemes and Insider Trading – Rule 10b-5 Law and Cases

SEC v. Madoff (Complaint, 2008) Ponzi Scheme	PDF Attachment
SEC v. Rajaratnam (Complaint, 2011) Insider Trading	PDF Attachment