

Chapter 5
Government Regulation of Business Activities

- **Corporate Crime and Securities Law**
 - **Felony:** most serious category of crime, typically one that's punishable by imprisonment of more than a year
 - Corporate crimes are often felonies
 - **Misdemeanor:** punishable by a year or less
 - **Infraction/Violation:** least serious crime, may be fined but usually no jail time
 - **Fraud**
 - Can be prosecuted by the govt. as a crime
 - Different types of fraud (mail fraud, wire fraud, insurance fraud, Medicare/Medicaid fraud, securities fraud, etc.)
 - Silence can never be fraud
 - People who are actually participating in fraud are liable, can be stretched to business associates. Anyone who knows about it may be liable
 - **Securities Law**
 - Refers to a vast collection of laws, both fed and state, that govern securities
 - **Securities:** stocks, bonds, and similar arrangements where different investors effectively pool their money and hope to profit from some enterprise managed by other people
 - **Securities and Exchange Commission (SEC):** fed govt. agency charged with carrying out fed. Securities laws
 - Securities fraud has a much larger reach than common-law fraud
 - Securities law creates affirmative obligations to relay accurate info, and this makes it much easier to prosecute the corporate officers, the accountants, and others
 - **Two Categories of Obligations:**
 - **Registration Rules**
 - Need to register info about the offering and sale of the stock with SEC
 - Exemptions for small businesses, but these exemptions have their own rules that must be complied with, and sometimes those rules require a simplified filing rather than a complete exemption from filing
 - Also important to note that exemption from fed. Registration rules does not necessarily mean exemption from state registration rules
 - **Anti-Fraud Rules**

- o Cannot mislead potential investors when selling stock
- o Silence on a subject can be considered securities fraud, if disclosure of the info would be relevant based on the info you've otherwise conveyed to investors and potential investors
- o **Insider Trading**: purchase or sale of securities, based on info that has not yet been made public, by an insider or by someone receiving info from and insider (called tippee)
- o Racketeer Influenced and Corrupt Org. Act of 1970 (RICO)
 - Originally directed at organized crime
 - Broad enough to cover just about any corp. crime associated with a business enterprise
 - Racketeering includes white collar crimes such as mail fraud, securities fraud, bribery, embezzlement, and obstruction of justice
 - In order for RICO to apply there must be:
 - A business enterprise
 - Used in the commission of predicate crimes
 - A "pattern" of racketeering, which means at least two commissions of a predicate crime within a 10 year period
 - If RICO applies, that means there are criminal penalties for the defendant above and beyond those imposed as a result of the predicate crimes
 - Civil RICO
- o The Sarbanes-Oxley Act of 2002
 - Multifaceted approach to corporate crime in publicly-held companies
 - Creates a Public Company Accounting Oversight Board to oversee audits, protect investors, and further the public interest in accurate corporate financial reporting
 - Includes numerous provisions designed to ensure that accountants are independent from the companies they audit
 - Requires disclosure of greater info in corp. financial statements
 - Requires the CEO/CFO to certify the accuracy of corp. financial statements, and requires them to reimburse the company for any bonus or stock sales profits received within 12 months after the filing of a financial statement that had to be substantially corrected
 - Prohibits personal loans from the corp. to directors and officers
 - Increases the penalties for securities fraud and other forms of criminal fraud

- Authorizes the SEC to ban someone from serving as an officer or director, temporarily or permanently
- Increases the penalties for document tampering and other obstructions of justice, including imprisonment of up to 20 years
- Provides new protection to whistleblowers by creating penalties for retaliation against them, including imprisonment of up to 10 years
- **Antitrust Law**
 - Allows for competition
 - Sherman Antitrust Act Section 1
 - **Trust**: one way that 2 or more businesses can operate under a single management so that they can jointly control the market for a particular product
 - **Antitrust Law**: can refer to any laws that protect free trade by making illegal – agreements that restrain competition, monopolies, and other unfair trade practices
 - **Prohibits** → every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States
 - Before an act can be an illegal restraint of trade, there must necessarily be at least two separate individuals or businesses entering in some kind of agreement. There are other acts prohibited by antitrust law that can be done by one business alone, but not restraints of trade
 - **Despite its broad language, the Sherman Act prohibits only contracts or agreements that *unreasonably* restrain trade**
 - Has to be unreasonable
 - **Court analyzes the legality of such agreements using one of two frameworks: either the *per se* approach or the “rule of reason”**
 - Courts have put different types of agreements into different categories
 - Some types of agreements are so plainly an unreasonable restraint of trade that they’re considered *per se* illegal, and require no further proof that there’s been an unreasonable restraint of trade
 - **Examples of *per se* unlawful conduct include horizontal and vertical price-fixing and certain types of group boycotts**
 - If 2 competitors agree to sell a particular product for a fixed price, or to limit the amount of the product available for sale
 - Horizontal → the 2 businesses are in the same place in the chain of distribution