Volume 26

PART I. INTRODUCTION

CHAPTER 1. OVERVIEW

	TELUTION DISTRIBUTION
§ 1:1	In general
§ 1:2	Introduction to law of damages
§ 1:3	Introduction to securities laws
§ 1:3.10	Jurisdiction under the securities laws
§ 1:4	Introduction to law of damages in securities litigation
§ 1:5	An introduction to the definition of a security
§ 1:6	Condominiums as "investment contracts" under the
	securities laws

CHAPTER 2. REGULATION OF LIMITED LIABILITY COMPANIES AND OTHER INTERESTS UNDER THE FEDERAL SECURITIES LAWS

2	2:1	Sanna	αf	chapter
8	Z:1	ocobe	OI	cnabter

- § 2:2 The Supreme Court's standards for defining a security
- § 2:3 Attributes of limited liability companies
- § 2:4 Integrating the basic attributes of limited liability companies with the Supreme Court's definition of a security
- § 2:5 A place for predictability
- § 2:6 Cryptocurrencies and initial coin offerings

CHAPTER 3. THE PRIVATE SECURITIES LITIGATION REFORM ACT OF 1995

I. INTRODUCTION

§ 3:1 Generally

II. CLASS ACTION REFORM

§ 3:2	The professional plaintiff and lead plaintiff problem
§ 3:2.10	Reforms aimed at correcting problems associated with
	professional plaintiffs
§ 3:2.20	Reforms aimed at curbing the race to the courthouse

§ 3:2.30	Judicial Interpretation of the lead-plaintiff and notice
Ü	provisions of the PSLRA
§ 3:3	The Reform Act's impact on institutional investors
§ 3:4	Selecting a class representative
§ 3:5	Experience with PSLRA in the first 18 months
§ 3:5.10	—Moving securities fraud class actions to state court and
80500	congress's response
§ 3:5.20	—Institutional shareholders' involvement under the PSLRA
§ 3:5.30	—Institutional shareholders in non-PSLRA litigation
§ 3.5.50	Does the Reform Act impose new duties on institutional
3 0.0	investors?
§ 3:7	The settlement process
§ 3:8	Limits on abusive discovery
§ 3:8.10	—Must the defendant file a motion to dismiss?
§ 3:8.20	—Mandatory disclosures under the federal rules
§ 3:8.30	—Codefendants and potential defendants
§ 3:8.40	—Discovery in state proceedings
§ 3:8.50	—Public record laws
§ 3:8.60	—Exceptions to the stay of discovery
§ 3:8.70	—Preservation of evidence
§ 3:8.80	—Prevent undue prejudice
§ 3:8.90	—Third-party production exception
	LEADING REQUIREMENTS FOR PRIVATE ECURITIES FRAUD LITIGATION
SE A.	ECURITIES FRAUD LITIGATION PSLRA PLEADING REQUIREMENTS; GENERALLY
A. § 3:9	PSLRA PLEADING REQUIREMENTS; GENERALLY Pleading material misstatement or omissions
A. § 3:9 F § 3:10 F	PSLRA PLEADING REQUIREMENTS; GENERALLY Pleading material misstatement or omissions Pleading state of mind
A. § 3:9 F § 3:10 F	PSLRA PLEADING REQUIREMENTS; GENERALLY Pleading material misstatement or omissions
A. § 3:9 F § 3:10 F	PSLRA PLEADING REQUIREMENTS; GENERALLY Pleading material misstatement or omissions Pleading state of mind
A. § 3:9 F § 3:10 F § 3:11 F	PSLRA PLEADING REQUIREMENTS; GENERALLY Pleading material misstatement or omissions Pleading state of mind Pleading standards under the PSLRA
\$ 3:9 F \$ 3:10 F \$ 3:11 F	PSLRA PLEADING REQUIREMENTS; GENERALLY Pleading material misstatement or omissions Pleading state of mind Pleading standards under the PSLRA TELLABS DECISION Tellabs; Supreme Court's guidance on pleading scienter under the PSLRA
A. \$ 3:9 \$ 3:10 \$ 3:11 B. \$ 3:11.05 \$ 3:11.10	PSLRA PLEADING REQUIREMENTS; GENERALLY Pleading material misstatement or omissions Pleading state of mind Pleading standards under the PSLRA TELLABS DECISION Tellabs; Supreme Court's guidance on pleading scienter under the PSLRA The Tellabs allegations
A. § 3:9 F § 3:10 F § 3:11 F B. § 3:11.05	PSLRA PLEADING REQUIREMENTS; GENERALLY Pleading material misstatement or omissions Pleading state of mind Pleading standards under the PSLRA TELLABS DECISION Tellabs; Supreme Court's guidance on pleading scienter under the PSLRA
A. \$ 3:9 F \$ 3:10 F \$ 3:11 F B. \$ 3:11.05 \$ 3:11.20	PSLRA PLEADING REQUIREMENTS; GENERALLY Pleading material misstatement or omissions Pleading state of mind Pleading standards under the PSLRA TELLABS DECISION Tellabs; Supreme Court's guidance on pleading scienter under the PSLRA The Tellabs allegations Seventh Circuit's opinion in Tellabs
A. \$ 3:9 F \$ 3:10 F \$ 3:11 F B. \$ 3:11.05 \$ 3:11.20 \$ 3:11.30	PSLRA PLEADING REQUIREMENTS; GENERALLY Pleading material misstatement or omissions Pleading state of mind Pleading standards under the PSLRA TELLABS DECISION Tellabs; Supreme Court's guidance on pleading scienter under the PSLRA The Tellabs allegations Seventh Circuit's opinion in Tellabs Seventh Circuit places the PSLRA in its historic context
A. \$ 3:9 \$ 3:10 \$ 3:11 B. \$ 3:11.05 \$ 3:11.20 \$ 3:11.30 \$ 3:11.40	PSLRA PLEADING REQUIREMENTS; GENERALLY Pleading material misstatement or omissions Pleading state of mind Pleading standards under the PSLRA TELLABS DECISION Tellabs; Supreme Court's guidance on pleading scienter under the PSLRA The Tellabs allegations Seventh Circuit's opinion in Tellabs Seventh Circuit places the PSLRA in its historic context Seventh Circuit approves of confidential sources
A. \$ 3:9 \$ 3:10 \$ 3:11 B. \$ 3:11.05 \$ 3:11.20 \$ 3:11.30 \$ 3:11.40 \$ 3:11.50	PSLRA PLEADING REQUIREMENTS; GENERALLY Pleading material misstatement or omissions Pleading state of mind Pleading standards under the PSLRA TELLABS DECISION Tellabs; Supreme Court's guidance on pleading scienter under the PSLRA The Tellabs allegations Seventh Circuit's opinion in Tellabs Seventh Circuit places the PSLRA in its historic context Seventh Circuit approves of confidential sources Seventh Circuit's application
A. \$ 3:9 \$ 3:10 \$ 3:11 B. \$ 3:11.05 \$ 3:11.20 \$ 3:11.30 \$ 3:11.40 \$ 3:11.50 \$ 3:11.60	PSLRA PLEADING REQUIREMENTS; GENERALLY Pleading material misstatement or omissions Pleading state of mind Pleading standards under the PSLRA TELLABS DECISION Tellabs; Supreme Court's guidance on pleading scienter under the PSLRA The Tellabs allegations Seventh Circuit's opinion in Tellabs Seventh Circuit places the PSLRA in its historic context Seventh Circuit approves of confidential sources Seventh Circuit's opinion in Tellabs Seventh Circuit's opinion in Tellabs Supreme Court's opinion in Tellabs Supreme Court's new competing inferences and the "at

C. PLEADING SCIENTER AFTER TELLABS

§ 3:11.100	Generally
§ 3:11.110	Tellabs Awards the Draw to Plaintiffs
§ 3:11.120	Motive and Opportunity, or Recklessness As
	Independent Methods of Establishing Scienter May No Longer Suffice
§ 3:11.130	Ninth Circuit's Dual Inquiry Test
§ 3:11.140	Tellabs does not extend PSLRA's strong inference standard to SEC enforcement actions
§ 3:11.145	Holistic evaluation of scienter
§ 3:11.148	Auditor's scienter
§ 3:11.150	Amending securities fraud pleadings
§ 3:11.152	Judicial notice and incorporation by reference after

IV. LOSS CAUSATION AND THE LIMITATION OF DAMAGES

§ 3:12	Loss causation
§ 3:12.10	Pleading and proving loss causation
§ 3:12.20	Pleading securities fraud with particularity and loss causation
§ 3:12.30	Loss causation and summary judgment
§ 3:13	Damages
§ 3:14	The "fair share" rule of proportionate liability
§ 3:14.10	Joint and several liability for knowing wrongdoing
§ 3:14.20	Proportionate liability and trial practice
§ 3:14.30	The PSLRA's damages formula and settlement reduction
§ 3:14.40	The PSLRA's damages formula and classwide relief
§ 3:14.50	The PSLRA's damages formula and experts
§ 3:14.60	The PSLRA's proportionate liability provisions apply to controlling persons, and the three step process to determine a liable defendant's share of responsibility
§ 3:14.70	Mutual funds

V. SAFE HARBOR PROVISIONS

§ 3:15	Generally
§ 3:16	Who and what is protected by the safe harbor
§ 3:17	Application of the safe harbor for oral and written
	statements

§ 3:18 The safe harbor and subsequent case law

VI. SANCTIONS FOR ABUSIVE LITIGATION

§ 3:19 Attorney sanctions for pursuing meritless litigation

VII. THE MODEL COMPLAINT UNDER THE PSLRA

§ 3:20 Introduction to Model Complaint

CHAPTER 4. EMPIRICAL ANALYSIS OF CLASS ACTION SECURITIES LITIGATION UNDER THE PRIVATE SECURITIES LITIGATION REFORM ACT

- § 4:1 Introduction
- § 4:2 Grundfest and Perino study
- § 4:3 NERA and Cornerstone Research securities litigation statistics
- § 4:4 The PSLRA, Enron and Laxity

CHAPTER 5. THE SCOPE OF FEDERAL SECURITIES REGULATION

- § 5:1 The new pre-emptive course of federal regulation
- § 5:2 The Securities Litigation Uniform Standards Act of 1998
- § 5:3 —The language of the Uniform Act
- § 5:4 —The scope of preclusion
- § 5:5 ——Claims in connection with the purchase or sale of a covered security
- § 5:6 ——Defined class actions
- § 5:6.50 — Actions that are joined, consolidated, or otherwise proceeding as a single action
- § 5:7 ——Covered securities
- § 5:8 ——Direct rather than derivative actions
- § 5:8.30 ——"Best execution" claims
- § 5:8.70 ——Federal securities class actions under the 1933 Act in state court
- § 5:9 —The scope of dismissal
- § 5:10 —Plaintiffs' ability to amend
- § 5:11 —Procedural devices
- § 5:12 ——Removal
- § 5:13 ——The discovery stay
- § 5:14 The Internet and electronic delivery
- § 5:15 Securities fraud on the Internet

CHAPTER 5A. THE SARBANES-OXLEY ACT OF 2002

- § 5A:1 The Act's political and economic environment
- § 5A:2 An overview of the Act's provisions
- § 5A:3 CEO and CFO certification requirements
- § 5A:4 Section 906 Certification
- § 5A:5 Shorter Section 16 reporting deadline
- § 5A:6 Prohibition on loans to executive officers and directors
- § 5A:7 Audit Committees—§ 301

§ 5A:8	Improper influence on audits—§ 303
§ 5A:9	Forfeiture of executive compensation upon restatements— § 304
§ 5A:10	Officer and director bars—§ 305
§ 5A:11	Insider trades during pension blackout periods—§ 306
§ 5A:12	Conduct rules for attorneys—§ 307
§ 5A:13	Disclosure report—§ 401
§ 5A:14	Management assessment of internal accounting controls— § 404
§ 5A:15	Ethics code for financial officers—§ 406
§ 5A:16	Audit committee financial experts—§ 407
§ 5A:17	SEC review of disclosures—§ 408
§ 5A:18	"Real Time" disclosures—§ 409
§ 5A:19	Statute of limitations for securities fraud—§ 804
§ 5A:20	Whistleblower protection—§ 806
§ 5A:21	No retaliation against informants—§ 1107
§ 5A:22	Auditor related provisions
§ 5A:23	The Act's significance
§ 5A:24	The Act's Omissions
§ 5A:25	The Act's reliance on criminal law

CHAPTER 5B. THE SARBANES-OXLEY ACT'S UNNOTICED ENHANCEMENT OF PRIVATE CIVIL LIABILITY UNDER THE SECURITIES LAW

§ 5B:1	Introduction
§ 5B:2	Section 804 and the extension of statute of limitations for fraud
§ 5B:3	New, private causes of action?
§ 5B:4	Corporate responsibility with regard to CEO/CFO certifications of financial statements under Section 302 and enhanced § 10(b) Liability
§ 5B:5	A private action for certain bonuses and profits Section 304
§ 5B:6	A private action against an insider who trades during pension fund blackouts—Section 306
§ 5B:7	Private actions based on disclosures in periodic reports— Section 401
§ 5B:8	Disclosure on a rapid and current basis—Section 409
§ 5B:9	Damages not dischargeable—Section 803
§ 5B:10	Private actions against attorneys for breach of new withdrawal and disclosure obligations

CHAPTER 5C. ATTORNEY EXPOSURE TO DAMAGES FOR SECURITIES FRAUD AFTER SARBANES-OXLEY

§ 5C:1 Overview

§ 5C:2	The attorney's federal common law duty to blow the whistle
§ 5C:3	The new federal statutory duty to disclose client confidences
§ 5C:4	The nationalization of securities regulation
§ 5C:5	State attorney confidentiality standards in conflict with the SEC's regime
§ 5C:6	The legitimacy of the preemptive force of the SEC's professional standards
§ 5C:7	The trend toward national securities law standards
§ 5C:8	Private rights of action against attorneys for failing to blow the whistle
8 5C·9	The nationalization consequences

CHAPTER 5D. SARBANES-OXLEY ACT (SOX), SECURITIES FRAUD, AND BANKRUPTCY

§ 5D:1	Bankruptcy and securities fraud
§ 5D:2	Reorganization proceedings as a forced sale in violation of
	the securities laws

- $\$ 5D:3 Bankruptcy's automatic stay and securities fraud claims against the debtor-company while in bankruptcy
- § 5D:4 Securities fraud class actions in bankruptcy: class proofs of claim
- § 5D:5 Excepting securities fraud claims from bankruptcy discharge
- § 5D:6 Bankruptcy trustees
- § 5D:7 Bankruptcy examiners

CHAPTER 5E. THE DODD-FRANK WALL STREET REFORM AND CONSUMER PROTECTION ACT

- § 5E:1 Introduction
- § 5E:2 Extending antifraud measures to security-based swaps
- § 5E:3 Whistleblowers
- § 5E:4 Consumer financial protection bureau
- § 5E:5 Extraterritorial reach of private securities fraud litigation

PART II. DAMAGES UNDER THE SECURITIES ACT OF 1933

CHAPTER 6. SECTION 11, SECURITIES ACT OF 1933

I. INTRODUCTION

§ 6:1 In general

Contents-1-10

II. SECTION 11 LIABILITY

- § 6:2 Overview of violations
- § 6:3 Section 11 Liability—Elements of Liability
- § 6:3.10 Actions against underwriters
- § 6:3.20 Pleading false statements of opinion under Section 11
- § 6:4 Defenses
- § 6:4.10 Section 11 actions for fraud against mutual funds

III. PURPOSES OF SECTION 11 CIVIL REMEDIES

- § 6:5 Overview of Section 11
- § 6:6 Legislative history of 1933 Act civil remedies
- § 6:7 Inadequacy of common law remedies
- § 6:8 Design as supplement to common law

IV. CURRENT SECTION 11 DAMAGE FORMULA

- § 6:9 Criticism
- § 6:10 Original Section 11 damage formula
- § 6:11 Amended damage formula
- § 6:12 If plaintiff keeps security
- § 6:13 If plaintiff sells security before suit
- § 6:14 If plaintiff sells security during suit
- § 6:15 Summary of current Section 11 damage alternatives
- § 6:16 —As of time suit was brought
- § 6:17 —Value under Section 11(e)
- § 6:18 —Value determination factors

V. SECTION 11 DAMAGE THEORY

- § 6:19 Contrast with traditional damage formula
- § 6:20 Make plaintiff whole
- § 6:21 Declining market
- § 6:22 Rising market
- § 6:23 Influenced market
- § 6:24 Plaintiff's damage alternatives

VI. SECTION 11(E) DAMAGE PROVISO

- § 6:25 Lack of causation defense
- § 6:26 Value problem
- § 6:27 Judicial guidance on proviso
- § 6:28 Proving negative causation
- § 6:29 Judicial restraints
- § 6:30 Conclusion
- § 6:31 Negative causation under Section 11 of Securities Act of 1933
- § 6:32 Section 11(e) does not limit the liability of an underwriter to

the shares that particular underwriter distributed to the public

CHAPTER 7. DAMAGES FOR VIOLATIONS OF SECTION 12, SECURITIES ACT OF 1933

§ 7:1	Introduction to express remedies under Section 12
§ 7:2	"Sellers" under Section 12 and persons liable
§ 7:3	—Those who pass title
§ 7:4	—Those who successfully solicit
§ 7:5	Conduct prohibited by Section 12(a)(1)
§ 7:6	Conduct prohibited by Section 12(a)(2)
§ 7:7	—A "Prospectus" and the "Public Offering" limitation
§ 7:8	Timeliness bars applicable to Section 12 claims
§ 7:9	Introduction to damages under Section 12
§ 7:10	—Section 12 damages compared to rescission
§ 7:11	—Consideration
§ 7:12	—Measured in money or property
§ 7:13	—Tax benefits
§ 7:14	Introduction to damages under Section 12 Contribution and indemnification under Section 12

PART III. DAMAGES FROM EXPRESS REMEDIES UNDER THE SECURITIES EXCHANGE ACT OF 1934

Contribution and indemnification under Section 12(2)

Statutes of limitations for Section 12(a)(2)

CHAPTER 8. SECTIONS 9(C), 16(B) AND 18 DAMAGES

I. INTRODUCTION

§ 8:1 In general

§ 7:15

§ 7:16

§ 8:2 Overview of Exchange Act

II. SECTION 9(E)

- § 8:3 Liability for listed stock manipulations
- § 8:4 Section 9(e) causation
- § 8:5 Damages

III. SECTION 16

§ 8:6 Section 16(b) generally

Contents-1-12

§ 8:7	Section 16(a) generally
§ 8:8	Damage measure
§ 8:9	Matching
§ 8:10	Employee stock options
§ 8:11	Dividends
§ 8:12	Interest
§ 8:13	Expenses
§ 8:14	Purchase or sale price in noncash transactions
§ 8:14.50	The statute of limitations under section 16(b)

IV. SECTION 18

- $\S~8:15$ Section 18 liability for misstatement in filed reports
- § 8:16 Causation and damages

PART IV. IMPLIED REMEDIES FOR SECURITIES FRAUD

CHAPTER 9. NATURE OF IMPLIED REMEDIES

§ 9:1	Scope of chapter
§ 9:2	Implication test
§ 9:3	Implication of private right of action under Rule 10b-5
§ 9:4	—Constitutionality of § 10(b) implied rights of action— Uncertain origins of § 10(b)'s implied remedy
§ 9:5	— —Unconstitutionality of the judicial creation and perpetuation of the § 10(b) private right of action
§ 9:6	— —Unfortunate consequences of the unconstitutional exercise of judicial power
§ 9:7	— <i>Musick</i> , <i>Peeler</i> and the implied right to contribution
§ 9:8	—— <i>Central Bank</i> and the rejection of an implied aiding and abetting remedy
§ 9:9	— —Coping with the absence of the judicially created § 10(b) private remedy
§ 9:10	Damages under tort model
§ 9:11	Damages under contract model
§ 9:12	Damages under jurisdictional model
§ 9:13	Elements of a Rule 10b-5 action
§ 9:14	The limitations periods for Rule 10b-5 actions
§ 9:15	—The purposes of limitations periods for Rule 10b-5 actions
§ 9:16	—The historical limitations period for Rule 10b-5 actions
§ 9:16.10	— —The limited and short-lived congressional response to <i>Lampf</i>
§ 9:17	—The Congressional two-and five-year limitations period for Rule 10b-5 actions
§ 9:17.10	 — The retroactive application of the Congressional two-and five-year limitations periods

§ 9:18	—The two-year statute of limitations applicable to Rule
0.01010	10b-5 actions
§ 9:18.10	——The impact of SEC investigations on the statute of
8 0.10	limitations The five year statute of reness applicable to Pule 10h 5
§ 9:19	—The five-year statute of repose applicable to Rule 10b-5 actions
§ 9:20	—Tolling the limitations periods for Rule 10b-5 actions
§ 9:20.10	——Equitable tolling
§ 9:20.20	— — Equitable estoppel
§ 9:20.30	— —Forfeiture and waiver
§ 9:20.40	——American Pipe tolling for Rule 10b-5 class actions
СНАРТ	TER 10. RULE 10b-5
§ 10:1	Threshold elements of Rule 10b-5 liability
§ 10.1 § 10:2	—Jurisdictional means
§ 10.2 § 10:2.50	Supreme Court's test in <i>Morrison</i> for extraterritorial
\$ 10.2.00	application of Rule 10b-5 to foreign cubed cases
§ 10:2.60	Congressional response to Morrison
§ 10:2.70	Evolution of <i>Morrison</i> and the extraterritorial reach of
3	Rule 10b-5
§ 10:3	Threshold elements of Rule 10b-5 liability—In
	connection with purchase or sale
§ 10:3.50	Standing and holder suits
§ 10:4	Security
§ 10:5	Conduct rendered unlawful by Rule 10b-5—In general
§ 10:6	—Scienter
§ 10:7	—Breach of fiduciary duty
§ 10:8	—Tipper liability
§ 10:9	—Tippee liability
§ 10:10	—Relationship of tippee liability to scienter
§ 10:11	—Misappropriation
§ 10:12	Objectification of culpability in 10b-5
§ 10:13	Rule 10b-5 liability in lower federal courts
§ 10:14	—First Circuit
§ 10:15	—Second Circuit
§ 10:16	—Third Circuit
§ 10:17	—Fourth Circuit
§ 10:18	—Fifth Circuit
§ 10:19	—Sixth Circuit
§ 10:20	—Seventh Circuit
§ 10:21	—Eighth Circuit
§ 10:22	—Ninth Circuit
§ 10:23	—Tenth Circuit
§ 10:24	—Eleventh Circuit
§ 10:25	—District of Columbia Circuit
§ 10:26	—Summary
§ 10:27	Materiality and the "bespeaks caution" doctrine

§ 10:27.50	Materiality: the "statistically significant" test
§ 10:27.60	Materiality: Duty to disclose
§ 10:27.70	Puffery
§ 10:27.80	Materiality: shareholder proposals
§ 10:28	The PSLRA's forward-looking incentives
§ 10:29	Judicial interpretations of the PSLRA's forward looking statement provisions
§ 10:30	Presumptions of reliance and the novel "fraud created the market" theory
§ 10:30.10	Fraud-on-the-market theory applies to actions against analysts
§ 10:30.15	The presumption of reliance under the fraud-on-the- market theory
§ 10:31	Fraud-created-the-market theory ripens into a circuit split
§ 10:31.10	Circuits endorsing the fraud-created-the-market theory
§ 10:31.20	—Fifth Circuit
§ 10:31.30	—Tenth Circuit
§ 10:31.35	—Reliance on the integrity of the regulatory process
§ 10:31.40	—Eleventh Circuit
§ 10:31.50	Circuits rejecting the fraud-created-the-market theory
§ 10:31.55	—Seventh Circuit
§ 10:31.60	—Third Circuit
§ 10:31.70	—Sixth Circuit
§ 10:31.80	—Reconciling the circuit split
§ 10:31.90	Market manipulation and auction rate securities

CHAPTER 11. LOSS CAUSATION IN RULE 10B-5 CASES

§ 11:1	Introduction to loss causation
§ 11:2	Evolution of loss causation
§ 11:3	After <i>Huddleston</i> : Loss causation used to deny all recovery
§ 11:4	Arguments supporting loss causation
§ 11:5	—Analogies to regulatory scheme
§ 11:6	—Supreme Court declarations on causation in securities cases
§ 11:7	—Causation in common-law fraud cases
§ 11:8	—Potential for unlimited exposure
§ 11:9	Toward abandonment of loss causation
§ 11:10	Life after loss causation
§ 11:11	Loss causation, fraud on the market, and artificial inflation
§ 11:11.10	Dura's impact on securities fraud sentences
§ 11:12	Conclusion

CHAPTER 11A. THE SUPREME COURT'S INTERPRETATION OF LOSS CAUSATION UNDER THE PRIVATE SECURITIES LITIGATION REFORM ACT OF 1995

A. OVERVIEW

- § 11A:1 Introduction to Supreme Court's *Dura Pharmaceuticals* decision
- § 11A:2 Supreme Court's interpretation of PSLRA's loss causation language
- § 11A:3 Legislative history of PSLRA's loss causation provision
- § 11A:4 The Congressional intent supporting PSLRA's loss causation provision
- § 11A:5 Congress's carefully designed structure of the PSLRA and the federal securities laws
- § 11A:6 Supreme Court's policy concerns in *Dura Pharmaceuticals*

B. SUPREME COURT'S NEW CONCEPT OF ECONOMIC LOSS IN PRIVATE SECURITIES FRAUD LITIGATION

- § 11A:7 Supreme Court's use of economic loss
- § 11A:8 Economic loss and corporate finance theory

C. CONSEQUENCES OF SUPREME COURT'S DURA PHARMACEUTICALS OPINION

- § 11A:9 Supreme Court's holding in *Dura Pharmaceuticals* is limited to private actions by securities purchasers pursuing the fraud on the market theory
- § 11A:10 Satisfying the Supreme Court's standards in the limited cases in which those standards apply
- § 11A:11 Court in *Dura Pharmaceuticals* declined to reach other uncertain loss causation issues

D. DURA PHARMACEUTICALS V. BROUDO AND THE EVOLVING SCOPE OF LOSS CAUSATION

- § 11A:12.10 Loss Causation: Circuit Survey
- § 11A:12.20 —First Circuit
- § 11A:12.30 —Second Circuit
- § 11A:12.40 —Third Circuit
- § 11A:12.50 —Fourth Circuit
- § 11A:12.60 —Fifth Circuit
- § 11A:12.70 —Sixth Circuit
- § 11A:12.80 —Seventh Circuit
- § 11A:12.90 —Eighth Circuit

§ 11A:12.100	—Ninth Circuit
§ 11A:12.110	—Tenth Circuit
§ 11A:12.120	—Eleventh Circuit
§ 11A:13	Pleading loss causation under the PSLRA
§ 11A:14	Post-Dura Developments
§ 11A:15	Pleading an adequate theory of loss causation
§ 11A:15.10	—Fraud-on-the-market theory
§ 11A:15.20	—"Materialization of risk" theory
§ 11A:15.30	—"Risk free assurances" theory
§ 11A:16	Proving loss causation: event studies, regression analyses, and expert testimony
§ 11A:17	Loss causation's effect on class certification
§ 11A:17.10	—Rebutting the fraud-on-the-market theory at class certification
§ 11A:17.20	—Loss causation as a prerequisite to invoking the fraud-on-the-market theory
§ 11A:17.30	—Supreme Court in <i>Halliburton</i> rejects requiring proof of loss causation at class certification
§ 11A:17.40	"Plausible" allegation of materiality and rebutting the presumption of reliance at class certification
§ 11A:18	Loss causation's effect on certifying a class alleging Section 11 claims
§ 11A:19	Dura's effect on Section 11 and Section 12 claims
§ 11A:20	Extending the law of loss causation to common law fraud and SEC actions

CHAPTER 12. STATUTORY GUIDANCE FOR RULE 10B-5 DAMAGES

I. INTRODUCTION

§ 12:1 In general

II. FEDERAL REMEDIAL POWERS

- § 12:2 Section 27(a) of the Exchange Act: District Court jurisdiction
- § 12:3 Section 28(a) limitations on damages
- § 12:4 —Relationship to Rule 10b(5)

III. THE 1933 AND 1934 ACTS

§ 12:5 Limitations from express remedies
 § 12:5.50 Extending the Law of Loss Causation to Section 11 and Section 12 Claims
 § 12:6 Limitations from express remedies—Relationship to Rule 10b-5
 § 12:7 Section 12(2): Material misstatements or omissions by sellers of securities

SECURITIES LITIGATION: DAMAGES

- § 12:8 —Relationship to Rule 10b-5
 § 12:9 Material misstatements or omissions under Section 10(b)
 § 12:10 —Relationship to Rule 10b-5
- IV. COMMON LAW

§ 12:11 Tort law

V. CONCLUSION

§ 12:12 Analysis of availability of damages

Volume 26A

CHAPTER 13. SUPREME COURT RULE 10B-5 DAMAGES GUIDANCE

- § 13:1 Introduction
- § 13:2 Definition of theories
- § 13:3 Rejection of benefit of bargain measure
- § 13:4 Out-of-pocket—Affiliated Ute Citizens v. United States
- § 13:5 ——Supreme Court analysis
- § 13:6 —Formation of general rule
- § 13:7 Role of materiality in general rule
- § 13:8 Quantifying the materiality under Section 12(2)
- § 13:9 —Minimizing plain language definition
- § 13:10 —Minimizing legislative intent
- § 13:11 ——Analogy to Section 10(b)
- § 13:12 —Under recissionary damages
- § 13:13 Uniformity of measure of damages under Sections 12(2) and 10(b)
- § 13:14 —Merger context
- § 13:15 ——Application of materiality standard to Basic
- § 13:16 ——Evaluating materiality
- § 13:17 Supreme Court endorses fraud on the market theory

CHAPTER 14. RULE 10B-5 DAMAGES IN LOWER COURTS

- § 14:1 Introduction
- § 14:2 First Circuit—General rule
- § 14:3 —Exceptions to general rule
- § 14:4 —Unjust enrichment or engorgement
- § 14:5 Second Circuit—General rule
- § 14:6 —Exceptions to general rule
- § 14:7 —Materiality of misstatement or omissions
- § 14:8 —Resale price measure of damages
- § 14:9 —Recovery of defendant's profit

```
§ 14:10
         -Materiality and public disclosure
§ 14:11
         —Direct market repercussion theory
§ 14:12
         —Disgorgement
         Third Circuit—General rule
§ 14:13
§ 14:14
         —Defendant's profits
§ 14:15
         —Availability of rescission
§ 14:16
         -Materiality
§ 14:17
         Fourth Circuit—General rule
         —Factors in applying discretion
§ 14:18
§ 14:19
         —Rejection of rescission
§ 14:20
         —Materiality of actions or omissions
§ 14:21
         —Qualified profit measure of damages
§ 14:22
         —Rescissionary measure of damages
§ 14:23
         Fifth Circuit—General rule
§ 14:24
         —Limitations of general rule applicability
§ 14:25
         —Privity
§ 14:26
         -Rescission
         -Role of materiality in damage measurement
§ 14:27
§ 14:28
         —Special or consequential damages
§ 14:29
         Sixth Circuit—General rule
§ 14:30
         —Additional relief
§ 14:31
         —Limitations upon recovery
         Seventh Circuit—General rule
§ 14:32
§ 14:33
         —Exceptions
§ 14:34
         —Role of materiality in damages measurement
         -Rescission
§ 14:35
         —Analogy to Uniform Commercial Code
§ 14:36
§ 14:37
         —Imperfections in analogy
§ 14:38
         -Attempt to create congruence between rescissionary and
          market measure of damages
§ 14:39
         —External market forces
         —Quantifying materiality of nondisclosure generally
§ 14:40
§ 14:41
         —Quantification of materiality in Rule 10b-5 actions
§ 14:42
         Eighth Circuit—General rule
§ 14:43
         —Calculating damages
§ 14:44
         -Valuation date
         -Materiality of misstatement or omission
§ 14:45
         Ninth Circuit—General rule
§ 14:46
§ 14:47
         -Rescission
         —Calculating value
§ 14:48
§ 14:49
         —Quantification of materiality
         Tenth Circuit—General rule
§ 14:50
§ 14:51
         —Election of rescission of rescissionary damages
         —"Cover" measure of damages
§ 14:52
§ 14:53
         Consequential damages
§ 14:54
         Eleventh Circuit—General rule
§ 14:55
         -Rescission
```

—Limitations of damages upon rescission § 14:56 District of Columbia Circuit—General rule § 14:57 —Rescissionary relief § 14:58 —Valuation limits § 14:59 Summary—Out-of-pocket rule § 14:60 —Calculating value § 14:61 § 14:62 —Disgorgement of unjust enrichment § 14:63 —Profit-based measurement § 14:64 —Limits on rescissionary relief § 14:65 —Benefit of the bargain measure § 14:66 —Punitive damages -Materiality of nondisclosures or misstatements § 14:67

CHAPTER 14A. PRIVATE ACTION UNDER SECTION 11 AND SECTION 12 OF THE 1933 ACT FOR MATERIAL MISREPRESENTATIONS IN REGISTRATION STATEMENTS AND PROSPECTUSES

- § 14A:1 Misrepresenting good will and loan loss reserves in registration statements
- § 14A:2 "Forced Seller" Doctrine and Section 11 and Section 12 claims

PART V. SPECIFIC SOURCES OF DAMAGES

CHAPTER 15. DAMAGES IN INSIDER TRADING, CHURNING AND SECONDARY LIABILITY LITIGATION

§ 15:1	Introduction
§ 15:2	Insider trading damages
§ 15:2.50	Insider trading damages-Rule 10b5-1 plans
§ 15:3	Insider trading damages—Where no duty to disclose
	exists
§ 15:4	—Churning damages
§ 15:5	Secondary liability damages
§ 15:6	Professional liability under Sarbanes-Oxley
§ 15:7	Supreme Court's Stoneridge Decision
§ 15:8	—Factual Background
§ 15:9	—Reaffirming the Bar on Aiding and Abetting Liability,
	But Allowing for Secondary Actor Liability where the
	Secondary Actor is a Primary Violator.
§ 15:10	—Reliance; Fraud on the Market
§ 15:11	Fraud-on-the-market theory applies to actions against
	analysts

§ 15:12	Supreme Court's <i>Stoneridge</i> Decision—Restricting Implied Private Rights of Action under § 10(b)
§ 15:13	—Examining Policy Implications in a Securities Fraud Action
§ 15:14	Stoneridge under the Microscope; Analyzing its Impact
§ 15:15	—The Polarized Debate
§ 15:16	What's the Rule: A Role in the Deceptive Conduct Plus Plaintiff Awareness
§ 15:17	—Stoneridge's Effect on SEC Aiding and Abetting Enforcement Actions
§ 15:18	—Stoneridge's Impact for Common Secondary Actors
§ 15:19	—Shifting the Litigation Landscape to State Court
§ 15:20	—Stoneridge's Impact on the Enron Litigation
§ 15:21	Liability for secondary actors in light of Stoneridge
§ 15:22	Primary liability after Stoneridge
§ 15:23	Accountant liability: accountant liability requires a misrepresentation or omission in audit opinions
§ 15:24	Attorney liability: outside counsel is not liable for drafting, reviewing, or revising materials which are used to effect fraudulent transactions
§ 15:25	Corporate officer liability
§ 15:26	Background to <i>Stoneridge</i> —The Supreme Court's <i>Central Bank</i> decision
§ 15:27	— —The Eighth Circuit's <i>In Re Charter Communications</i> decision: <i>Stoneridge</i> is born
§ 15:28	— —The Ninth Circuit's <i>AOL-Simpson</i> decision: expanding secondary actor liability
§ 15:29	——The Fifth Circuit weighs in on the debate: score one for the Eighth Circuit
§ 15:30	Congressional reinstatement of scheme/secondary liability
§ 15:31	Circuits reject the "creationism" test for secondary liability
§ 15:32	Secondary Liability After Central Bank, Stoneridge, Janus, and Lorenzo

CHAPTER 16. PRIVATE REMEDIES FOR INTERFERENCE WITH THE MARKET FOR CORPORATE CONTROL

8	16:1	Introduction
ð	10.1	III o dad coloii

- § 16:2 Proxy solicitation relief
- § 16:3 Remedies in tender offer context
- § 16:4 —Injunctive relief
- § 16:5 Rescission
- § 16:6 Minority shareholders' remedies
- § 16:7 Relationship between federal and state law remedies
- § 16:8 State law appraisal remedies

CHAPTER 17. CAUSATION IN PROXY FRAUD LITIGATION

- § 17:1 Introduction to proxy fraud
- § 17:2 History of private Section 14(a) actions
- § 17:3 Virginia Bankshares and Section 14(a) causation
- § 17:4 Aftermath of Virginia Bankshares
- § 17:5 Hidden agenda in Virginia Bankshares
- § 17:6 Loss causation and rescissory remedies

CHAPTER 18. DEFINING MATERIAL FACTS IN SECURITIES FRAUD DAMAGES ACTIONS

- § 18:1 Introduction to materiality
- § 18:2 Evolving Supreme Court definition of material facts
- § 18:3 Virginia Bankshares and the materiality of soft information
- § 18:4 Ramifications of the Supreme Court's distinction between subjective and objective falsehoods
- § 18:5 The Supreme Court and statistical significance

CHAPTER 19. DAMAGES IN ADDITIONAL IMPLIED SECURITIES ACTIONS

- § 19:1 Implied Section 17(a) remedy
- § 19:2 Section 17(a) liability and damages
- § 19:3 Section 6(b) of the 1934 Act: Discipline of members
- \S 19:4 Section 7(c) of the 1934 Act: Extension of credit limits
- § 19:5 Sections 11(d)(2) and 17(a) of the 1934 Act: Disclosure requirements
- § 19:6 Sections 12(b) and 12(f) of the 1934 Act: Reporting requirements
- § 19:7 Section 13(a) of the 1934 Act: Filing requirements
- § 19:8 Section 15 of the 1934 Act: Regulation of brokers and dealers
- § 19:9 Section 20(c) of the 1934 Act: Obstruction of filings
- § 19:10 Rule 10b-16: Procedures governing the extension of credit

PART VI. ANCILLARY SOURCES OF DAMAGES

CHAPTER 20. CONTRIBUTION, INDEMNIFICATION, AND INSURANCE

- § 20:1 Contribution—In general
- § 20:2 —Under federal securities laws
- § 20:3 —Judicial power to create
- § 20:4 —Joint tortfeasors
- § 20:5 The effect of settlement on contribution

§ 20:6	Indemnification—In general
§ 20:7	—Exceptions to general rule
§ 20:8	Claim procedure
§ 20:9	The Supreme Court's implied right to contribution in § 10(b) cases
§ 20:10	—The facts
§ 20:11	—The SEC's and the parties' strongest arguments—The SEC's position: A right of contribution should be recognized in private actions under Section 10(b) and Rule 10b-5
§ 20:12	——Securities Exchange Act manifests a clear congressional intent to permit contribution
§ 20:13	——Policy considerations support recognition of contribution
§ 20:14	— —Respondents' additional arguments—Contribution is a well-established right under Securities Exchange Act Section 10(b)
§ 20:15	— — — Congressional action
§ 20:16	— — The legislative scheme under the Exchange Act, including the express contribution provisions therein, implies a right of contribution under Section 10(b)
§ 20:17	— — Statutory authorization of contribution "as in cases of contract" and contractual underpinnings of the Section 10(b) action support a right of contribution
§ 20:18	— — Congress intended to create an independent federal regulatory scheme under the securities laws, so the existence of state remedies does not limit federal contribution
§ 20:19	— — Northwest Airlines and Texas Industries are not controlling: The securities laws, unlike the civil rights and antitrust laws considered in those cases, require implied contribution in their statutory scheme
§ 20:20	—The strongest arguments against the implied right of contribution
§ 20:21	— —Federal courts may not imply a right of contribution in Section 10(b)
§ 20:22	——Federal common law cannot supply any basis to grant contribution to a person held liable under Section 10(b)
§ 20:23	— — —If federal common law power existed to create a right of contribution under Section 10(b), the court should not exercise it
§ 20:24	— — — The court should reject expansion of federal common law in the guise of "fleshing out" the victim's claim
§ 20:25	— No principled distinction exists between implied and express victims' remedies for the purpose of analyzing whether to imply contribution
§ 20:26	The Supreme Court's holding and analysis
§ 20:27	Contribution and settlement

· ·	Insurance Director and Officer (D&O) insurance and securities fraud-
0	basics of D&O insurance
§ 20:30	Common provisions in a D&O policy
§ 20:31	D&O insurance "tower"
§ 20:32	Settlement and D&O insurance

CHAPTER 21. ATTORNEY FEES, COSTS AND INTEREST

- § 21:1 In general
- § 21:2 Attorney fees and costs
- § 21:3 Prejudgment and postjudgment interest

CHAPTER 22. RICO AND STATE LAW

- § 22:1 RICO securities fraud
- § 22:2 The historical use of RICO securities fraud
- $\$ 22:3 —RICO securities fraud's historic lack of a purchaser-seller requirement
- § 22:4 —RICO securities fraud's historic causation requirement
- § 22:5 —Measuring damages for historic RICO securities fraud
- § 22:6 The PSLRA's RICO bar
- § 22:7 —The "Criminal Conviction" exception
- § 22:8 —State-Law RICO equivalents
- § 22:9 Equitable relief, fees and costs
- § 22:10 State common law damages
- § 22:11 State statutory damages
- § 22:12 Securities arbitration
- § 22:13 —The status of securities arbitration
- § 22:14 —Punitive damages in securities arbitration

CHAPTER 23. EXTRAORDINARY PRIVATE REMEDIES

- § 23:1 Introduction
- § 23:2 Injunctive relief
- § 23:3 Abstention
- § 23:4 Receiverships
- § 23:5 Provisional remedies
- § 23:6 Contract voidance

PART VII. LITIGATION AND PRACTICE

CHAPTER 24. LITIGATING SECURITIES LAW DAMAGES ISSUES

§ 24:1 Scope of chapter

$\S 24:1.10$	Investigating and preparing for securities litigation
$\S 24:1.20$	—Examining publicly available material
$\S 24:1.30$	—Accessing internal company information
$\S 24:2$	Pleading stage
$\S 24:2.50$	—Experts in complaints
§ 24:3	Pleading adequate theories of "loss"
§ 24:3.10	Artificially inflating the value of a security
§ 24:3.20	The dissipation of that artificial inflation
§ 24:3.30	—Inflationary loss upon a corrective disclosure and a
	drop in stock value
§ 24:3.40	—Inflationary loss through market forces
§ 24:3.50	—Inflationary loss as a result of the company's collapse
§ 24:4	Pleading scienter after Tellabs
§ 24:5	Pleading scienter for outside auditors
§ 24:6	Scienter red flags
§ 24:7	Tellabs Inc. v. Makor Issues & Rights, Ltd and pleading
	scienter
§ 24:8	—First circuit
§ 24:9	—Third circuit
§ 24:10	—Fifth circuit
§ 24:11	—Seventh circuit
§ 24:12	Pleading and proving less causation
§ 24:12.10	Pleading and proving loss causation—Short selling and
	securities litigation
§ 24:13	Class certification
§ 24:13.10	Materiality and Class Certification
§ 24:13.20	Rebutting reliance at class certification
§ 24:13.30	—The "mismatch" defense
§ 24:14	Loss causation and class certification
§ 24:15	Loss causation will not act as a class certification
	barrier
§ 24:16	Damages discovery
$\S 24:17$	Summary judgment
§ 24:18	Motions in limine
§ 24:19	Expert testimony
§ 24:20	The expert witness
$\S 24:21$	Types of experts
§ 24:22	Disclosure regime for expert testimony
§ 24:23	Deposing the expert
§ 24:24	Defending the expert deposition
§ 24:25	Jury instructions
§ 24:26	—Charts and summary exhibits admitted in evidence
§ 24:27	—Charts and summary exhibits not admitted
§ 24:28	—Depositions
§ 24:29	—Expert witnesses
§ 24:30	—Conflicting expert testimony
§ 24:31	—Damages—Caution against inference from instruction
5 47.01	Damagos Causion against inference from histraction

SECURITIES LITIGATION: DAMAGES

§ 24:32 —Caution against multiple recovery	
§ 24:33 —Caution regarding multiple defendants	
§ 24:34 — Joint and several liability	
§ 24:35 —Section 11 of the 1933 Act—Generally	
§ 24:36 — —Where plaintiff retains stock	
§ 24:37 — —Where plaintiff sells stock before suit	
§ 24:38 — —Where plaintiff sells securities during litigation	1
§ 24:39 — —Where defendant is an underwriter	
§ 24:40 ——Limit on recovery	
§ 24:41 ——Act special interrogatories	
§ 24:42 —Section 12 of the 1933 Act—Where plaintiff has tendered securities	
§ 24:43 — —Where plaintiff no longer owns securities	
§ 24:44 —Alternative Section 12 instructions	
§ 24:45 —Causation—Section 10(b) of the 1934 Act	
§ 24:46 —General Section 10(b) measure	
§ 24:47 —Section 10(b)'s benefit of the bargain measure	
§ 24:48 —Section 10(b)'s rescissionary measure	
§ 24:49 —Section 10(b)'s uniform instruction	
§ 24:50 —Materiality	
§ 24:51 Multidistrict transfers for pretrial	
§ 24:52 Analysis of <i>Tellabs</i> and recent circuit court decision establishing scienter	s:
§ 24:52.50 Pleading scienter: motive, opportunity, and reckless	ness
§ 24:53 Use of confidential witnesses in securities fraud pleading	
§ 24:53.10 —Circuit survey and effect of <i>Tellabs</i>	
§ 24:53.20 —Documents from confidential witnesses	
§ 24:53.30 —Private investigators	
§ 24:54 Discovery of confidential witnesses	
§ 24:54.10 The discoverability of confidential witnesses' identit	ies
under Rule 26	100
§ 24:54.20 The availability of work-product protection	
§ 24:54.30 Obtaining an order of protection	
§ 24:55 Group pleading or "collective scienter" theory	
§ 24:56 "Core operations" inference of scienter	
§ 24:56.10 Core operations inference alone as sufficient to imposition scienter	ute
§ 24:56.20 Core operations inference to bolster existing allegat	ions
§ 24:56.30 Core operations inference as one factor among many	У
§ 24:56.40 Misconstruing the core operations inference	
§ 24:56.50 Reconciling the approaches	
§ 24:57 Effect of <i>Tellabs</i> on fraud by hindsight	
§ 24:58 Expanding <i>Tellabs</i> beyond § 10(b) and Rule 10b-5 actions	

CHAPTER 25. LITIGATING A CLASS ACTION UNDER THE FEDERAL SECURITIES LAWS

§ 25:1	The selection of an interim lead plaintiff
§ 25:1.10	—Securing the most capable interim lead plaintiff
§ 25:1.20	—"Pay to play" arrangements
§ 25:1.30	—Monitoring arrangements with institutional investors
§ 25:1.40	—Advertising "investigations" to solicit lead plaintiffs
§ 25:1.50	—Investment advisers securing assignments on behalf of investors
§ 25:1.60	—Courting foreign institutional investors
§ 25:2	The class action settlement's publication
§ 25:3	Judicial approval of the securities class action settlements
§ 25:3.10	Independent approval of securities settlements
§ 25:3.20	Cy Pres awards and securities class actions
§ 25:4	Attorneys' fees in securities class actions
§ 25:4.10	Lodestar vs. percentage-of-fund recovery
§ 25:4.20	Objecting to attorneys' fees
§ 25:4.30	Presumption of reasonableness to agreed-upon fees
§ 25:4.40	Issues with non-lead counsel and other actors seeking payment from the common fund
§ 25:5	Security for costs in a securities class action
§ 25:6	An introduction to the selection of class counsel and auctioning
§ 25:7	The Third Circuit Task Force and its recommendations
§ 25:8	The PSLRA and auctions
§ 25:9	Morrison's effect on class certification

CHAPTER 25A. SECURITIES FRAUD CLASS ACTIONS AFTER THE CLASS ACTION FAIRNESS ACT

§ 25A:1 Overview of Class Action Fairness Act

CHAPTER 25B. EVENT STUDIES IN SECURITIES FRAUD LITIGATION

§ 25B:1	Event studies and securities fraud claims
§ 25B:2	Potential Seventh Amendment problems with the
	dispositive role of event studies
§ 25B:3	Proper methodology for event study analysis
§ 25B:4	Proper event study must account for a "tangle of factors"
§ 25B:5	Challenging the reliability of an event study
§ 25B:6	Event studies and class certification—Section 10(b) and Rule 10b-5 claims
§ 25B:7	Questions of market efficiency and market impact
§ 25B:8	Section 11 claims

§ 25B:9 Event studies and summary judgment

CHAPTER 26. SUBROGATION AND ASSIGNMENT OF SECURITIES FRAUD CLAIMS

- § 26:1 Overview
- § 26:2 Assignment of Section 10(b) Claims
- § 26:3 Subrogation

CHAPTER 26A. CLAIMS INVOLVING FINRA MEMBERS

- § 26A:1 Credit default swaps and "customers" under FINRA rules
- § 26A:2 FINRA and the role of SROs in enforcing the securities laws

CHAPTER 27. THE INTERNATIONAL SCOPE OF THE FEDERAL SECURITIES LAWS

- § 27:1 Introduction to international securities regulation
- § 27:2 Criticisms of extraterritorial jurisdiction
- § 27:3 —Statutory construction and legislative intent
- § 27:4 —Reliance on international law
- § 27:5 —Unreasonableness of the balance of interests test
- § 27:6 —Injury to the United States
- § 27:7 Responding to criticisms of transnational jurisdiction— Statutory construction and legislative intent
- § 27:8 —Reliance on international law
- § 27:9 A direction for transnational securities fraud regulation
- § 27:10 Second Circuit's extraterritorial application of Rule 10b-5 to foreign cubed cases

CHAPTER 28. TRANSACTIONAL JURISDICTION AND THE INTERNET

- § 28:1 Introduction to jurisdictional issues in cyberspace
- § 28:2 Extraterritorial subject matter jurisdiction
- § 28:3 —The "conduct" test
- § 28:4 —The "effects" test
- § 28:5 Personal jurisdiction and transnational securities transactions
- § 28:6 Jurisdiction over cyberspace securities transactions
- § 28:7 The "conduct" and "effects" tests lack clarity
- § 28:8 —What is a sufficient minimum contact in cyberspace?

CHAPTER 29. CONCLUSION

§ 29:1 Summary § 29:2 Prognosis

APPENDICES

APPENDIX 1. Securities Act of 1933: Relevant Sections

APPENDIX 2. Securities Exchange Act of 1934: Relevant Sections

and Regulations

APPENDIX 3. Racketeer Influenced and Corrupt Organization Act

(RICO): Relevant Sections

APPENDIX 4. Glossary

Table of Laws and Rules

Table of Cases

Index