

# **Syllabus for Commercial Fraud**

**Fall 2003**

**Professors Byrne and Dennis**

## **1. Materials to be used for class are:**

Commercial Fraud has not been a traditional subject of legal studies. As a result, there is no case book treatment available. The materials will be assigned throughout the semester and will include UN Notes and preparatory papers, essays, reports of cases, and miscellaneous documents. In addition, students are requested to read *The Myth of Prime Bank Fraud* (Byrne, ed.) (3<sup>rd</sup> Ed.) and R. Cialdini, *Influence*, which will form a basis for the class sessions.

From time to time useful supplementary materials will also be placed on reserve for reading or copying and, if so, also made available through the University Copy Center.

## **2. Objectives**

Parallel to the legitimate world of international commerce and finance, there exists an alternative universe of commercial fraud. While there is a criminal dimension to commercial fraud, there is a significant non-criminal dimension to combating it. Indeed, commercial fraud is a matter of the gravest concern for commerce and commercial law because, apart from direct and indirect losses, it poses a serious threat to the integrity of the tools and institutions of international trade and finance which underlie all commerce. Commercial Fraud encompasses financial fraud, commodity fraud, and fraud regarding the sale and delivery of goods. One of the significant problems in dealing with it is the lack of a systematic study of its nature and of the role of law in combating it.

This course is designed to begin that study in the context of coordination of actual efforts to combat commercial fraud and of the drafting of papers for an International Colloquium summoned by the United Nations Commission on International Trade Law to meet on 14 - 16 April 2004 in Vienna.

The goals of the course are to expose students to the various aspects of commercial fraud, to acquaint them with the methodology of analysis of an ill-defined area, to provide them with an opportunity to exchange views with internationally recognized experts, and to enable them to explore an aspect of commercial fraud that is of interest to them, and, incidentally, to give them experience in making oral presentations.

## **3. Grades & Examination**

The grades will be based on an oral presentation related to a paper which must be submitted. Students may select any topic that is of interest to them within the wide range of commercial fraud. The paper may relate to the UNCITRAL Colloquium or a case study of a current commercial fraud. During the process of preparation, each student must meet with Professor Byrne for a discussion of the topic and the paper in lieu of a class session.

The schedule for the papers is as follows: 1.) Written proposal stating the topic, its scope, the method of research, and the approach to be taken, together with a proposed outline: 18 September 2003; 2.) Initial draft: 1 October 2003 with copies emailed or supplied for each class member; 3.) Presentation & Critique: At scheduled classes during October and November 4.) Final paper by 12 December 02. The paper will be graded on its professionalism, the rigor of its methodology and analysis, and the ability to organize data and approach the topic.

#### **4. Class Participation, Assignments, & Outside Assignments**

It is expected that students will be regularly prepared for class as part of the attendance requirements. Reading assignments will be given as soon as possible and not later than the previous class. Preparation includes the completion of class assignments.

#### **5. Attendance**

A seating chart will be circulated at the first class. Students are responsible for selecting a seat. Attendance will be taken at the beginning of each class based on this chart. Any student not seated in the seat selected at the time class is scheduled to begin will be marked absent. Anyone coming to class after attendance has been taken is responsible after class for advising the instructor of his or her presence. At the discretion of the instructor, an attendance sheet may be circulated for signature in which case it is governed by the Honor Code and only the student named may indicate his or her presence by signing.

The maximum number of absences permitted will be allowed for this course under law school regulations. As it is assumed that all students will conduct themselves as professionals, there is no need to advise the instructor in advance of an absence.

Cancelled classes will be announced in advance in class whenever possible and notices posted in accordance with University policies. To the extent possible, make up classes will be scheduled as extensions of regularly scheduled classes. Please be prepared to discuss possible make up classes at the first class session.

#### **6. Notices**

Notices will be posted in accordance with Law School regulations. In addition, students may provide the Instructor with their email address and a list serve will be created and used to provide students with announcements and assignments directly.

#### **7. Office Hours and Individual Appointments**

Professor Byrne warmly welcomes any questions relating to the course or otherwise. He will be available regularly for office hours during the following times:

**30 minutes before and after class**

If these times are inconvenient, he is available by appointment. He can be contacted through the Faculty Secretary at (703) 993-8065.

## 8. Topics to be studied:

The topics to be studied include:

- The meaning and nature of commercial fraud
- The relationship of commercial fraud to negligence and other torts and to criminal law
- Regulatory supervision and approaches to commercial fraud from the securities and banking sectors
- financial fraud
- high yield or prime bank fraud
- risk management

## 9. Tentative Schedule

20 August: Introduction to Commercial Fraud

27 August: Defining Legal Fraud: Cases

3 September: Defining Legal Fraud: A Defining Legal Fraud: Analysis and Comparison

10 September: \*Warren L. Dennis, Senior Litigation Partner, Proskauer Rose LLP: The Provident Bank Case: An Introduction to Commercial Fraud

Optional: [16 September: North American Steering Committee 10AM to 3PM in the Dean's Suite]

17 September: \* W. Dennis Provident Bank Part 2

24 September: By videotape: Arthur G. Lloyd, Vice President and Senior Counsel, Investigation, Potential Loss and Regulatory Relations Department, Citibank, N.A. (ret.), Control Risks (ret.): A Holistic Approach to Risk Management

1 October: Jacob Manning: The *Solo* Case: A Study

8 October: Prime Bank and High Yield Scams

15 October William Kerr, National Bank Examiner, Special Supervision and Fraud Section, Enforcement and Compliance Division, Office of the Comptroller of the Currency: Bank Regulation and Financial Instrument Fraud

22 October Student Report or Case Study

29 October: Student Report or Case Study

5 November: Student Report or Case Study

12 November: \* Michael McGarry, Trial Attorney, USDOJ: A Criminal Case Involving Prime Bank Frauds

19 November \* Michael McGarry: The Intersection between Criminal and Commercial Fraud

\* indicates tentative date which may require adjustment of other scheduled matters

Possible Topics and Speakers to be scheduled:

Securities Fraud