

TABLE OF CONTENTS

INTRODUCTION

§ 1.1 Securities Law Emerges as a Legal Field: 1911-1951	1
§ 1.2 Arizona's Uniquely Non-Federal Securities Laws.....	3

HISTORICAL DEVELOPMENT OF ARIZONA'S SECURITIES LAWS

§ 2.1 The Nineteenth Century.....	9
§ 2.1.1 A Century Without Securities Regulation.....	9
§ 2.1.2 Business Corporations Emerge.....	15
§ 2.1.3 Arizona's Mining Corporations and Securities Fraud....	18
§ 2.1.4 Securities Markets, Ticker Tapes, and Bucket Shops.....	20
§ 2.1.4.1 Publicly Traded Securities	20
§ 2.1.4.2 Ticker Tapes and Public Interest in Stock Prices.....	21
§ 2.2 The 1909 Antibucketing Act.....	22
§ 2.2.1 In General.....	22
§ 2.2.2 Criminal Provisions.....	24
§ 2.2.3 Civil Remedies	24
§ 2.3 Interest in Securities Regulation Develops: 1900-1910.....	25
§ 2.4 Formation of the Corporation Commission (1910)	26
§ 2.5 A Note on the Corporation Commission's Securities-Law Precedent	33
§ 2.6 The 1912 Investment-Company Act	36
§ 2.6.1 In General.....	36
§ 2.6.2 Judicially Created Remedies.....	39
§ 2.7 The 1917 Securities-Broker and Antibucketing Act.....	42
§ 2.7.1 Licensing and Bonding Requirements.....	42
§ 2.7.2 Antibucketing Provisions	43

§ 2.8 The 1921 Securities-Dealer Act 44

 § 2.8.1 Licensing Requirements..... 44

 § 2.8.2 Criminal and Antifraud Provisions 46

§ 2.9 Drafting a Modern Securities Act: 1949-51 46

 § 2.9.1 Historical Background to the 1951 Securities Act..... 46

 § 2.9.2 World War II and the Transformation of Arizona’s
Economy..... 47

 § 2.9.3 Formation of the Special Securities Committee 48

 § 2.9.4 Formation of the Arizona Securities Division: 1949..... 50

 § 2.9.5 Legislative Origins of the 1951 Act 51

 § 2.9.5.1 The Decision to Draft a New Securities
Act 51

 § 2.9.5.2 The SEC’s Influence 52

 § 2.9.5.3 The Investment Bankers Association’s
Influence 53

 § 2.9.5.4 The Final Drafting Process 54

 § 2.9.5.5 Passage of the 1951 Act..... 55

IS IT A SECURITY?

§ 3.1 Investment Contracts 58

 § 3.1.1 Investment of Money..... 59

 § 3.1.2 Investment in a Common Enterprise..... 59

 § 3.1.3 Expectations of Profits..... 60

 § 3.1.4 Solely Through the Efforts of Others..... 61

§ 3.2 Partnership and Joint-Venture Interests..... 62

§ 3.3 Limited-Liability Companies 64

§ 3.4 Notes 68

 § 3.4.1 Notes Under Federal Law 69

 § 3.4.2 Notes Under Arizona Law 72

§ 3.5 Stock 75

§ 3.6 Oil and Gas Interests 77

§ 3.7 Commodity Investment Contracts..... 79

TABLE OF CONTENTS

§ 3.8 Variable Annuities 81
§ 3.9 Viaticals 82
§ 3.10 Real Property Investment Contracts..... 83
§ 3.11 Prime-Bank Schemes 84
§ 3.12 Principal-Protected Notes and Other Structured Products 85
§ 3.13 Other Investments 87

STATUTORY LIABILITY FOR SECURITIES-REGISTRATION VIOLATIONS

§ 4.1 Registration Violations..... 89
 § 4.1.1 Prohibited Conduct..... 89
 § 4.1.2 Defenses to Registration Violations 92
 § 4.1.2.1 In General..... 92
 § 4.1.2.2 Statutory Defenses 93
 § 4.1.2.3 Nonstatutory Defenses..... 94
 § 4.1.2.4 Bankruptcy 99
 § 4.1.3 Remedies for Registration Violations..... 100
 § 4.1.4 Extended-Primary and Secondary Liability 101

STATUTORY LIABILITY FOR DECEPTION IN SECURITIES TRANSACTIONS

§ 5.1 Securities Fraud..... 103
 § 5.1.1 The 1951 Securities Act..... 103
 § 5.1.2 Parallel Civil Liabilities Under the Corporation Code . 103
 § 5.1.3 AzRac Liability for Securities Violations 104
 § 5.1.4 Concurrent Jurisdiction of 1933 Act Claims 105
 § 5.1.5 Arizona’s Primary Securities-Fraud Statute: A.R.S. § 44-1991 106
 § 5.1.5.1 Pre-1951 Antifraud Statutes..... 106
 § 5.1.5.2 A.R.S. § 44-1991 108
 § 5.1.6 Significant Amendments to the Securities-Fraud Statutes..... 110

§ 5.1.6.1	1977 and 1993 Amendments	110
§ 5.1.6.2	1996 Amendments	111
§ 5.1.6.2.1	In General.....	111
§ 5.1.6.2.2	A.R.S. § 44-1998	113
§ 5.1.6.3	2002 and 2003 Amendments	117
§ 5.1.7	Arizona’s Non-federal Approach to Statutory Securities Interpretation	117
§ 5.1.7.1	In General.....	117
§ 5.1.7.2	The U.S. Supreme Court’s Narrowing of Rule 10b-5 Liability	121
§ 5.1.7.3	Arizona’s Legislatively Guided Remedial Interpretation.....	125
§ 5.1.8	When Should Federal Securities Law Be Cited?	133
§ 5.1.9	Section 44-1991 Claims	142
§ 5.1.9.1	Prohibited Conduct.....	142
§ 5.1.9.2	Territorial Scope and Choice-of-Law Provisions	146
§ 5.1.9.3	Standing to Sue: Purchasers, Sellers, and Holders.....	150
§ 5.1.9.4	Materiality	155
§ 5.1.9.5	False Statements and Misleading Omissions	162
§ 5.1.9.5.1	In General.....	162
§ 5.1.9.5.2	Section 44-1991(A)(2)’s False-Statements Clause.....	163
§ 5.1.9.5.3	Section 44-1991(A)(2)’s Omissions Clause	164
§ 5.1.9.6	Reliance.....	168
§ 5.1.9.7	Causation	171
§ 5.1.9.8	Investor Negligence	177
§ 5.1.9.9	“In Connection With”	182
§ 5.1.9.10	Scienter.....	184
§ 5.1.9.11	Pleading and Discovery	187
§ 5.1.9.11.1	In General.....	187

TABLE OF CONTENTS

§ 5.1.9.11.2	Pleading State of Mind.....	188
§ 5.1.9.11.3	Pleading Participation and Inducement.....	189
§ 5.1.9.11.4	Pleading Loss Causation.....	191
§ 5.1.9.11.5	Discovery Stays.....	192
§ 5.1.9.11.6	Effect of Heightened Pleading on the Statute of Limitations	198
§ 5.1.9.12	Securities-Class Actions.....	200
§ 5.1.9.12.1	Federal Preemption	200
§ 5.1.9.12.2	State-Law Class Actions.....	201
§ 5.1.9.12.3	Special Requirements for State-Securities-Class Actions	202
§ 5.1.9.12.4	Tolling the Statute of Limitations in Class Litigation	203
§ 5.1.10	Defenses to Securities Fraud	204
§ 5.1.10.1	In General.....	204
§ 5.1.10.2	Nonstatutory Defenses.....	211
§ 5.1.10.3	Bankruptcy	217
§ 5.1.11	Remedies for Securities Fraud.....	217
§ 5.1.11.1	The Basic Remedies: Rescission or Damages	217
§ 5.1.11.2	Other Damage Measures.....	221
§ 5.1.11.3	Effect of Loss Causation on Damages and Rescission.....	224
§ 5.1.11.4	Joint-and-Several Liability	228
§ 5.1.11.5	Market-Price Damages	229
§ 5.2	Consumer Fraud	229
§ 5.2.1	In General.....	229
§ 5.2.2	Elements of the Claim	232
§ 5.2.3	Reliance.....	236
§ 5.2.4	Defenses to Consumer Fraud.....	240

§ 5.2.5	Remedies for Consumer Fraud	242
§ 5.3	Investment-Advisory Fraud	243
§ 5.3.1	In General.....	243
§ 5.3.2	Elements of the Claim	243
§ 5.3.3	Defenses to Investment-Advisory Fraud.....	245
§ 5.3.4	Remedies for Investment-Advisory Fraud	247

**EXTENDED-PRIMARY AND SECONDARY LIABILITY
FOR STATUTORY VIOLATIONS**

§ 6.1	Securities Violations	249
§ 6.1.1	A.R.S. § 44-2003(A): Extended-Primary Liability.....	250
§ 6.1.1.1	In General.....	250
§ 6.1.1.2	Key developments under § 44-2003	252
§ 6.1.1.3	Does a remedy for all § 44-1991(A) violations exist?	254
§ 6.1.1.4	Participant Liability	259
§ 6.1.1.5	Section 44-2003(A)'s Safe Harbor	274
§ 6.1.1.6	Inducement Liability	277
§ 6.1.2	Secondary Liability	286
§ 6.1.2.1	Respondeat Superior.....	286
§ 6.1.2.2	Aiding and Abetting.....	287
§ 6.1.2.2.1	Before 2013: aiding and abetting as a separate claim.....	287
§ 6.1.2.2.2	After 2013: aiding and abetting as a separate claim does not exist.....	292
§ 6.1.2.2.3	Aiding and abetting under § 44-2003(A)	293
§ 6.1.2.3	Actively Aiding Securities Fraud	299
§ 6.1.2.4	Indirect Fraud	302
§ 6.1.2.5	Controlling-Person Liability.....	304
§ 6.1.2.6	Responsible-Corporate-Officer Liability	309

TABLE OF CONTENTS

§ 6.2 Consumer Fraud 312
§ 6.3 Investment-Advisory Fraud 313

**COMMON-LAW LIABILITY FOR DECEPTION
IN SECURITIES TRANSACTIONS**

§ 7.1 Liability for Misrepresentation and Nondisclosure 315
 § 7.1.1 Fraudulent Misrepresentation..... 315
 § 7.1.2 Fraudulent Concealment 320
 § 7.1.3 Negligent Misrepresentation..... 321
 § 7.1.4 Negligent Nondisclosure..... 324
 § 7.1.5 Innocent Misrepresentation..... 325
§ 7.2 Defenses to Misrepresentation and Nondisclosure Claims..... 326
 § 7.2.1 In General..... 326
 § 7.2.2 The Economic Loss Rule..... 330
 § 7.2.3 Bankruptcy 333
§ 7.3 Remedies for Misrepresentation and Nondisclosure 333
§ 7.4 Liability in Fiduciary and Other Special Relationships..... 335
 § 7.4.1 In General..... 335
 § 7.4.2 Financial Professionals 338
 § 7.4.3 Officers, Directors, and Promoters 340
§ 7.5 Defenses to Breach of Fiduciary and Other Special Duties..... 342
§ 7.6 Remedies for Breach of Fiduciary Duties and Special
 Relationships 343

**COMMON-LAW THEORIES OF EXTENDED-PRIMARY
AND SECONDARY LIABILITY**

§ 8.1 Piercing the Corporate Veil..... 347
§ 8.2 Respondeat Superior 348
§ 8.3 Participant Liability..... 349
§ 8.4 Concerted Action: The Restatement’s Influence 350
§ 8.5 Aiding and Abetting 351
§ 8.6 Conspiracy 355

TABLE OF AUTHORITIES

Arizona State and Federal Cases357
 Arizona Corporation Commission Decisions373
 Arizona Attorney General Opinions376
 Arizona Revised Statutes376
 Arizona Session and Territorial Laws378
 Arizona Bills and Proposed Legislation379
 Arizona Administrative Code379
 Other Arizona Rules380
 Cases from Other Jurisdictions380
 SEC Decisions.....392
 United States Code393
 Federal Session Laws.....393
 Code of Federal Regulations394
 Other States’ Codes & Statutes.....394
 Other States’ Session Laws.....394
 Model Rules & Uniform Acts.....394
 Books, Treatises, & Restatements394
 Articles.....400
 Newspapers414
 ABA, ACC & Self-Regulatory Organization Materials416
 Court Filings & Transcripts417
 Hearings, Letters, Memorandums, Pamphlets, & Addresses417

APPENDIX OF SELECTED ARIZONA AND FEDERAL STATUTES

Arizona Securities Act Statutes421
 Arizona Investment Management Act Statutes.....444
 Arizona Consumer Fraud Act Statutes.....447
 Securities Act of 1933.....449
 Securities Exchange Act of 1934.....451
INDEX.....453