



Michael E. Ginsberg, Esq.
Pattison, Sampson, Ginsberg & Griffin, P.C.
22 First Street, P.O. Box 208
Troy, New York 12181-0208
(518) 266-1026
(518) 274-6034 Fax
mginsberg@psgglaw.com

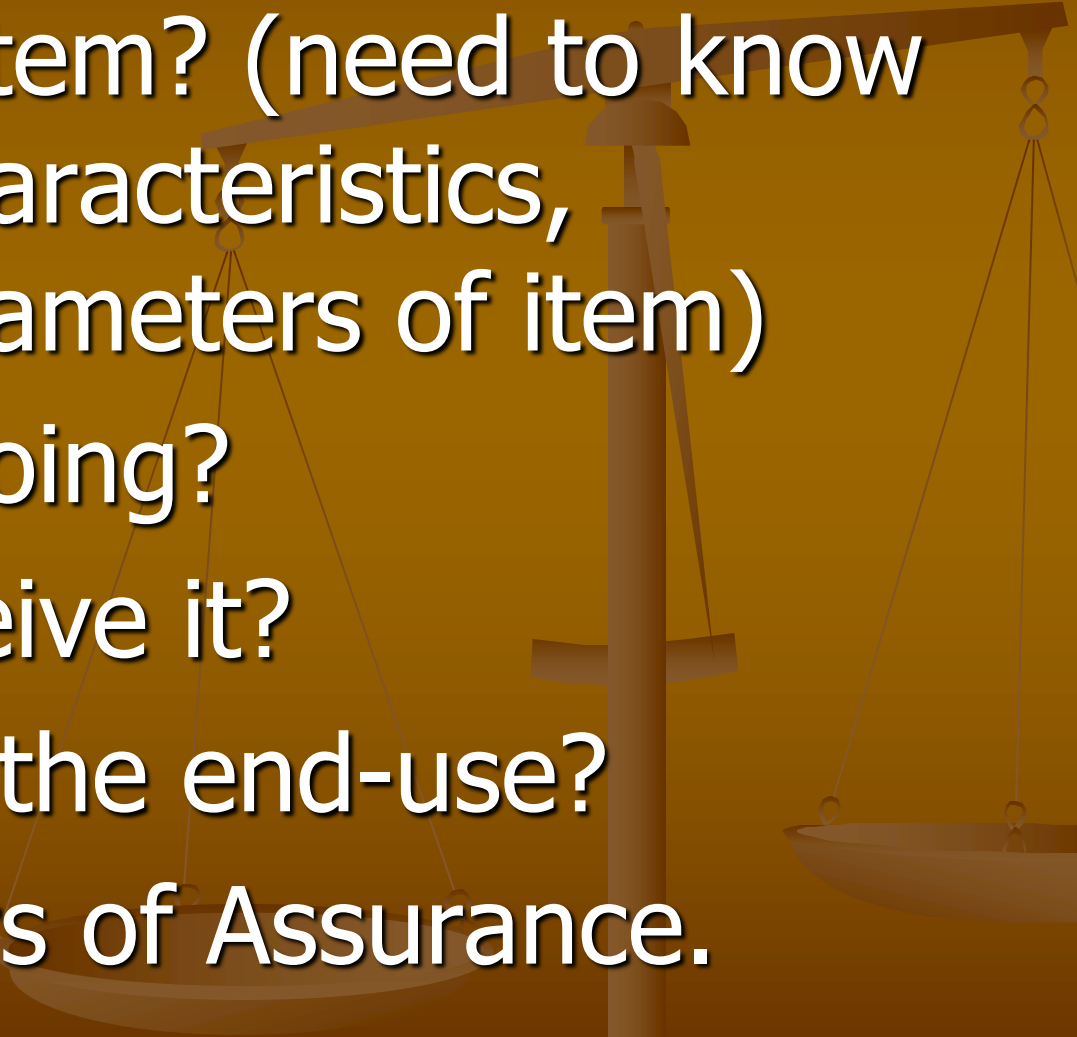


Thomas E. Lavery, Esq.
Pattison, Sampson, Ginsberg & Griffin, P.C.
22 First Street, P.O. Box 208
Troy, New York 12181-0208
(518) 266-1040
(518) 274-6034 Fax
lavery@psgglaw.com

EXPORT CONTROL AND INTERNATIONAL TRADE



What information do you need to know for every export transaction?

- What is the item? (need to know functions, characteristics, technical parameters of item)
 - Where is it going?
 - Who will receive it?
 - What will be the end-use?
 - Obtain Letters of Assurance.
- 

DEFINITIONS



■ **ITEM**

- Items are commodities, software and technology.

■ **EXPORT**

- An export is the transfer of a physical item, computer software or technical information to a foreign country.

■ **DEEMED EXPORT**

- A deemed export is the release of information, technology or source code to a foreign national on U.S. soil.

■ **REEXPORT**

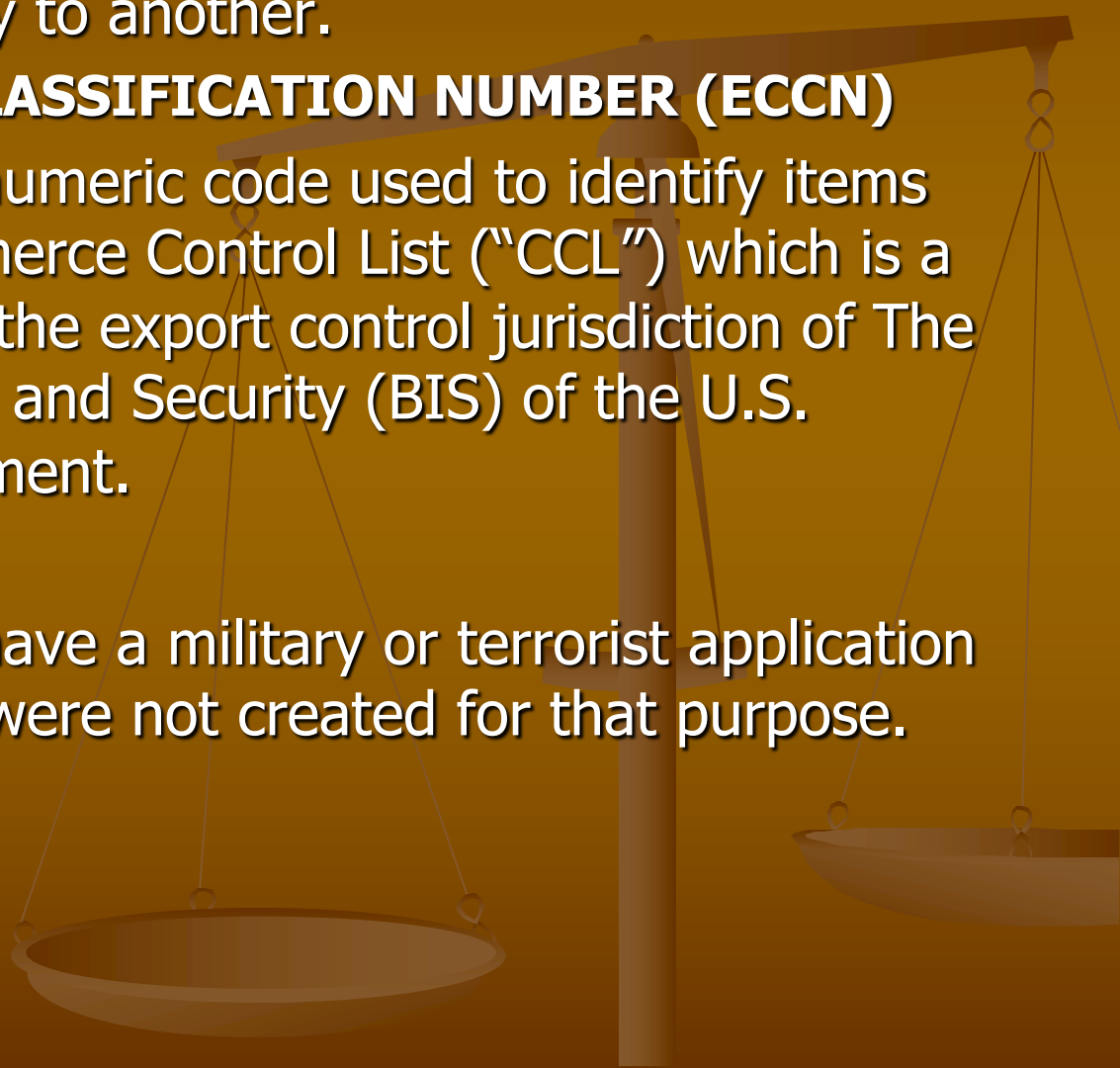
- A reexport is a shipment or transmission of items from one foreign country to another.

■ **EXPORT CONTROL CLASSIFICATION NUMBER (ECCN)**

- ECCN is an alpha-numeric code used to identify items listed on the Commerce Control List ("CCL") which is a list of items under the export control jurisdiction of The Bureau of Industry and Security (BIS) of the U.S. Commerce Department.

■ **DUAL USE ITEMS**

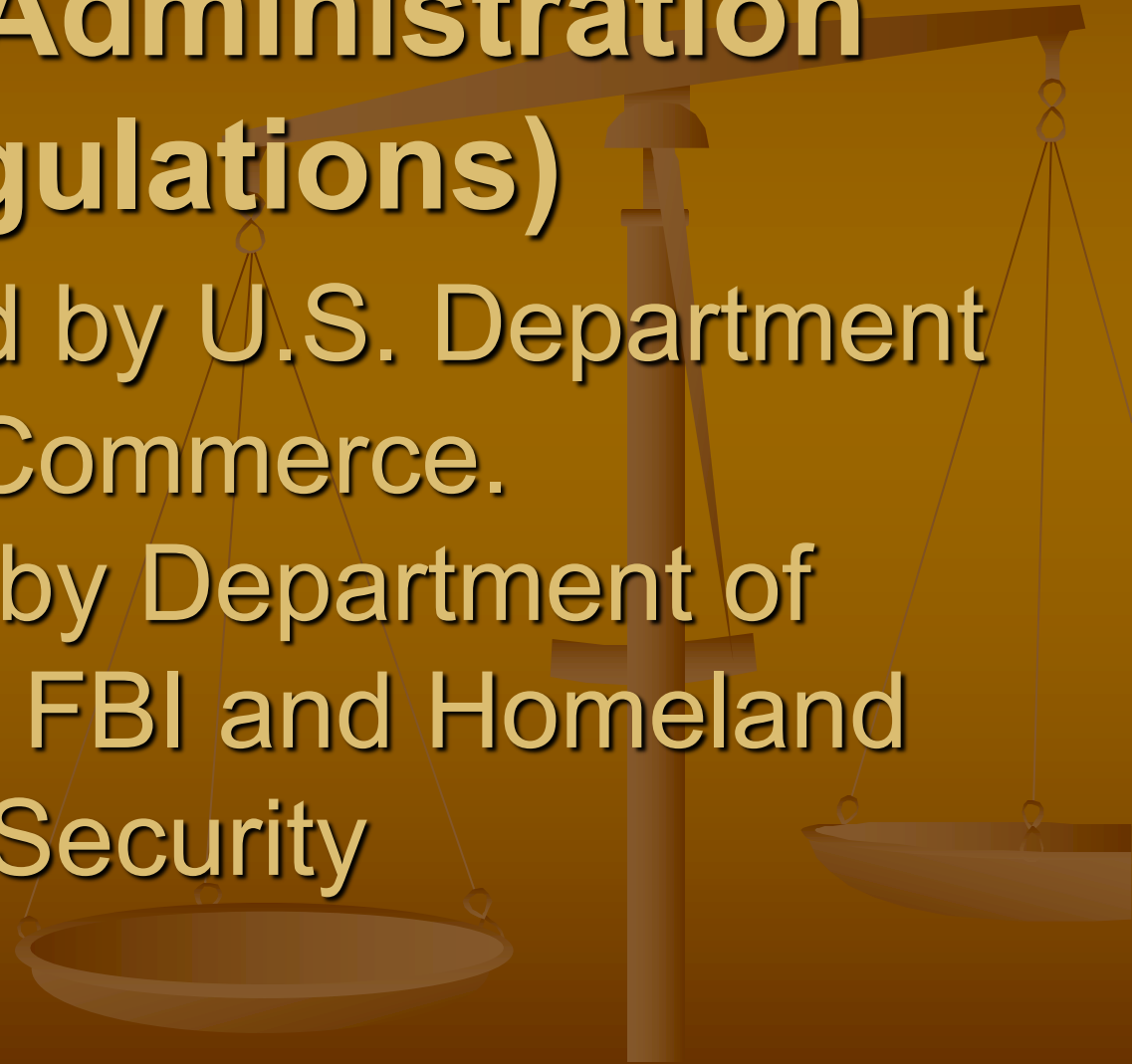
- Items which may have a military or terrorist application even though they were not created for that purpose.



EAR (Export Administration Regulations)

Administered by U.S. Department
of Commerce.

Enforced by Department of
Commerce, FBI and Homeland
Security



ITEMS SUBJECT TO EAR

- All items of U.S. origin wherever located.
- All items in the U.S., including a U.S. Foreign Trade Zone or items in transit through the U.S. from one foreign country to another.
- Foreign-made items that incorporate controlled items of U.S.-origin, foreign-made items “bundled” with controlled items of U.S.-origin software, foreign-made software that is commingled with controlled U.S.-origin software, and foreign-made technology commingled with controlled U.S.-origin technology.

LICENSING REQUIREMENTS

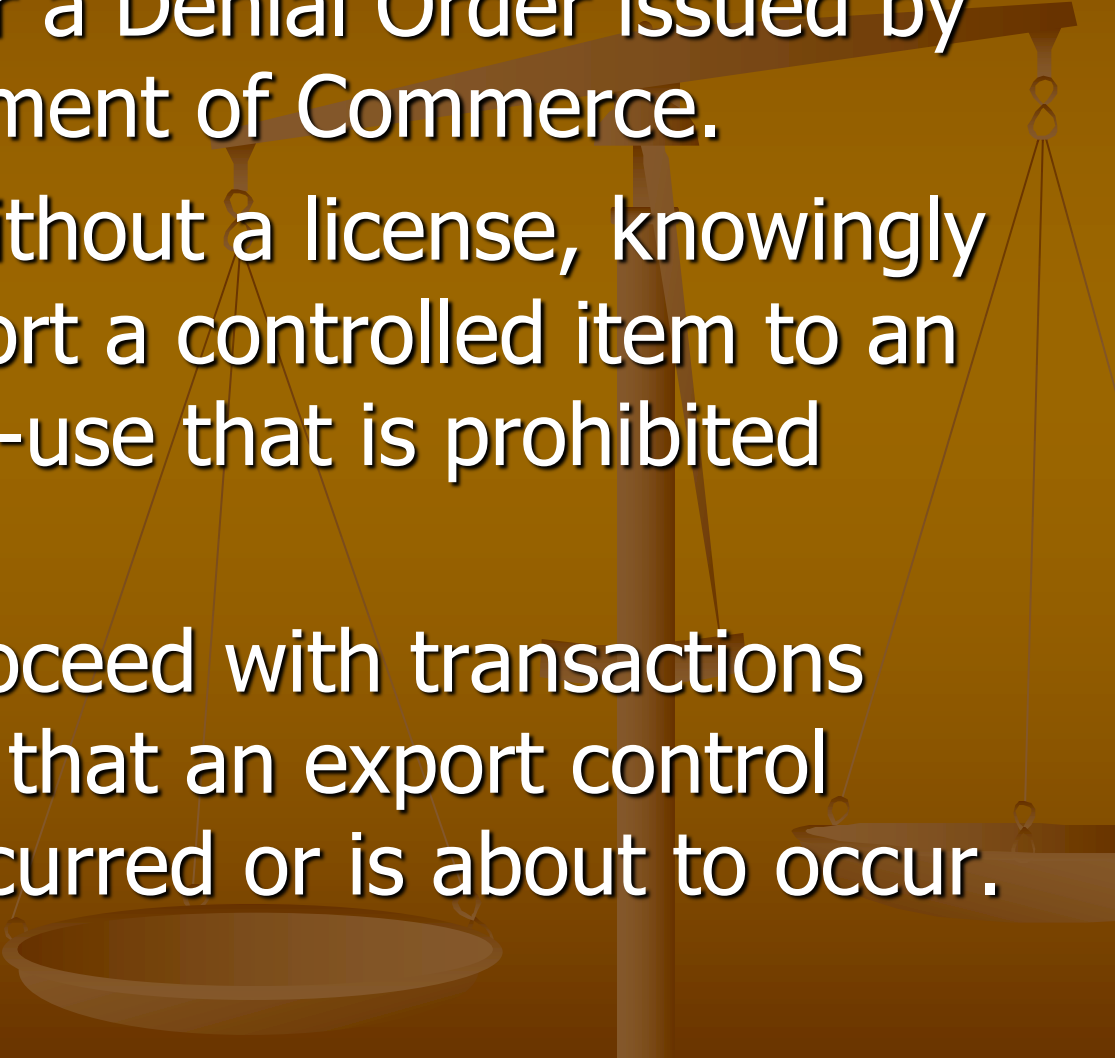
General Prohibitions:

- Without a license from the U.S. Department of Commerce or an available license exception under EAR, you cannot:
 - Export or reexport controlled items to certain countries listed on the Commerce Country Chart.
- 

General Prohibitions (Cont'd.):

- Export or reexport foreign-made items incorporating more than *de minimis* amount of controlled U.S. content.
 - Reexport foreign-produced direct products of controlled U.S. technology or software to certain countries.
 - Export or reexport a controlled item to an embargoed country.
- 

General Prohibitions (Cont'd.):

- You may not take any action that is prohibited under a Denial Order issued by the U.S. Department of Commerce.
 - You may not, without a license, knowingly export or reexport a controlled item to an end-user or end-use that is prohibited under the EAR.
 - You may not proceed with transactions with knowledge that an export control violation has occurred or is about to occur.
- 

EAR PENALTIES



DENIAL ORDER

- Denial Orders are issued by the U.S. Department of Commerce for violations of EAR.
- Such Denial Orders can effectively put a company out of business since they prohibit transactions and negotiations relating in any way to the export of commodities, software or technology, whether exported by the subject entity or anyone else on that company's behalf. (Denial Orders apply to component parts as well.)

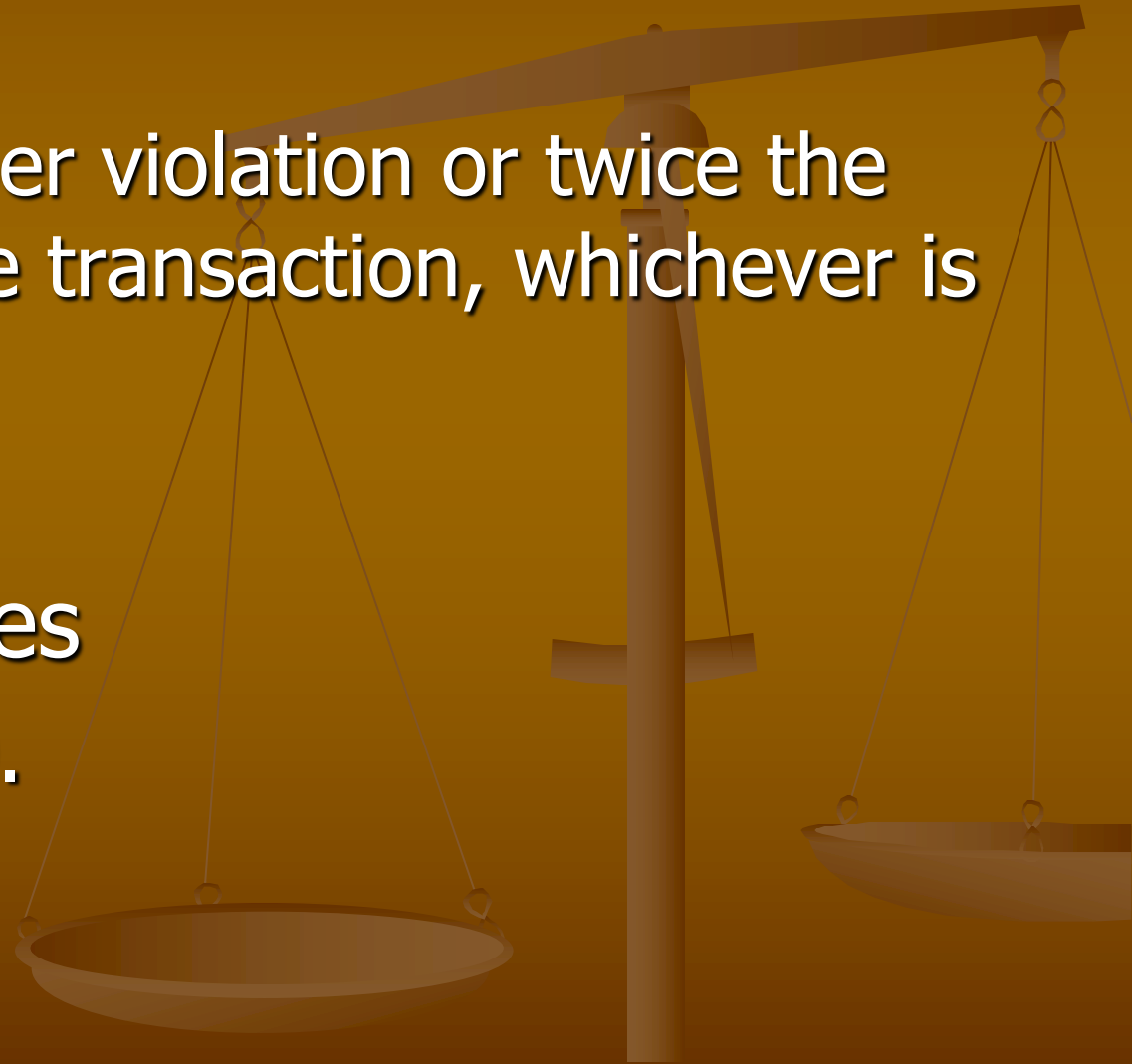
FINES

- Civil Fines

- \$250,000 per violation or twice the value of the transaction, whichever is greater.

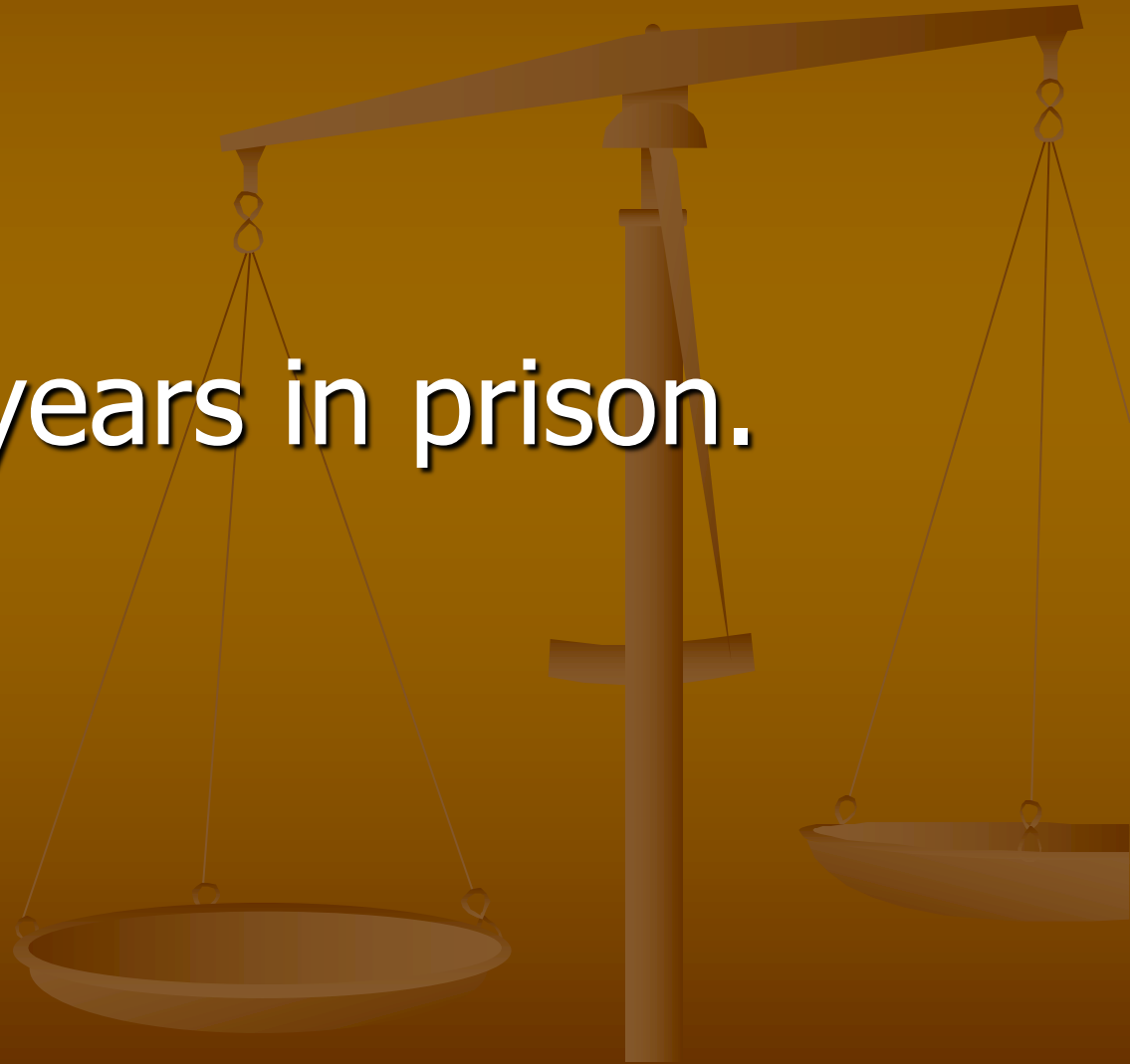
- Criminal Fines

- \$1,000,000.



IMPRISONMENT

- Up to 10 years in prison.



ITAR

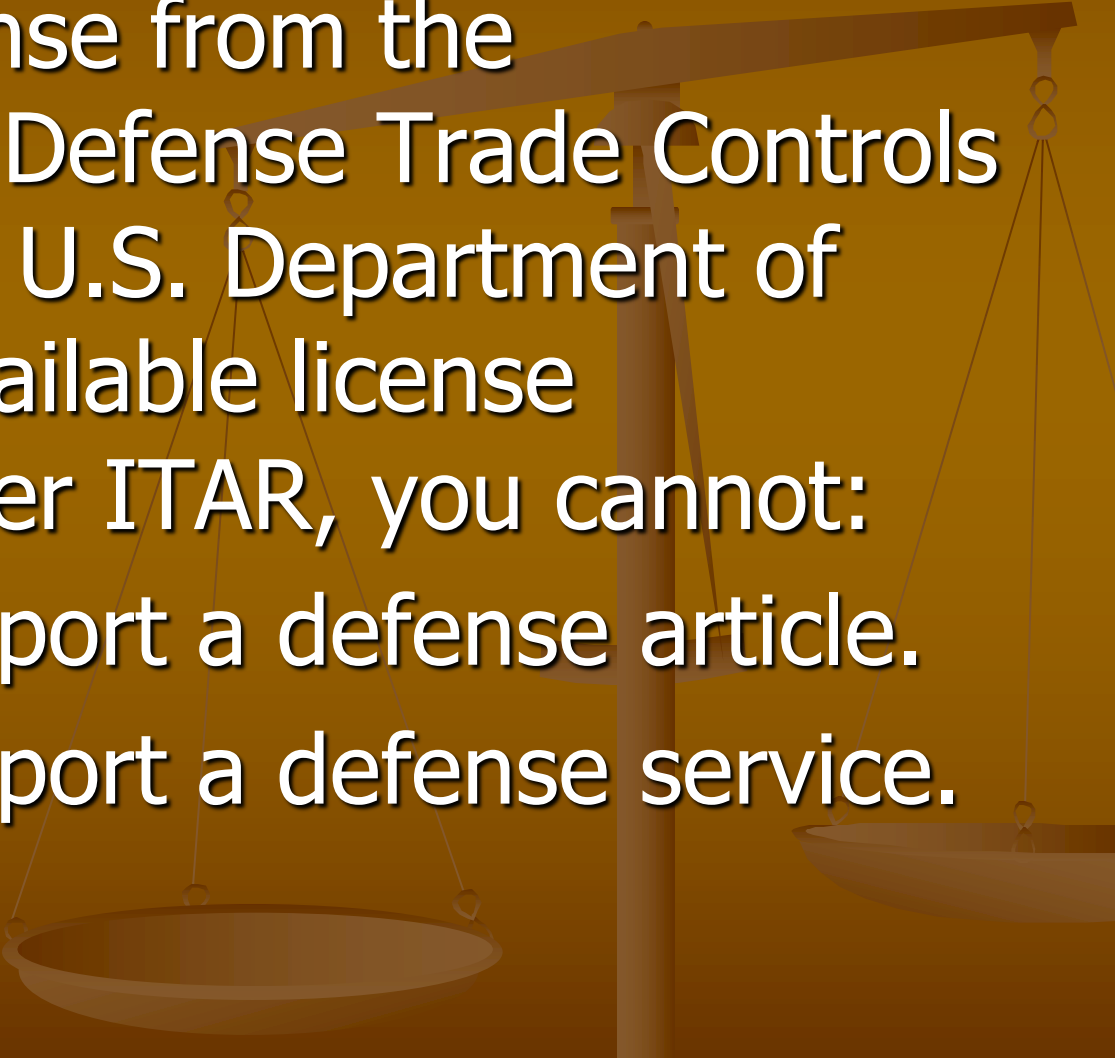
- **(International Traffic in Arms Regulations)**
- Administered by U.S. Department of State.
- Enforced by FBI and Homeland Security



ITEMS SUBJECT TO ITAR

- **Defense Articles and Services** (munitions and items with military application including technical data.)
 - A defense article is any item appearing on the U.S. Munitions List.
 - A defense service is the furnishing of technical assistance, training, or technical data related to defense items, including information, training, text, plans, plant visits, etc.

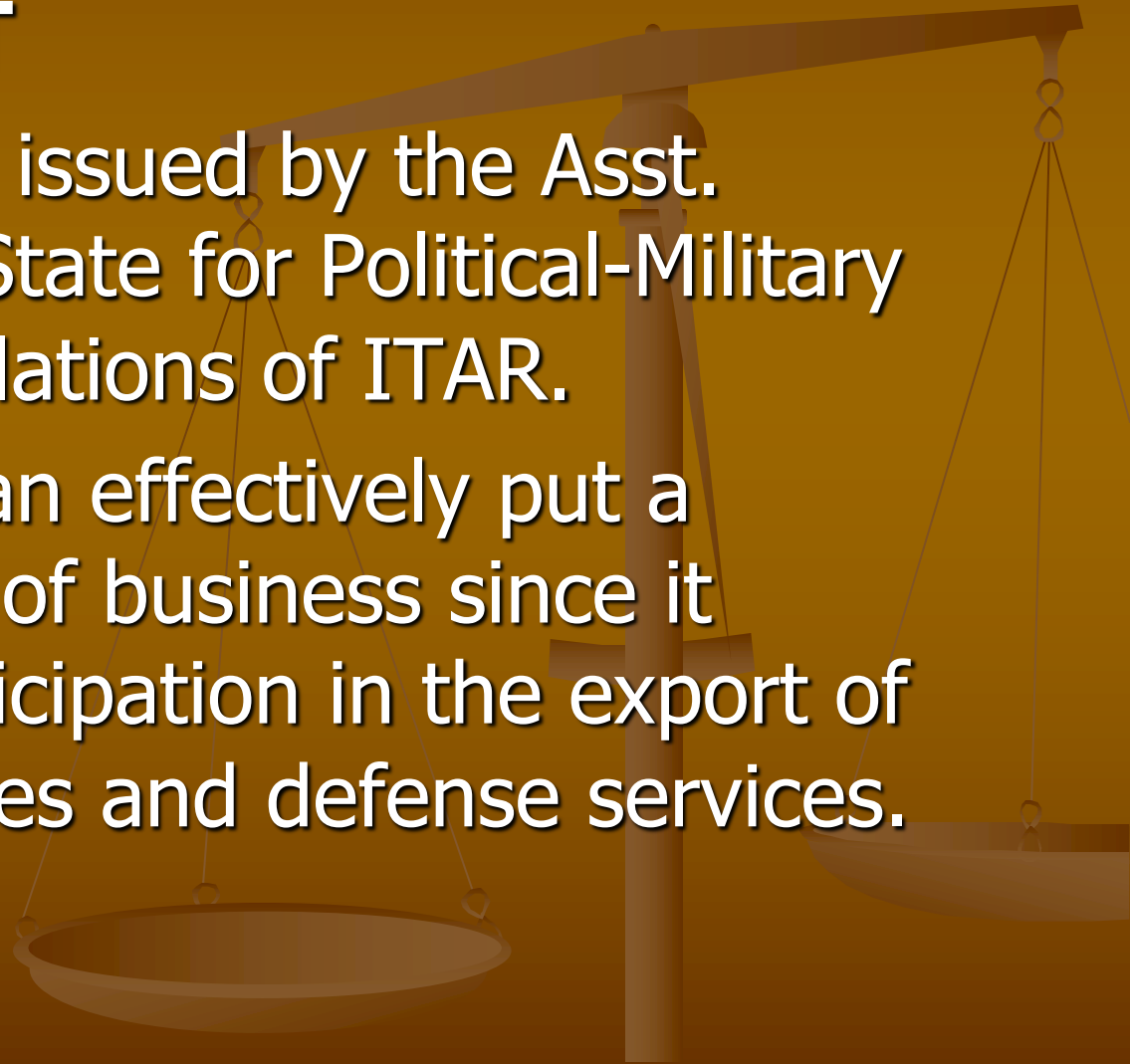
LICENSING REQUIREMENTS

- Without a license from the Directorate of Defense Trade Controls (DDTC) of the U.S. Department of State or an available license exception under ITAR, you cannot:
 - Export or reexport a defense article.
 - Export or reexport a defense service.
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ITAR PENALTIES

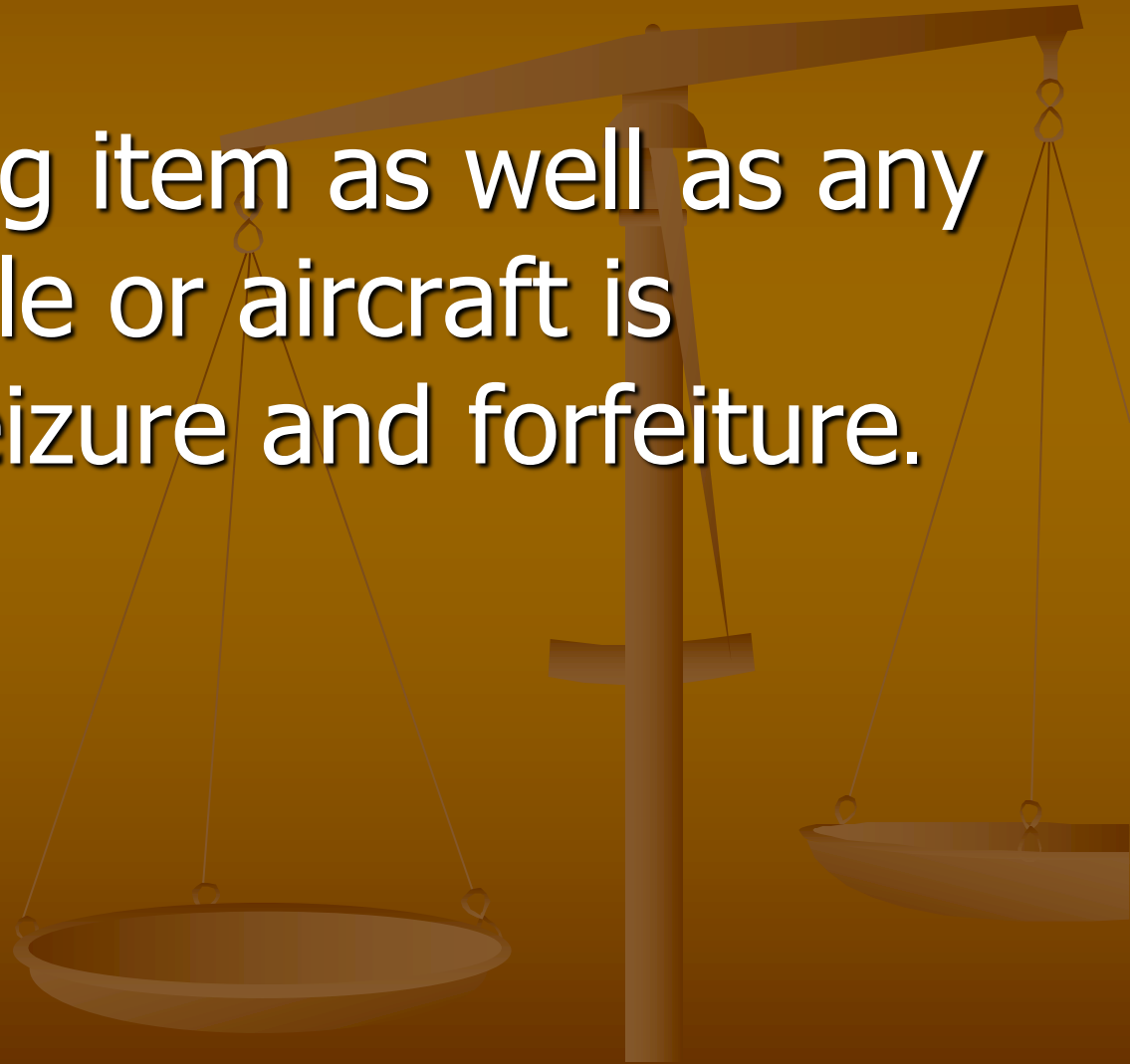
■ DEBARMENT

- Debarment is issued by the Asst. Secretary of State for Political-Military Affairs for violations of ITAR.
- Debarment can effectively put a company out of business since it prohibits participation in the export of defense articles and defense services.



SEIZURE AND FORFEITURE

- The offending item as well as any vessel, vehicle or aircraft is subject to seizure and forfeiture.



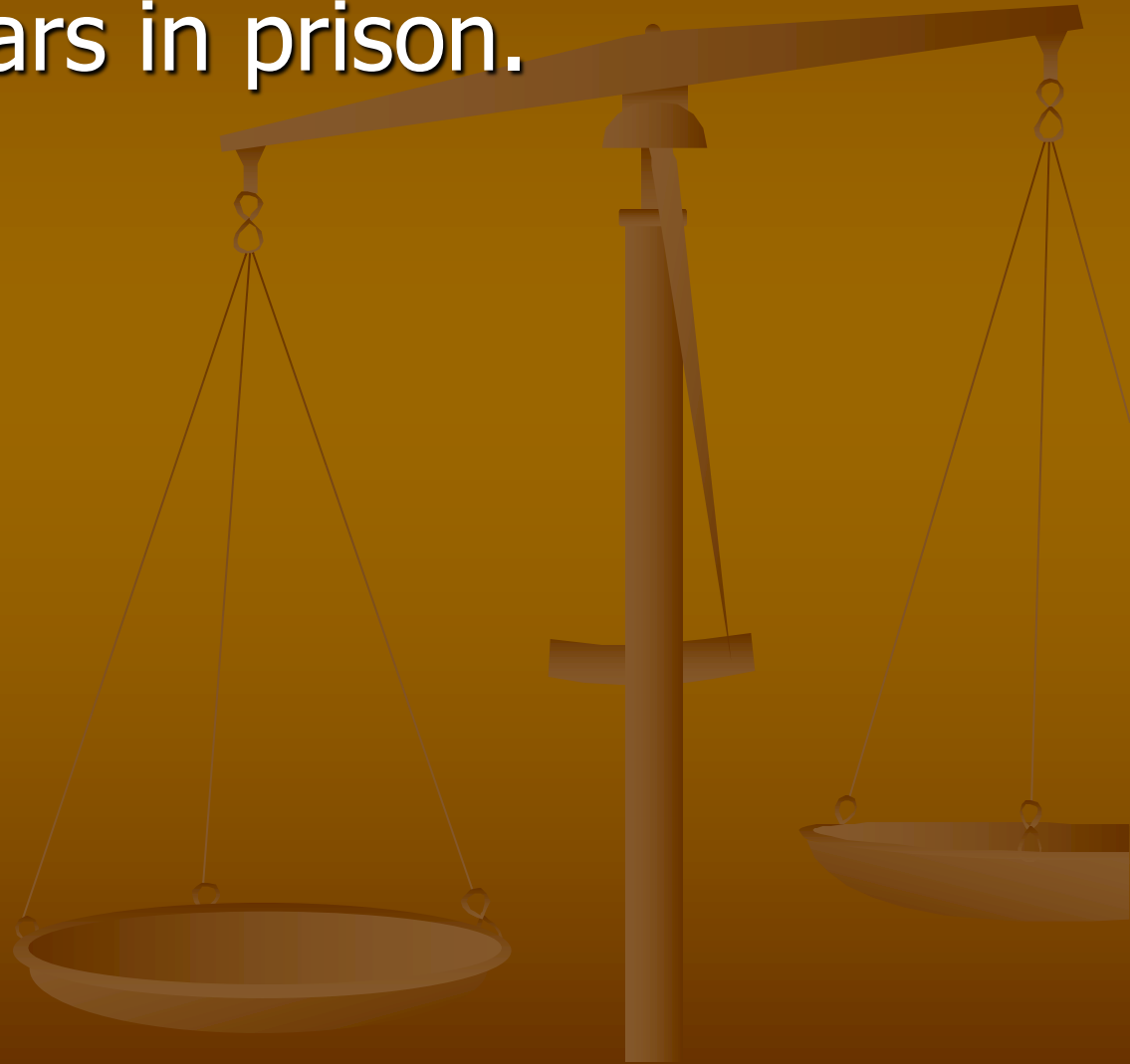
FINES

- Civil Fines
 - \$500,000 per violation.
- Criminal Fines
 - \$1,000,000.



IMPRISONMENT

- Up to 10 years in prison.





CASE STUDIES

WHEN THE ENFORCEMENT OFFICERS COME



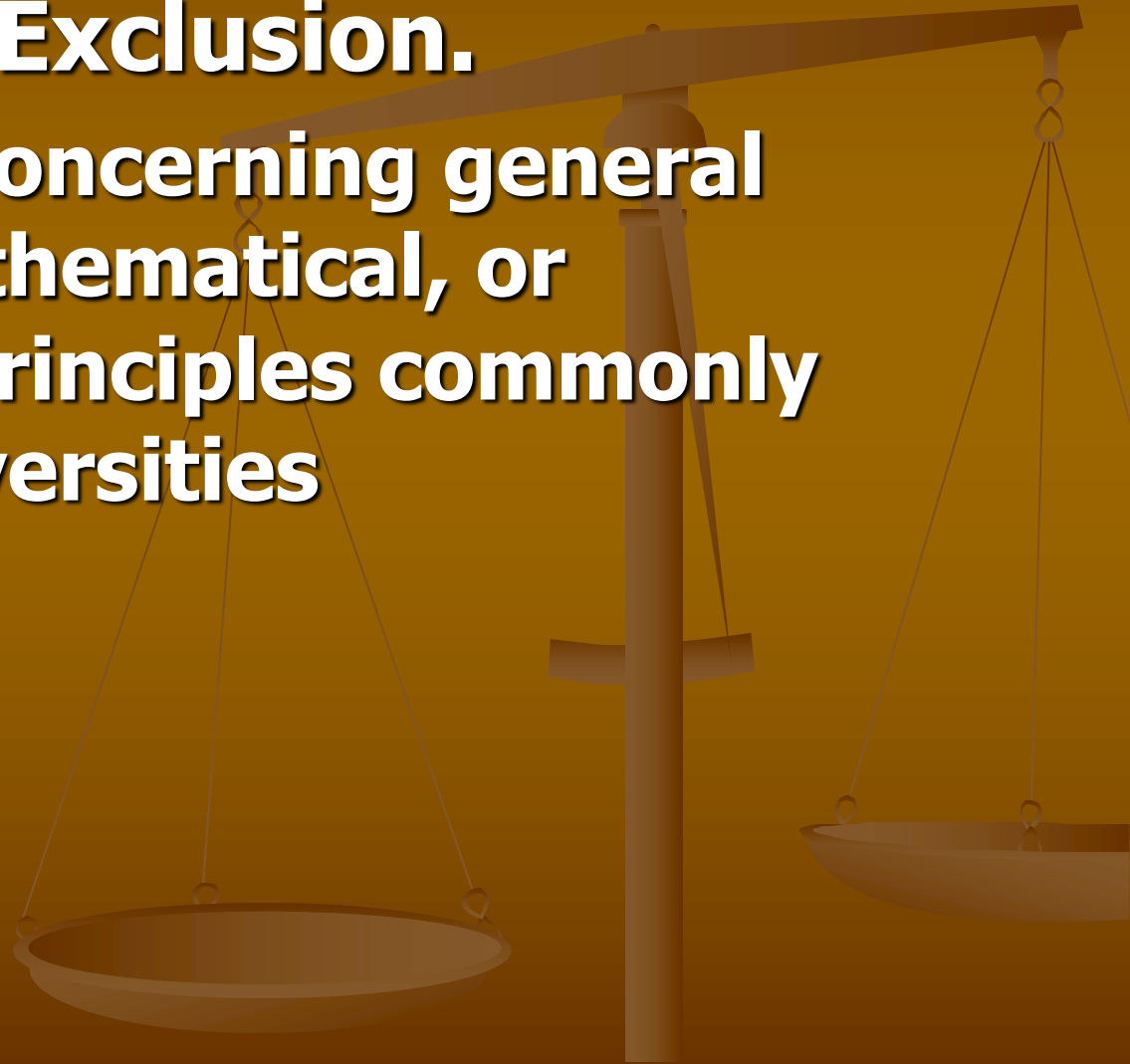




PROFESSOR JOHN REESE ROTH

EXPORT CONTROL EXCLUSIONS

- **Education Exclusion.**
- **Information concerning general scientific, mathematical, or engineering principles commonly taught at universities**



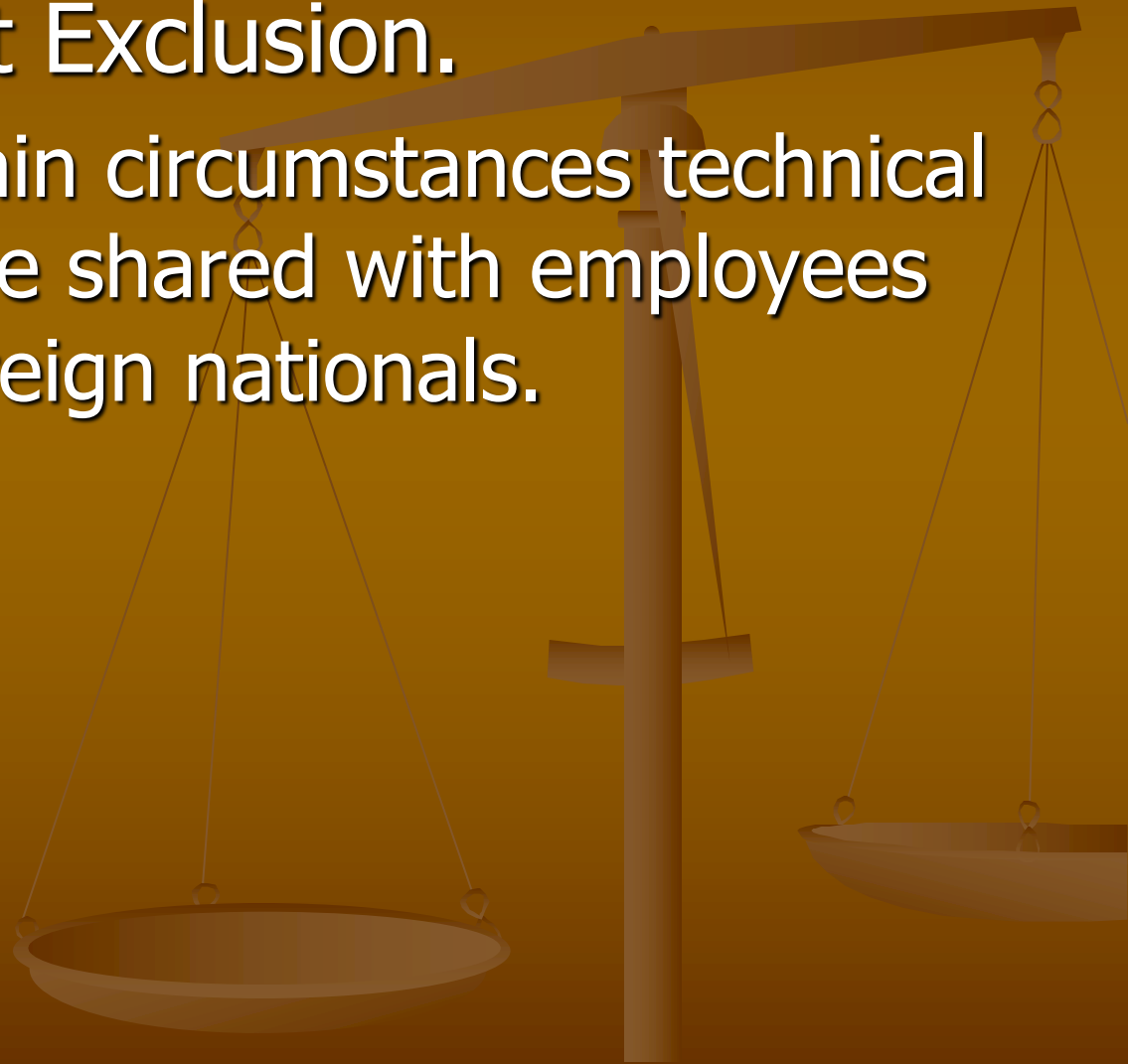
■ Fundamental Research Exclusion.

- Research information which is published and generally accessible to the public.



■ Employment Exclusion.

- Under certain circumstances technical data may be shared with employees that are foreign nationals.



FCPA

Foreign Corrupt Practices Act

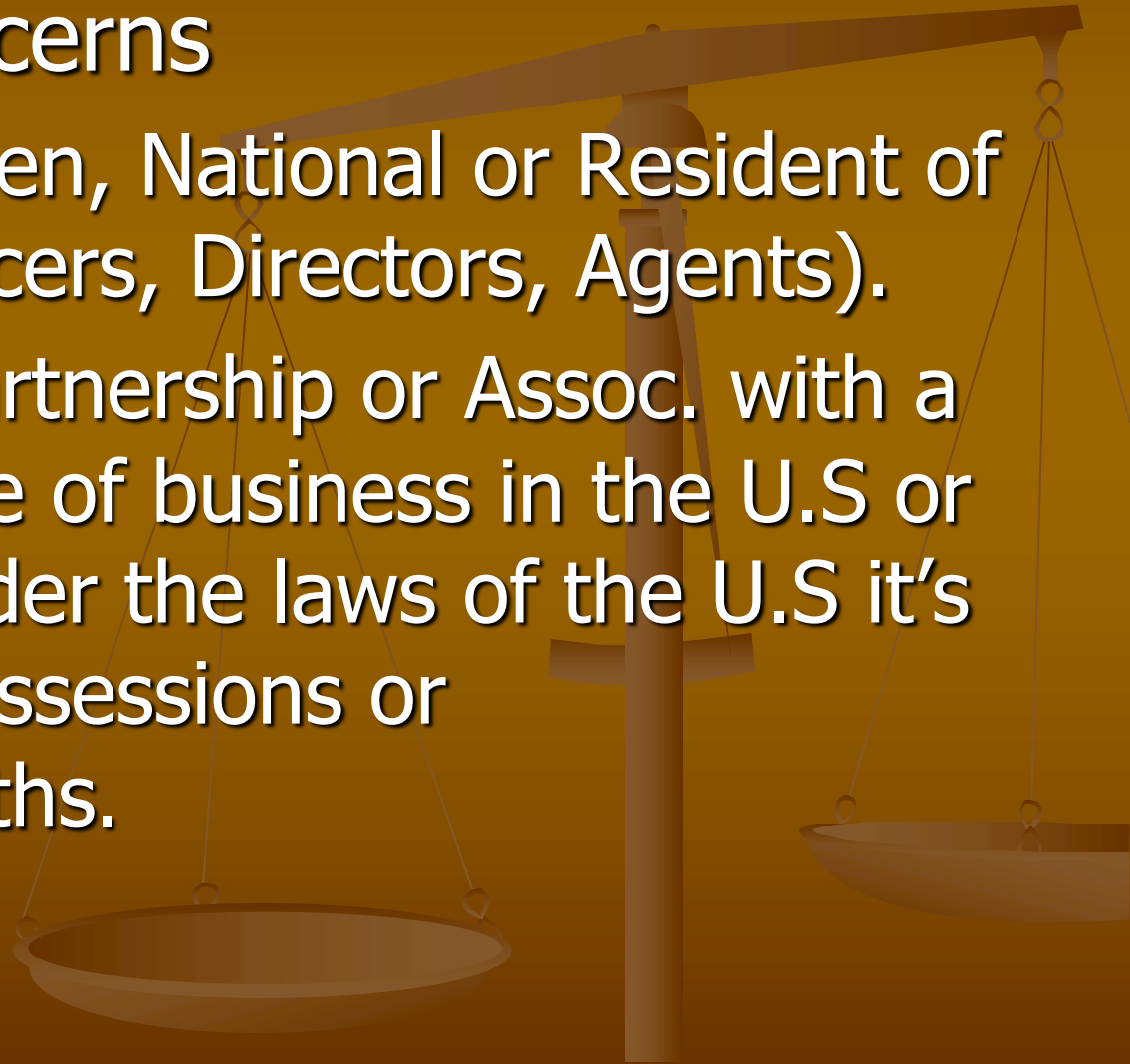
- Enforced by Department of Justice (DOJ) and Securities and Exchange Commission (SEC)



Who is Subject to FCPA

■ Domestic Concerns

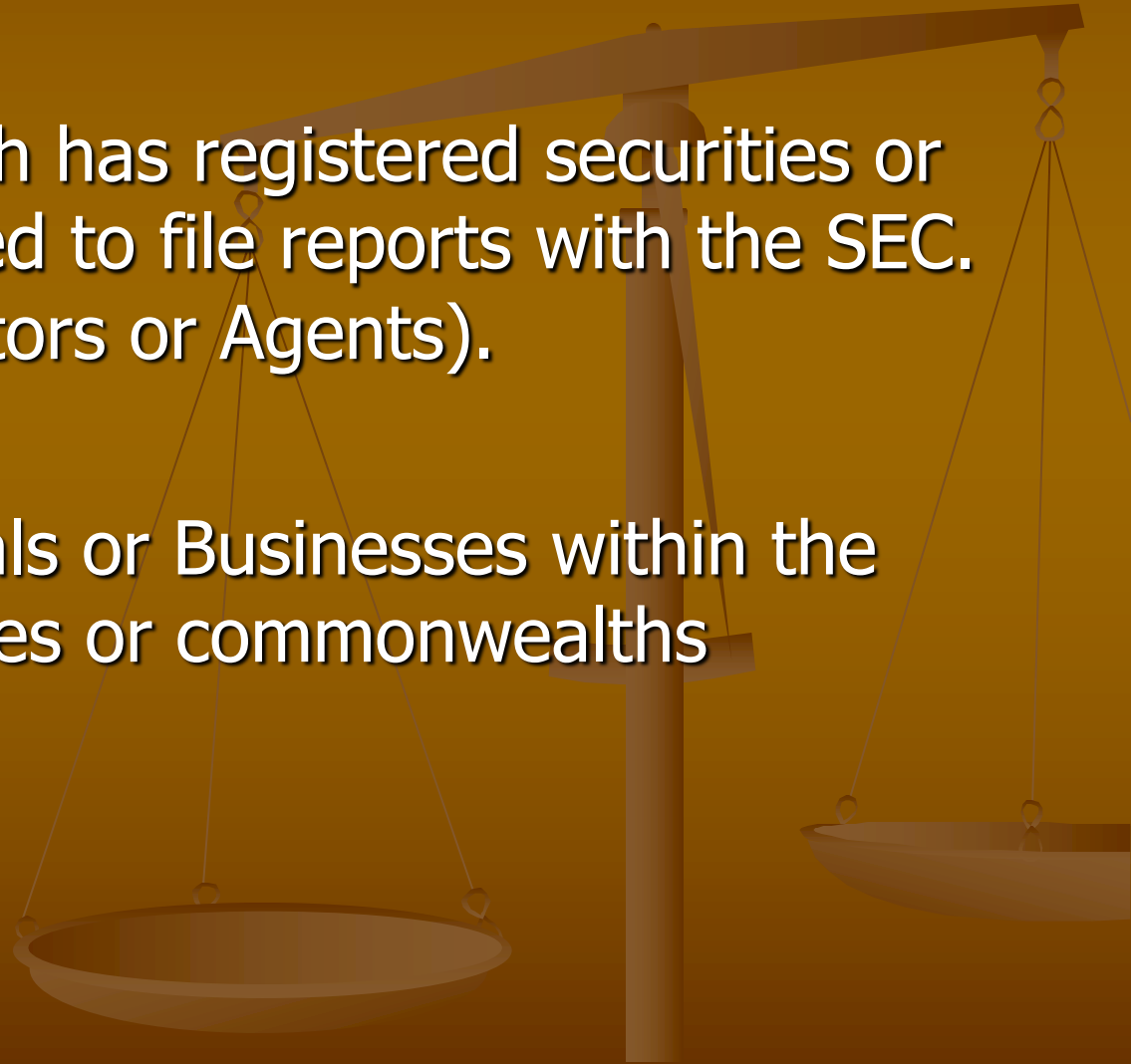
- Any U.S. Citizen, National or Resident of the U.S. (Officers, Directors, Agents).
- Any Corp., Partnership or Assoc. with a principal place of business in the U.S or organized under the laws of the U.S it's territories, possessions or commonwealths.



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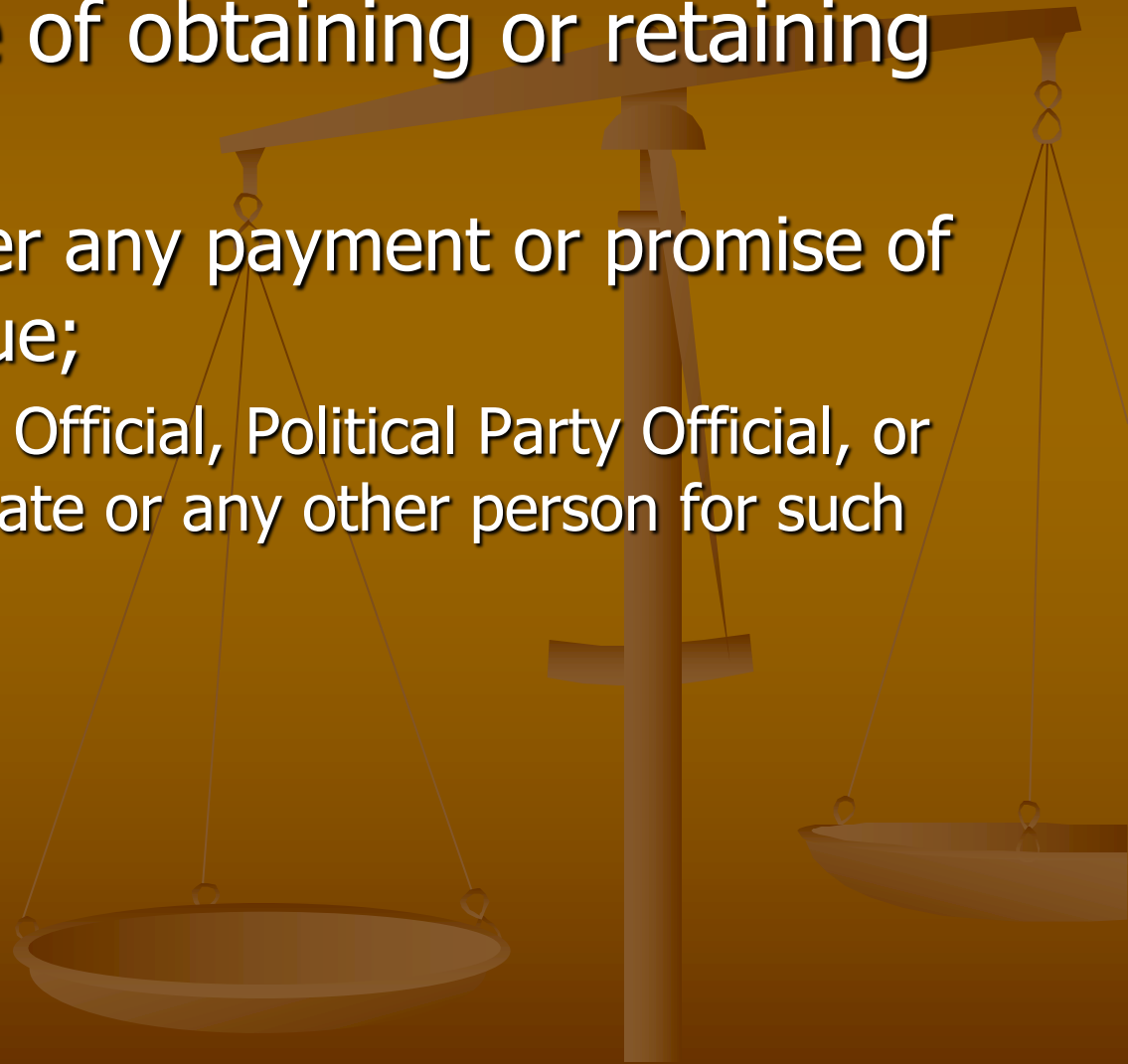
■ Issuer

- Any entity which has registered securities or which is required to file reports with the SEC. (Officers, Directors or Agents).
- Foreign Nationals or Businesses within the U.S, its territories or commonwealths



Prohibited Practices

- For the purpose of obtaining or retaining business:
 - To make or offer any payment or promise of anything of value;
 - To any Foreign Official, Political Party Official, or Political Candidate or any other person for such purpose;



Cont.

- In order to:
 - Influence any official act or decision; or
 - Induce a violation of lawful duty of such official by act or omission; or
 - induce such foreign official to use their influence with a foreign government or instrumentality; or
 - To secure any improper advantage.

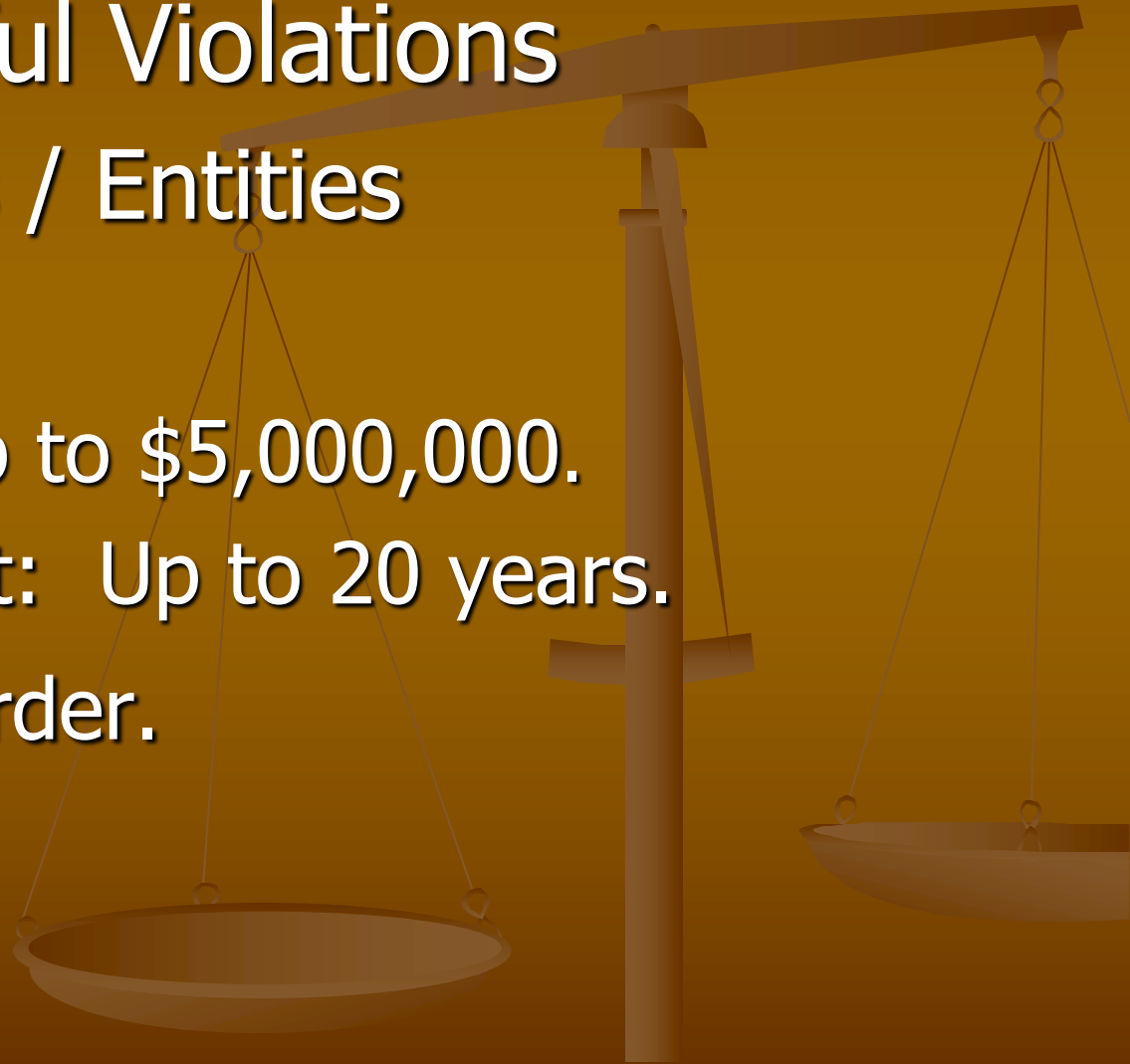


FCPA PENALTIES

Willful Violations

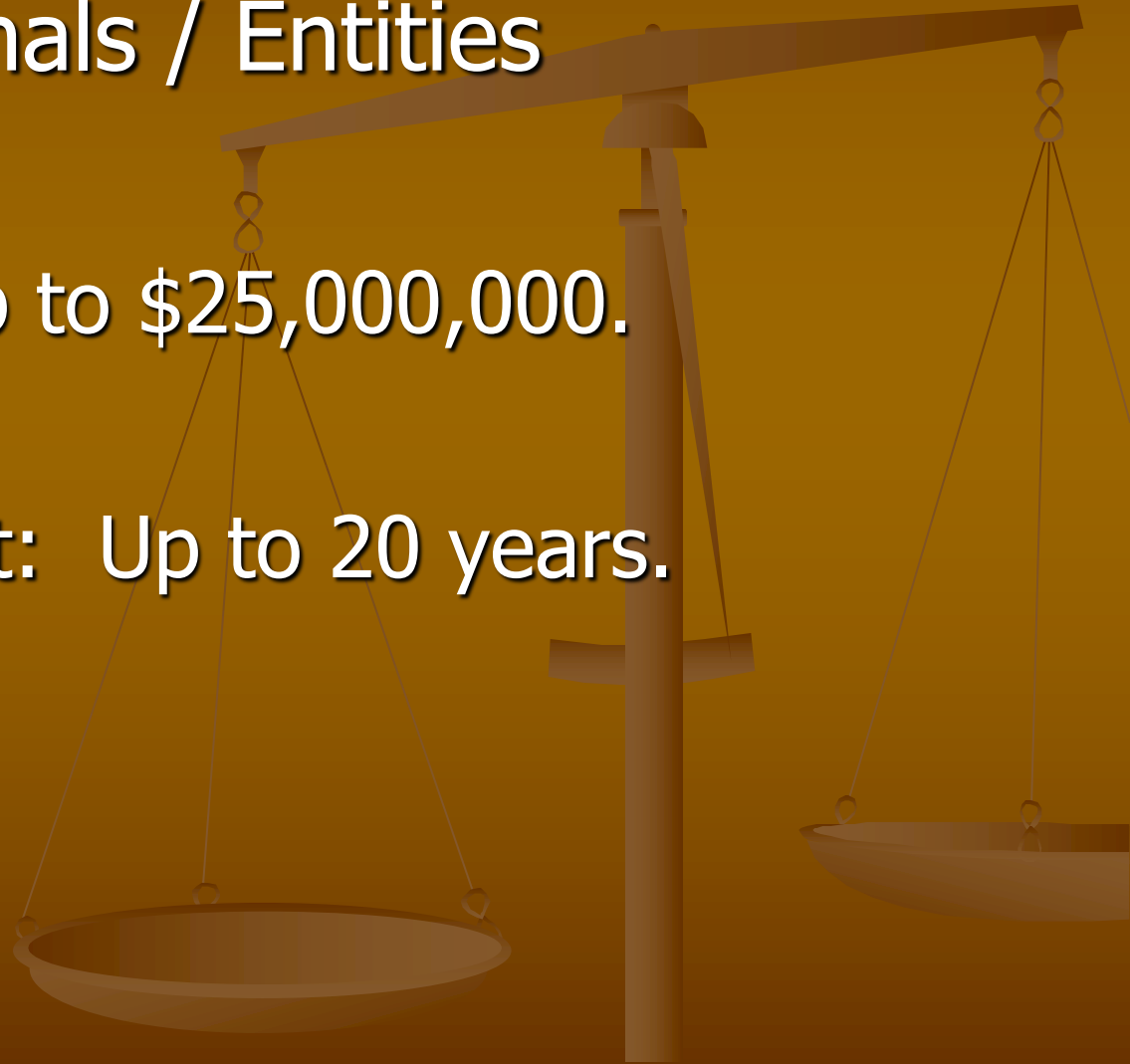
Natural Persons / Entities

- Fines: Up to \$5,000,000.
- Imprisonment: Up to 20 years.
- Restraining order.



Cont.

- Foreign Nationals / Entities
 - Fines: Up to \$25,000,000.
 - Imprisonment: Up to 20 years.

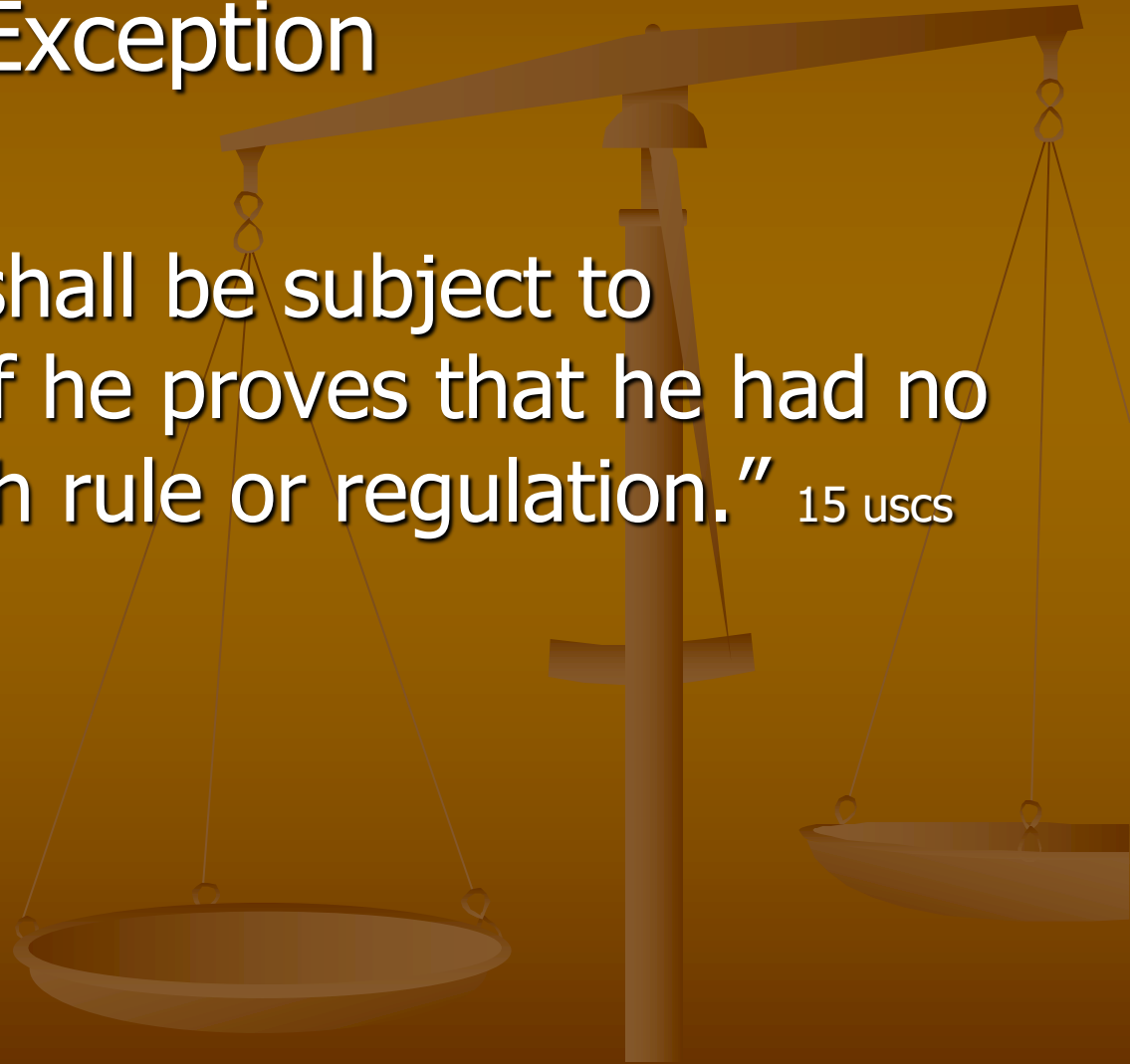


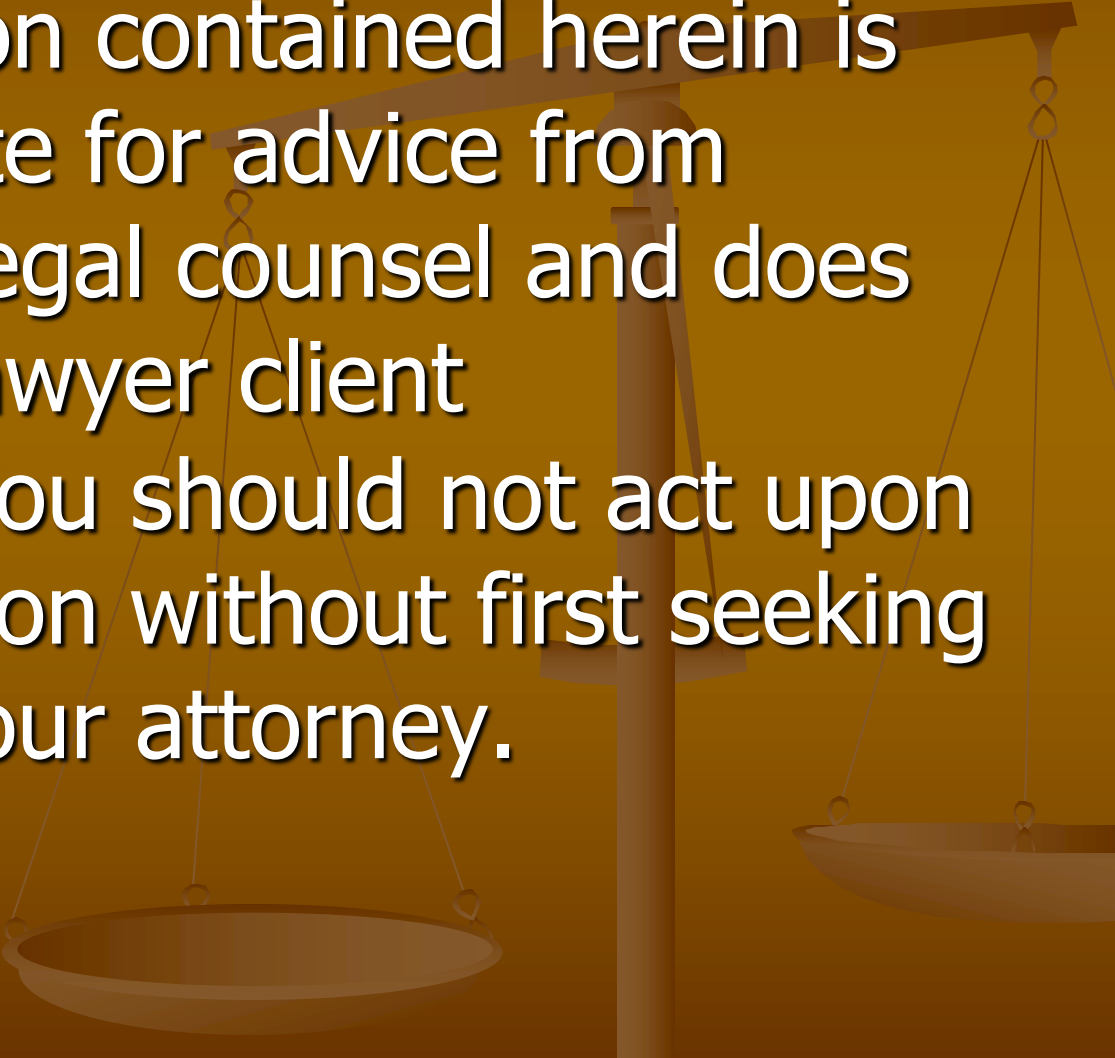
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Exception

“No person shall be subject to imprisonment ... if he proves that he had no knowledge of such rule or regulation.” 15 USC

sec. 78ff.



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- The information contained herein is not a substitute for advice from independent legal counsel and does not create a lawyer client relationship. You should not act upon such information without first seeking advice from your attorney.

QUESTIONS

