

Payment Systems – FALL 2020

LAW 6031 - 2 credits

Prof. Seth Chertok
University of Florida Levin College of Law

Welcome to this Course. I hope that you'll all enjoy the semester as much as getting one step closer to becoming excellent banking and regulatory lawyers!!!

Course Duration: Wednesday, Aug. 26 – Tuesday, Nov. 24

Veteran's Day: Class will not be held on Wednesday, Nov. 11

Thanksgiving Week: Wednesday's class will be held on Tuesday, Nov. 24 [our final class] – while class on Thursday, Nov. 26 will be cancelled

Class Meeting Time and Place: Wednesdays and Thursdays from 4:35-5:30 PM in Bailey Court Room

Office Hours: After class – or as needed (by skype) – my skype name is sethchertok

E-Mail Address: schertok@law.ufl.edu – or please feel free to reach me on canvass

Review Session #1 Date: Toward the end of the semester

Review Session #2 Date: Toward the end of the semester

Exam Date: Thursday, Dec. 10 at 8:30 AM

Course Objectives and Overview

While the financial industry (e.g., banks, BHCs, investment banks, other broker-dealers, trading markets, investment management, insurance, etc.) plays such a pivotal role in virtually all nations' economics and is responsible for many trillions and trillions of dollars in assets and transactions (financial services in 2017 were close to 10% of the U.S. GDP and intermediated greater than \$90 trillion in transactions), in HLS Prof. Jackson's words, "the financial sector is undeniably essential to everyday life [and the society], yet few really understand what it is, how it works, or how regulating it intersects with its risks."

This Course in financial regulation will focus on specifically analyzing the market and regulatory architecture of key aspects of the US banking and BHC (holding companies with diversified financial subsidiaries, spanning investment banks, brokerage, investment management, etc.) sectors as they exist today, observing their high utilities for all but countervailing consumer and systemically risky roles in the last financial crisis, then analyzing new puzzling questions over regulatory responses and solutions, especially under Dodd-Frank, the post-crisis central pillar of US banking regulations. At times, we'll emphasize the "international" comparative aspects of this field, noting the cross-border implications of US rules, and comparing, where appropriate, the US financial regulatory framework and policy choices to the EU.

Major topics include what is the financial sector; the theory of commercial exchange and money; physical correspondences between monetary flow and scientific water studies (observing the mechanics of natural waterbodies and artificial plumbing systems); the theory of financial regulations (focusing on law & economics risk-utility analysis as well as balancing the economics individual [consumer], prudential [firm] and macro-prudential [systemic] layers); the history of US financial regulation, from the Founding Fathers to post-Dodd-Frank and now on to the current virus crisis fears (with an emphasis on empirical data of past crises and crisis management solutions as well as the temporal free markets and new technologies); the evolving convergent as well as divergent faces of the problem of financial systemic risks, with a focus on a corresponding physics model of a network of metal discs connected by metal chains (noise and volatility, size, inter-connections and resonance synchronizations); bank accounting and financial statements; the US system of dual state versus national banking charters; banking choice and conflicts of law; the historical evolution of banking powers and countervailing activities restrictions; the resulting bank risk taking incentives utilities and concerns, followed by questions about the evolving appropriate scope and extent of banking risk mitigation regulatory solutions, especially post-crisis (such as lending limits and diversifications, transactions with affiliates in BHCs, insider loans, the Volcker Rule and finally evolving capital regulation standards under all evolving Basel regimes and supplementary US specific standards); and concluding with the evolution of the regulation of large BHCs, i.e., complex conglomerates engaging in ever-more diversified and loosely understood banking, including at times investment banking, investment management, merchant banking, etc., first under the old post-Depression "walled off" Glass-Steagall Act regime, then for FHCs under the free markets GLBA "repealing" regime and on to post-crisis tweaks, under Dodd-Frank (including the Volcker Rule) and what might lie beyond Dodd-Frank.

Course Grading

Grading will be based on a Final Exam as well as class participation.

	Weighting
Class Participation	Roughly 15% (<i>though I reserve the right to make a slightly different adjustment</i>)
Final Exam	Roughly 85%

The Final Exam will be a 2.5 hours exam, and mostly multiple choice, though I reserve the right to test with some Fact Pattern. The Final Exam Multiple Choice portion could cover anything in the course, but any Fact Pattern would only test the more advanced later topics on powers restrictions, Basel / Capital and BHC, etc. I will do my best to model at least some Final Exam questions after our in class and Review Session problems!

The Final Exam will be open-book. You will also be permitted to access the Internet, say to look up RWAs, like in the Review Session. However, under the UF Honor Code, you will not be permitted to discuss Exam questions and answers with other students. In addition, you must not retain, publish or otherwise distribute copies of the Exam after the Exam is over.

This class adheres to UF's posted grading policy:

Letter Grade	Point Equivalent
A (Excellent)	4.0
A-	3.67
B+	3.33
B	3.0
B-	2.67
C+	2.33
C (Satisfactory)	2.0
C-	1.67
D+	1.33
D (Poor)	1.0
D-	0.67
E (Failure)	0.0

Further information for UF grading policies for assigning points can be found at:

<https://catalog.ufl.edu/ugrad/current/regulations/info/grades.aspx>

Other UF Policies

COVID-19

We will have face-to-face instructional sessions to accomplish the student learning objectives of this course. In response to COVID-19, the following policies and requirements are in place to maintain your learning environment and to enhance the safety of our in-classroom interactions:

- You are required to wear approved face coverings at all times during class and within buildings. Following and enforcing these policies and requirements are all of our responsibility. Failure to do so will lead to a report to the Office of Student Conduct and Conflict Resolution. You also will no longer be permitted on the UF Law campus. Finally, Dean Inman will also report your noncompliance to the relevant state board of bar examiners.
- This course has been assigned a physical classroom with enough capacity to maintain physical distancing (6 feet between individuals) requirements. Please utilize designated seats and maintain appropriate spacing between students. Please do not move desks or stations.
- Sanitizing supplies are available in the classroom if you wish to wipe down your desks prior to sitting down and at the end of the class.
- Follow your TA's guidance on how to enter and exit the classroom. Practice physical distancing to the extent possible when entering and exiting the classroom.
- If you are experiencing COVID-19 symptoms (<https://www.cdc.gov/coronavirus/2019-ncov/symptoms-testing/symptoms.html>), please do not come to campus or, if you are already on campus, please immediately leave campus. Please use the UF Health screening system and follow the instructions about when you are able to return to campus. <https://coronavirus.ufhealth.org/screen-test-protect/covid-19-exposure-and-symptoms-who-do-i-call-if/>.
- Course materials will be provided to you with an excused absence, and you will be given a reasonable amount of time to make up work. <https://catalog.ufl.edu/UGRD/academic-regulations/attendance-policies/>.

Honesty Policy

UF students are bound by The Honor Pledge which states, "We, the members of the University of Florida community, pledge to hold ourselves and our peers to the highest standards of honor and integrity by abiding by the Honor Code. On all work submitted for credit by students at the University of Florida, the following pledge is either required or implied: 'On my honor, I have neither given nor received unauthorized aid in doing this assignment.'"

The Honor Code (<http://www.dso.ufl.edu/sccr/process/student-conduct-honor-code/>) specifies a number of behaviors that are in violation of this code and the possible sanctions. Furthermore, you are

obligated to report any condition that facilitates academic misconduct to appropriate personnel. If you have any questions or concerns, please consult with Prof. Chertok.

Class Attendance, Make-Up Exams, Etc.

Per ABA requirements, please attend all classes, unless you e-mail me in advance with a legitimate excuse. “Requirements for class attendance and make-up exams, assignments, and other work in this course are consistent with university policies that can be found at:

<https://catalog.ufl.edu/ugrad/current/regulations/info/attendance.aspx>

ABA Standard 310 Policy

Students should expect to spend, on average, approximately two hours preparing for every hour of class. It is expected that you will spend time preparing the Q&A in the Pre-Class Slides, as well as the readings, all per the Syllabus.

Disability Policy

Students with disabilities requesting accommodations should first register with the Disability Resource Center (352-392-8565, www.dso.ufl.edu/drc/) by providing appropriate documentation. Once registered, students will receive an accommodation letter which must be presented to Student Affairs (Dean Rachel Inman). Students with disabilities should follow this procedure as early as possible in the semester. Please don't e-mail your request to Prof. Chertok, to preserve student anonymity.

Online Course Evaluations Policy

Students are expected to provide professional and respectful feedback on the quality of instruction in this course by completing course evaluations online via GatorEvals. Guidance on how to give feedback in a professional and respectful manner is available at <https://gatorevals.aa.ufl.edu/students/>. Students will be notified when the evaluation period opens and can complete evaluations through the email they receive from GatorEvals in their Canvas course menu under GatorEvals or via <https://ufl.bluera.com/ufl/>. Summaries of course evaluation results are available to students at <https://gatorevals.aa.ufl.edu/public-results/>.

Technical Issues

If you have technical problems, please contact the UF Help Desk at <http://helpdesk.ufl.edu>

Wellness

If you or a friend is in distress, please contact umatter@ufl.edu or 352-392-1575 so that a team member can reach out to you or your friend.

Reading List

Required Textbook: Michael S. Barr, et al., Financial Regulation: Law and Policy, Second Edition (2018)

Supplementary Readings for Law Practice:

- **Business News**
 - Wall Street Journal Student/Academic Pass -
https://partner.wsj.com/en/register?mod=wsj_uf4
 - New York Times Student/Academic Pass -
<https://myaccount.nytimes.com/verification/edupass>
- **Business Encyclopedia**
 - <https://www.investopedia.com>
- **Regulations**
 - **Corporate Law** - Rainier Kraakman, et al., The Anatomy of Corporate Law: A Comparative and Functional Approach (3rd ed. 2017)
(available as e-book from Oxford University Press -
<http://uf.catalog.fcla.edu/permalink.jsp?20UF035138809>)
 - **Securities Regulation** – Louis Loss & Joel Seligman, Fundamental of Securities Regulation (6th ed. 2011)
[in westlaw treatises section]
 - **Antitrust Regulation** – Phillip Areeda & Herbert Hovenkamp, Antitrust Law: An Analysis of Antitrust Principles and their Application
<http://lp.hscl.ufl.edu/login?url=http://search.ebscohost.com/login.aspx?direct=true&AuthType=ip,uid&db=catalog04364a&AN=ufl.037688356&site=eds-live>

Syllabus

Notes

- Please read all materials, including the notes, falling within any assigned casebook pages
- Reading assignments are supplemented with my own slides about the materials, which will be posted on the course portal – to prepare for each class, please work through the questions and problems in my slides, apart from the readings

Readings

Given that this is a 2-credit course, I've narrowed down the topics that are most relevant toward large BHC banking practice, which is the most lucrative and intricate banking area today!

Week 1 / Jan. 15-16

Ch. 1.1 / Finance Today, p. 1-32

Physical → Financial Correspondences:

Nature / Water Navigation:

Bodies of Water, https://en.wikipedia.org/wiki/Body_of_water

Dams, <https://en.wikipedia.org/wiki/Dam>

Water Stagnation, https://en.wikipedia.org/wiki/Water_stagnation

Metaphor of the Waterbodies / Palsgraf Judge Andrews Dissent, 348 N.Y. 339 (Ct. App. N.Y. 1928)

Humans / Plumbing and Sewage:

Wikipedia, plumbing, <https://en.wikipedia.org/wiki/Plumbing>

Howstuffworks, Plumbing Basics (within a home),
<https://home.howstuffworks.com/home-improvement/plumbing/plumbing-basics-ga.htm>

Sewage, <https://en.wikipedia.org/wiki/Sewage>

Pre-19th Century / Cesspits, <https://en.wikipedia.org/wiki/Cesspit>

Moderns / Sewage Treatment, https://en.wikipedia.org/wiki/Sewage_treatment

Regulations / Theory:

Tort Law / Introduction to L&E Risky “Activities” Regulations

Rylands v. Fletcher, LR. 3 H.L. 330 (British House of Lords, 1868)

Robert. L Rabin, The Ideology of Enterprise Liability, 55 Maryland L. Rev. 1190, 1194-99 (1996)

Judge Richard A. Posner, American Cyanamid case, 916 F.2d 1174 (7th Cir. 1990)

Week 2 / Jan. 22-23

Financial Regulatory Goals / Casebook, p. 76 -79

Ch. 1.2 / The History of U.S. Financial Regulation, p. 34-73 (up to the Great Depression)

Week 3 / Jan. 29-30

Ch. 1.2 / The History of U.S. Financial Regulation, p. 34-73 (up through the last financial crisis)

Week 4 / Feb. 5-6

Ch. 1.2 / The History of U.S. Financial Regulation, p. 34-73 (Dodd-Frank and post-Dodd-Frank)

Updates / The Virus Crisis

Ch. 1.3 / Regulatory Frameworks, p. 79-106

Week 5 / Feb. 12-13

Ch. 1.4 / The Regulatory Perimeter, p. 107-136

Ch. 1.5 / A Tour of Financial Statements, p. 137-162 [self-study, won't discuss in class]

Week 6 / Feb. 19-20

Ch. 2.1 / The Impact of Charter Choice, p. 165-188

Ch. 2.2 / Activities Restrictions and the Business of Banking, p. 189-218 (up until ABS)

Week 7 / Feb. 26-27

Ch. 2.2 / Activities Restrictions and the Business of Banking, p. 189-218 (from ABS onward)

Ch. 2.3 / Portfolio Diversification and Affiliate Transactions, p. 219-237

Week 8 / March 11-12

Ch. 2.4 / Deposit Insurance, p. 239-264

Ch. 2.5 / Capital Regulation: An Introduction, p. 265-290

Week 9 / March 18-19

Ch. 2.5 / Capital Regulation: An Introduction, p. 265-290 (cont'd)

Ch. 2.6 / Capital Regulation: Pre-Financial Crisis to Basel II, p. 291-311

Week 10 / March 25-26

Ch. 2.6 / Capital Regulation: Pre-Financial Crisis to Basel II, p. 291-311 (cont'd)

Ch. 2.7 / Capital Regulation: Basel III and Beyond, p. 313-339

Updates / The Virus Crisis

Week 11 / April 1-2

Ch. 2.7 / Capital Regulation: Basel III and Beyond, p. 313-339 (cont'd)

Review Session / Basel Frameworks Exam-Style Problem [prepare for later Review Session]

Week 12 / April 8-9

Ch. 2.7 / Capital Regulation: Basel III and Beyond, p. 313-339 (cont'd)

Updates / The Virus Crisis

Ch. 6.1 / Regulation of Holding Companies, p. 685-712

Week 13 / April 15-16

Ch. 6.1 / Regulation of Holding Companies, p. 685-712 (cont'd)

Updates / The Virus Crisis

Review Session #1

Grand Basel Problem

Review Session #2

BHCA Act:

Problem #1 (On Foreign Gov Hold Cos) – see P. 689, Note 1

a. Sub-Problem / Policy – see P. 693, Note 2

Problem #2 (On Foreign Hold Cos / Non-Gov v. Gov) – see p. 693, Note 1

Volcker Rule:

Part A / Proprietary Trading

Problem #3 (On the Market Making Carve-Out) – see p. 708, Note 2

Part B / Covered Funds

Problem #4 (On the Merchant Banking Carve-Out) – see p. 709, Note 3

Problem #5 (On Super 23A) – see p. 709, Note 5