

Payment Systems – SPRING 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, Jan. 15 – Thursday, April 16

Spring Break: We'll pause for Spring Break during the Week of March 2-6

Class Meeting Time and Place: Wednesdays and Thursdays from 4:35-5:30 PM in Room HH – 285A

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

Exam Date: Friday, April 24 at 1 PM

Course Objectives and Overview

With the financial industry (e.g., banks, BHCs, broker-dealers and investment banks, investment management, insurance, etc.) playing such a pivotal financial role in virtually all nations' economics and responsible for trillions and trillions of dollars in assets and transactions, this course in financial regulation will focus on analyzing the market and regulatory architecture of key aspects of the US banking and BHC sectors as they exist today, observing their roles in the last financial crisis and analyzing new puzzling questions over regulatory responses and solutions, especially under Dodd-Frank.

We'll open by studying ever-expanding topics such as what is the broad financial sector; all of its tremendous risks and great utilities for individuals and the broader society (including systemic shocks of the sort that caused the last financial crisis); the special theory and history of financial regulations (going all the way back to the Founding Fathers); various state, federal, international and market regulator forces; banking charters and choice of law; banking accounting and financial statements; the growth of special banking "powers" leading up to the last financial crisis; firm risk mitigation strategies (such as lending limits, transactions with affiliates in BHCs and insider loans); individual risk mitigation strategies, such as the depositor insurance system (FDIC) as well as consumer lending protections (ranging from mortgages, to credit card and payday loans); the evolution of the regulation of BHCs, i.e., complex financial conglomerates desiring to engage in banking, insurance, investment banking, merchant banking, etc., first under the old "walled off" Glass-Steagall regime, then under GLBA and later Dodd-Frank (Volcker Rule); banking consolidation trends with M&A and antitrust issues; payment systems (e.g. from traditional checks to credit and debit cards to the future of Apple Pay, Bitcoin and other cryptocurrency, etc.); special rules of banking corporate governance and compliance as well as regulators' supervision and enforcement; the society's options for managing banking failures and arresting corresponding financial crises (e.g. the lender of last resort, purchases of toxic assets, bailouts, etc.); the rise of synthetic derivatives and finally shadow banking (securitization, GSEs, money market funds and short-term whole funding). 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.

Although this Class is designed primarily to emphasize banking "regulations," we'll also cover some of the banking "commercial" aspects tested on the Florida Bar, e.g., commercial paper (checks and notes) endorsements (focusing on the central UCC "holder-in-due-course" rule) and mortgage loans in real estate (transferability, security interests, foreclosure, etc.).

To help students with problem solving for the Bar, Professor Chertok will provide some optional sample problems on a non-graded basis.

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%

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

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 (all on reserve in the library):

- **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>
- **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)
[on reserve at LIC]
 - **Antitrust Regulation** – Phillip Areeda & Herbert Hovenkamp, Antitrust Law: An Analysis of Antitrust Principles and their Application
[on reserve at LIC]

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

Class 1, Wednesday, Jan. 15

Introduction (Slides)

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

Physical Correspondences / Plumbing, Water Hazards and Water Navigation (Slides)

Class 2, Thursday, Jan. 16

Ch. 1.2 / The History of U.S. Financial Regulation, p. 34-73

Class 3, Wednesday, Jan. 22

Introduction to Law & Economics / Tort Law and the Regulation of “Activities” with Externalities

Judge Richard A. Posner:

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

Economic Analysis of Law, 226-31 (8th ed. 2010) [*on reserve at LIC*]

Ch. 1.3 / Regulatory Frameworks, p. 75-106

Class 4, Thursday, Jan. 23

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

Ch. 1.5 / A Tour of Financial Statements, p. 137-162

Class 5, Wednesday, Jan. 29

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

Ch. 2.2 / Activities Restrictions and the Business of Banking, p. 189-218

Class 6, Thursday, Jan. 30

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

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

Class 7, Wednesday, Feb. 5

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

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

Class 8, Thursday, Feb.6

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

Class 9, Wednesday, Feb. 12

Ch. 5.1 / The Consumer Financial Protection Bureau, p. 567-598

Class 10, Thursday, Feb. 13

Ch. 5.2 / Mortgages, p. 599-624

The Florida Bar, "Commercial" Aspects of Commercial Paper Notes and Real Estate Mortgages
(Slides)

Class 11, Wednesday, Feb. 19

Ch. 5.3 / Consumer Financial Products and Services, p. 625-652

Ch. 5.4 / Comparing Consumer Protection Models Across Sectors, p. 653-681

Class 12, Thursday, Feb 20

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

Ch. 6.2 / Regulation of Bank Market Structure and Consolidation, p. 713-736

Class 13, Wednesday, Feb. 26

Ch. 6.3 / Regulating Systemic Risk, p. 737-768

Financial Contagion, Beyond Banks:

Insurance Sector / AIG, p. 362-367

Investment Banks / Bear Stearns, p. 469-472

Hedge Funds / LTCM, p. 1127-1132

Class 14, Thursday, Feb. 27

Ch. 6.4 / Foreign Banks in the United States and U.S. Banks Broad, p. 769-798

Class 15, Wednesday, March 11

Ch. 7.1 / Introduction to Payment Systems, p. 802-831

The Florida Bar, "Commercial" Aspects of Commercial Paper Checks (Slides)

Class 16, Thursday, March 12

Ch. 7.2 / Examining Critical Issues in Payment Systems, p. 833-863

Class 17, Wednesday, March 18

Ch. 8.1 / Corporate Governance, p. 867-895

Class 18, Thursday, March 19

Ch. 8.2 / Supervision and Enforcement, p. 897-931

Class 19, Wednesday, March 25

Ch. 9.1 / Lender of Last Resort, p. 935-960

Ch. 9.2 / Traditional Toolkit for Bank Failures, p. 961-984

Class 20, Thursday, March 26

Ch. 9.3 / After the Crisis: From Orderly Liquidation to Bail-In, p. 985-1010

Class 21, Wednesday, April 1

Ch. 11.1 / Overview of Derivatives, p. 1155-1180

Ch. 11.2 / Derivatives: Market Infrastructure, p. 1182-1206

Class 22, Thursday, April 2

Ch. 11.3 / Derivatives: Business Conduct and Market Integrity, p. 1208-1234

Class 23, Wednesday, April 8

Ch. 12.1 / Securitization, p., 1237-1268

Class 24, Thursday, April 9

Ch. 12.2 / Mortgage Markets and the Government-Sponsored Enterprises, p. 1269-1299

Class 25, Wednesday, April 15

Ch. 12.3 / Money Market Funds, p. 1301-1324

Class 26, Thursday, April 16

Ch. 12.4 / Short-Term Wholesale Funding, p. 1326-1353