**Fintech Law & Policy**

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**Overview:** In this course, we will examine the foundation of financial technology (“fintech”) and the law and policy around it. We will analyze the intersection of fintech with existing law governing financial institutions and how it influences fintech and vice versa. We will also explore practical considerations for a career in the field.

**Learning Outcomes:**

* Understand the current trends in fintech
* Analyze the interests motivating varying policy positions on fintech innovation
* Recognize different approaches to fintech regulation and their impact
* Understand the major existing legal regimes that govern financial technology
* Identify key practical business and legal considerations when working or practicing at a fintech company (or outside counsel for one) or at a financial services regulator

**Credits:**  Two

**Meeting Time & Place:** Wednesdays, 10-12, HH-285D

**Materials:** One book is required for purchase, Mark Cuban, *How to Win at the Sport of Business* (2011) with the rest of materials, limited for course use only, available in the course folder.

**Office Hours:** Thursdays, 2-4, via Zoom. Appointments for individual office hours via Zoom can also be made.

**Attendance, Course Approach, and Grading:** Attendance in class is required by both the ABA and the Law School. If you miss more than three classes, your grade for the semester may be adversely affected. If you have a legitimate reason for missing class, you should contact me before or soon after class for your absence to be excused.

Course substance will derive from readings, class discussion, and a small group project. Consistent with the American Bar Association Standard 310, you should expect to spend four hours per week preparing for this two-hour course. There will also be a final exam.

Grading breaks down as follows -

Class participation – 10%

Pitch Project – 25%

Final Exam – 65%

The law school policy on exam delays and accommodations can be found [here](https://www.law.ufl.edu/life-at-uf-law/office-of-student-affairs/current-students/forms-applications/exam-delays-accommodations-form) . The Levin College of Law’s grading and distribution (mean and mandatory) policies are posted on the College’s website and this class adheres to that posted grading policy.

The law school grading policy is available at: <https://www.law.ufl.edu/life-at-uf-law/office-of-student-affairs/current-students/uf-law-student-handbook-and-academic-policies> .

**Disability Accommodation:** The University of Florida is committed to providing equal educational access to students with disabilities. Students with disabilities requesting accommodations should first register with the Disability Resource Center (352-392-8565, <https://disability.ufl.edu/> ) by providing appropriate documentation. Once registered, students will receive an accommodation letter which must be presented to the instructor when requesting accommodations. Students with disabilities should follow this procedure as early as possible in the semester.

**Prohibition on Photos or Videos of Classroom Discussions:** Students may not take, circulate, or post photos or videos of classroom discussions, whether they are in-person, hybrid, or completely online. Students failing to follow this rule will be referred to the College of Law Honor Code Council and the University’s Office of Student Conduct and Conflict Resolution.

**University Policy on Academic Misconduct:** Academic honesty and integrity are fundamental values of the University community. Students should be sure that they understand the UF Student Honor Code at <https://sccr.dso.ufl.edu/policies/student-honor-code-student-conduct-code/> .

**Student Course Evaluations:** 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/> .

**COVID-19 Precautions:** We will be having 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:

1. 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. Dean Inman will also report your noncompliance to the relevant state board of bar examiners.

2. 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.

3. 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.

4. Practice physical distancing to the extent possible when entering and exiting the classroom.

5. 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 too campus. <https://coronavirus.ufhealth.org/screen-test-protect/covid-19-exposure-and-symptoms-who-do-i-call-if/> .

**Course Readings**

**What is fintech? (One hour – first class)**

Readings:

Ann Sraders, *What Is Fintech? Uses and Examples in 2020*, *TheStreet* (Feb. 11, 2020)

John L. Douglas, *New Wine Into Old Bottles: Fintech Meets the Bank Regulatory World*, 20 N.C. Banking Inst. 17, 17-21 (2016)

*Independent Bankers Ass’n of N.Y v. Marine Midland Bank*, 757 F.2d 453 (2d Cir. 1985)

**Fintech Trends (One hour – first class)**

Readings:

Julie Verhage, *No banking charter? No problem. Fintech companies team up with small-town banks*, Los Angeles Times (Sept. 27, 2019)

Capgemini, *World FinTech Report* (2020)

Ron Shevlin, *Google: The Next Big Fintech Vendor*, Forbes (May 11, 2020)

KPMG, *Pulse of Fintech H1’20 – Americas*, Summary (2020)

Richard Turrin, *Neobanks Can’t Fight the COVID-19 ‘Flight to Quality,*’ The Financial Brand (Mar. 31, 2020)

Lydia Beyoud, *Pandemic Lending Pushes Community Banks Toward Fintech Fixes*, Bloomberg Law (July 8, 2020)

Elisabeth Buchwald, *Going cashless during the COVID pandemic makes life even more difficult for the 14 million unbanked Americans*, MarketWatch (Aug. 7, 2020)

**Fintech & Regulatory Policy (Two hours)**

Readings (Part I):

Executive Order 12866, *Regulatory Planning and Review*, 1-2(Sept. 30, 1993)

Christopher G. Bradley, *FinTech's Double Edges*, 93 Chi.-Kent L. Rev. 61, 80-95 (2018)

William Magnuson, *Financial Regulation in the Bitcoin Era*, Stanford Journal of Law, Business & Finance, Vol. 23 No. 2, 159, 184-187 (2018)

Readings (Part II):

PayPal, *21st Century Regulation: Putting Innovation at the Heart of Payments Regulation*

Venable LLP, *CFPB Seeks to Boost Financial Innovation*, Insights (Nov. 21, 2019)

FDIC, *Request for Information on Standard Setting and Voluntary Certification for*

*Models and Third-Party Providers of Technology and Other Services* (July 24, 2020)

**The Entrepreneurial Mindset & The Sport of Business (One hour)**

Readings:

Mark Cuban, *How to Win at the Sport of Business*, 29-33, 35-41, 48-49, 52-55, 59-60, 73 (2011)

Optional Background: 3-19

Theo Lau, *A Journey to Purposeful Fin(Tech)*, Finnovate Blog (May 27, 2020)

John Devine, *How Robinhood Changed an Industry*, U.S. News & World Rpt. (Oct. 17, 2019)

**Product Funding & Advancement (One hour)**

Readings:

Venture Center, *FIS Selects Ten Startups for 2020 Fintech Accelerator Program* (June 30, 2020)

Jonathan Shieber, *500 Startups moves to rolling admissions instead of cohorts*, TechCrunch (Mar. 26, 2020)

Citi Ventures, About Citi Ventures

VyStar Credit Union Announces $10 Million FinTech Investment Fund (Sept. 24, 2019)

Glen Sarvady, *Demystifying the CUSO*, Credit Union Nat’l Assoc. News (Nov. 6, 2019)

FinTech Sandbox, *Journey of a FinTech Sandbox Startup*, Infographic

**Networking (Half hour)**

Readings:

Finovate, *FinovateSpring 2020 to Host 1,100+ Senior Attendees, 60+ Demoing Companies* (Mar. 5, 2020)

California Community Banking Network, *Innovate Community Banking!* (2019)

Laura Grace Tarpley, *An Oklahoma bank CEO who responded to a tweet from Mark Cuban used his advice to get cash into customers' hands in less than a week*, Business Insider (Apr. 22, 2020)

Danny Crichton, *Conduit launches to help founders find actually useful angels and VCs*, TechCrunch (Aug.12, 2020)

**Protecting IP (Half hour)**

Readings:

Michael J. Kasdan, *What Start-ups Need to Know About Intellectual Property*, Nat’l Law Rev. (Sept. 25, 2018)

*Intellectual Ventures I LLC v. Capital One Bank (USA)*, 792 F.3d 1365 (Fed. Cir. 2015)

TD Bank, *Suit filed to protect TD’s U.S. customers and brand from Plaid's unauthorized use of TD's name, logos and trademarks*, Press Release (Oct. 14, 2020)

**Bank Fundamentals (Two hours)**

Readings (Part I):

Optional Background: Brendan Pedersen, *Why is it so hard for a fintech to become a bank?*, Podcast Transcript, American Banker (Nov. 18, 2020)

White & Case, Fintech Companies & Bank Charters, Client Alert (Jan. 2018)

*Vullo v. Office of the Comptroller of the Currency*, 378 F.Supp.3d 271 (S.D.N.Y. 2019)

Diego Zuluaga, *To Help the Unbanked, Break the Industrial Bank Taboo*, Alt-M (June 5, 2020)

Readings (Part II):

FDIC, *Application for Federal Deposit Insurance & Consent to Merge re Varo Bank, NA*, Order (Feb. 7, 2020)[[1]](#footnote-1)

FDIC, *Application for Federal Deposit Insurance re Square Financial Servs., Inc*., Order (Mar. 17, 2020)

Martin J. Gruenberg, *Application for Federal Deposit Insurance re Square Financial Servs., Inc*., Statement (Mar. 17, 2020)

*LendingClub Announces Acquisition Of Radius Bank*, Press Release (Feb. 18, 2020)

Patrick Boot & Marysia Laskowski, *The First Cryptocurrency Bank*, Nat’l Rev. (Sept. 22, 2020)

**Card & Mobile Payments (1.5 hours)**

Readings:

Odysseas Papadimitriou, *How Credit Card Transaction Processing Works: Steps, Fees & Participants*, WalletHub (Apr. 2, 2009)

*Tucker v. Chase Bank USA, N.A*., 399 F.Supp.3d 105 (S.D.N.Y. 2019) (TILA – CARD Act)

Bill Fay, *Electronic Funds Transfer Act*, Debt.org

Steven Abrams, *What You Need to Know About Mobile Wallets*, U.S. News & World Rept. (Mar. 16, 2018)

CFPB, *CFPB Finalizes Strong Federal Protections for Prepaid Account Consumers* (Oct. 5, 2016)

Ballard Spahr, *PayPal files lawsuit against CFPB challenging prepaid card rule*, Consumer Finance Monitor (Dec. 16, 2019)

**Marketplace Lending (Two hours)**

Readings (Part I):

Lee Reiners, FinTech Law and Policy (1st ed. 2019) (Ch. 2 excerpts)

Emily McCormick, *Helping Customers When They Need It Most*, Bank Director (June 26, 2020)

Kevin Wack, *Battered by coronavirus crisis, online lenders face reckoning*, American Banker (May 14, 2020)

*Kaur v. World Bus. Lenders, LLC*, NO. 19-11364-WGY (D. Mass. 2020)

Readings (Part II):

*Peek v. SunTrust Bank, Inc.*, No. 19-cv-658 (D.D.C. Mar. 24, 2020) (ECOA I)

*Saint-Jean v. Emigrant Mortg. Co*., 337 F.Supp.3d 186 (E.D. N.Y. 2018) (ECOA II)

*Sterling v. Ourisman Chevrolet of Bowie Inc*., 943 F. Supp. 2d 577 (D. Md. 2013) (FCRA)

**Investing & Wealth Management (1.5 hours)**

Readings:

Ilker Koksal, *How AI Is Expanding The Applications Of Robo Advisory*, Forbes (Apr. 18, 2020)

SEC, *IM Guidance Update* (Feb. 2017)

Optional Background: SEC Interpretation Regarding Standard of Conduct for Investment Advisers (July 12, 2019)

Chris Velazco, *SEC fines Robinhood $65 million for misleading users*, Yahoo! Finance (Dec. 17, 2020)

Kate Rooney, *Robinhood makes second attempt at launching a high-yield account similar to banks*, CNBC (Oct. 18, 2019)

Andy Verity & Eleanor Lawrie, *Hound of Hounslow: Who is Navinder Sarao, the 'flash crash trader'?*, BBC (Jan. 28, 2020)

*CP Stone Fort Holdings, LLC v. Doe*, Case No. 16 C 4991 (N.D. Ill. 2016)

**Preventing Criminal Activity (One hour)**

Readings:

Dep’t of Treasury, Financial Crimes Enforcement Network, *In the Matter of Ripple Labs Inc*., No. 2015-05, Assessment & Settlement (May 5, 2015) [[2]](#footnote-2)

Optional Background: FinCEN, Statement on Enforcement of the Bank Secrecy Act (Aug. 18, 2020)

31 C.F.R. §§ 103.22-103.23

Jason Leopold et al., *Dirty Money Pours into the World’s Most Powerful Banks*, BuzzFeed News (Sept. 20, 2020)

**Marketing (1.5 hours)**

Readings:

*FTC v. LendingClub Corp*., No. 18-cv-02454-JSC (N.D. Cal. Jun 1, 2020) (Part I)[[3]](#footnote-3)

*CFPB v. Access Funding*, LLC, 270 F.Supp.3d 831 (D. Md. 2017)

Patrick Donachie, *SEC Revises Marketing Rules for Advisors*, WealthManagement.com (Dec. 22, 2020)

*Brickman v. Facebook, Inc*., 230 F.Supp.3d 1036 (N.D. Cal. 2017)

FTC, *CAN-SPAM Act: A Compliance Guide for Business* (Sept. 2009)

**Consumer Agreements (One hour)**

Readings:

TermsFeed, No. 3, FAQ (July 23, 2020)

*Mucciariello v. Viator, Inc*., No. 18-14444 (FLW) (D.N.J. Sept. 27, 2019)

*Adams v. Postmates, Inc*., No. 19-3042 SBA (N.D. Cal. Mar. 5, 2020)

Ana Alexandre,*[Robinhood Looks to Win Back Users Angry Over System Outage on Historic Market Day](https://cointelegraph.com/authors/ana-alexandre)*[, Cointelegraph (Mar. 24, 2020)](https://cointelegraph.com/authors/ana-alexandre)

**Managing Risk (One hour)**

Readings:

Gideon Pell, *Wirecard Fraud Is Risk Management Lesson For Fintech Companies*, Forbes (July 14, 2020)

OCC, Third-Party Relationships: Risk Management Guidance, Bulletin 2013-29 (Oct. 30, 2013)

Embroker, How to Properly Protect Your Fintech Company with Insurance (July 23, 2019)

**Privacy & Security (Two hours)**

Readings:

Int’l Ass’n of Privacy Professionals, *In Brief: The Financial Privacy Requirements of the Gramm-Leach-Bliley Act*

*FTC v. LendingClub Corp*., No. 18-cv-02454-JSC (N.D. Cal. Jun 1, 2020) (Part II - Count IV)

Burt Helm, *Credit card companies are tracking shoppers like never before: Inside the next phase of surveillance capitalism*, Fast Company (May 12, 2020)

*In re Facebook Biometric Info. Privacy Litig*., No. 3:15-cv-03747-JD (N.D. Cal. 2018)

Segal McCambridge Singer & Mahoney, *The Cybersecurity Act of 2015: A Brief Overview and What’s Next*, Litigation Blog (Mar. 14, 2016)

Readings (Part II):

16 C.F.R. § 314 (FTC Safeguarding Rule)

Appendix F to Part 225 - Interagency Guidelines Establishing Information Security Standards

FTC, *PayPal Settles FTC Charges that Venmo Failed to Disclose Information to Consumers About the Ability to Transfer Funds and Privacy Settings; Violated Gramm-Leach-Bliley Act*, Press Release (Feb. 27, 2018)

*In re Brinker Data Incident Litigation*, No. 3:18-cv-686-J-32MCR (M.D. Fla. Jan. 27, 2020)

Ron Shevlin, *The Cloud’s Looming Cybersecurity Headaches*, Forbes (Aug. 17, 2020)

**Pitch Competition**

**Big Data & Open Banking (One hour)**

Readings:

CFPB, *Consumer Access to Financial Records*, Summary of Symposium (July 2020)

Arnab Shome, *Plaid Faces Second Lawsuit for Violating Data Privacy*, Finance Magnates (July 20, 2020)

Steve Boms, *U.S. way behind the curve on open banking*, American Banker (Sept. 21, 2018)

Anna Hrushka, *Mastercard to buy Finicity for $825M in open banking play*, Banking Dive (June 24, 2020)

**Automation & Artificial Intelligence (One hour)**

Readings:

Debra Slapak and Anurag Juneja, *AI Conversations: Transforming Financial Services*, CIO (June 29, 2020)

FTC, *Using Artificial Intelligence and Algorithms*, Tips & Advice (Apr. 8, 2020)

Aaron Klein, *Reducing bias in AI-based financial services*, Brookings Institution (July 10, 2020)

Aarthi Swaminathan, 'Educational Redlining': New report alleges discrimination against certain student loan borrowers, Yahoo Money (Feb. 8, 2020)

**Digital Assets (Two hours)**

Readings (Part I):

Optional Background: Hanna Halaburda & Guillaume Haeringer, *Bitcoin: A Digital Revolution?* (2018)

Douglas at 39-47

*CFTC v. My Big Coin Pay, Inc.*, No. 18-10077-RWZ (D. Mass Sept. 26, 2018)

*SEC v. Telegram Grp. Inc*., No. 19-cv-9439 (PKC) (Mar. 24, 2020 S.D.N.Y.)

Readings (Part II):

Alexandra C. Scheibe et al., *SEC Division of Corporate Finance Issues Second No-Action Letter for a Blockchain Issuance*, National Law Rev. (Aug. 12, 2019)

Kollen Post, *What does VCOIN's SEC authorization mean for securities law and crypto?*, Cointelegraph (Dec. 3, 2020)

Kiran Stacey & Hannah Murphy, *How Facebook’s Libra went from world changer to just another PayPal*, Financial Times (Apr. 17, 2020)

Kai Stinchcombe, *Ten years in, nobody has come up with a use for blockchain*, Hacker Noon (Dec. 22, 2017)

1. When reading the Varo and Square orders, look for similarities and differences between the two, with an emphasis on the differences. [↑](#footnote-ref-1)
2. Read Attachment A first. [↑](#footnote-ref-2)
3. Skip parts on privacy violation discussion (Count IV). [↑](#footnote-ref-3)