

Consumer Protection Law
Syllabus – Fall Semester 2021 – Maddox
Office Hours: By appointment or after class
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- **Casebook:** ADAM LEVITIN, CONSUMER FINANCE: MARKETS & REGULATIONS (1ST EDITION, WOLTERS KLUWER)
- **SUPPLEMENTAL:** ADAM LEVITIN, CONSUMER FINANCE: SELECT FEDERAL LAW MATERIALS (available via Amazon)
- **SUPPLEMENTAL:** ADAM LEVITIN, CONSUMER FINANCE: SELECT STATE AND PRIVATE LAW MATERIALS (available via Amazon)

Class Meetings.

We meet on Monday from 1:00 – 2:40 pm in room 121 and will take a short break during the middle of the class period.

Course Overview and Goals.

This course provides an overview of the consumer finance system—the way in which consumers finance and manage their consumption—and examines the business, economics, politics, and regulation of this sector of the economy. Consumer finance is a business-to-consumer industry, and this course focuses on both consumer and financial institution concerns in transactions.

This course examines both the markets for consumer financial products and services and their regulation. A patchwork of federal and state laws regulates consumer financial products and services, and these laws tend to be complex.

Consumer spending is a multi-trillion-dollar sector that drives the U.S. economy. Consumer spending runs through a set of payment systems. These payments generate enormous troves of valuable data about consumers and their consumption interests. That data is essential for determining whether consumers can obtain credit and on what terms. Much of consumer spending is funded through borrowed funds. The defining feature of the broad American middle class is that it borrows to finance key purchases: homes, cars, furniture, and education. Other Americans often borrow simply to make ends meet in any given week. In short, consumer financial products—payments, data, and credit—are the essential underpinnings of much of the U.S. economy and tie together households and the financial economy.

Understanding this area of law will give you an edge in a variety of practice settings whether it is the “big law” firm advising the financial industry, the small law firm representing individuals with financial problems, the compliance department of a financial institution trying to follow the law, the legal aid society protecting the rights of low-income consumers, or the offices of a federal or governmental regulatory agency seeking to enforce the law.

This course has two categories of formal goals—attainment of a set of substantive knowledge and attainment of a set of skills. The substantive knowledge that you should gain from this course is a sophisticated familiarity (enough to have an intelligent, well-informed conversation at a job interview) with four related areas:

- ***The major consumer financial products, the risks and benefits involved, and the main features of their regulation;***
- ***The regulatory structure governing consumer finance (i.e., which regulators have authority over what entities or products);***
- ***The particular powers and authority of the Consumer Financial Protection Bureau;***
- ***The key policy issues in consumer finance regulation***

There are also a pair of important skills that you should gain from the course:

- ***Statutory interpretation.*** This is a statutory course, and you will have ample practice engaging in close reading a range of complex interlocking statutes and regulations and regulatory interpretations.
- ***Client counseling.*** A lawyer does more than tell a client what the law is. A lawyer also explains to a client ambiguities in the law, identifies possible course of action, articulates risk/reward tradeoffs, and makes recommendations based on the client's particular concerns (and ethical constraints). The problem set method through which this course is taught will constantly place students in the role of counselor.

Participation and the Problem Set Method.

The class will be taught in some part through problem sets at the end of each chapter. The problems generally present the key substantive legal points in applied practice contexts where you are advising clients. The problems are usually not questions about blackletter law, but instead are asking what advice one gives a client given the blackletter law. One implication of this is that there is often not a clear “right” answer, but instead, a weighing of different considerations. Your client might not care if you can eventually win a case, if it will take five years and cost \$10 million in legal fees. The problems can be difficult but will prepare you for the final examination.

Expectations.

I take volunteers to go through the Problems in each class. The expectation is that when you volunteer, you will have a *written* answer – one that you wrote prior to coming to class. I will notate who volunteers during each class, so everyone has an opportunity to volunteer.

I encourage everyone to collaborate, study together in preparing for class, and engage in class discussion; however, the final examination is a floating exam and must be completed on your own. Our classroom environment is built upon mutual respect, trust, and honesty – the same as the goals for our profession.

Chapter 1

Introduction to Consumer Finance – (Pages 1-20)

- I. Consumer Financial Services
- II. Consumers: Meet the Median-Income Smiths
- III. U.S. Consumers: An Aggregate Picture
- IV. The Consumer Finance Business: Big and Small
- V. Regulation of Consumer Finance
- VI. Overview of This Book

Problem Set 1 – (Page 22)

Part I

REGULATION – (Page 23)

Section A

Regulation by Private Law – (Page 23)

Chapter 2

Regulation Through Contract and Tort – (Pages 25-37)

- I. Two Flavors of Regulation Through Contract
 - A. Market Discipline
 - B. Contractual Terms and Tortious Overreaches
 - C. Negative Implications for Non-Contractual Consumer Relationships
- II. Mandatory Contract Terms: Good Faith, Fair Dealing, and "Conscionability"
- III. Regulation as an Alternative to Contract Doctrine

Problem Set 2 – (Page 40)

Section B

Regulation by Public Law – (Page 73)

Chapter 5

CFPB I: History and Policy – (Pages 103-113)

- I. History and Policy Behind the CFPB
 - A. Consumer Financial Regulation Pre-2010
 - B. Problems with the Pre-2010 Regulatory Architecture
 1. Consumer Protection as an Orphan Mission
 2. Consumer Protection Subordinated to Regulatory Concerns About Bank Profitability
 3. Regulators with Limited Expertise
 4. Opportunities for Regulatory Arbitrage
 - C. Creation of the CFPB

Problem Set 5 – (Page 118)

Chapter 6

The CFPB II: Rulemaking – (Pages 119-128)

- I. The Enumerated Consumer Laws
- II. Organic Powers Under the Consumer Financial Protection Act
 - A. Covered Persons
 - B. Service Providers
 - C. Procedural Limitations on Rulemakings

Problem Set 6 – (Page 129)

Chapter 7

The CFPB III: Supervision – (Pages 131-138)

- I. What is Supervision
- II. Scope of Supervision Authority
 - A. Banks and the Dual Banking System
 - B. Division of Bank Supervision Authority Between CFPB and Federal Prudential Regulators
 - C. Supervision of Non-Banks
 - D. Market Surveillance

Problem Set 7 – (Page 139)

Chapter 8

THE CFPB IV: Enforcement and Jurisdictional Limits – (Pages 141-158)

- I. Enforcement
 - A. Scope of Enforcement Jurisdiction
 - B. Related Persons of Non-Depository Institutions
 - C. Substantial Assistance
 - D. Limitation on Enforcement Against Smaller Depositories
 - E. Shared Enforcement Power with State Attorneys General
 - F. Administrative or Judicial Adjudication
 - G. Relief Available
 - H. Enforcement *Qua* Rulemaking
- II. General Exclusions from CFPB Authority
 - A. Non-Financial Goods or Service Providers
 - B. Purchase Money Financing
 - C. Jurisdictional Carve-Outs
 - D. Clawback of the Jurisdictional Carve-Outs
 - E. Auto Dealers' Carve-Out
- III. What the CFPB Cannot Do

Problem Set 8 – (Page 159)

Chapter 9 – Federalism and Preemption – (Pages 161-181)

- I. Types of Preemption
- II. Federal Preemption Before the Dodd-Frank Act
- III. The Dodd-Frank Act and Preemption
- IV. New OCC Preemption Regulations
- V. The Current Status of National Bank Act Preemption.
- VI. True Lender Cases and Preemption
- VII. Tribal Lending
- VIII. Offshore Lending

Problem Set 9 – (Page 182)

Chapter 10

UDAAP I: Unfair Deceptive Acts and Practices – (Pages 185-199)

- I. Unfair Acts and Practices
- II. Deceptive Acts and Practices

Problem Set 10 – (Page 202)

Chapter 11

UDAAP II: Abusive Acts and Practices – (Pages 205-225)

- I. Abusive Acts and Practices
 - A. Material Interference with the Ability of a Consumer to Understand Terms and Conditions of a Consumer Financial Product or Service
 - B. Taking Unreasonable Advantage of Consumers' Lack of Understanding of Material Risks, Costs, or Conditions
 - C. Taking Unreasonable Advantage of the Inability of the Consumer to Protect His Interests
 - D. Taking Unreasonable Advantage of Consumers' Reasonable Reliance on a Covered Person to Act in the Consumer's Interest

Problem Set 11 – (Page 230)

Section C

Disclosure Regulation and Consumer Rationality – (Page 231)

Chapter 12

Disclosure Regulation – (Pages 233-242)

- I. Disclosure, Disclosure Everywhere, and Nary a Thing Disclosed?
- II. Why Do Disclosure?
- III. Does Disclosure Work?
 - A. Australian ATM Fees
 - B. More Complex Transactions and Products
 - C. Product Standardization as a Remedy for Complexity
 - D. Format Matters: Evidence from Grocery Store Unit Pricing
Omri Ben-Shahar & Carl E. Schneider, The Failure of Mandated Disclosure

Problem Set 12 – (Page 245)

Chapter 13

Behavioral Economics – (Pages 247-258)

- I. Classical vs. Behavioral Economics
- II. Behavioral Economics and Consumer Finance
 - A. Thimblorig
 - B. Cognitive Thimblorig
- III. Behaviorally Informed Regulation
 - A. Behavioral Economics' Limited Guidance on Regulation
 - B. Reactive Regulation to Behavioral Problems
 - C. Behavioral Regulation
- IV. Criticisms of Behavioral Economics
 - A. Are Behavioral Claims Empirically Supported?
 - B. Learning
 - C. Competition and Seller Education
 - D. Distribution of Cognitive Biases in the Population

Problem Set 13 – (Page 259)

Part II

MARKETS – (Page 261)

Chapter 18

Payment Systems I: Paper Payments – (Pages 335-350)

- I. Payments in Society
- II. Cash
 - A. The Cost of Cash
- III. Checks
 - A. The Checking System
 - B. Regulation of Checks
 - C. The Technology Revolution in Checking
 - D. Check Cashing

Problem Set 18 – (Page 352)

Chapter 19

Payment Systems II: Electronic Payments – (Pages 353-373)

- I. Debit and Credit Cards
 - A. Brief History of Credit and Debit Cards
 - B. Structure of Credit and Debit Card Payment Systems
 - C. Regulation of Consumer-Issuer Relations for Debit and Credit Cards
 - D. Interchange Fees and the Merchant Side of Payment Cards
 - E. Merchant Restraint Rules
 - F. Durbin Amendment and Regulation of Debit Interchange Fees
 - G. The Durbin Amendment and Merchant Restraints
- II. Automated Clearinghouse (ACH)
 - A. Parties to an ACH Transaction
 - B. How an ACH Transaction Works
 - C. ACH Credit Transactions
 - D. ACH Debit Transactions
 - E. ACH Processing
 - F. Basic Rules for ACH Transactions
 - G. ACH Conversion of Checks
 - H. Funds Availability
 - I. Stop Payments
 - J. ACH Returns
 - K. Third-Party Payment Processors
 - L. ACH Compared with Other Payment Systems

Problem Set 19 – (Page 375)

Section B

Credit – (Page 439)

Chapter 22

Credit Basics

- I. Sources of Repayment
- II. Loan Terms
 - A. Balance
 - B. Maturity and Prepayment
 - C. Interest Rates, Points, and Fees
 - D. Amortization
 - E. Collateral and Down Payment
 - F. Payment Allocation
- III. Underwriting
- IV. Loan Versus Lease

Problem Set 22 – (Page 455)

Chapter 24

Fair Lending – (Pages 477-503)

- I. Fair Lending
 - A. Why Discriminate? Economic Theories of Discrimination
 - B. Discrimination in Consumer Financial Services
- II. Fair Housing Act
- III. Equal Credit Opportunity Act
 - A. Information Requests
 - B. Application Evaluation
 - C. Terms of Extension of Credit
 - D. ECOA Procedural Requirements
 - E. ECOA Liability
 - F. ECOA Compliance
- IV. Disparate Impact under Federal Fair Lending Laws
- V. State Fair Lending Laws
- VI. Duties to Serve: the Community Reinvestment Act

Problem Set 24 – (Page 504)

Chapter 25

Truth in Lending – (Pages 509-521)

- I. The Truth in Lending Act
 - A. TILA Disclosures
 - B. Who Is a Creditor?
 - C. What Is a Finance Charge?
 - D. The Annual Percentage Rate
 - E. TILA Liability

Problem Set 25 – (Page 522)

Chapter 30

Small-Dollar Credit – (Pages 619-644)

- I. Small-Dollar Credit: Liquidity Needs
- II. Types of Small-Dollar Credit
 - A. Signature Loans
 - B. Payday Loans
 - 1. Rollovers
 - 2. Borrower Profile
 - 3. Industry Structure
 - 4. Online Payday Lending
 - 5. State Level Regulation of Payday Loans
 - C. Auto Title Loans
 - 1. The Title Lending Industry
 - 2. Title Borrower Profile
 - 3. Policy Concerns Regarding Title Loans
 - 4. State Level Title Loan Regulations
 - D. Tax Refund Anticipation Loans
 - 1. Traditional Refund Anticipation Loans
 - 2. Refund Anticipation Checks
 - 3. New-Style Refund Anticipation Loans
 - E. Pawn Loans
- III. Policy Issues with Small-Dollar Loans
 - A. Consumer Optimism

- B. Competition in Small-Dollar Lending Markets
- C. Substitution Hypothesis
- IV. Federal Regulation of Small-Dollar Loans
 - A. The CFPB Payday Rule
 - 1. The Ability to Repay Requirement
 - 2. Safe Harbors
 - 3. Prohibited Payment Transfer Attempted
 - B. Other Federal Regulation of Small-Dollar Loans

Problem Set 30 – (Page 645)

Chapter 33

Debt Collection I: Fair Debt Collection Practices Act – (Pages 693-712)

- I. Debt Collection in and out of the Courts
 - A. Unsecured Debts
 - B. Secured Debts
- II. The Debt Collection Industry
- III. Fair Debt Collection Practices Act
 - A. Definition of Debt Collector
 - B. FDCPA Prohibitions and Requirements
 - 1. Communications with Third Parties
 - 2. Validation of Debts
 - 3. Communications with the Consumer
 - 4. FDCPA Damages

Problem Set 33 – (Page 712)

Chapter 34

Debt Collection II: Other Regulations – (Pages 715-731)

- I. Federal Regulations: The FTC Act § 5
- II. Federal Regulation: Criminal Law
- III. Federal Regulation: Servicemembers' Civil Relief Act
- IV. Federal Regulation: Garnishment Limitations
 - A. The Garnishment Process

B. Federal Wage Garnishment Limitations

C. Federal Wage Garnishee Employment Protections

V. Debt Relief Services and the Telemarketing Sales Rule

VI. Federal Bankruptcy Law

VII. State and Local Debt Collection Regulation

Problem Set 34 – (Page 732)

I. Attendance Policy at Cumberland:

For Fall 2021, any student who is absent from class for good cause shall notify the Associate Dean and the professor within 24 hours of the missed class and provide the cause. The Associate Dean, in her sole discretion, shall have authority to excuse an absence for good cause so that it will not count against the number of permitted class absences prescribed by Academic Standard 207. "Absent for good cause" means absence due to COVID-related illness, or quarantine, absence due to exigent circumstances as determined by the Associate Dean, absence due to bereavement, and absence related to pregnancy, childbirth, and adoption. All other absences remain unexcused pursuant to Academic Standard 207. The Associate Dean will determine at the end of the semester, and only after the student has reached the maximum number of absences allowed in a course, whether a particular absence is excused. An excused absence does not relieve a student of responsibility for the academic work in the class missed. Additionally, in the event that a student tests positive for COVID he or she must email COVID19health@samford.edu upon receipt of the positive result and copy the Associate Dean. Without timely notification to COVID19health and the Associate Dean, a student's absences may not be excused.

II. Statement regarding online or remote delivery if the course must transition to a digital learning format

The 21-22 academic year will see the return of many regular activities and operations; however, as the presence of Covid-19 is monitored on campus and within our community, state law, local health orders, and CDC guidance could affect the course activities and modality (including a change to an emergency remote or online course). Students must attend class and check email and Canvas regularly for any important updates from the course instructor and/or university administration.

III. Technology needs

Because of the possibility of a student needing to participate in the course virtually at some point during the semester, all students should have the following technology available to them:

- A Windows 10 or Macintosh desktop or laptop computer; although Chromebooks and mobile devices are capable of accessing the Canvas learning management system, they may not be compatible with certain third-party software.
- A web cam (built into most modern laptops)
- A microphone and speakers, headphones, or earbuds (also built into most modern laptops)
- The most recent version of the Chrome or Firefox Web browser; the Safari browser can be particularly problematic when accessing online courses.
- A stable Internet connection capable of at least 2 Mbps upstream and 5 Mbps downstream. Students may test the speed of their connection at <http://speedtest.net>.
- Capable of running Exam4 software by Extegrity.

IV. Emergency Readiness

RAVE is the primary method of communication used by Samford University during a campus emergency. If you have not registered for RAVE alerts, please use the link provided below and go to the My Contact Information box on your Portal homepage to update your RAVE Emergency Alert Information. <https://connect.samford.edu/group/mycampus/student>

Samford University utilizes Alert Samford for desktop, laptop, tablet, and mobile devices to provide students with information, procedures, and links about what to do in the event of a variety of emergency situations that could occur on our campus. If you do not already have the Alert Samford app on your mobile

device, laptop, desktop, or tablet, please click on this link <https://connect.samford.edu/group/mycampus/student> and go to the Emergency Information box on your Portal homepage for instructions on downloading the App. Once you have downloaded the App, please take time to review the information provided, it is important that you know what to do in the case of a campus emergency.

V. Americans with Disabilities Act

Students with disabilities who wish to request accommodations should register with Disability Resources (205-726-4078, disability@samford.edu, Dwight Beeson Hall Room 103 and 104, www.samford.edu/dr). Students who are registered with Disability Resources are responsible for scheduling a meeting with Cumberland's Director of Student Services and ADA Compliance, Tona Hitson, (205-726-2222, tlhitson@samford.edu, Memory Leake Robinson Hall Room 124), to discuss how their approved accommodations will apply to this course. Accommodations will not be implemented until students have met with her to review their accommodation letter.

Classroom accommodations are not retroactive; therefore, prompt attention to the process is advisable. Students who wish to receive examination accommodations must be approved for accommodations by University Disability Resources and notify Tona Hitson, Cumberland's Director of Student Services and ADA Compliance, no later than thirty (30) days prior to the last day of classes.

Because the process of evaluating and documenting a student's need for accommodations can be time consuming, students are encouraged to contact Disability Resources early in the semester in order to ensure the completion of all necessary paperwork by the aforementioned deadline. Accommodations received after the deadline will be processed for the following semester

VI. Title IX

Samford University is committed to the creation and maintenance of a safe learning environment for students and the University community. In accordance with federal policy all University employees are required to report information related to discrimination and harassment which includes, but is not limited to, sexual assault, relationship violence, stalking, and sexual harassment. For this reason, if you tell a faculty member about a situation of sexual harassment or sexual violence or other related misconduct, the faculty member must share that information with the University Title IX Coordinator. If you wish to speak with an employee who is not required to report information, you can find a list of confidential resources listed in the online student handbook and the Title IX website or contact the Counseling Center at 205-726-4083 or the Office of Spiritual Life at 205-726-2825.

Note: The first time you schedule an appointment, you will need to create an account, using your Samford email and password.

Inclement Weather

Inclement weather or other events beyond the control of the University that might cause risk or danger to students, faculty and staff may occasionally result in changes to normal University operations, including cancellation of classes or events; the class schedule and/or calendar may be adjusted.

Counseling Services

Students may benefit from meeting with a counselor at some point to discuss difficult issues, gain insight for dealing with stress, or to process and understand events from the past. When a need for counseling arises, students should contact Counseling Services & Wellness Programs. On-site appointments are prepaid through student fees and there is no extra cost to the student. To schedule an appointment, please email counseling@samford.edu, call 205-726-2065, or stop by Dwight Beeson Hall (DBH) room 203.

Mask requirements within the educational setting:

It is very difficult to differentiate vaccination status within the more interpersonal and intimate indoor educational settings such as the classroom. Therefore, masking is required for all participants in this course, regardless of vaccination status. This small act supports our calling to respect and serve others within the Samford community and may reduce academic disruption in this course. Failure to comply with instructions to wear a mask from a member of the Samford faculty could result in an Honor Code warning letter and/or violation.

Updated: August 9, 2021