

Consumer Protection Law
LAW 223

Fall 2021
Monday, 6:05-9pm

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OVERVIEW: This class will present students with an overview of consumer protection law, with an emphasis on the common law, the Federal Trade Commission Act, and major financial consumer protection laws. We will also cover constitutional issues surrounding information regulation, and privacy and data security law.

LEARNING OUTCOMES: By the end of the course, students will:

- Have a comprehensive understanding of purpose of consumer protection law
- Have a working knowledge of the major sources of consumer protection law
- Understand how the legal elements of unfair and deceptive acts and practices apply to a variety of business practices
- Understand the doctrine of advertising substantiation
- Understand major financial consumer protection laws
- Understand consumer protection remedies
- Understand the key First Amendment issues raised by consumer protection law

BASIS OF EVALUATION: Your grade will be determined by a Final Examination and class participation.

- The Final Examination will be on **December 7 at 6pm. The Final Examination will be 3 hours and it will be open book and notes.**
- I expect students to be prepared to discuss assigned readings in class. Consistently outstanding class participation or consistent lack of

preparation may result in 1/3 letter-grade adjustment to your final grade (e.g., B to a B+ or a B-).

TEXT: The primary readings for this course are in a Course Pack available from the bookstore (No. 857016). The Course Pack (referred to as CP in the reading schedule) has readings from three separate books: PETER B. MAGGS & ROGER E. SCHECTER, *TRADEMARK AND UNFAIR COMPETITION LAW* (7th Ed. 2012); JOHN SPANOGLIE ET AL., *CONSUMER LAW: CASES AND MATERIALS* (4th Ed., 2013); and ADAM J. LEVITIN, *CONSUMER FINANCE LAW* (2018). I will also assign additional cases that you can download on Westlaw or Lexis, post outside readings on TWEN, and the syllabus contains links to the assigned FTC documents. The preliminary reading schedule is listed below, but likely will be adjusted as the semester progresses.

OFFICE HOURS: Office hours: Tuesdays from 3:30-5:00pm, and by appointment. I encourage you to email me questions that may arise as you study and prepare for this class. I typically respond quickly.

ATTENDANCE: Regular and punctual attendance are required to earn academic credit. Attendance requirements for academic credit will follow the policies set forth in Academic Regulation 4-1. Should circumstances occur where you anticipate the possibility of missing a substantial number of class sessions (e.g. a serious illness), you should immediately contact the Assistant Dean, Student Academic Affairs.

INTELLECTUAL PROPERTY: I own all course content that I create (e.g. PPT slides), regardless of form (electronic, print, audio/ video, etc.), including recordings of class sessions, office hours, and other meetings. You are forbidden to use them with, or distribute them to, anyone other than your classmates in this course.

CLASS RECORDING: Pursuant to Academic Regulation 4-2.2, no portion of a class session or an examination may be preserved by means of a recording device such as an audio recording device or camera. Any exceptions to this policy must be expressly permitted in writing by me.

ACADEMIC INTEGRITY: It is expected that students adhere to the Antonin Scalia Law School Honor Code. The Honor Code prohibits lying, cheating, or stealing. This includes a student obligation to never represent the work of another as their own, and to never provide or accept unauthorized assistance on

any school related assignment. The Honor Code is available here:
<https://sls.gmu.edu/honor/>.

Course Readings

Topic	Readings
1	Economic Underpinnings of Consumer Protection <ul style="list-style-type: none">• Beales, Craswell, & Salop, <i>The Efficient Regulation of Consumer Information</i>, 24 J.L. & ECON. 491 (1981)
2	Consumer Protection Under the Common Law <ul style="list-style-type: none">• CP: 1-40; 46-71
3	Federal Trade Commission Act: Deception <ul style="list-style-type: none">• CP: 72-77; 98-119; 132-146• Federal Trade Commission, Policy Statement on Deception (Oct. 14, 1983),• <i>Kraft, Inc. v. FTC</i>, 970 F.2d 311 (7th Cir. 1992)• University of Phoenix Settlement (video, complaint, and statements)
4	Federal Trade Commission Act: Substantiation <ul style="list-style-type: none">• CP: 119-132• Federal Trade Commission, Policy Statement Regarding Advertising Substantiation (Mar. 11, 1983)• FTC v. POM Wonderful, LLC (Commission Decision)
5	Federal Trade Commission Act: Endorsements, Fake Reviews, and Disclosures <ul style="list-style-type: none">• Endorsement Guides• Influencer Guides• Dot Com Disclosures• Sunday Riley Modern Skin Care, LLC (complaint and order)• Age of Learning (complaint and order)
6	Federal Trade Commission Act: Unfairness <ul style="list-style-type: none">• CP: 78-98

- Federal Trade Commission, [Policy Statement on Unfairness](#) (Dec. 17, 1981)
- [Apple, Inc.](#) (statements from Commission, Wright, and Ohlhausen)

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Federal Trade Commission Act: Pyramids

- Handout (available on TWEN)
- [AdvoCare International, L.P.](#) (complaint and order)

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Financial Consumer Protection: TILA

- CP: 195-237

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Financial Consumer Protection: FCRA

- CP: 238- 288
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Financial Consumer Protection: ECOA

- CP: 289-328

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Financial Consumer Protection: CFPB

- CP: 329-366

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Federal Trade Commission Act: Deception and Unfairness Applied to Privacy and Data Security

- Excerpt from DANIEL J. SOLOVE AND PAUL M. SCHWARTZ, CONSUMER PRIVACY AND DATA SECURITY
- [Nomi Technologies, Inc.](#) (complaint and statements)
- [Vizio, Inc.](#) (complaint and statements)
- [Lenovo, Inc.](#) (complaint and statements)
- *FTC v. Wyndham Worldwide Corp.*, 799 F.3d 236 (3d Cir. 2015)
- *FTC v. LabMD, Inc.*, 894 F.3d 1221 (11th Cir. 2018)

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Constitutional Limits on Consumer Protection: Commercial Speech Doctrine

- *Virginia St. Bd. of Pharmacy v. Virginia Citizens Consumer Council*, 425 U.S. 748 (1976)
- *Central Hudson Gas & Elec. Corp. v. Public Svs. Comm'n of New York*, 447 U.S. 557 (1980)

- *Mainstream Marketing Servs. v. FTC*, 358 F.3d 1228 (10th Cir. 2004)
- *POM Wonderful, LLC v. FTC*, 777 F.3d 478 (D.C. Cir. 2015)
- *Sorrell v. IMS Health, Inc.*, 131 S. Ct. 2653 (2011)
- *Milavetz v. U.S.*, 559 U.S. 229 (2010)

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Federal Trade Commission Act: Remedies

- CP: 147-170
- *FTC v. Figgie Int'l, Inc.*, 994 F.2d 595 (9th Cir. 1993)
- *FTC v. Commerce Planet, Inc.*, 815 F.3d 593 (9th Cir. 2016)
- *AMG Capital Mgmt, LLC v. FTC*, 141 S.Ct. 1341 (2021)

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State Consumer Protection Statutes

- CP: 40-46; 176-189
- Cooper & Shepherd, *State Unfair and Deceptive Trade Practices Laws: An Economic and Empirical Analysis*, 81 ANTITRUST L.J. 947 (2017)