

**FEDERAL CONSUMER PROTECTION LITIGATION**  
**Law 750-001**

2 Credit Hours  
Fall 2023

**Your Adjuncts:**

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**Class Schedule:** Monday, 4:00 to 6:00 p.m.

**Learning Outcomes:** Consumer protection matters have a significant place on the dockets of our federal courts. This course will immerse students in the subject using practical, “real world” applications over the span of 13 weeks. Upon completion of the course, students will be equipped with tools for:

1. Understanding the life cycle of a consumer protection case in federal court.
2. Applying knowledge of civil procedure to substantive law not previously studied.
3. Identifying strategies for obtaining your client’s desired relief.
4. Recognizing perspectives that drive the prosecution and defense of consumer cases.

**Office Hours:** Upon request. In general, we are more likely to have availability before or after class on Monday. Please call or email to schedule. We can alternatively make ourselves available to talk by phone or meet by Zoom. Ms. Kelly can also be available for more in-person meetings as requested since her home office is in Northern Virginia.

**Materials:** There is no required text or casebook. Materials will be made available online before the class for which they will be used. Materials will consist of: assigned excerpts of relevant treatises of the National Consumer Law Center (You will receive login credentials for its digital library. <https://library.nclc.org/>); relevant consumer protection statutes; select cases; actual briefs and pleadings filed in federal cases; and policy papers or law review articles considering policy issues in this field. In addition,

we ask that students bring a paper or online copy of the Federal Rules of Civil Procedure to each class.

**Grades:** Your grade will be based on three components:

- *First*, your class participation will account for 30% of your grade and will be determined by attendance, preparation, and your contributions to class discussion.
  - *Second*, 35% of your grade will be determined by the quality of work submitted during the practicum weeks.
  - *Third*, 35% of your grade will be determined by a final paper, which will consist of an academic writing (no fewer than 3,000 words and no more than 4,000 words, including footnotes) that analyzes an area or issue of consumer protection in the context of litigation in federal court. You may:
    - Advance a policy argument or criticism;
    - advance a legal claim or defense; or
    - make a civil procedure argument germane to consumer protection litigation.
- Any topic must be approved by us in advance of Week 11. Proposals shall be submitted by email and must include a short summary or outline of the proposed paper.

## **SCHEDULE**

### **Week One: Overview of Consumer Protection in Federal Court**

*Lecture and Class Discussion.* We will introduce you to the subject of federal consumer protection. We will discuss the areas of financial services litigation that are commonly litigated in federal courts across the country. We will specifically cover The Consumer Credit Protection Act, which comprises several consumer protection laws, including—among others—the Fair Debt Collection Practices Act, the Fair Credit Reporting Act, the Truth in Lending Act, and the Equal Credit Opportunity Act. We will also touch on other claims that are frequently utilized in consumer litigation, including the Racketeer Influenced and Corrupt Organizations Act (RICO) and other statutes that target predatory or high-interest internet lending. We will explain how these statutes are used in federal litigation on behalf of consumers and what claims are most frequently prosecuted.

## **Week Two: The Pleadings**

*Lecture and Class Discussion.* This course is not a civil procedure or federal courts refresher. But we will discuss the relevant Federal Rules of Civil Procedure as they operate in practice—specifically in the context of consumer law. We will discuss the nuts and bolts of the pleadings that set the stage for litigation, namely the complaint, the answer, and motions practice (e.g., motion to dismiss for failure to state a claim).

## **Week Three: Discovery**

*Lecture and Class Discussion.* We will explore what happens after the pleadings. Topics covered include initial disclosures, drafting discovery requests, drafting discovery responses, and preparing for and taking depositions.

## **Week Four: The Parties and Their Counsel.**

*Guest Lecturers and Discussions.* We will talk about the roles of plaintiffs, defendants, and their respective counsel. Leading defense attorneys in this field will offer behind the scenes perspectives and outline how to represent corporate defendants in federal consumer protection cases. We will contrast their experiences and advice with our own.

## **Week Five: The Judge**

*Guest Lecturers and Discussions.* We will examine the role of the judge in a federal consumer case. Two of the most respected federal judges in the Eastern District of Virginia will share their insight and experience.

## **Week Six: The Laws**

*Lecture and Class Discussion.* We will go in depth into some of the most litigated areas of consumer law in federal courts. We will teach you the nuts and bolts of claims brought under the Fair Credit Reporting Act, the Fair Debt Collection Practices Act, and other laws. This substantive primer will tee up a four-week practicum that will show you how the early stages of consumer law cases typically play out.

## **Week Seven: Practicum Part One – Diagnosis the Problem**

This practicum will present hypothetical clients (single-plaintiff fact patterns and case files) who have asked for your assistance in a consumer protection matter. We will go through the mechanics of the client intake interview, how to spot red flags, and when to agree to take a case.

## **Week Eight: Practicum Part Two – Drafting Pleadings**

Using the case file from Part One, we will draft complaints that seek appropriate relief and that will withstand motions practice from the defendants.

### **Week Nine: Practicum Part Three – Drafting Discovery**

Now that the case is underway, we will draft initial disclosures and offensive discovery requests, which target the information you need to prove your case. We will also explore discovery responses—both in the context of how you should respond to ensure compliance with the Federal Rules of Civil and how most parties respond in practice.

### **Week Ten: Practicum Part Four – Settlement Negotiations**

After learning about the value of your case through discovery, it's time to talk settlement. We will draft brief settlement memoranda that highlights the strengths and acknowledges the weaknesses of your cases. We will talk strategy for: (i) deciding when to settle and for how much; (ii) cooperating with opposing counsel; and (iii) how to present your case before a neutral, such as a United States Magistrate Judge.

### **Week Eleven: Consumer Class Action Litigation**

*Lecture, Discussion, and Guest Lecturers.* Following your single-plaintiff practicum, we will outline the mechanics of a class action under Federal Rule of Civil Procedure 23. You will hear from top class action litigators and the top legal mind who advocates on behalf of objectors.

### **Week Twelve: Arbitration in Consumer Cases**

*Lecture, Discussion and Guest Lecturers.* Not all cases make it to federal court. And some are not allowed to stay there. We will discuss when, why, and how cases go to arbitration. On a policy level, our discussion will consider the ways in which forced arbitration is a threat to consumer rights, and we will discuss the sometimes-undervalued benefits to arbitration. You will hear from two of the most knowledgeable and nationally recognized voices on each side of the contentious arbitration issue.

### **Week Thirteen: Regulatory and Political Perspectives**

*Guest Lecturers and Discussion.* So, what does it all mean? Our final class will endeavor to make sense of everything you (hopefully) learned by looking at regulatory and political perspectives on consumer issues. We will explain how the federal system keeps pace with the everchanging consumer landscape. Several of the nation's most respected regulators (or former regulators) in the financial services field will discuss the roles of entities like the FTC and the CFPB. You will also hear from one of the leading consumer protection legislators in the Virginia State Senate.