

Consumer Protection Law  
LAW 332

Fall 2023  
Tuesday & Thursday, 6:05-7:30pm

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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, privacy and data security law, and the economics of information.

**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
- Understand the economic issues at play in 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 8, 2023, 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* (7<sup>th</sup> Ed. 2012); JOHN SPANOGLIE ET AL., *CONSUMER LAW: CASES AND MATERIALS* (4<sup>th</sup> Ed., 2013); and ADAM J. LEVITIN, *CONSUMER FINANCE LAW* (2018). I also assign additional cases that you can download on Westlaw or Lexis, post outside readings on TWEN, and the syllabus contains links to most of the assigned FTC documents. The 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 is 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 for 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. I will not be recording class sessions on

Zoom, and recorded sessions will not be available for those who are absent from class.

**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

Week	Readings
1	<p><b>Economic Underpinnings of Consumer Protection</b></p> <ul style="list-style-type: none"><li>• Beales, Craswell, &amp; Salop, <i>The Efficient Regulation of Consumer Information</i>, 24 J.L. &amp; ECON. 491 (1981)</li></ul> <p><b>Consumer Protection Under the Common Law</b></p> <ul style="list-style-type: none"><li>• CP: 1-18; 33-39; 50-70</li></ul>
2	<p><b>Federal Trade Commission Act: Deception</b></p> <ul style="list-style-type: none"><li>• CP: 72-77; 98-119; 132-146</li><li>• Federal Trade Commission, <a href="#">Policy Statement on Deception</a> (Oct. 14, 1983)</li><li>• <i>Kraft, Inc. v. FTC</i>, 970 F.2d 311 (7<sup>th</sup> Cir. 1992)</li><li>• <a href="#">Telemarketing Sales Rule Guidelines</a></li></ul>
3	<p><b>Federal Trade Commission Act: Ad Substantiation</b></p> <ul style="list-style-type: none"><li>• CP: 119-132</li><li>• Federal Trade Commission, <a href="#">Policy Statement Regarding Advertising Substantiation</a> (Mar. 11, 1983)</li><li>• <a href="#">FTC v. POM Wonderful, LLC (Commission Decision)</a></li></ul>
4	<p><b>Federal Trade Commission Act: Endorsements, Fake Reviews, Disclosures, and Negative Options</b></p> <ul style="list-style-type: none"><li>• <a href="#">Endorsement Guides</a></li><li>• <a href="#">Google Pixel (Complaint and Order)</a></li></ul>

- [Influencer Guides](#)
- [Dot Com Disclosures](#)
- [Sunday Riley Modern Skin Care, LLC \(complaint and order\)](#)
- [Age of Learning \(complaint and order\)](#)

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#### **Federal Trade Commission Act: Unfairness**

- CP: 78-98
- Federal Trade Commission, [Policy Statement on Unfairness](#) (Dec. 17, 1981)
- [Apple, Inc.](#) (statements from Commission, Wright, and Ohlhausen)
- *FTC v. Amazon, Inc.*, 2016 WL 10654030 (Jul. 7, 2016)
- [Epic Games](#) (Complaint and Order)
- *FTC v. Fleetcorp Tech., Inc.*, 2022 WL 3273286 (Aug. 9, 2022)

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#### **Federal Trade Commission Act: Pyramids**

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

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

- [Nomi Technologies, Inc.](#) (complaint and statements)
- Health Breach Notification Rule
- [Betterhelp](#)
- *FTC v. Kochava, Inc.*, 2023 WL 3249809 (May 4, 2023)
- *FTC v. Wyndham Worldwide Corp.*, 799 F.3d 236 (3d Cir. 2015)
- *FTC v. LabMD, Inc.*, 894 F.3d 1221 (11<sup>th</sup> Cir. 2018)

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#### **Federal Trade Commission Act: Remedies and Rulemaking**

- CP: 147-170
- *AMG Capital Mgmt, LLC v. FTC*, 141 S.Ct. 1341 (2021)

- 9                   **Financial Consumer Protection: TILA**
- CP: 195-237
- 10                   **Financial Consumer Protection: FCRA**
- CP: 238- 288
- 11                   **Financial Consumer Protection: ECOA**
- CP: 289-328
- 12                   **Financial Consumer Protection: CFPB**
- CP: 329-366
- 13                   **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 (10<sup>th</sup> 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)
- 14                   **State Consumer Protection Statutes**
- Cooper & Shepherd, *State Unfair and Deceptive Trade Practices Laws: An Economic and Empirical Analysis*, 81 ANTITRUST L.J. 947 (2017)
  - *Shikida v. Bristol-Myers Squip Co.*, 2023 WL 2519857 (Sup. Ct. Hi., Mar. 15, 2023)