

Antonin Scalia Law School
George Mason University

Law & Regulation of Financial Institutions

3-credit course

Law 240-001

Fall 2025

Wednesday from 6:05pm to 9:00pm

Instructor

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Course Overview

Welcome to what has been described as the most bizarre, tangled financial regulatory system in the world! This course covers the law and regulation of financial institutions, with an emphasis on U.S. banking law and introductory-level material on securities and insurance law. Studying this material will provide students with an understanding of the various, and often complex, structures of U.S. financial institutions, as well as the substantive rules that apply to their activities.

The material covered in this course will require students to face questions and shape arguments relating to the past, present, and future of financial regulatory law and policy. Why do we have such an unusual financial regulatory framework? What activities are banks authorized to conduct? How do financial institutions make their money and what are the attendant risks? Are there externalities associated with such activities? And, if so, how should the government respond? Is the application of new technologies to the provision of financial services changing everything that came before, or is it simply more of the same?

Additionally, this course will include a variety of practical elements, such as understanding the multiple sources of banking, securities, and insurance law and reviewing specific actions taken by regulators. Throughout, the course will challenge students to consider how they would advise their client or what recommendation they would make to a senior financial regulatory counsel. Students will be expected to evaluate both sides of each issue and to persuasively articulate their position in class.

Perhaps most importantly, the class will strive to bring excitement and energy to the study of U.S. financial services law.

This course, including all assigned material and classroom discussion, does not represent the views of the Board of Governors of the Federal Reserve System or the U.S. government. All course materials and discussions represent the instructor's own viewpoint and should not in any way be construed as a statement or opinion on behalf of either the Board of Governors of the Federal Reserve System or the U.S. government.

Student Learning Objectives

Students will be able to demonstrate knowledge of the historical development of U.S. financial services law and how this history still shapes a wide range of current laws, regulations, and policies.

Students will be able to define the major legal forms companies use to engage in banking and other forms of financial services, the key legal powers that come with each form (especially with respect to securities and insurance activities), and the associated federal and state regulators that have jurisdiction over each legal entity and activity.

Students will be able to analyze fact patterns that place federal and state financial services laws into conflict and to describe how the law handles such circumstances, particularly in the context of national bank powers and state usury law, as well as the regulation of insurance companies.

Students will be able to demonstrate knowledge of the most important federal consumer financial laws and the powers and responsibilities of the newest federal regulatory agency in this area, the Consumer Financial Protection Bureau.

Students will be able to understand a basic bank balance sheet and to analyze its components under the critically important rules governing bank capital and liquidity.

Students will be able to analyze fact patterns to determine whether banks are in compliance with laws governing loans to one borrower, loans to bank insiders, transactions between banks and their affiliates, and prohibitions on bank tying.

Students will be able to describe the supervision and enforcement approaches and authorities used by the various federal regulatory agencies.

Students will be able to demonstrate knowledge of why banks and other financial institutions fail and the federal and state government's powers and responsibilities in resolving these failures.

Casebook

Barr, Jackson & Tahyar, *Financial Regulation: Law and Policy* (3d ed. 2021) ["BJT"].

Final Exam, Class Participation, and Student News Discussion

This course will be graded on the basis of students' performance on a final exam, with an additional class participation component (as described below).

The final exam will be limited open book, which means that you may use your casebook; the course PowerPoint slides; any notes or outlines that you have personally prepared; and copies of any statutory, regulatory, or other materials that are discussed in the casebook or in class.

Class participation will be a very important part of this course. Students will be required to participate frequently and substantively during each class meeting. Consistently insightful class participation may result in a discretionary one-third letter grade increase (e.g., B to B+) while a consistent lack of preparation may result in a discretionary one-third letter grade decrease (e.g., B to B-).

As part of the class participation requirement, beginning at week 2 of the course, at least one student per class will be required to present a financial services news topic to the class. Students may select their presentation date in advance, but involuntary assignments will be made for any classes that lack volunteers. Depending on the class size, students may be required to present on more than one occasion. Articles for presentation must be sent to jderr@gmu.edu 24 hours in advance of class.

Instructor Availability

As a part-time adjunct, I do not have an office at the law school. I will, however, make every effort to be available to students outside of class. You can always reach me by email, which is provided at the top of the syllabus. If you would like to communicate by phone, it is preferred that we schedule the date and time in advance. I will also be available before and after class.

Reading Assignments

The reading assignments primarily comprise the BJT casebook, and all statutory and regulatory provisions discussed within. Please pull all required caselaw reading (that is not already hyperlinked) from your preferred legal research database.

All the material contained in the following reading assignments (including the direct text of the statutory and regulatory provisions discussed within) *and* any additional material discussed in class may be tested on the final exam.

Other required reading assignments may be added to the material below during the semester. If any changes are made to the assigned material, I will be sure to provide sufficient advance notice either in class or by email.

Week 1—Introduction and History of Financial Regulation

Required Reading

- BJT: 1–21 (stop before “Payment Systems”); 35–60 (stop before “Securitization”); 122–128 (the “Classification Problem”)
- *Board of Governors of the Federal Reserve System v. Dimension Financial Corporation*, 474 U.S. 361 (1986)

Overview

- Introduction and Review of Syllabus
- What is a Bank?
- History of U.S. Financial Regulation: Founding to the Early 2000s

Week 2—History of Financial Regulation (Continued), Banking Basics, and Who Regulates Whom?

Required Reading

- BJT: 25–32 (Shadow Banking); 60–77; 79–83; 85–91 (skip notes); 139–144 (stop before “Income Statement”); 146–148; 167–181; 1012–1015 (Changing Monetary Policy Tools)
- *Camp v. Pitts*, 111 U.S. 138 (1973)

Overview

- [Student News Discussion]
- Financial Crisis of 2008 and Beyond
- Banking Business Basics and Balance Sheets
- The Federal Reserve and the Money Supply
- Banking Industry Structure
- Regulatory Structure: Who Regulates Whom and Why
- Entry into Banking
- Judicial Review of Chartering Decisions

Week 3—Preemption, Usury, and National Bank Powers

Required Reading

- BJT: 181–184 (Competitive Equality); 639–645 (federal preemption before and after the Dodd-Frank Act)
- *Barnett Bank v. Nelson*, 517 U.S. 25 (1996) (only read preemption portion of opinion, pages 27–37)
- 12 U.S.C. § 25b
- *Lusnak v. Bank of America*, 883 F.3d 1185 (9th Cir. 2018)
- [*Cantero v. Bank of America*, 602 U.S. 205 \(2024\)](#)
- BJT: 131–138 (Usury and *Marquette Nat'l Bank*); 186–192 (Fintech)
- 12 U.S.C. § 85
- BJT: 193–203 (National Bank Powers; skip “Government and Corporate Debt” section for now); 204–206 (stop before “Repo and Securities Lending”)
- 12 U.S.C. §§ 29, 371
- [*NationsBank of North Carolina v. Variable Annuity Life Insurance Company*, 513 U.S. 251 \(1995\)](#) (only read case syllabus and footnote 2 in the Court’s opinion)

Overview

- Preemption: Interactions Between Federal and State Law
- Usury and Most Favored Lender; Fintech Partnerships
- National Bank Powers

Week 4—Securities Law and National Banks’ Securities Activities

Required Reading

- BJT: 453–470 (securities regulation history and overview); 268–270 (SIPC)
- *Hodges v. Harrison*, 372 F. Supp. 3d 1342 (S.D. Fla. 2019) (only read up to the end of Count 1, pages 1342–1350)
- 15 U.S.C. §§ 77b(a)(1), 77c(a), 77d(a)
- <https://www.sec.gov/resources-small-businesses/exempt-offerings/private-placements-rule-506b>
- 12 C.F.R. §§ 220.4, 220.12 (margin rules)
- BJT: 203–204 (national banks’ government and corporate debt securities powers) and 209–219 (national banks’ securities powers, continued)

- *Securities Industry Association v. Comptroller of the Currency*, 577 F. Supp. 252 (D.D.C. 1983) (skip Section C on McFadden Act)
- *Securities Industry Association v. Board of Governors of the Federal Reserve System*, 468 U.S. 137 (1984) (only read case syllabus)
- *Securities Industry Association v. Board of Governors of the Federal Reserve System*, 807 F.2d 1052 (D.C. Cir. 1986)

Overview

- [Student News Discussion]
- Securities Regulation Overview
- Securities Registration
- Broker-Dealer Regulation (Margin Rules)
- National Banks' Securities Powers

Week 5—Insurance Law and National Banks' Insurance Activities

Required Reading

- BJT: 355–369; 387–390 (skip notes)
- 15 U.S.C. §§ 1011-15
- *World Trade Center Properties, LLC v. Hartford Fire Insurance Company*, 345 F.3d 154 (2d Cir. 2003) (skip Section I on Jurisdiction and skip Section III on Travelers' Section 1292(B) Appeal)
- *SEC v. Variable Annuity Life Insurance Company*, 359 U.S. 65 (1959)
- *Blackfeet National Bank v. Nelson*, 171 F.3d 1237 (11th Cir. 1999)
- BJT: 219-220
- 12 U.S.C. § 92
- 15 U.S.C. § 6712
- [*NationsBank of North Carolina v. Variable Annuity Life Insurance Company*, 513 U.S. 251 \(1995\)](#) (skip Section II in the opinion and focus on Section III)
- *Insurance Agents of America v. Ludwig*, 997 F.2d 958 (D.C. Cir. 1993)
- *Independent Insurance Agents of America, Inc. v. Hawke*, 211 F.3d 638 (D.C. Cir. 2000)

Overview

- [Student News Discussion]
- Insurance Regulation Overview

- Economic Principles Underlying Insurance
- McCarran-Ferguson Act
- Insurance Company Solvency Regulation
- National Banks' Insurance Powers

Week 6—Bank Holding Companies, Financial Holding Companies, Affiliate Transactions, and Mergers & Acquisitions

Required Reading

- BJT: 715–744 (holding companies); 239–245 (affiliate transactions); 745–756 (bank antitrust)
- 1995 Bank Merger Guidelines:
<https://www.justice.gov/sites/default/files/atr/legacy/2007/08/14/6472.pdf>
- *DOJ Withdraws From 1995 Bank Merger Guidelines* (Sept. 17, 2024): <https://www.justice.gov/opa/pr/justice-department-withdraws-1995-bank-merger-guidelines>
- DOJ's 2024 Banking Addendum to 2023 Merger Guidelines:
<https://www.justice.gov/atr/media/1368576/dl>
- FDIC Final Statement of Policy on Bank Merger Transactions:
<https://fdic.gov/system/files/2024-09/final-statement-of-policy-on-bank-merger-transactions.pdf> (read only pages 39–42 on monopolistic or anticompetitive effects)
- OCC Final Rule on Business Combinations Under the Bank Merger Act: <https://www.govinfo.gov/content/pkg/FR-2024-09-25/pdf/2024-21560.pdf> (skim only Appendix A, *Federal Register* pages 78,218–78,221)

Overview

- [Student News Discussion]
- Bank Holding Company Basics
- Financial Holding Companies
- Volcker Rule
- Thrift Holding Companies
- Subsidiaries of Banks
- Affiliate Transactions
- M&A and Antitrust Constraints

Week 7—Safety and Soundness: Capital Regulation

Required Reading

- BJT: 277–279 (what is capital?); 290–302 (Basel I basics and prompt corrective action); 303–323 (Basel II); 325–337 (Basel III); 341–346 (stress testing and Basel III critiques)

Overview

- [Student News Discussion]
- Capital Regulation (Basel I, II, and III)
- Prompt Corrective Action
- Stress Testing

Week 8—Safety and Soundness: Liquidity and Deposit Insurance

Required Reading

- BJT: 249–268 (bank runs, reserve requirements, and deposit insurance); 338–341 (Basel III liquidity requirements); 1007–1012 (Fed as Lender of Last Resort); 1015–1038 (Fed emergency lending authority)

Overview

- [Student News Discussion]
- Bank Runs and Panics
- Basel III Liquidity Requirements
- Federal Reserve Discount Window and Lender of Last Resort
- Deposit Insurance

Week 9—Prudential Rules; Consumer Financial Protection Bureau and Select Federal Consumer Protection Laws

Required Reading

- BJT: 225–230 (lending limits); 245–247 (loans to insiders)
- Title X of the Dodd-Frank Act (Sections 1001–1002; 1011–1017; 1021–1026): <https://www.gpo.gov/fdsys/pkg/PLAW-111publ203/pdf/PLAW-111publ203.pdf>
- BJT: 587–589 (federal consumer protection laws); 592–611 (CFPB overview); 637–639 (lending discrimination); 664–667 (Truth in Lending Act and credit cards); 676–677 (credit reporting)
- *Household Credit Services, Inc. v. Pfennig*, 541 U.S. 232 (2004)

Overview

- [Student News Discussion]
- Prudential Rules: Loans to One Borrower and Insider Lending
- Consumer Financial Protection Bureau Overview: Governance, Jurisdiction, and Authority
- Equal Credit Opportunity
- Truth in Lending

- Credit Reporting

Week 10—Federal Consumer Protection Law (Continued)

Required Reading

- BJT: 589–591 (neoclassical and behavioral views of consumer protection); 617–634 (mortgages and predatory lending); 675–676 (debt collection); 756–758 (tying); 695–701 (Community Reinvestment Act)
- *Freeman v. Quicken Loans, Inc.*, 566 U.S. 624 (2012) (RESPA case)
- 12 U.S.C. § 1972(1) (tying statute)

Overview

- [Student News Discussion]
- Mortgages
- Predatory Lending
- Debt Collection
- Tying
- Community Reinvestment Act

Week 11—Supervision and Enforcement

Required Reading

- BJT: 935–949; 952–960; 982–990
- *Dodge v. Comptroller of the Currency*, 744 F.3d 148 (D.C. Cir. 2014) (skip Section III at the end of the opinion)

Overview

- [Student News Discussion]
- Supervision: Background and Rating Systems
- Enforcement: Written Agreements; Cease-and-Desist Orders; Suspension, Removal, and Prohibition; Civil Money Penalties; and Criminal Penalties

Week 12—Bank Failure

Required Reading

- BJT: 1041–1050 (skip “open bank assistance” section); 1051–1055 (skip notes and problem); 1058–1064; 1065–1070; 1072–1087

Overview

- [Student News Discussion]
- Logic of Receivership
- Appointing a Receiver
- Structuring Resolution
- Marshaling Assets/FDIC Superpowers
- Paying Valid Claims in Order of Priority
- DFA Title II Orderly Liquidation Authority and FDIC “Single Point of Entry” Proposal
- Resolution Planning (“Living Wills”)

Week 13—Foreign Banking Supervision Overview and REVIEW SESSION for FINAL EXAM

Required Reading

- BJT: 801–805; 811–812; 814–817; 827–831

Overview

- [Student News Discussion]
- Foreign Banking Supervision Overview
- REVIEW SESSION for FINAL EXAM