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BANKING LAW SYLLABUS, SPRING 2017

Purpose of the Course: The purpose of this course is to teach the current law and practice in the field of banking law. Specifically emphasized will be the history and development of the unique US “dual banking” system comprised of overlapping Federal and state jurisdiction, along with comparisons to the unitary financial regulation more common in non-US jurisdictions. A sampling of subjects covered include: (i) the role of banking regulators, such as the Federal Reserve, Office of the Comptroller of the Currency and state banking regulators; (ii) the Volcker Rule and the “orderly liquidation authority”; (iii) the regulation of bank holding companies; (iv) the regulation of non-US banks operating in the US; (v) the regulatory impact of the Dodd-Frank Act; (vi) panics, retail and wholesale “runs” on banks; (vii) public policy and banks; and (viii) retail (*i.e.* consumer) banking.

Learning Objectives: By the end of the course, you should be:

- Conversant with banking law’s historic development and how it shaped today’s bank regulatory regime.
- Familiar with and able to navigate the various overlapping legal and regulatory regimes applying to banks and bank holding companies.
- Knowledgeable of the root causes of bank panics and wholesale runs (including particularly the wholesale runs which occurred during the 2008 financial crisis) and the regulatory framework which has evolved to address this systemic risk.
- Able to critically compare the bank regulatory system in the US comprised of multiple state and federal regulators with the “single financial regulator” system operating in many other jurisdictions.
- Understand the underlying public policy objectives for macroeconomic regulation and bank regulation.

Course Materials: Barr, Jackson, Tahyar, *Financial Regulation: Law and Policy*,” 1st Edition, 2016 (Foundation Press) is required for this course.

Additional course materials will be made available via TWEN, provision of a citation or in-class handouts.

Classes: This class (CRN: 24581) is scheduled to meet for two credit hours per week, on Mondays from 6:10 – 8 pm in [].

Attendance and Preparation: Students are expected to attend classes regularly and to prepare for classes conscientiously. If you miss class frequently or are unprepared several times, your grade may be lowered. Alternatively, I may ask the Registrar to withdraw you from the course. Sometimes you can't avoid missing a class. If you know in advance that you will be missing a class for a compelling reason, or if you have missed a class due to illness or emergency, please send me an e-mail, briefly explaining the situation.

Lateness: Students are expected to be on time to class. However, it is better to come to class late than not at all. You may walk in late if you have a good reason, as long as you don't abuse this privilege.

"TWEN" (The West Education Network): A course page for this class is set-up on TWEN. TWEN gives me a quick way to reach all of you with any announcements, Syllabus changes, handout materials, interesting links, etc. It also gives me a way to extend class discussion beyond the classroom hours.

Final Grade for the Course: The course is based on the results of a final exam.

This class will be subject to a curve which will be calculated in accordance with law school policy.

Computer Policy: Computers are to be used during class for taking notes and no other purpose. They are not to be used to "surf the net" or send e-mail or instant messages. Violations of this rule may lead to you being prohibited from using a laptop during class.

Communications: The best way to communicate with me is by e-mail at the above address. I will get back to you within 24 hours. While I do not maintain regular office hours, if you need to speak with me in person, we can set up an appointment either before or after class or at some other mutually convenient time.

Summary of Course:

It will be necessary to update reading materials or to modify class content based on legal or regulatory developments. Nonetheless, the below is a good guide to the topics we will cover. All of the below reading items are to be found in Barr, Jackson, and Tahyar (“BJT”), posted on TWEN, via citation or handout in class. All “Required Readings” are due in advance of the class they are related to.

#	Summary	Questions Considered	Readings
1	How we got here: Role of specie, “fractional reserve” banking, Hamilton v. Jefferson and the Bank of the United States, Jackson and the Second Bank of the United States, “Free Banking” era, National Bank Act, Federal Reserve Act, Glass-Steagall and the depression era, Reigle-Neal, Graham-Leach-Bliley	What is the function of a bank? What is “free banking”? What is the “dual banking” system?	Required Reading: BJT 1.2 Recommended Reading: BJT 1.1
2	The regulators, <i>i.e.</i> Federal Reserve, Office of the Comptroller of the Currency, Federal Deposit Insurance Corporation, National Credit Union Administration and state regulators; “outer limits” test; Abolition of Office of Thrift Supervision by Dodd-frank Act; Modern day chartering process (administrative) vs. historical process (legislative or executive); Federal Reserve prior approval of acquisition of bank through intermediating entity	Is the chartering process for a national bank consistent with its “free banking” origin? What are the pros and cons of maintaining a “dual banking” system? Is the Financial Stability Oversight Council necessary? Is it overreach?	Required Reading: Week 2 Reading Materials (on TWEN) BJT 1.3, 2.1 Recommended Reading: BJT 1.4
3	Permitted bank activities and investments, lending limits, debt previously	What is the rationale for limiting the activities which banks may engage	Required Reading: BJT 2.2

	contracted and the limitations imposed by the Volcker Rule	in? Why is the debt previously contracted regime so flexible?	Recommended Reading: 12 USCA §§ 24 and 29
4	Bank balance sheets; safety and soundness of banks, bank capital and reserves, application of Basel III, “contingent capital” and the supervision and examination of banks	Are capital regulations necessary? Can a disclosure regime provide an alternative market-based mechanism? What are some of the mechanisms used to ensure the safety and soundness of banks?	Required Reading: BJT 1.5, 2.5 Recommended Reading: BJT 2.7 Robert E. Lucas, Jr., “The U.S. Recession of 2007-201?” Milliman Lecture, University of Washington, May 19, 2011, p. 19-36, http://econ.washington.edu/files/2013/05/millimansl.pdf
5	Bank Holding Company Act of 1956, 1970 amendment thereto, Regulation Y and the “laundry list” of permissible activities “closely related to banking”; bank holding companies and financial holding companies	Consider the pros and cons of different regulatory regimes applying to banks and their holding companies. What do banks actually do? Why does regulation of banks in the United States extend beyond the actual bank?	Required Reading: BJT 6.1 Recommended Reading: “Anti-Tying Restrictions of Section 106 of the Bank Holding Company Act Amendments of 1970,” 68 FR 52,024 (August 29, 2003), Federal Reserve System, Docket No. Op-1158 (on TWEN)
6	Regulation W and inter-affiliate activities; restrictions on tying	What is the reason for restricting activities of affiliates of banks? To what extent are tying protections necessary?	Required Reading: BJT 2.3 Recommended Reading: “Anti-Tying Restrictions of Section 106 of the Bank Holding Company Act Amendments of 1970,” 68 FR 52,024 (August 29, 2003), Federal Reserve System, Docket No. Op-1158 (on TWEN)
7	Role of central banks; lender of last resort;	To what extent, if at all, should central banks be	Required Reading: BJT 9.1

	activities of the Federal Reserve; central bank independence	independent? What is the lender of last resort role and is it necessary?	
8	Supervision of banks; role of bank examiners	What is the historical origin of the modern day bank examiner? How effective is on-sight supervision? What is the role, if any, for self-regulatory organizations?	Required Reading: BJT 8.2, 9.2
9	Resolution of banks, FDIC's liquidation regime, Federal Reserve's bank holding company responsibilities, New York State "ringfencing," the Dodd-Frank "orderly liquidation regime" and potential alternatives; source of strength doctrine and "single point of entry"; shadow banking	Are any institutions "too big to fail"? What are the consequences of failure? Does failure have any positives? What trade-offs are required in return for higher economic security?	Required Reading: BJT 9.3 Recommended Reading: BJT 6.2 Paul L. Lee, "The Source-of-Strength Doctrine: Revered and Revisited – Part I," 129 Banking L.J. 771 (2012)
10	International activities of US banks, Regulation K, International Banking Act of 1978 and regulation of foreign banks in US including concept of "national treatment"	Does "national treatment" provide a level playing field? Are foreign banks operating in the US generally competitively advantaged or disadvantaged in comparison to US banks?	Required Reading: BJT 6.3
11	Deposit insurance, Consumer Financial Protection Bureau, consumer finance	Is the Federal Deposit Insurance Corporation a public good? Ought <i>caveat emptor</i> to apply to consumer financing? Should there be a market dominance requirement, similar to that existing in antitrust law, for a tying violation? What are the pros and cons of the independence the Consumer Financial	Required Reading: BJT 2.4, 5.1

		Protection Bureau had before it was ruled unconstitutional?	
12	Anti-discrimination legislation, predatory lending and the rise and fall of sub-prime lending and the vehicles that facilitated sub-prime lending; usury and truth-in-lending and other disclosure requirements	Did federal housing and lending policy fuel the subprime crisis? Is there a way to balance broader availability of consumer finance with the maintenance of high underwriting standards?	Required Reading: BJT 5.2, 5.3
13	Privacy, bank secrecy, money laundering and economic embargoes	Are there societal benefits to “bank secrecy” and, if so, what are they? The United States asserts extraordinary broad jurisdiction with respect to sanctions regimes. Is this an undue incursion into the sovereignty of other nations or justified by the nature of the international financing system?	Required Reading: BJT 7.1 Recommended Reading: BJT 7.2
14	Loan agreements and documentation, secondary trading, asset-backed securities, securitizations and lender liability; final exam review	Why are loan agreements relatively standardized in the commercial markets? What are some of the reasons loans might be syndicated? In what circumstances can banks be deemed to have lender liability? Did mortgage-backed securities fuel the 2008 financial crisis? How does ensuring the “safety and soundness” of financial institutions square with allowing for financial innovation?	Required Reading: N/A Recommended Reading: <i>Banco Espanol de Credito v. Security Pacific Nat. Bank</i> , 973 F.2d 51 (1992)