University of Washington School of Law
Winter 2019 7 January 2019 draft—subject to change

Payment Systems and FinTech
A511 AB (3 credits)
Tuesday/Thursday 10:30 am-12:20 pm, William Gates Hall 118

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SYLLABUS

Course Description
Overview of law of money and payment systems including the UCC provisions governing checks, federal and state laws governing electronic fund transfers including Internet and mobile payments, and the emergence of alternative payment systems including cryptocurrencies. The impact of the rise of disruptive FinTech innovators on government regulators and private governance schemes will also be considered.


- Situate legal issues in their extra-legal context by recognizing what payments laws cover and where there are gaps in payments law in light of how payment systems work and the nature of disruptive FinTech innovation;
- Apply selected substantive and procedural payment law doctrines to issues that commonly arise in the regulation of payment systems;
- Analyze how competing stakeholder interests may be handled under different payment law regimes and how possible future changes in technology and law might affect those interests; and
- Work collaboratively with others on Team Based Learning and other activities related to the course.

Textbook
Required
• Any recent commercial law statutory supplement such as: Walt & Warren, Foundation Press Commercial Law, Selected Statutes, 2018-2019 Edition or any similar statutory supplement, it does not have to be 2018-2019, it can be any recent (within 2-3 years) edition
• Articles and other reading distributed in hard copy in class and by PDF through the Canvas site and designated as required readings

Gallagher Law Library Course Reserve/Electronic Course Reserve

Grading
Grades will be based 50% on the final exam and 50% on other assessments including:
• Open book quizzes in Canvas to confirm understanding of reading assignments;
• Multiple choice quizzes administered as part of Team Based Learning in-class discussion activities;
• Poll everywhere multiple choice questions;
• Participation in class discussions; and
• Other assessment methods as announced in class.

Final Exam
The exam will be 3 hours and may include essay, short-answer and multiple-choice questions.

The exam is currently scheduled for 8:30 am on Monday, March 18, 2019. You are responsible for checking https://www.law.washington.edu/students/exams/default.aspx to verify date and start time of the exam. [Do *NOT* refer to information contained in the main UW central university online course catalog which may not be correct.]

Students may use a computer to write their exam answers, or may write them by hand using specially prepared answer sheets. In recent years, all students have chosen to write their exams by computer. No exam answers written in bluebooks will be accepted. If you want to write your exam answers by hand, please provide the Academic Services Offices of this as soon as possible so that a separate copy of the exam with spaces for handwritten answers can be prepared in advance of the exam date.

Students using a computer to write their exams are required to use ExamSoft in Non-Secure with Blocked Internet mode.

This exam will be “OPEN” BOOK with regard to hard copy materials and digital materials stored to the hard drive of your own computer: i.e., you are permitted to use the course textbook; your own outline; some else’s outline, commercial study aids, etc.; provided they are in hard copy form or digital form stored to the hard drive of your computer. You are permitted to search inside digital records stored on
your hard drive using the document search function on your computer (usually “CTRL + F”). You are *NOT* permitted to access files on the Internet or other online resources during the exam.

**Class Participation/Expectations**
Students are expected to attend class and to be prepared to answer questions about the assigned reading materials if called upon in class. A student may pass when called on if unprepared, but will then be expected to answer a question in the next class. If a student is called upon and found unprepared on several occasions, this will constitute unsatisfactory class participation and may result in the student’s final grade for the course being lowered. If you cannot attend class, please notify me in advance to request an excused absence.

**Team-Based Learning**
From time to time, students will engage in “Team Based Learning” activities in class. Teams in this class do not meet outside of class; teams are designed to provide a framework for class discussion. After drop/add, I will randomly assign students to teams. These teams will remain the same for the entire quarter.

Minor team based discussion activities include discussing as a group answers to informal class discussion questions or Poll Everywhere questions.

Major team-based learning and discussion activities provide “review and synthesis” opportunities:
- Students take a multiple choice test as individuals, and turn in their answers;
- Students break into teams and answer the same multiple choice test as a group using a scratch-off sheet to record their answers (I will provide the “Immediate Feedback Assessment Technique” scratch off cards); and
- Students will be given a more complex problem to solve in teams; team results will be reported to class and followed by class discussion.

Before the end of the quarter, students will be asked to assess the performance of their team members by noting something that the team member has done well, and something that can be improved. The “team based learning” part of students’ grades will be based on my observation of their behavior in class as well as the feedback students provide to each other and receive from each other. For example, writing “Well done!” for what peers did well and “Keep up the good work!” for what could be improved will result in a student receiving 0/10 possible points.

Although students are free to meet as teams outside of class, they are not required to do so. I will not assign any team activities other than those that take place during class time.

**Course Evaluation**
Course evaluations are open online during the last week of classes. Please bring a laptop or mobile device to class on this date to participate in the evaluation.
**Optional Exam Review Session**
An optional exam review session will be scheduled for the week of March 11. The optional exam review session will focus on strategies for answering the questions on the Spring 2012 Payments Law final exam which has been posted to the Course Materials page in Canvas.

**Rescheduled Classes:**
Due to unavoidable schedule conflicts, I regret I will have to miss class on Tuesday January 15. This class will be made up with some combination of supplemental lectures, online instruction or other activities. At this time, I do not anticipate missing any other classes.

**Podcasts:**
Audio recordings of classes will be made and the recordings distributed as podcasts. Access to the podcasts will be restricted to students enrolled in this class and will end after the exam. The quality of the recordings is generally quite low.

**Electronic Devices**
Use of mobile phones, computers and other electronic devices during class for class-related activities is permitted. Other uses, especially any that might disrupt class, are not permitted. In addition, the Law School’s policy on exams, paper and use of computers on exams is set out here: [https://www.law.washington.edu/students/academics/exams.aspx](https://www.law.washington.edu/students/academics/exams.aspx)

**Communications Protocols:**
I believe that email communications should be treated like written communications, not spoken communications. I try to respond to email communications from students with regard to class matters in a timely and effective way. I regret that sometimes I cannot respond as quickly as I would like, and that sometimes I lose track of emails altogether. If you suspect that I have lost track of a message that you have sent and you still need a reply, please resend the message noting that it is a second attempt. To assist me in keeping up with my emails, I ask that students emailing me with questions related to class take the time to organize their thoughts before composing and sending the message, and to be concise. I also ask that you acknowledge receipt of my reply, even if it is only to say “thanks.”

**Guests and Visitors**
Anyone wishing to attend class as a visitor or guest of a student should contact me in advance to confirm that will be OK.

**Law School Attendance Policy**
Under changes to ABA Accreditation Standard 304, adopted in August 2004, a law school shall require regular and punctual class attendance.

At any time after the fifth week of a course, a student who has been determined by the instructor to have attended fewer than 80 percent of the class sessions in any course will be required to drop the course from his or her registration upon the instructor’s so indicating to the Academic Services Office.
**Access and Accommodation**

Your experience in this class is important to me. If you have already established accommodations with Disability Resources for Students (DRS), please communicate your approved accommodations to me at your earliest convenience so we can discuss your needs in this course.

If you have not yet established services through DRS, but have a temporary health condition or permanent disability that requires accommodations (conditions include but not limited to; mental health, attention-related, learning, vision, hearing, physical or health impacts), you are welcome to contact DRS at 206-543-8924 or uwdrs@uw.edu or disability@uw.edu. DRS offers resources and coordinates reasonable accommodations for students with disabilities and/or temporary health conditions.

Reasonable accommodations are established through an interactive process between you, your instructor(s) and DRS. It is the policy and practice of the University of Washington to create inclusive and accessible learning environments consistent with federal and state law.

**Modules**

This course will include the following modules:

1. **Introduction and Overview of Payment Systems, Payments Law & FinTech**
   This module will provide an overview of how paper and electronic payment systems operate; how US law regulates conventional payment systems; the factors contributing to the rise of disruptive “FinTech” innovation in payment systems; and how payments law is adapting to those innovations.

2. **Negotiable Instruments Law**
   This module will provide a brief overview of negotiable instruments law which applies to checks, drafts and promissory notes. Negotiable instruments were generally the most important payment systems in the US from 1600 until around 2010. The law governing negotiable instruments emerged in the 18th and 19th centuries and so often appears to be profoundly counterintuitive to ordinary people and even most lawyers today. They are governed by UCC Article 3.

3. **Check Truncation**
   Computers were introduced into the process of clearing and settling bank checks in the 1960s, and starting in the 1980s, the effort to replace paper checks with digital records—known as “check truncation”—began in earnest. It was not until around 2010, however, that the volume of paper checks being processed in the US began to decline sharply until it was recently completely eliminated. This module will cover the legal framework for check truncation. Clearing and settlement of payments by check were once subject only to UCC Article 4, but in recent years, have increasingly come under direct federal regulation.

4. **Credit Cards**
Credit cards began to achieve widespread adoption in the US in the 1960s. In 1970, Congress imposed a consumer protection framework on credit cards—Regulation Z—and that framework has continued to evolve over the years. As credit cards became more popular, antitrust law issues related to the market power of card networks were raised. The relationship between merchants accepting credit card payments and banks remains largely unregulated.

5. **Debit Cards & EFT**
Although debit cards may seem more similar to credit cards than electronic fund transfers (EFT) and EFT may seem more similar to wire transfers than debit cards, they are both regulated under the Electronic Funds Transfer Act of 1978. Unlike credit cards which involve a bank extending credit to a card holder, debit cards result in an immediate debit to the card holder’s bank account. Unlike wholesale funds transfers which are executed quickly, are final and irreversible as soon as made and may be for millions of dollars, EFT transactions may take 2-3 days to process and may be reversed.

6. **Wire Transfers**
The wholesale wire transfer system of the US includes Fedwire, operated by the central bank, and the Clearinghouse for Interbank Payments (CHIPS) operated by The Clearing House, a private consortium of banks established in 1853. On every day that American banks are open for business, more than US$ 2 trillion a day is sent over the Fedwire and more than US$ 1 trillion a day is sent over CHIPS (i.e., the combined total can reach US $ 4 trillion a day). These payment transactions are regulated by UCC Article 4A and regulations issued by the Federal Reserve Board.

7. **Mobile & API**
Under US payments law, mobile payments are covered by bewildering patchwork of overlapping regulations depending on how the mobile payment is originated and processed. Mobile payments have not been as popular in the US as in many other countries as a result of “path dependency” and “lock-in” to older electronic payment systems based on payment cards and checks. The EU has pushed forward with a new regulatory framework designed to push banks to open up their systems to disruptive innovators using “application programming interfaces” (APIs). By contrast, US regulators are taking a more cautious, market-oriented approach to the spread of APIs.

8. **Blockchain & Cryptocurrencies**
In recent years, the idea that blockchain and cryptocurrencies represent the future of financial services has captured the imagination of innovators, investors, financial services firms, corporations, and consumers around the world. Many experts remain unconvinced, however, and believe their current popularity is evidence of a speculative bubble.

**Reading Assignments** (tentative, subject to change)

**WEEK ONE 7 January 2019**
**CLASS 1 – Tuesday 8 January 2019**
Topic: Introduction to Payments Law and FinTech
Readings: BLJ pp. 1-27 Chapters 1 & 2 Introduction and overview
Canvas Module One: Intro

CLASS 2 – Thursday 10 January 2019
Topic: Introduction to Checks
Readings: BLJ pp. 29-45 Check System
   Barr, Jackson & Tahyar, Financial Regulation: Law & Policy (2018), Chapter 7.1: Introduction to Payment Systems
   Cagle, Disappearance of AI, Forbes 2019
Canvas Module One: Intro

WEEK TWO 14 January 2019
CLASS 3 – Tuesday 15 January 2019
Class rescheduled (JKW out of town)

CLASS 4 – Thursday 17 January 2019
Topic: Introduction to Negotiable Instruments Law
Readings: McJohn Chapters 1-4, pp. 1-60
Canvas Module Two: Negotiable Instruments

WEEK THREE 21 January 2019
CLASS 5 – Tuesday 22 January 2019
Topic: Introduction to Negotiable Instruments Law
Readings: McJohn Chapters 5-8, pp. 61-126
Canvas Module Two: Negotiable Instruments

CLASS 6 – Thursday 24 January 2019
Topic: Review Introduction to Payment Systems BLJ, BJT and Cagle Disappearance of AI
Readings: review readings from Week 1
Team Based Learning: Quiz and Discussion Problem, Intro to Pay
Canvas Module One: Intro

WEEK FOUR 28 January 2019
CLASS 7 – Tuesday 29 January 2019
Topic: Introduction to Negotiable Instruments Law
Readings: McJohn Chapter 9, pp. 127-145
Canvas Module Two: Negotiable Instruments

CLASS 8 – Thursday 31 January 2019
Topic: Introduction to Negotiable Instruments Law
Readings: McJohn Chapter 10, pp. 147-160
Canvas Module Two: Negotiable Instruments