

Financial Law

Module Introduction and Overview

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1 Introduction to the Module

The module aims to examine and critically discuss the fundamental concepts of financial law in the light of market developments in national and international financial markets. It builds upon the introductory module, *Introduction to Law and to Finance*, and complements the more specialist modules, *Legal Aspects of International Finance*, *Legal Aspects of Corporate Finance* and *Regulation of International Capital Markets*.

This module (*Financial Law*) will examine the legal aspects of finance. It will outline the basic legal principles and institutional preconditions of finance and financial markets. It will therefore complement the remaining law modules, which are concerned with more specific topics. Indeed, the module *Legal Aspects of Corporate Finance* is specifically concerned with the legal aspects of equity and debt finance from the point of view of corporations as borrowers in national and international financial markets. On the other hand, *Legal Aspects of International Finance* is not concerned with any type of lender or borrower in particular but it focuses on the transactions and instruments by which borrowers and lenders come together and exchange money in financial markets.

This module, *Financial Law*, will neither focus on borrowers and lenders nor will it exclusively examine the instruments, contracts and transactions by which finance is supplied. It will nevertheless focus on the broader picture; it will examine finance against the general institutional framework of market-based economies. It will seek to outline the legal institutions which are necessary for the development of financial markets and then it will provide a concise overview of the most basic of them. The module will be based on English financial law although it may occasionally adopt a comparative perspective of the laws of other jurisdictions with key international financial centres.

There is no generally accepted definition of financial law. Generally, the concept relates to the legal rules relating to finance, finances and financiers – in other words, the rules relating to the process of raising or providing funds or capital or furnishing credit to another person. Financial law is therefore a broad concept, which may include the legal framework applicable to investors, depositors or lenders, financial intermediaries, borrowers and issuers, financial instruments, transactions and contracts, markets and exchanges, or even public authorities overseeing that process. In short, the subject matter is so wide that it cannot possibly be examined in its entirety. Hence, this introductory note will set the boundaries of this module in the light of the objectives of the programme and the content of the remaining modules.

As a first rule of thumb, this module will not examine issues that form part of the remaining modules. As a result, the module will not examine the important question of regulation and supervision of financial markets by public authorities, which is the subject of the elective module, *Regulation of International Capital Markets*. Further, it will not examine the most basic and fundamental rules of contract law, fiduciary duties and tortious liability,

which are examined by *Introduction to Law and to Finance*. It goes without saying that an understanding of the basic concepts of English law as they were presented in that first module is essential for students studying this present module. In addition, this module will not address the question of corporate finance from the perspective of the borrowing or issuing corporation. This does not mean that the legal aspects of corporate finance as such will not be addressed at all. We will simply ignore those legal aspects that are exclusively relevant for corporate borrowers and issuers to the extent that they are studied in the module, *Legal Aspects of Corporate Finance*.

Further, the purely contractual framework of international finance, including the practicalities and mechanisms of international loans, bonds and derivative transactions will also not be addressed. To offer a somehow crude example, the technicalities of international syndicated loans will be ignored as they form part of *Legal Aspects of International Finance*, but the basic foundations and principles of the law of loan agreements will be examined. Clearly, the basic law of loan agreements applies not only to international commercial loans but also to other forms of finance, including consumer finance and lending.

Essentially, this module will be concerned with the key legal aspects of finance in an attempt to present rules of general application regardless of the specific form that a financial transaction may take in a given context. The objective of the module is to enable you to understand the broader legal framework within which financial markets operate, delegating the study of more specialist topics to the remaining law modules of the programme. Within the ambit of the module objective, this module also reflects on the contemporary issue in the financial markets, *ie* the banking crisis of the Northern Rock, which led to the promulgation of the Banking Act 2009.

2 The Module Authors

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3 Study Materials

This study guide is your central learning resource as it structures your learning unit by unit. Each unit should be studied within a week. It is designed in the expectation that studying the unit and the associated core

readings will require 15 to 20 hours during the week. In addition to the study guide, you will have access to two key texts and the module readings.



Key texts

Ellinger EP, E Lomnicka, CVM Hare (2011) *Ellinger's Modern Banking Law*. 5th Edition. Oxford: Oxford University Press.

McKendrick E (Ed.) (2016) *Goode on Commercial Law*. 5th Edition. London: Penguin.

Module readings

You are provided with access to a selection of academic articles and extracts from books, which you are expected to read as part of your study of this module. You will note from reading them that the topics covered in these articles often vary widely from the study guide. The module reading articles are often more technical or adopt a more in-depth approach. This should not put you off, as many were written with an academic audience in mind. These articles were selected so that the central arguments and concepts could be understood and appreciated at a level appropriate to this module.

Optional reading

You are provided with all the reading essential for this module, and we do not expect you to undertake extra reading on your own, partly because not all students have ready access to good libraries or bookshops. However, useful articles are sometimes suggested to augment your study of the module units, and the reference section of each unit lists academic articles, book chapters or web-based sources that you can choose to read if you wish to further investigate a particular topic. Many of these readings can be accessed on the Internet, but it is important to note that they will not be assessed in examination or assignments.

Although not required, we think that you will enrich your study of this module by looking at such articles. Indeed, you are encouraged to choose your own additional reading on topics related to global finance. You can do this through searching the internet and by making use of the online academic journals available through the University of London Online Library.

You are also recommended to browse through the key texts for additional coverage of the topics studied in this module.

4 Module Overview

Unit 1 Introduction to Financial Law

- 1.1 Introduction
- 1.2 The Banking System
- 1.3 Capital Markets
- 1.4 The Importance of Law for Financial Markets
- 1.5 The Legal Preconditions for Efficient Financial Markets

- 1.6 The Institutional Preconditions for Efficient Financial Markets
- 1.7 Conclusion

Unit 2 The Needs of Finance and the Character of English Financial Law

- 2.1 Introduction
- 2.2 The Needs of Finance
- 2.3 The Nature of English Financial Law
- 2.4 The Principal Sources of English Financial Law
- 2.5 Conclusion

Unit 3 Deposits and Bank Accounts

- 3.1 Introduction
- 3.2 Bank Deposits and the Financial System
- 3.3 The Banker–Customer Relationship
- 3.4 The Legal Properties of Bank Accounts
- 3.5 Confidentiality and Data Protection
- 3.6 The Law of Electronic Banking
- 3.7 Conclusion

Unit 4 The Law Relating to Money and Payments

- 4.1 Introduction to Money and Payments
- 4.2 The Legal Concept of Money
- 4.3 The Legal Concept of Payment
- 4.4 Payments by Bank Transfers
- 4.5 Payment Systems – Clearing and Settlement
- 4.6 Conclusion

Unit 5 The Law Relating to Loans and Credit

- 5.1 Introduction to Lending and Bank-Based Finance
- 5.2 Forms of Credit
- 5.3 The Loan Agreement and Principal Questions of Law
- 5.4 The Law Relating to Consumer Lending
- 5.5 Conclusion

Unit 6 The Law of Secured Finance

- 6.1 Introduction to the Mechanisms of Credit Enhancement
- 6.2 The Economic Rationale of Secured Finance
- 6.3 Forms of Security – Pledge, Mortgage and Charge
- 6.4 Issues of Priority and Enforcement
- 6.5 Key Considerations
- 6.6 Conclusion

Unit 7 The Law Relating to the Control of Financial Crisis

- 7.1 Introduction to the 2008–2009 Financial Crisis
- 7.2 The Northern Rock Banking Crisis
- 7.3 The Banking Act 2009
- 7.4 The Definition of a Failing Bank
- 7.5 Conclusion

Unit 8 Questions of Liability

- 8.1 Introduction to the Concept of Liability
- 8.2 Doctrinal Bases of Liability
- 8.3 Advice
- 8.4 Lender Liability
- 8.5 Conclusion

5 Learning Outcomes

When you have completed your study of this module and its core readings, you will be able to:

- outline and discuss the importance of financial law for the creation and development of strong financial markets
- analyse the institutional framework that is necessary for the provision of credit and the operation of financial markets
- explain and critically discuss the basic legal components of the financial system
- examine and discuss the key legal problems that relate to the provision of finance and the ways in which financial institutions address such problems
- critically discuss the legal principles and rules applicable to bank deposits and the relationship between the banker and the customer
- discuss and analyse the basic legal principles underpinning commercial and international banking transactions
- identify and critically evaluate the legal risks involved in the process of agreeing and documenting the most basic financial agreement
- analyse and discuss the basic legal components of the payment systems of key jurisdictions of the world
- critically evaluate the nature, scope, economic function of security in the provision of finance
- identify and critically evaluate the systemic risk in the financial market encountered by the financial authority.

7 Study Advice

As with all other modules, you are advised to have a pen and paper while you are studying the text. Make sure that you complete the readings, making clear notes on important points, and answer any questions or exercises set. If you are not confident that you have understood a particular section, go back and try again. It is better to spend more time in understanding a particular point than continuing regardless. The module is structured in its development of the study material, and so future sections build on previous information, and you will be at a disadvantage if you did not understand it in the first place.

We do not assume that you have access to well-stocked libraries or bookshops, but we do assume that you have access to the web and to specialist electronic resources, which form part of the module material, like WESTLAW. You will be told when to connect to the internet and for what purpose.