

**253.11 sec. 001 - E-Commerce & Product Counseling: A Consumer Protection Perspective  
Spring 2019**

***Instructor Information***

**Instructor:** Monami Chakrabarti  
**Email:** monami.chakrabarti@gmail.com

**Office:** Café Zeb - approximately 45 minutes to an hour before class  
**Office Hours:** By appointment. Please email instructor to set up a time

***Course Information***

**Meetings:** 6:25 PM - 8:15 PM, Tuesdays  
**Location:** Boalt 10  
**Credit Hours:** 1

***Textbook/Course Materials***

Readings and course materials will be posted on bCourses, prior to each class. Readings will be posted at least one week before class, ideally two (2) weeks before class.

***Course Description***

This course will focus on legal and policy considerations related to e-commerce and consumer protection, and will allow students to develop practical lawyering skills from an in-house counsel perspective. With financial services as a use case, this course will cover topics such as FTC and CFPB guidance, UDAP risks, privacy considerations, consumer consent, transmission of payments, digital contracting, and best practices for mobile app user interfaces.

Although the course will highlight financial services, students will analyze novel e-commerce questions applicable to all industries (e.g., biometric authentication and geolocation tracking), and will draft agreements including terms of use and privacy policies.

***Students in the course will be expected to achieve the following Berkeley Law Learning Outcomes:***

- (a) Knowledge and understanding of substantive and procedural law;
- (b) Legal analysis and reasoning, legal research, problem-solving, and written and oral communication in the legal context; and
- (c) Using the law to solve real-world problems and to create a more just society.

***Assignments/Exams/Experiential Exercises/Papers/Projects***

Students will be evaluated in the following areas: You will be evaluated based on class participation and a take-home final examination (essay format). You can find the exam schedule here: <https://www.law.berkeley.edu/php-programs/exams/examCourseList.php>. You can find the review session schedule here: <https://www.law.berkeley.edu/students/review-session-schedule/>

***Grading/Evaluation***

This is a credit/no credit class. Your final grade will be based on the final examination and class participation: The take-home examination will count for 80% of your grade; class participation will count for 20% of your grade.

The take-home examination will be available for download on Monday, April 22, 2019 and will consist of issue-spotting questions that you may face as in-house counsel. The examination will be open for completion

for one week after it is available for download. You will have 4 hours to complete the final exam, and your answers cannot exceed 6 pages, 12-point font.

Class participation will consist of regular attendance and active engagement in class. Each student should participate in class, as an active listener and contributor. For your grade, class participation will be taken into account only to break any ties that must be broken due to the law school's grading system. I will call on students in almost every class. You are encouraged to volunteer answers (when I seek volunteers) and to ask questions. Sometimes, I will have to postpone certain questions to keep the class moving at an appropriate pace. Please bring any remaining questions to me during office hours or email me, so that we can discuss them. You should come to class even if you are unprepared (which, certainly, you should strive to avoid). If you need to miss class for an emergency, please email me.

Students may be dropped from the class for missing two or more classes.

### ***School-wide Policies***

1) A "credit hour" at Berkeley Law is an amount of work that reasonably approximates three to four hours of work per week for 15 weeks, including a) classroom time, b) time spent preparing for class, c) time spent studying for, and taking, final exams, d) time spent researching, writing, and revising papers and other written work, and e) time spent preparing for and completing any other final project, presentation, or performance. For the purposes of these calculations, 50 minutes of classroom instruction counts as one hour, and the 15 weeks includes the exam period. You can expect to spend this amount of time per unit per week on in-class and out-of-class, course-related work as described above.

Note: Please direct any student requests for accommodations or changes to their midterm or final exam schedule to Kyle Valenti in Student Services. If you have students who request academic accommodations, or you want to discuss such accommodations, please contact Kyle Valenti, Director of Student Services ([kvalenti@law.berkeley.edu](mailto:kvalenti@law.berkeley.edu)) as soon as possible.

2) Students who need classroom accommodations or want to discuss implementation of their accommodations in this class are advised to contact Kyle Valenti, Director of Student Services ([kvalenti@law.berkeley.edu](mailto:kvalenti@law.berkeley.edu)) as soon as possible.

Student Services schedules all exams, including accommodated exams, as the law school is committed to anonymous grading. PROFESSORS DO NOT HAVE THE AUTHORITY TO RESCHEDULE EXAMS. Any student who seeks an accommodated or rescheduled exam for documented medical reasons or for religious observance should contact Student Services in 280 Simon Hall, 510-643-2744, [kvalenti@law.berkeley.edu](mailto:kvalenti@law.berkeley.edu)

3) The Academic Honor Code [[Academic Honor Code](#)] governs the conduct of all students during examinations and in all other academic and pre-professional activities at Berkeley Law.

4) If you are in need of economic, food, or housing support, you can find help at [basicneeds.berkeley.edu](http://basicneeds.berkeley.edu) You may be eligible for money to buy groceries via [calfresh.berkeley.edu](http://calfresh.berkeley.edu) or our [Food Assistance Program](#). If you are in need of food immediately, please visit our UC Berkeley Food Pantry at [pantry.berkeley.edu](http://pantry.berkeley.edu)

### ***Course Policies***

You may use a laptop or other device to access reading assignments during class. However, we strongly encourage you to take hand-written notes. (Research shows that students absorb information better this way.) Further, accessing the internet (or apps) during class—except for class-related activities—is prohibited. You cannot check your Facebook page and successfully make meaningful contributions to class.

*Course Schedule (tentative and subject to change)*

<b>Class Date</b>	<b>Topic</b>	<b>Reading Assignment/Other Assignment</b>	<b>Relevant Learning Outcome</b>
1/8	<i>Regulation of eCommerce &amp; the Role of In-House Counsel</i>	<p>Federal Trade Commission Act: Background Information, available at <a href="https://www.ftc.gov/enforcement/statutes/federal-trade-commission-act">https://www.ftc.gov/enforcement/statutes/federal-trade-commission-act</a></p> <p>Section 5(a) of the Federal Trade Commission Act (FTC Act): 15 U.S.C. § 45(a)</p> <p>FTC Policy Statement on Unfairness (Dec. 17, 1980), available at <a href="https://www.ftc.gov/public-statements/1980/12/ftc-policy-statement-unfairness">https://www.ftc.gov/public-statements/1980/12/ftc-policy-statement-unfairness</a></p> <p>FTC Policy Statement on Deception (Oct. 14, 1983), available at <a href="https://www.ftc.gov/public-statements/1983/10/ftc-policy-statement-deception">https://www.ftc.gov/public-statements/1983/10/ftc-policy-statement-deception</a></p> <p>CFPB's Authority, Purpose and Jurisdiction: 12 U.S.C. §§ 5511-5515; 5481(12); 5561-5565 (you can just skim these sections)</p> <p>CFPB's UDAAP Authority: 12 U.S.C. §§ 5531, 5536</p> <p><b>FTC and CFPB Enforcement Actions:</b></p> <p>FTC v. Ruby Corp., <a href="https://www.ftc.gov/system/files/documents/cases/161214ashleymadisoncmplt1.pdf">https://www.ftc.gov/system/files/documents/cases/161214ashleymadisoncmplt1.pdf</a></p> <p>In the Matter of PayPal, Inc. (we will focus on the violations of Section 5 of the FTC Act, and not on the Privacy Rule or Regulation P violations):</p> <p><a href="https://www.ftc.gov/system/files/documents/cases/1623102_c-4651_paypal_venmo_complaint_final.pdf">https://www.ftc.gov/system/files/documents/cases/1623102_c-4651_paypal_venmo_complaint_final.pdf</a></p> <p>CFPB/ITT Litigation: <a href="https://files.consumerfinance.gov/f/201402_cfpb_complaint_ITT.pdf">https://files.consumerfinance.gov/f/201402_cfpb_complaint_ITT.pdf</a></p> <p><b>Optional:</b></p> <p>Title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act - you can just skim Title X only - this is just for your reference - please do not read the entire document: <a href="https://www.gpo.gov/fdsys/pkg/PLAW-111publ203/pdf/PLAW-111publ203.pdf">https://www.gpo.gov/fdsys/pkg/PLAW-111publ203/pdf/PLAW-111publ203.pdf</a></p> <p>CFPB's UDAAP Exam Manual, available at:</p>	<i>Identify the FTC and CFPB's authority to regulate ecommerce, understand foundational UDAP/UDAAP principles and how to approach problems as in-house counsel.</i>

		<a href="https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/102012_cfpb_unfair-deceptive-abusive-acts-practices-udaaps_procedures.pdf">https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/102012_cfpb_unfair-deceptive-abusive-acts-practices-udaaps_procedures.pdf</a>	
1/22	<i>Advertising and Marketing in the Digital Space</i>	<p><b>FTC’s Digital Advertising Guidance:</b></p> <ul style="list-style-type: none"> <li>• .com Disclosures: How to Make Effective Disclosures in Digital Advertising (<a href="https://www.ftc.gov/sites/default/files/attachments/press-releases/ftc-staff-revises-online-advertising-disclosure-guidelines/130312dotcomdisclosures.pdf">https://www.ftc.gov/sites/default/files/attachments/press-releases/ftc-staff-revises-online-advertising-disclosure-guidelines/130312dotcomdisclosures.pdf</a>)</li> <li>• Understanding Mobile Apps (<a href="https://www.consumer.ftc.gov/articles/0018-understanding-mobile-apps">https://www.consumer.ftc.gov/articles/0018-understanding-mobile-apps</a>)</li> <li>• Marketing Your Mobile App (<a href="https://www.ftc.gov/system/files/documents/plain-language/pdf-0140_marketing-your-mobile-app.pdf">https://www.ftc.gov/system/files/documents/plain-language/pdf-0140_marketing-your-mobile-app.pdf</a>)</li> </ul> <p><b>FTC Enforcement Actions:</b></p> <ul style="list-style-type: none"> <li>• FTC v. Lending Club Corporation: <a href="https://www.ftc.gov/system/files/documents/cases/lendingclub_corporation_first_amended_complaint.pdf">https://www.ftc.gov/system/files/documents/cases/lendingclub_corporation_first_amended_complaint.pdf</a></li> <li>• In the Matter of Snapchat, Inc.: <a href="https://www.ftc.gov/system/files/documents/cases/141231snapchatcmpt.pdf">https://www.ftc.gov/system/files/documents/cases/141231snapchatcmpt.pdf</a></li> </ul>	<i>Effectively apply FTC guidance and UDAP/UDAAP legal principles to digital advertising; be able to effectively make disclosures.</i>
2/5	<i>Privacy and Data Collection</i>	<p><b>FTC’s Guidance:</b></p> <ul style="list-style-type: none"> <li>• Mobile Privacy Disclosures: Building Trust through Transparency: <a href="https://www.ftc.gov/sites/default/files/documents/reports/mobile-privacy-disclosures-building-trust-through-transparency-federal-trade-commission-staff-report/130201mobileprivacyreport.pdf">https://www.ftc.gov/sites/default/files/documents/reports/mobile-privacy-disclosures-building-trust-through-transparency-federal-trade-commission-staff-report/130201mobileprivacyreport.pdf</a></li> <li>• Location, Location, Location: <a href="https://www.ftc.gov/news-events/blogs/business-blog/2015/02/location-location-location?utm_source=govdelivery">https://www.ftc.gov/news-events/blogs/business-blog/2015/02/location-location-location?utm_source=govdelivery</a></li> </ul> <p><b>FTC Enforcement Actions:</b></p> <ul style="list-style-type: none"> <li>• United States v. Path, Inc.: <a href="https://www.ftc.gov/sites/default/files/documents/cases/2013/02/130201pathinccmpt.pdf">https://www.ftc.gov/sites/default/files/documents/cases/2013/02/130201pathinccmpt.pdf</a></li> <li>• United States v. InMobi Pte Ltd:</li> </ul>	<i>Understand best practices related to data collection and privacy disclosures; be able to apply FTC guidance and mitigate UDAP/UDAAP risks on apps that collect consumer data.</i>

		<a href="https://www.ftc.gov/system/files/documents/cases/160622inmobicmpt.pdf">https://www.ftc.gov/system/files/documents/cases/160622inmobicmpt.pdf</a>	
2/19	<i>Privacy and Data Collection (cont'd): What Happened with Facebook?</i>	<p>In the Matter of Facebook, Inc. - Complaint:  <a href="https://www.ftc.gov/sites/default/files/documents/cases/2011/11/111129facebookcmpt.pdf">https://www.ftc.gov/sites/default/files/documents/cases/2011/11/111129facebookcmpt.pdf</a></p> <p>In the Matter of Facebook, Inc. - Consent Decree:  <a href="https://www.ftc.gov/sites/default/files/documents/cases/2011/11/111129facebookagree.pdf">https://www.ftc.gov/sites/default/files/documents/cases/2011/11/111129facebookagree.pdf</a></p> <p>"The Facebook and Cambridge Analytica scandal, explained with a simple diagram", May 2, 2018, available at:  <a href="https://www.vox.com/policy-and-politics/2018/3/23/17151916/facebook-cambridge-analytica-trump-diagram">https://www.vox.com/policy-and-politics/2018/3/23/17151916/facebook-cambridge-analytica-trump-diagram</a></p> <p>"Why the F.T.C. Is Taking a New Look at Facebook Privacy", New York Times, December 22, 2018, available at:  <a href="https://www.nytimes.com/2018/12/22/technology/facebook-consent-decree-details.html">https://www.nytimes.com/2018/12/22/technology/facebook-consent-decree-details.html</a></p> <p>Megan Gray, Understanding and Improving Privacy Audits under FTC Orders, April 2018, Stanford Cyber Law Blog, available at:  <a href="http://cyberlaw.stanford.edu/files/blogs/white%20paper%204.18.18.pdf">http://cyberlaw.stanford.edu/files/blogs/white%20paper%204.18.18.pdf</a></p>	
3/5	<i>Privacy and Data Collection (GDPR Considerations)</i>  <i>Drafting Effective Privacy Policies and Terms of Use</i>	<p>TBD</p> <p>NYU Program on Corporate Compliance and Enforcement, "The General Data Protection Regulation: A Primer for U.S.-Based Organizations That Handle EU Personal Data", available at:  <a href="https://wp.nyu.edu/compliance_enforcement/2017/12/11/the-general-data-protection-regulation-a-primer-for-u-s-based-organizations-that-handle-eu-personal-data/">https://wp.nyu.edu/compliance_enforcement/2017/12/11/the-general-data-protection-regulation-a-primer-for-u-s-based-organizations-that-handle-eu-personal-data/</a></p> <p>Norwegian Consumer Council, "Deceived by Design", June 27, 2018, available at: <a href="https://fil.forbrukerradet.no/wp-content/uploads/2018/06/2018-06-27-deceived-by-design-final.pdf">https://fil.forbrukerradet.no/wp-content/uploads/2018/06/2018-06-27-deceived-by-design-final.pdf</a></p>	
3/19	<i>Drafting Effective Privacy Policies and Terms of Use</i>	TBD	
4/2	<i>Biometric Authentication and Fraud Detection</i>	<p>Machine Learning and Behavioral Biometrics: A Match Made In Heaven, Forbes, January 18, 2018 available at:  <a href="https://www.forbes.com/sites/forbestechcouncil/2018/01/18/machine-learning-and-behavioral-biometrics-a-match-made-in-heaven/#2021f2493306">https://www.forbes.com/sites/forbestechcouncil/2018/01/18/machine-learning-and-behavioral-biometrics-a-match-made-in-heaven/#2021f2493306</a></p> <p>Banks and Retailers Are Tracking How You Type, Swipe and Tap, New York Times, Aug. 13, 2018, available at:  <a href="https://www.nytimes.com/2018/08/13/business/behavioral-biometrics-banks-security.html">https://www.nytimes.com/2018/08/13/business/behavioral-biometrics-banks-security.html</a></p>	

		<p>Hold the Phone! My Unsettling Discoveries About How Our Gestures Online Are Tracked, New York Times, Aug. 15, 2018, available at:  <a href="https://www.nytimes.com/2018/08/15/business/behavioral-biometrics-data-tracking.html">https://www.nytimes.com/2018/08/15/business/behavioral-biometrics-data-tracking.html</a></p> <p>Apple: don't use Face ID on an iPhone X if you're under 13 or have a twin, Guardian, Sept. 27, 2017, available at:  <a href="https://www.theguardian.com/technology/2017/sep/27/apple-face-id-iphone-x-under-13-twin-facial-recognition-system-more-secure-touch-id">https://www.theguardian.com/technology/2017/sep/27/apple-face-id-iphone-x-under-13-twin-facial-recognition-system-more-secure-touch-id</a></p> <p>Voice recognition: is it really as secure as it sounds?, Guardian, Sept. 22, 2018, available at:  <a href="https://www.theguardian.com/money/2018/sep/22/voice-recognition-is-it-really-as-secure-as-it-sounds">https://www.theguardian.com/money/2018/sep/22/voice-recognition-is-it-really-as-secure-as-it-sounds</a></p> <p>FTC Report: Facing Facts: Best Practices for Common Uses of Facial Recognition Technologies, October 2012, available at:  <a href="https://www.ftc.gov/sites/default/files/documents/reports/facing-facts-best-practices-common-uses-facial-recognition-technologies/121022facialtechrpt.pdf">https://www.ftc.gov/sites/default/files/documents/reports/facing-facts-best-practices-common-uses-facial-recognition-technologies/121022facialtechrpt.pdf</a></p>	
	Exam	Please confirm the take-home window for the exam and other details with Kyle Valenti, Director of Student Services, <a href="mailto:kvalenti@law.berkeley.edu">kvalenti@law.berkeley.edu</a>	

