

# Characteristics of financial law

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## Abstrakt

Financial law is the law and regulation of the commercial banking, capital markets, insurance, derivatives and investment management sectors. Understanding financial law is crucial to appreciating the creation and formation of banking and financial regulation, as well as the legal framework for finance generally. Financial law forms a substantial portion of commercial law, and notably a substantial proportion of the global economy, and legal billables are dependent on sound and clear legal policy pertaining to financial transactions. Financial law may be understood as being formed of three overarching methods, or pillars of law formation and categorised into five transaction silos which form the various financial positions prevalent in finance.

Financial law is important because it promotes stability and integrity within the financial system by establishing regulations and safeguards. Financial law sets rules and guidelines for financial institutions, ensuring they operate in a secure and responsible manner. This helps prevent financial crises, protects consumers, and maintains confidence in the financial system. Financial law also provides a clear legal policy relating to all financial transactions.

Financial regulation can be distinguished from financial law in that regulation sets out the guidelines, framework and participatory rules of the financial markets, their stability and protection of consumers, whereas financial law describes the law pertaining to all aspects of finance, including the law which controls party behaviour in which financial regulation forms an aspect of that law. Financial law is understood as consisting of three pillars of law formation, these serve as the operating mechanisms on which the law interacts with the financial system and financial transactions generally. These three components, being market practices, case law, and regulation; work collectively to set a framework upon which financial markets operate.

**Key words:** stability, regulation, transaction, financial markets, interacts.

## 1. DEFINITIONS OF FINANCIAL LAW

Financial law is a broad category that encompasses several legal fields to help ensure fair competition by protecting the financial interests of companies along with their investors. Antitrust laws, bankruptcy and [securities](#) law are a few of the most common legal fields associated with financial law.<sup>1</sup>

- Antitrust laws refer to more [competition laws](#) that will protect consumers from anticompetitive mergers and business practices. The Federal Trade Commission (FTC) as well as a number of private organizations will approve or reject deals they see as bordering anticompetitive practice. On the other hand, bankruptcy law explains the tax consequences and ways to avoid going bankrupt from small to large businesses.
- Securities law is mainly tailored to helping publicly traded companies get their financial data to investors and business stakeholders. The Securities Exchange Commission handles the majority of this part of law to make sure companies are complying with specific financial and reporting obligations.
- A more recent legal issue relating to finance law that has come into the media spotlight is political donations. The Federal Election Commission administers and enforces the laws related to the financial contributions to a political figure. Recent case law has come down from the Supreme Court as the government attempts to define this ambiguous sector of law.
- Finance law sets standards and requirements for financial transactions and financial institutions. Its purpose is to protect all parties involved, such as depositors and investors, as well as the financial institutions themselves, by having transparent rules. It is applied by setting clear standards and then monitoring whether they are being followed, such as reviewing bank reserves to ensure enough is on hand to repay depositors or offer loans.<sup>2</sup>
- Finance laws include banking laws, antitrust laws, securities laws, and bankruptcy laws. Antitrust works to prevent monopolies, or one entity controlling a market. Securities law governs trading and disclosures around investments. Bankruptcy is when a person or business does not have the means to pay their existing debts, and the law works to restructure, repay, or remove these debts.
- Financial Law Components - Financial law spans many areas of business governing financial transactions. This includes:
  - ✓ Finance law covers all areas of financial transactions and institutions, including banking, securities, insurance, asset management, and other financial industries. Any monetary transaction is subject to regulation to protect all parties involved.
  - ✓ Banking law is a subset specifically covering the banking industry. Banks deal with more regulation than most industries. Banking law governs what banks can and cannot do but also details reporting requirements as regulators analyze banks to ensure they are not taking undue risks and will be able to repay depositors in many different circumstances.

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<sup>1</sup> UpCounsel, (2023), Finance Law Explained - Free Legal Resource on UpCounsel, <https://www.upcounsel.com/finance-law>.

<sup>2</sup> Study.com, (2023), What is Financial Law? | Study.com, <https://study.com/academy/lesson/what-is-financial-law.html>.

- ✓ Antitrust law seeks to make markets competitive with no one party having undue influence on prices or quantities exchanged.
- ✓ Securities law covers requirements for issuing and trading securities. It seeks to create markets that are fair to all participants, and part of this comes from governing what, how, and when information is shared.
- ✓ Bankruptcy law outlines options for individuals or businesses who cannot afford debts. The regulations either allow certain debts to be restricted or cover when assets have to be sold to pay debts.

In the complex world of finance, where every transaction and investment carries legal implications, understanding financial law is paramount. In the vast universe of finance, where fortunes are created and economic destinies are shaped, the role of law is profound and necessary:<sup>3</sup>

❖ Financial law serves as a guiding framework that not only ensures the ethical conduct of financial transactions, but also acts as a guardian of economic stability and investor confidence:

1. Basics of Financial Law. At its core, financial law is a comprehensive set of regulations that govern the behavior of financial institutions, markets and individuals. Financial law regulates the issuance and trading of securities, regulation of banking institutions. Financial law maintains the transparency, fairness and overall health of financial systems.

2. Securities, banking and beyond. Securities laws oversee the dynamic world of stocks and bonds, protecting investors from fraudulent practices. This complex interplay of laws extends to derivatives, consumer protection and financial crime prevention, creating a multifaceted legal landscape that requires attention and understanding.

3. Compliance. Compliance with financial laws is the backbone of a robust and reliable financial system. Compliance protects investors, protects them from fraud and maintains market stability. Failure to comply with financial law can have far-reaching consequences, from large fines to irreparable reputational damage.

❖ Financial law encompasses a wide range of regulations designed to ensure the fair, transparent, and secure functioning of financial markets. Financial law serves as the backbone, providing a framework for ethical conduct and protecting the interests of investors, consumers, and the financial system as a whole:

1. Securities Law. One of the pillars of financial law is securities regulation. This branch governs the issuance and trading of securities like stocks and bonds. Securities Law plays a pivotal role in enforcing securities laws, safeguarding investors from fraudulent activities, and ensuring accurate and timely disclosure of financial information.

2. Banking and Financial Regulation. This aspect of financial law focuses on the stability and integrity of financial institutions. Understanding these regulations is crucial for both financial institutions and consumers to navigate the banking landscape securely.

❖ Compliance. Compliance with financial regulations is not an option; it's a necessity. Failing to adhere to these laws can lead to severe consequences, including fines, legal action, and damage to reputation. Compliance matters:

1. Protecting Investors. Financial regulations are designed to safeguard investors' interests by ensuring fair practices, preventing market manipulation, and promoting transparency.

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<sup>3</sup> Jones, J., (2023), Finance Law 101: Navigating Financial Regulations in 2024 – Law, [lawscope.org/finance-law/](https://lawscope.org/finance-law/)

2. **Safeguarding Against Fraud.** Financial regulations are a bulwark against fraudulent activities that can undermine the stability of markets. By imposing strict standards and penalties for financial misconduct, these laws create a deterrent and promote a level playing field for all participants.

3. **Maintaining Market Stability.** Financial regulations play a crucial role in maintaining the stability of financial markets. This includes mechanisms to prevent systemic risks, regulate derivatives, and supervise institutions deemed “too big to fail.”

Financial law is the body of laws and regulations that govern the management of money, banking, investments, and credit. Financial law plays a pivotal role in the financial sector by providing the legal framework necessary for the operation of financial markets, the conduct of financial services, and the protection of stakeholders involved in financial transactions:<sup>4</sup>

1. The branch of law is essential for maintaining market integrity, ensuring transparency, and safeguarding the economy from risks such as fraud and market manipulation. The significance of financial law lies in its ability to create a stable and efficient financial environment that fosters economic growth and protects consumers. Financial law involves understanding and applying various legal provisions related to financial transactions, investment management, and financial services regulation.

2. Fundamental principles of Financial law include the protection of investor interests, the prevention of financial fraud, and ensuring fair and transparent market practices. Finance law also covers aspects like lending, insurance, derivatives, and structured finance, each with its own regulatory and legal considerations.

3. Financial regulations are essential components of financial law, designed to maintain the stability and integrity of financial markets. Compliance with these regulations is mandatory for financial institutions and is crucial in preventing financial crises. These regulations cover many areas, including banking operations, securities trading, corporate finance, and consumer lending. Regulatory bodies at national and international levels are tasked with enforcing these laws and ensuring financial institutions operate within legal and ethical parameters.

4. Finance lawyers play a crucial role in the financial sector, bridging the gap between complex financial operations and legal compliance. Their primary functions include advising clients on legal aspects of financial transactions, ensuring regulation adherence, and structuring deals to optimize financial and tax outcomes.

- ✓ Banking lawyers often work with banks, investment firms, corporations, and government entities, guiding various issues from securities offerings and corporate governance to regulatory compliance and dispute resolution. The expertise of finance lawyers is vital in navigating the intricate legal landscape of finance and protecting their client’s interests in this highly regulated sector:
- ✓ Banking lawyers, a key component of finance law, governs the operation and regulation of banks and other financial institutions. It encompasses various legal issues, including bank formation, operation, regulation, and insolvency.
- ✓ Banking lawyers ensure that financial institutions comply with myriad laws and regulations, such as those concerning capital requirements, consumer protection, anti-money laundering, and privacy. The implications of banking law are far-

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<sup>4</sup> Law of the Day, (2024), What is Finance Law? A Detailed Introduction to Financial Legal Frameworks, <https://lawoftheday.com/banking-and-finance-law/what-is-finance-law>.

reaching, impacting everything from how banks lend money and manage customer deposits to how they handle financial risks and conduct transactions.

5. Securities Law and Capital Markets. Securities law is central to the functioning of capital markets, regulating the issuance and trading of securities such as stocks, bonds, and derivatives. This area of law ensures transparency and fairness in the market, aiming to protect investors from fraud and market manipulation. Securities lawyers advise clients on compliance with securities regulations, assist in structuring public offerings, handle regulatory filings, and represent clients in dealings with regulatory bodies like the Securities and Exchange Commission (SEC). Their expertise is crucial in navigating the complex regulatory environment of capital markets.

Financial law sets standards and requirements for financial transactions and financial institutions. The purpose of financial law is to protect all parties involved, such as savers and investors, as well as financial institutions themselves, with transparent rules. Financial law is applied by setting clear standards and then monitoring whether they are followed:<sup>5</sup>

1. Finance laws include banking laws, antitrust laws, securities laws, and bankruptcy laws. Antitrust works to prevent monopolies or a single entity from controlling the market. Securities law regulates trading and disclosures surrounding investments. Bankruptcy is when a person or business does not have the means to pay their existing debts, and the law works to restructure, discharge or eliminate these debts.

2. Financial law encompasses many areas of business that regulate financial transactions. This includes:

- ✓ Finance law covers all areas of financial transactions and institutions, including banking, securities, insurance, asset management and other financial industries. Every monetary transaction is subject to regulation to protect all parties involved.
- ✓ Banking law is a subset that specifically covers the banking industry. Banks deal with more regulation than most industries. The Banking Act regulates what banks can and cannot do, but it also details reporting requirements as regulators analyze banks to ensure they are not taking unnecessary risks and can repay depositors in a wide variety of circumstances.
- ✓ Antitrust law seeks to make markets competitive without any party having undue influence over prices or quantities traded.
- ✓ The Securities Law covers the requirements for the issuance and trading of securities. It strives to create markets that are fair to all participants, and part of this comes from managing what, how and when information is shared.
- ✓ Bankruptcy law outlines options for individuals or businesses that cannot afford debt. The regulations either allow certain debts to be limited or cover when assets must be sold to pay debts.

3. Banking and Finance Act. Finance law is a broad term that encompasses banking, securities, insurance, asset management and other financial industries. For example, laws surrounding the insurance industry may dictate when an insurance company must pay a claim. Or to make sure that insurance contracts are fair to both the insurer and the party buying the insurance. The Banking and Finance Act also heavily regulates the banking industry in order to protect depositors and ensure customers have access to loans as needed. Those working in the banking industry must understand all the regulations and may find that additional education, such

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<sup>5</sup> Degroot, N., (2024), Financial Law Definition, Components & Examples, <https://study.com/academy/lesson/what-is-financial-law.html>.

as a master's in banking, can help. The regulations cover deposit and loan activity as well as other operational details.

## 2. CHARACTERISTICS OF FINANCIAL LAW

Financial law is the laws and regulation of the insurance, derivatives, commercial banking, capital markets and investment management sectors. Understanding Financial law is crucial to appreciating the creation and formation of banking and financial regulation, as well as the legal framework for finance general:<sup>6</sup>

- Financial law forms a substantial portion of commercial law, and notably a substantial proportion of the global economy, and legal billables are dependent on sound and clear legal policy pertaining to financial transactions. Therefore financial law as the law for financial industries involves public and private law matters.
- Financial law may be understood as being formed of three overarching methods, or pillars of law formation and categorised into five transaction silos which form the various financial positions prevalent in finance.
- These three components, being market practices, case law, and regulation underpinned by several legal concepts upon which financial law depends, notably, legal personality, set-off, and payment which allows legal scholars to categorise financial instruments and financial market structures into five legal silos; those being:
  - ✓ simple positions,
  - ✓ funded positions,
  - ✓ asset-backed positions,
  - ✓ net positions, and
  - ✓ combined positions.
- The five position types are used as a framework to understand the legal treatment and corresponding constraints of instruments used in finance (such as, for example, a guarantee or Asset-backed security.)

Financial law is critical because it regulates the financial services industry, ensuring stability, fairness and consumer protection. Financial legislation regulates markets, transactions and institutions, mitigating risks and fostering a predictable investment environment, which is vital to economic health and consumer confidence. The importance of financial law cannot be overstated, as it is fundamental to the stability, fairness and protection of consumers in the financial system:<sup>7</sup>

- Financial law plays a key role in promoting stability, fairness and consumer protection in our financial system. Understanding these objectives is necessary as they seek to

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<sup>6</sup> Definitions.net, (2023), What does financial law mean? - Definitions.net.  
[https://www.definitions.net/definition/financial law.](https://www.definitions.net/definition/financial%20law)

<sup>7</sup> Montague, (2024), Decoding Finance Law: An Overview of Regulation,  
[https://montague.law/blog/understandi.](https://montague.law/blog/understandi)

ensure the efficient functioning of financial markets and to protect consumers from fraud and exploitation. Financial law covers a wide range of topics, including:

- ✓ banking,
  - ✓ securities,
  - ✓ insurance,
  - ✓ consumer protection,
- Financial law promotes fairness, integrity and stability in financial markets and transactions, ensuring a well-established and independent judiciary and mitigating systemic risk. This creates a predictable investment environment, leverages the integrity of the financial system and facilitates efficient dispute resolution.
- The basic characteristics of Financial Law include:
- ✓ Corporate Finance and Capital Markets. Corporate finance and capital markets revolve around the activities and transactions related to the management of assets and other resources by corporations. The purpose of financial law in supervising corporate financial activities and capital market transactions is to ensure that these transactions are conducted fairly and transparently, protecting the interests of all parties involved. An integral part of the legal framework of the financial markets is the concept of a separate legal personality, which facilitates the division of financial risk and allows parties to enter into financial contracts and transfer credit risk between them.
  - ✓ Banking and Commercial Law. Banking law and commercial law delve into the legal aspects of banking and commercial transactions, such as loans, borrowing and payment systems. One example of such a transaction is an overdraft, a loan that is usually repaid on demand. Banks are only required to provide overdraft facilities if there is an express or implied agreement. If the bank approves an overdraft, it is considered that the client has accepted the bank's conditions, which indicates that a loan has been requested and granted. To protect lenders from borrowers' credit risk, contractual provisions such as:
    - conditions precedent,
    - restrictions on the borrower's activities,
    - information contracts,
    - set-off provisions,
    - default provisions,
- Financial institutions and their role. Financial institutions, organizations that specialize in facilitating financial transactions such as investments, loans and deposits, play a key role in the financial law landscape. By offering their services as intermediaries to individuals and businesses, financial institutions enable them to effectively manage their finances. The main categories of financial institutions include:
- ✓ Central banks,
  - ✓ Retail and commercial banks,
  - ✓ credit unions,
  - ✓ Savings and loans,

These institutions are essential to the economy, providing financial services to customers and enabling the circulation of funds. Given the significant role of financial institutions in the financial law landscape, an understanding of their responsibilities and functions is necessary for the smooth functioning of the financial system.

- **Corporate Governance and Securities Regulation.** Corporate governance, the system of rules, practices and processes used to direct and manage a company, ensures transparency, accountability and ethical behavior in an organization. Securities regulation, on the other hand, focuses on the legal aspects of corporate governance, including disclosure requirements and shareholder rights. Together, these two aspects of finance law play a significant role in maintaining the integrity and stability of financial markets.
- **Disclosure requirements** mandate that companies make certain information available to the public, such as financial statements, corporate governance policies and other relevant information. These requirements ensure that investors have access to accurate and timely information about the company. Shareholder rights, on the other hand, refer to the rights of shareholders to participate in decision-making processes in the corporate sector, including voting on critical issues, receiving dividends, and inspecting company documents and records.
- **Consumer protection and experiential learning.** Consumer protection, a set of regulations and measures designed to protect the rights and interests of consumers when engaging with businesses and service providers, is a key component of finance law. You are required to:
  - ✓ **Preventing Fraudulent, Fraudulent and Unfair Practices.** Guarantee for the quality and safety of products and services
  - ✓ **Provide consumers with an opportunity to seek redress** in the event of a dispute or complaint. Government agencies such as the Federal Trade Commission (FTC) and the Consumer Financial Protection Bureau (CFPB), as well as state-level consumer protection offices, enforce consumer protection laws and regulations.
  - ✓ **Experiential learning**, a useful tool for advancing financial literacy, provides individuals with practical knowledge and skills in a tangible environment. By helping individuals understand the complexities of finance law and make prudent decisions about their finances, experiential learning can facilitate understanding of complex financial transactions and regulations and promote financial literacy.

### **3. FINANCIAL SYSTEM**

A financial system is a set of institutions, such as banks, insurance companies, and stock exchanges, that permit the exchange of funds. Financial systems exist on firm, regional, and global levels. Borrowers, lenders, and investors exchange current funds to finance projects, either for consumption or productive investments, and to pursue a return on their financial assets. The financial system also includes sets of rules and practices that borrowers and lenders use to decide which projects get financed, who finances projects, and terms of financial deals:<sup>8</sup>

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<sup>8</sup> Investopedia Team, (2024), Financial System: Definition, Types, and Market Components, <https://www.investopedia.com/terms/f/financial-system.asp>.

**Figure1:**



Source: Investopedia Team, (2024), Financial System: Definition, Types, and Market Components, <https://www.investopedia.com/terms/f/financial-system.asp>.

A financial system is an economic arrangement wherein financial institutions facilitate the transfer of funds and assets between borrowers, lenders, and investors. Its goal is to efficiently distribute economic resources to promote economic growth and generate a return on investment (ROI) for market participants. In any functional economy, economic resources are limited, with individuals having unlimited wants and desires. This problem, referred to as scarcity, is one of the significant drivers of an economy. However, it challenges an economy in determining when, where, to whom to distribute its resources:<sup>9</sup>

❖ Consequently, it resulted in a financial system structure capable of efficiently allocating economic resources to stimulate growth. Also, it allows participants to benefit by:

- ✓ Providing a way of making payments (banks),
- ✓ Giving participants a way of earning interest in the form of time value (investment institutions),
- ✓ Protecting them against financial risks (insurance),
- ✓ Collecting and distributing financial information (credit agencies),
- ✓ Governing regulations to maintain stability (central banks and governments),
- ✓ Maintaining liquidity and converting investments into cash (banks and financial institutions).

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<sup>9</sup> Johnson, P., (2024), Financial System - Meaning, Components, Functions ,WallStreetMojo, <https://www.wallstreetmojo.com/financial-sys>.

❖ There are several financial system components to ensure a smooth transition of funds between lenders, borrowers, and investors:

- ✓ Financial Institutions,
  - ✓ Financial Markets,
  - ✓ Tradable or Financial Instruments,
  - ✓ Financial Services,
  - ✓ Currency (Money).
- **Financial Institutions** - Financial institutions act as intermediaries between the lender and the borrower when providing financial services. These include:
- ✓ Banks (Central, Retail, and Commercial),
  - ✓ Insurance Companies,
  - ✓ Investment Companies,
  - ✓ Brokerage Firms.
- **Financial Markets** - These are places where the exchange of assets occurs with borrowers and lenders, such as stocks, bonds, derivatives, and commodities. Financial markets help businesses to grow and expand by allowing investors to contribute capital. Investors invest in company stock with the expectation of it producing a return in the future. As the business makes a profit, it can then pass on the surplus to the investors.
- **Financial Instruments** - Tradable or financial instruments enable individuals to trade within the financial markets. These can include cash, shares of stock (representing ownership), bonds, options, and futures.
- **Financial Services** - Financial services provide investors a way of managing assets and offer protection against systemic risk. These also ensure individuals have the appropriate amount of capital in the most efficient investments to promote growth. Banks, insurance companies, and investment services would be considered financial services.
- **Currency (Money)** - A currency is a form of payment to exchange products, services, and investments and holds value to society.

A financial system is a network of financial institutions – such as insurance companies, stock exchanges, and investment banks – that work together to exchange and transfer capital from one place to another. Through the financial system, investors receive capital to fund projects and receive a return on their investments:<sup>10</sup>

- Financial markets involve various players, including borrowers, lenders, and investors that negotiate loans for investment purposes. The borrowers and lenders tend to trade money in exchange for a return on the investment at some future date. Derivative instruments are also traded in the financial markets as well, which are contracts that are determined based on an underlying asset's performance.
- When determining the guidelines of raising capital within a financial system, the project being funded and who funds them are decided upon by the planner, who can be a

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<sup>10</sup> CFI Team, (2024), Financial System - Overview, Components, Example, Corporate Finance Institute, <https://corporatefinanceinstitute.com/re>.

business manager. Thus, the financial system is typically organized through central planning, a market economy, or a combination of both.

- A centrally planned economy is structured around a central authority, such as a government, which makes economic decisions regarding the manufacturing and distribution of products for a specific country. A market economy is when the pricing of goods and services is dictated by the aggregated decision of citizens and business owners, often resulting in the effects of supply and demand.
- Financial markets operate within a government regulatory framework that filters the sort of transactions that can be conducted. Financial systems are heavily regulated due to their influence and facilitation capabilities to contribute to the growth of real assets.

## CONCLUSION

Finance law refers to the legal framework that governs the financial services industry and the regulation of financial markets. This area of law encompasses a wide range of topics, including banking, securities, insurance, and consumer protection. Financial law is designed to promote stability and fairness in the financial system, protect consumers from financial fraud and abuse, and ensure the proper functioning of financial markets. Understanding financial law is essential for anyone working in financial services or investing in financial markets.<sup>11</sup>

Financial law is designed to promote stability and fairness in the financial system, protect consumers from financial fraud and abuse, and ensure the proper functioning of financial markets. Financial law is an important area of business practice that deals with financial instruments and transactions, and helps businesses protect themselves from potential liabilities and lawsuits. Understanding financial law is essential for anyone working in financial services or investing in financial markets. Financial law is important as it aims to protect parties participating in transactions. This includes not only individuals who might borrow money, buy investors, or deposit money, but also the financial institutions that provide the services by having clear and fair guidelines for transactions.

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<sup>11</sup> Daehoon P., (2023), Finance Law: All You Need to Know - Contract Lawyers, Global web icon. <https://www.contractscounsel.com/b/finance-law>.

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