

International Banking

Cases, Materials, and Problems

Third Edition

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This book is dedicated to
Susie A. Malloy
Μητερουλα του παιδιον μας

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PREFACE TO THE THIRD EDITION

Three years after the second edition of this casebook was published, the financial services sector, domestically and internationally, was transformed into a blast zone. The collapse of the U.S. residential mortgage market had an impact internationally, because the “securitization” of mortgage-related products spread mortgage risk directly into the securities markets creating vulnerabilities in capital markets. The United States continues to struggle with the effects of this crisis, unresolved by the 2010 Dodd-Frank Act, and our trading partners suffer along with us. External debt is no longer a “less developed country” problem, but a serious sovereign debt crisis affecting a broadening variety of states. Hence, not only has the landscape of international banking changed considerably, many assumptions and tools have been thrown into doubt. Is managing capital levels of internationally active banks the most effective way to manage risk? Are the structures of international bank supervision adequate to their tasks and objectives? These are just some of the issues explored in this new edition.

Making this situation more complicated are the uncertainty and incompleteness surrounding Dodd-Frank, the lead U.S. statutory response to the crisis. Many of the most significant changes mandated by the act will take years to implement fully. This is the result of effective dates of key provisions that stretch out over two years following the enactment of Dodd-Frank, as well as a lengthy and complex process of regulatory implementation of the provisions of the act. Most recently, the Congress itself has begun to question the wisdom of the aggressive restructuring of the regulatory system initiated by Dodd-Frank, and this failure of vision will only complicate the structure even further.

These and other major developments make a challenging field of study even more daunting in its complex mix of issues. Hopefully, the problem-oriented approach of this edition, a hallmark of the book from its beginning, will continue to present students with genuine opportunities to confront developments and challenges that are likely to be with us for years to come.

Special thanks are due to many persons for their assistance and support for my work on this new edition. Many friends and colleagues inside and outside of the academy have offered useful advice and observations about the previous edition that helped me to reconceive, revise, or replace material in this edition.

In addition, I benefitted from the encouragement of Francis J. Mootz, III, Dean of the McGeorge School of Law at the University of the Pacific, and Anne Bloom, Associate Dean for Faculty Scholarship. A special word of thanks must be given to Ms. Janice Johnson, supervisor of the Faculty Support Office, and the FSO staff. They have kept vexing bureaucratic burdens from my door while I worked on this project. I also received invaluable aid from my student research assistant, Ms. Maria Kim, of the Pacific McGeorge Class of 2013, and from the professional staff of the Law Library .

All of this assistance notwithstanding, producing a new, third edition would have been burdensome without the encouragement of my wife, Susie A. Malloy, who continues, as always, to make the scholarly life an adventure.

— Michael P Malloy
London
December 2012

PREFACE TO THE SECOND EDITION

In the six years since the first edition of this casebook appeared, the regulation of financial services enterprises has grown in importance and complexity. A wide range of significant historical and political developments have had a marked impact on international markets as well as on day-to-day existence. The European Union has edged ever closer to political and regulatory integration. U.S. banks and bank holding companies have been granted broader authority to participate in activities that are “financial in nature,” including securities and insurance activities. The terrorist attacks on the United States that occurred in September 2001 prompted a renewal of U.S. statutory and regulatory interest in both offensive and defensive supervision of the banking system to combat terrorism, and an emerging international consensus has focused on antiterrorism and anti-money laundering in response to international terrorism. Regional financial services regulation under NAFTA celebrated its tenth anniversary, followed by the General Agreement on Trade in Services at the multilateral level. These and other major developments join an even wider variety of continuing regulatory concerns—competitive equality among enterprises, coordination of the supervisory efforts of different national regulators, and the growing need for transactional rules for e-commerce and e-banking activities, to name a few. As with the previous edition, this casebook tries to draw together these and other regulatory issues in a way that will present them coherently and that will make the practical importance of these issues understandable to the student.

While the casebook still focuses primarily on U.S. regulation of international banking at the federal level, it includes more extensive material on international and comparative aspects of financial services regulation, including more material on the EU, NAFTA, Eastern Europe and Islamic banking. U.S. practice remains a convenient point of departure for study of international banking, and the problems and notes that appear throughout the casebook continue to offer a very concrete and practical context for the exploration of the issues, concepts and rules embodied in the cases and secondary materials excerpted in the casebook.

Special thanks are due to many persons for their assistance and encouragement of the completion of this new edition. Associate Dean John Sprankling and my colleague Claude Rohwer have been generous in their support and understanding of the burdens that preparation of even a second edition of a casebook places on an author. I am particularly thankful for the resources that the law school has made available to me, not only for the direct work on this edition but also for the many opportunities that I have been given to participate in U.S. and international conferences and speaking engagements. These opportunities allowed me to air my views on many current developments in international financial services regulation for further discussion and refinement. I also must acknowledge Ms. Sally Snyder, Supervisor of the Faculty Secretaries’ Office, and Ms. Denai Burbank and the rest of the Faculty Secretaries for their singular efforts in keeping administrative burdens from my door while I worked on this project. My student research assistants, Ms. Suzanne Uzelac of the University of the Pacific Class of 1998, Ms. Lotte Colbert of the Class of 1999, and Mr. David Richards of the University of the Pacific Class of 2004 provided invaluable, and invariably thorough, assistance.

Finally, the original project and the renewed effort of a second edition would have been personally worthless without the encouragement, inspiration, and devoted editorial assistance of my wife, Susie A. Malloy. As a relentless editor and boon companion, she

xxx

INTERNATIONAL BANKING

makes me better than I am.

– Michael P Malloy
London
April 2004

PREFACE TO THE FIRST EDITION

The regulation of financial services enterprises involved in the international market is of increasing importance. This area raises a wide variety of regulatory concerns—competitive equality among enterprises, coordination of the supervisory efforts of different national regulators, the growing need for multilateral rules for transborder activities. This casebook tries to draw together these and other regulatory issues in a way that will present them coherently.

The casebook focuses primarily on U.S. regulation of international banking at the federal level, but with extensive international and comparative materials as well. U.S. practice in this regard is viewed simply as a convenient point of departure for study of international banking. The U.S. market is an active and immense one, and so regulatory developments there have a tendency to influence multilateral and other national regulatory regimes.

It cannot be emphasized enough that international banking is an area of intense practice, as well as a conceptually challenging area of intellectual study. Hence, the problems and notes that appear throughout the text are intended to provide a concrete context within which to understand many of the concepts and rules embodied in the excerpted readings from cases and secondary material.

Special thanks are due to several persons for their assistance and encouragement of the completion of this book. Dean Gerald Caplan and Associate Dean Kathleen M. Kelly of McGeorge School of Law, University of the Pacific, have provided both moral and material support for this project. My colleague Claude Rohwer has on more than one occasion lifted burdens so that I could concentrate on the work at hand. My student research assistants, Ms. Suzanne Uzelac of the University of the Pacific Class of 1998 and Ms. Lotte Colbert of the Class of 1999, have provided invaluable, and invariably thorough, assistance. Finally, this project would have been impossible to finish and of little personal interest without the devoted assistance and encouragement of my wife, Susie A. Malloy.

— Michael P Malloy
Vienna
July 1998

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