
Introduction

Technological innovations have impacted the structure and form of payment systems, increasing their variety as well as their ubiquity in modern society. This book explores these innovations and the legal and technological questions that they present.

Tapping into the experience and insights of lawyers and academics throughout the ABA Business Law Section, this book presents a topical discussion of the principal electronic payment systems utilized today. Chapters 1 through 3 discuss the primary modern payment systems, which form the “rails” for significant innovation. Legacy systems based on banks, credit cards, and non-bank money transmitters have relatively long histories and well-developed legal frameworks designed to meet demands for practical, efficient, and effective means of facilitating payments. While new technologies have also affected these systems, they have continued to benefit from their leading market position and widespread usage.

As the dynamics of competition affect the payments marketplace, legacy systems have progressed while new systems have emerged to challenge their hegemony. Chapters 4 through 6 discuss this next generation of payments technologies, which are seeking to deliver greater efficiency, convenience, and utility for businesses and consumers. Some of these new payment systems innovate by utilizing existing “rails” in new applications. For example, mobile wallet technologies frequently use credit cards and some peer-to-peer technologies utilize credit cards and ACH transactions. However, others are using new technologies, including distributed ledger technology used in cryptocurrencies, which potentially allow participants to avoid existing intermediaries and regulatory structures.

Regulatory frameworks serve multiple functions. Rules to resolve conflicts and enhance trust among the participants may be instrumental in helping a system to develop and flourish, but other relevant social norms play a significant role. Governments seeking to address problems of crime and terrorism face new challenges in globally functional electronic payment systems that can potentially circumvent their oversight. Chapters 7 through 8 discuss some important regulatory concerns, including money laundering, tax enforcement, and sanctions regimes, with chapter 7

focusing on U.S. approaches and chapter 8 focusing on European approaches and developments in cross-border payments outside the U.S. Chapter 9 provides a broad tour of the EU regulatory environment, while chapter 10 provides illustrations of some practical challenges for compliance by firms in the United Kingdom after Brexit.

Finally, chapters 11 through 13 provide current reflections and forward-looking thoughts on issues and concerns presented by technologies that are closely related to electronic payments. As the Internet of Things continues to expand its scope and impact on our daily lives, how are payment systems likely to adapt to these changes? And while we often extoll the benefits of technology, laws and regulations are also informed by critical examination of related social impacts. How does this movement toward electronic payment systems impact the poor and socially disadvantaged? As the digital revolution creates unprecedented volumes of data that are easily accessible and amenable to analysis, how does the emerging application of data analytics impact credit terms, privacy, and other social norms? How do these changes affect governmental regulation of the safety and soundness of systems, including banking and monetary policies? The authors in the final three chapters boldly address these and other topics.

This book is a cooperative venture that has benefitted from insights from many members of the Committee on Cyberspace Law. I am particularly grateful to our Committee Chair, Theodore Claypoole, my co-chair in the Electronic Payments subcommittee, Steven Middlebrook, as well as Sarah Jane Hughes, Candace Jones, and Denny Rice, each of whom has made important contributions that have shaped the structure and content of this work. The broad range of authors in this work, who are based in the U.S., Canada, Switzerland, and the U.K., reflects the global networks, connections, and friendships that emerge from work within the Business Law Section. These relationships enrich our lives and equip us to better serve our clients in an increasingly mobile and interconnected world.

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