



**THE ROMA TRE UNIVERSITY
SMALL SAVERS PROTECTION LEGAL CLINIC
SYLLABUS A.Y. 2020-2021
mariacecilia.paglietti@uniroma3.it
cledir@uniroma3.it**

Clinical classes are held weekly. It is a one-semester program (II semester, march-may, 7 CFU, 56 hours). We do not have an external desk or contact point.

The Small Savers Protection Legal Clinic (SSPLC) provides students with a qualified legal education on the legal framework about consumers and small savers protection in the banking and financial sector, especially as regards the enforcement of their rights and the filing of claims before the "Arbitro Bancario e Finanziario" (ABF - for banking issues) and the "Arbitro delle Controversie Finanziarie" (ACF – for financial issues); builds a network cooperation between academics and professionals; promotes knowledge of alternative methods of dispute resolution within the academic community and amongst.

During this last semester (Academic Year 2019/2020) lessons have been entirely online. The course started on March 16th, during the strict lockdown: we did not have a single live lesson, not even one.

The lessons and class activities were not, however, subject of a deep rethinking, only the SSPLC program had a much smaller operational field (just payment systems).

We verified the raise of cyber attacks, surely related to the COVID-19 pandemic: given the billions of people globally that have been forced to stay at home, many transactions have shifted online. With employees largely working from home, attackers saw multiple areas of vulnerability: telecommunications, e-commerce and financial services industries have been increasingly impacted by COVID-19 online fraud, all have large digital adoption, financial information and payments at the center of their online experience, and fared relatively well compared to other industries during the pandemic.

Our objectives have been to understand deeply the scam mechanisms, collect technical information on how the frauds work. In terms of legal activity, our work was exclusively focused on giving legal advices, given the impossibility of in presential meeting with clients.

Specific aims of the SSPLC is to combine both the clinical approach and the ADR promotion.

In Italy, in fact, we have the Banking and Financial Ombudsman (Arbitro Bancario Finanziario, ABF), an out-of-court settlement scheme for disputes between customers and banks and other financial intermediaries, established in 2009 by the Bank of Italy to introduce an alternative mechanism that is faster and less expensive than civil litigation.

The theoretical lessons (especially those at the beginning of the Course) are in fact integrated with the practical point of view, with the copresence in each lesson of the clinic counselor. So students

work both under the academic teacher's supervision, and the lawyer co-supervision.

Our methodology is based on two assumptions:

- 1) SSPL is a course formally recognized within the Roma Tre curriculum
- 2) The main goal of SSPLC is to ensure both educational objectives and quality of services to clients.

Consequences of these premises are:

- a) We have a qualitative instead of a quantitative approach;
- b) Numbers (of cases) do not matter to us;
- c) We assist individual clients, we do not just give them advice.

Cases are assigned to team, variably of three/four students.

At the beginning of the course, individual work is preferred, since the team work requires an extra effort for the student. Accomplish a good team work skills in group assignments is considered one of the goals of the SSPLC.

A) Analysis of the case: especially, comprehension of the facts

First step is to verify that the clinic is competent *Ratione materiae* (consumer law); the parties involved fall under the definition of "consumer" and "trader": Art. 2, par. 1, n. 1, Dir. 2011/83: «any natural person who, in contracts covered by this Directive, is acting for purposes which are outside his trade, business, craft or profession» « any natural person or any legal person, irrespective of whether privately or publicly owned, who is acting, including through any other person acting in his name or on his behalf, for purposes relating to his trade, business, craft or profession in relation to contracts covered by this Directive».

Then the second step is to really understand the facts: preparing legal strategies requires having, absorbing and comprehending large amounts of information (this involves ability to listen, ability to ask questions). Facts matter (standard burden of proof applies).

B) Methodology (see above)

Cases are analyzed according to a method which is determined by the clinical staff and the lawyer collaborating with the clinic.

Most of the time the first follow-up of the case is a request of advice by a national consumer association. The case is presented to the class by the clinical teacher and the lawyer.

Clinicians have first to check the legal basis. Then they determine whether the case has any merit and, if so, whether there are any viable defenses.

1) IDENTIFY THE PROBLEM (Theory):

A) FACTS:

- i. Identify key information (which will set the context for the problem) and unclear terms and concepts (ensure that everyone understands the technical terms used; ensure that everyone has a similar understanding of the situation described in the problem: people have different modes of thinking about facts).
- ii. Define the problem: investigate and organize facts.
- iii. Analyze the problem (even with a critical point of view): «what really happened?»

B) LEGAL ANALYSIS:

- i. Identify and qualify the legal issue: the client provides the clinicians with facts, not a list of legal theories
- ii. Identify the applicable norms: the current legal framework in the consumers' and small savers' area is fragmented > identify rules set by primary and sub-primary

- source; taking into account also rules other than consumer law (e.g.: banking law, EBA Opinions ecc.)
- iii. Share the results with the rest of the clinicians. Cite the resources used. Discuss if there is a case.

2) POSSIBLE SOLUTIONS (Action: if there is a case)

- i. Check the available evidence to support the client's position (standard burden of proof applies).
- ii. Try to settle (again: facts matter; better facts make for better settlements)
- iii. Draft the claim (in groups): with participatory approaches and ICT-based methodologies
- iv. Review of the claim by the lawyer

C) Drafting of the claim

Students will: (i) learn to use legal databases, which they were not previously familiar with (two lessons are entirely dedicated to teach students how to conduct a computer-assisted legal research); (ii) prepare written advice (iii) work in the class only with laptops (theirs or the ones provided by the Faculty), as they will learn to share document in clouds, use just one draft shared by the all class, mark it up and make it circulate by email;
-the entire ABF/ACF procedure is online, so that students will face with online dispute resolution (ODR).