From Mis-Selling to Sanction: Legal Fragmentation and the Changing Architecture of Cross-Border Financial Consumer Disputes

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Introduction

Cross-border financial consumer disputes (CBFCD) have become structurally complex as they unfold across overlapping domestic, regional, and international legal orders, each asserting regulatory authority without hierarchical resolution. Drawing on Martti Koskenniemi (2007) and Gunther Teubner (1997), this literature review treats legal fragmentation not as a background context but as a causal mechanism producing normative indeterminacy rather than coordinated governance. Using narrative analyses, it traces three evolutionary phases, including post-2008 paternalistic redress, fintech-driven contractualisation (2013–2018), and the current geo-financial sovereignty phase. It argues that CBFCD have shifted from domestic mis-selling adjudication to sovereignty-inflected exclusions through extraterritorial enforcement, often preventing consumer remedy. Each phase is anchored to a concrete dispute, so that the doctrinal shifts are traced to their effects on the consumer rather than treated as abstract regime change. Further, it identifies five literature gaps whose convergence at the intersection of fintech governance, Global South regulatory capacity, and algorithmic accountability remains unaddressed in existing literature.

Key Words: Legal Fragmentation, Cross Border Financial Consumer Disputes, Financial Governance, Fintech Regulation, Sanctions, Extraterritoriality, and Global South.

Methodology

This review employs qualitative narrative methodology grounded in doctrinal-legal analysis. Secondary sources, including peer-reviewed journals, regulatory instruments, and judicial decisions, are organised thematically and mapped onto the three evolutionary phases. Legal fragmentation is operationalised as an active causal variable, not merely a descriptive label, tracing its effects across three analytical dimensions, including dispute form, forum, and normative logic.

Background

The expansion of transnational finance has reconfigured consumer disputes beyond territorially bounded legal systems. While post-2008 reforms strengthened domestic oversight and redress mechanisms, such as the United Kingdom's Financial Ombudsman Service and enhanced European Union (EU) consumer directives, cross-border transactions increasingly implicated multiple regulatory authorities and private dispute forums. The 2008 financial crisis exposed how internationally marketed mortgage-backed securities, foreign-currency loans, and other retail financial products generated disputes that transcended national jurisdictions, while the subsequent growth of fintech platforms further expanded cross-border consumer transactions beyond traditional banking channels.

Thus, a retail investor purchasing financial products from a foreign bank or a migrant worker using a cross-border remittance service simultaneously engages with regulators, arbitral bodies, and compliance departments under multiple jurisdictions. For consumers, this fragmentation translates into delayed remedies, conflicting jurisdictional rules, increased litigation costs, and uncertainty over which authority possesses competence to hear their claims. In practice, this often means pursuing a claim in an unfamiliar language, before an unfamiliar forum, at a legal cost that renders many meritorious claims practically unrecoverable.

The proliferation of digital financial platforms further standardised contractual allocation of risk, jurisdiction, and governing law. Firms such as PayPal and Revolut rely on uniform terms directing disputes to specified courts or arbitration, which are often outside the consumer's home state. Therefore, the enforcement may depend on instruments such as the New York Convention, layering private adjudication onto domestic consumer law.

Simultaneously, intensifying geo-economic competition has embedded financial regulation within sovereignty and sanctions frameworks. For instance, measures administered by the Office of Foreign Assets Control (OFAC) can restrict asset transfers or payment processing, indirectly obstructing cross-border claims. Although literature on financial law, arbitration, and consumer protection examine these dynamics independently, limited attention has been given to how their interaction systematically restructures access to justice across fragmented legal orders.

Moreover, the 2008 financial crisis marks the analytical starting point of this review because it transformed retail consumer disputes from peripheral contractual grievances into systemic regulatory concerns, exposing the structural disjunction between transnational financial markets and territorially bounded redress mechanisms.

Conceptual Framework

This review integrates a structural and a normative lens to explain and evaluate the evolution of CBFCD. The structural dimension accounts for how disputes are shaped by overlapping regulatory orders, while the normative dimension establishes the criteria for assessing their implications for consumer justice.

1. Structural Lens: Legal Fragmentation Amid Financial Globalisation

Legal fragmentation, as theorised by Martti Koskenniemi (2007) and Gunther Teubner (1997), describes the coexistence of multiple, non-hierarchical legal regimes without a supreme coordinating authority. Andreas Fischer-Lescano and Teubner (2004) argue that regime conflict results from functional differentiation, rather than institutional failure. In cross-border finance, a single dispute may simultaneously engage domestic banking regulation, investment treaty protections, arbitral procedures, and soft-law standards, none maintains supremacy over the others.

Legal fragmentation is operationalised through three mechanisms: (1) corporate forum shopping, whereby firms strategically select favourable jurisdictions; (2) enforcement arbitrage across regimes with divergent standards; and (3) extraterritorial jurisdictional conflict arising from competing regulatory claims. These dynamics are further illuminated by trans-governmental regulatory networks (Slaughter, 2004), private regulatory authority exercised by market actors (Cutler, 2003), and distinctions between binding and non-binding norms (Abbott & Snidal, 2000).

2. Normative Lens: Consumer Vulnerability and Access to Justice

Literature on consumer protection rejects the classical assumption of inter-party equality in contracts. Structural vulnerability (Howells & Weatherill, 2005) and informational asymmetry (Micklitz & Reich, 2014) explain why consumers require mandatory protective norms beyond formal autonomy. In cross-border settings, forum selection and choice-of-law clauses amplify these disadvantages (Briggs, 2008; Symeonides, 2014).

Marc Galanter's (1974) repeat-player theory demonstrates how institutional actors accumulate procedural and strategic advantages over one-shot litigants. Access-to-justice theory (Cappelletti & Garth, 1978) establishes that meaningful redress requires structural reform of dispute mechanisms, including attention to linguistic and procedural exclusion in transnational contexts (Šarčević, 1997).

Together, these lenses provide the analytical and evaluative foundation for assessing each evolutionary phase.

Typology of Cross-Border Financial Consumer Dispute Forms

Under legal fragmentation, CBFCD bifurcates into direct and indirect or structurally mediated forms. The distinction is based on whether the consumer appears as a formal claimant, referring to direct disputes, or is structurally affected without procedural standing, referring to indirect disputes.

1. Three Types of Direct CBFCD

1.1 Cross-Border Retail Litigation: It refers to claims initiated by consumers against foreign or transnational financial institutions concerning mis-selling, foreign currency loans, payment services, or securities. Post-2008 foreign currency mortgage litigation in Central and Eastern Europe illustrates domestically filed claims arising from transnational banking structures. The jurisdiction and the applicable law are contested here.

1.2 Consumer Financial Arbitration: It includes disputes which are diverted into private fora through standard-form clauses, often enforced under the New York Convention. The consumer appears as a claimant, but proceedings are confidential and institutionally tilted toward repeat-player financial firms.

1.3 Cross-Border Insolvency Proceedings: It covers consumer claims arising from the collapse of financial intermediaries operating across jurisdictions. The recovery depends on competing national rules. The 2022 failure of FTX illustrates fragmented US–Bahamian proceedings in which retail customers ranked behind institutional creditors.

2. Two Types of Indirect CBFCD

2.1 Regulatory and Compliance Conflicts: They include disputes regarding consumer account suspensions, transaction blocks, or de-risking triggered by overlapping sanctions and Anti-Money Laundering (AML) regimes administered by authorities such as OFAC. No conventional dispute forum exists, yet financial access is directly impaired.

2.2 Sovereign Debt–Linked Consumer Exclusion: It covers disputes which are formally between states and creditors, often litigated in centers such as New York City or London, whose outcomes constrain domestic fiscal capacity and indirectly affect depositors, bondholders, and pension beneficiaries.

In both indirect forms, the absence of a formal claimant role means the affected consumer cannot initiate proceedings to contest the freeze, suspension, or fiscal constraint that harms them. This structural exclusion is arguably more severe than a procedural disadvantage within a forum as there is no forum to be disadvantaged within. Together, these five forms demonstrate how fragmentation structures both adjudicate and exclude within CBFCD.

Evolutionary Trajectory of Cross-Border Financial Consumer Disputes

The evolution of CBFCD reflects successive reconfigurations of fragmentation's effects, instead of linear regulatory progress. Across the three phases, dispute form, forum, and normative logic shift in response to financial innovation and geopolitical restructuring. What changes is not the existence of asymmetry, but its institutional expression.

Phase I (Post-2008): Paternalistic Redress within Territorial Forums

The 2008 financial crisis exposed systemic mis-selling, opaque derivatives distribution, and foreign currency mortgage risk embedded in transnational banking structures. Yet adjudication remained domestic. The Court of Justice of the European Union's ruling in Kásler v. OTP Jelzálogbank (C-26/13, 2014), concerning unfair terms in Hungarian foreign currency mortgage contracts, illustrates how globally marketed financial products generated domestically adjudicated consumer disputes involving foreign banks, with courts applying the Unfair Contract Terms Directive to correct informational asymmetry, rather than displacing it to another forum.

Regulatory reforms such as the Dodd–Frank Act (2010) in the United States and MiFID II (2014) in the European Union institutionalised consumer protection as systemic stabilisation (Helleiner, 2011; Stiglitz, 2010). National courts, ombudsmen, and regulators functioned as primary redress mechanisms. Fragmentation manifested in the mismatch between globally structured products and territorially bounded remedies. The dispute form centered on disclosure failure and fiduciary breach. The forum was the national regulatory state, and the normative logic was corrective paternalism.

Phase II (2013–2018): Contractualisation and Private Governance

The expansion of fintech platforms restructured dispute architecture by migrating adjudication into contractual ecosystems. Firms such as PayPal and Revolut standardised jurisdiction, governing law, and arbitration through uniform terms. For instance, PayPal's standard-form jurisdiction clauses routinely require disputes to be resolved under predetermined legal forums, limiting consumers' practical bargaining power despite formal contractual consent. This asymmetry was contested rather than settled. The Consumer Financial Protection Bureau's 2017 rule, barring mandatory arbitration clauses in consumer financial contracts, was overturned by Congress under the Congressional Review Act within months, showing that contractual governance's ascendancy over paternalistic correction was a political outcome, not a neutral market evolution.

Disputes increasingly concerned account suspensions, algorithmic credit scoring, and enforcement of mandatory arbitration clauses. Enforcement often relied on the New York Convention, reinforcing private adjudication (Cutler, 2003; Teubner, 1997). Regulatory responses, including EU Alternative Dispute Resolution (ADR) and Online Dispute Resolution (ODR) mechanisms, extended procedural access without fully addressing structural asymmetry (Cafaggi, 2017). The normative shift was decisive, from paternalistic correction to contractual autonomy. Consumers were repositioned as platform users governed by private authority, while repeat-player advantages intensified (Galanter, 1974).

Phase III (2018–Present): Geo-Financial Sovereignty and Extraterritorial Enforcement

Since 2018, geopolitical fragmentation and sanctions regimes have displaced both paternalistic and contractual models. Financial infrastructure has become an instrument of state power (Farrell & Newman, 2019). Measures administered by the OFAC or restrictions on payment networks can trigger asset freezes and account closures without a conventional dispute forum. The 2022 collapse of FTX further demonstrated cross-jurisdictional insolvency fragmentation. Parallel Delaware and Bahamian proceedings ranked retail customers behind institutional creditors in the distribution of recovered assets, illustrating how insolvency forum-splitting reallocates loss along lines the consumer never negotiated. A comparable pattern appears in compliance driven exclusion. The 2022 CFPB and New York Attorney General suit against MoneyGram, and the FTC's 2017 settlement with Western Union, both arose from remittance failures affecting migrant consumers with no comparable individual recourse, showing that account freezes and delayed transfers under AML and sanctions regimes leave consumers dependent on regulator-initiated action rather than a forum of their own.

Here, normative indeterminacy is acute as binding sanctions, soft-law AML standards, and divergent insolvency regimes intersect without hierarchical coordination (Abbott & Snidal, 2000). Moreover, the growing internationalisation of Chinese payment infrastructure and digital currency initiatives further illustrates the emergence of competing financial governance architectures beyond Western regulatory systems.

Across these phases, dispute architecture moves from domestic correction to private governance and finally to extraterritorial sovereignty projection. Fragmentation persists as the structuring condition, while consumer access to justice becomes progressively mediated by forces beyond the consumer's procedural reach.

Comparative Jurisdictional Literature

Three jurisdictional models illustrate divergent institutional responses to legal fragmentation across the phases examined above. The United States combines Consumer Financial Protection Bureau's (CFPB) administrative enforcement with federal judicial deference to mandatory arbitration, validated through AT&T Mobility LLC v. Concepcion (2011), producing substantial domestic redress capacity alongside structural exclusion at the cross-border interface (Shavell, 2004; Stiglitz, 2010). Galanter's (1974) repeat-player theory explains how this configuration systematically advantages institutional financial actors over one-shot consumer claimants in privatised fora.

The EU's hybrid model coordinates redress through its ADR Directive and ODR Regulation (2013) while domestic courts retain primary jurisdiction, generating multi-level governance with variable enforcement quality across member states (Cafaggi, 2017). However, procedural access does not resolve the informational and algorithmic asymmetries that Micklitz and Reich identify as structurally constitutive of consumer vulnerability.

Chen et al. (2017) present ASEAN's soft-law coordination model as theoretically significant. They assert that fragmentation is managed through inter-regulatory dialogue rather than hierarchical harmonisation, demonstrating that cooperative pluralism can generate functional governance capacity without supranational authority, a finding that transatlantic literature hasn't adequately absorbed. However, soft law coordination lacks binding enforcement as consumer remedy remains contingent on regulators' political will rather than a guaranteed procedural right, a limitation that is acknowledged but not resolved. Moreover, Global South jurisdictions, marked by rapid fintech expansion and disproportionate extraterritorial compliance burdens (Arner et al., 2016), remain marginalised in comparative literature. This gap is analytically central to understand the phase III where consumers experience unequal access to remedies, depending not only on the nature of the dispute but also on the institutional capacity of the jurisdiction in which it arises.

Normative Evaluation Across Phases

Normative benchmarks cannot be treated as fixed across the phases without producing systematic analytical distortion. Phase I applied a welfare-correction standard; regulatory reforms were evaluated by whether they reduced informational asymmetry and extended remedial access to structurally disadvantaged consumers (Braithwaite, 2008; Helleiner, 2011). This standard presupposes a functioning domestic institutional channel, an assumption that Phase II quietly dismantles.

Phase II substituted efficiency and contractual autonomy as the operative criteria. The relevant question became procedural accessibility, not substantive fairness, leaving the tension between formal autonomy and algorithmic asymmetry structurally unresolved (Zuboff, 2019). Consumers were evaluated as rational contracting parties; the power conditions under which they contracted were not.

Phase III renders both prior frameworks inadequate. Where financial exclusion is imposed extraterritorially through sanctions regimes or compliance-driven de-risking, the meaningful question is whether any remedy survives jurisdictional reach at all. Farrell and Newman (2019) are unambiguous that this constitutes systemic injustice, not regulatory inefficiency. Applying Phase I benchmarks to Phase III disputes does not merely underestimate harm but misidentifies its nature entirely, generating policy prescriptions calibrated to a regulatory landscape that no longer exists.

Literature Gaps

Five structural gaps emerge from this review, each analytically significant in isolation but collectively constituting a blind spot that no single disciplinary intervention can resolve on its own.

The first and most foundational is the treatment of legal fragmentation as context rather than cause. Across the literature, fragmentation appears as the backdrop against which disputes occur, not as the mechanism actively producing their form, forum, and normative logic. Forum shopping, enforcement arbitrage, and extraterritorial sovereignty tensions remain analytically untraced in their differential operation across the phases (Koskenniemi, 2007). Scholarship consequently describes fragmentation's symptoms while leaving its causal pathways untheorized. Future research could apply process tracing to a matched set of CBFCD case files spanning the three phases, while treating forum shopping, enforcement arbitrage, and extraterritorial conflict as distinct causal pathways, to test whether their relative weight shifts systematically across the phases.

The second gap is the geographic narrowness of comparative analysis. US and EU frameworks dominate scholarly attention while ASEAN, African, and South Asian models are either absent or framed as developmental approximations of a Euro-Atlantic norm. Chen et al. (2017) offer a partial corrective, but the Global South continues to be positioned as a site of regulatory deficit rather than a generative context producing distinct governance responses. Comparative studies drawing on regulator interviews and case file analyses across ASEAN, African, and South Asian dispute resolution bodies would test whether soft law coordination generates governance capacity comparable to hierarchical EU or US frameworks, rather than treating these models as developmental approximations.

The third gap concerns fintech scholarship's internal fragmentation. ODR mechanisms, crypto-asset regulation, and platform liability are extensively analysed in isolation, but their intersection with Phase III sovereignty tensions and extraterritorial enforcement dynamics remains theoretically underdeveloped (Arner et al., 2016; Zetzsche et al., 2020). Future research should build a single dataset, linking ODR case outcomes, crypto asset enforcement actions, and OFAC linked account restrictions for the same population of platforms, to test whether sovereignty driven exclusion and platform governed adjudication operate through shared or distinct mechanisms.

The fourth gap is the disciplinary siloing of normative evaluation from jurisdictional comparison. No existing study systematically maps how normative standards shift across the three phases or traces how those shifts produce divergent consumer outcomes across jurisdictional models. A structured comparative design tracking consumer outcome measures, like settlement value, time to resolution, and forum accessibility, against the three normative benchmarks would establish whether normative shifts independently predict outcome divergence or merely track jurisdictional wealth differences.

The fifth gap is the most practically consequential. The convergence of mandatory arbitration design, linguistic exclusion (Šarčević, 1997), and algorithmic decisional opacity (Katsh & Rabinovich-Einy, 2017; Pasquale, 2015) occurs precisely at the institutional moment where consumer access to justice is determined, yet this convergence has not been examined within a unified framework. Interdisciplinary research combining arbitration clause content analyses, algorithmic decision audits, and language access surveys of consumer claimants would test whether these three exclusionary mechanisms compound for the same claimant population, rather than operating as separable burdens.

Collectively, these five dimensions require a shared evidentiary base, including matched case files, regulators' interviews, and platform level enforcement data, that at present exists only in fragments across different disciplinary literatures.

Conclusion

CBFCDs have undergone three structurally distinct reconfigurations, not linear regulatory progress, driven by legal fragmentation as a causal mechanism rather than a background condition. Dispute forms have migrated from product mis-selling to algorithmic compliance conflicts and sanctions-linked exclusions; forums have shifted from domestic courts to privatised ODR platforms and extraterritorial enforcement mechanisms; normative logics have moved from paternalistic correction through contractual autonomy to sovereignty projection.

Each transition reconfigures rather than resolves the structural asymmetries consumer protection law exists to address. The consumer disadvantaged by informational inequality in 2008 is now disadvantaged by algorithmic opacity and geopolitical enforcement, a qualitatively different condition requiring a qualitatively different analytical response. Existing literature mirrors the fragmentation it studies, as it's rigorous within disciplines but blind across them.

Future research should combine comparative empirical case studies with interdisciplinary legal analysis to examine how fragmented regulatory architectures shape consumer outcomes across diverse jurisdictions, particularly in the Global South. Moreover, it must be explicitly attentive to how the architecture of redress is itself a site of power.

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