

University of Pennsylvania
The Wharton School
Legal Studies & Business Ethics Department

Syllabus

Legal Studies & Business Ethics 212
Business & Public Policy 212

Economic Analysis of Law, Spring 2009
Prof. Martin Asher

Required Text and Materials:

Cooter, Robert and Thomas Ulen, *Law and Economics*, Fifth Edition (Addison-Wesley, 2004).

Polinsky, A. Mitchell, *An Introduction to Law and Economics*, Second Edition (Little-Brown, 1989).

Barnes, David W. and Lynn A. Stout, *Cases and Materials on Law and Economics* (West, 1992).

Katz, Avery Wiener, *Foundations of the Economic Approach to Law* (Oxford, 1998).

Lecture Outlines (downloadable from course Web site).

Optional Materials:

The Wall Street Journal (discount student subscriptions available in class) or other current periodical containing news items relevant to an economic perspective of the law.

Objectives:

Broadly, the course is designed to learn how to think as an economist about legal rules; to evaluate alternative legal rules against standards of economic efficiency and distributive justice; and to understand the nature of the legal process and several specific areas of the law. With the use of alternative texts, both deductive and inductive reasoning will be employed to study the formation and interpretation of legal rules.

Course Requirements and Grading:

There will be two midterm examinations, one final examination, and one 5-7 page paper. The course grade will be determined according to the following proportions:

Midterm Exam I:	25 percent
Midterm Exam II:	25 percent
Final Exam:	35 percent
Paper:	15 percent

The final examination will be *cumulative over the material from the entire course* but will emphasize material since the last midterm examination.

Schedule of Exams and Paper:

Midterm I:	Thursday, February 19 (in class)
Midterm II:	Tuesday, March 31 (in class)
Paper:	Friday, April 24
Final:	Wednesday, May 6, 12:00-2:00 p.m. (2 hours)

Do not make travel plans that conflict with the final exam date. If you have already done so, then do not enroll in this course or drop it in favor of a course whose requirements you can fulfill.

Regrading of Exams:

Any requests for regrading of exams must be submitted using the **Regrade Request Form** (downloadable from the course Web site) *within one week* from the date that exams are returned in class. Requests for regrading must be very specific. When you request a regrade, I retain the right to regrade your entire exam. Unambiguous errors in grading will be promptly corrected. The one-week period for submission of exams for regrading begins on the date that the exams are returned in class, not the day on which you pick up the exam, if for some reason you are absent from class the day the exams are returned. If you miss the class during which the exams are returned, it is *your responsibility* to pick up your graded exam within the one-week period.

Paper Assignment:

One paper, 5-7 pages in length (12 point font, 1" margins, double spacing), will be due on **Friday, April 24**. Specifics of the paper assignment will be forthcoming. It will involve the application of economic analysis to a legal issue stemming from either current events or an actual court case.

Problem Sets:

Throughout the term, problem sets may be assigned from end-of-chapter questions in Cooter and Ulen. Answers to text questions are provided in the back of the text. Though the problem sets will not be graded or used for purposes of calculating the course grade, some exam questions will be inspired by problem set questions.

Office Hours and Other Information:

Tuesdays and Thursdays, 9:00-10:00 a.m. and by appointment at other times.
Office: **JMHH G95** Phone: 215-898-0285
E-mail address: asherm@wharton.upenn.edu
Web site: <http://finance.wharton.upenn.edu/~asherm/>

Note: I will also have an office in the Legal Studies & Business Ethics Department, JMHH 652, which can be used, as needed, for additional office hours after class on Tuesdays and Thursdays.

Course Outline

[**C-U** = Cooter and Ulen; **P** = Polinsky; **B-S** = Barnes and Stout; **K** = Katz; **O** = Other articles]

I. Introduction to Law and Economics

C-U Preface

Ch. 1: An Introduction to Law and Economics

P Preface

Ch. 1: Introduction

B-S Preface

K Becker, "The Economic Approach to Human Behavior", p. 6

Coleman, "Efficiency, Utility, and Wealth Maximization" p. 11

Schelling, "Economic Reasoning and the Ethics of Policy" p. 18

Blaug, "The Distinction between Positive and Normative Economics", p. 25

Friedman, "The Methodology of Positive Economics", p. 28

II. Review of Microeconomic Theory

C-U Ch. 2: A Review of Microeconomic Theory

P Ch. 2: Efficiency and Equity

Ch. 11: Competitive Markets

B-S Ch. 1: Introduction

Cases and Readings

A. Efficiency and Utility Maximization

a. *Cidris v. White*

B. Efficiency and Wealth Maximization

a. *Ross v. Wilson*

C. Comparing Utility and Wealth Maximization: The Pareto Criteria and the Role of Compensation

a. *United States v. Causby*

D. Efficiency and Equity

III. Introduction to Law and Legal Institutions

C-U Ch. 3: An Introduction to Law and Legal Institutions

IV. The Economics of Property Rights and Nuisance Law

C-U Ch. 4: An Economic Theory of Property

Ch. 5: Topics in the Economics of Property Law

P Ch. 3: The Coase Theorem

Ch. 4: First Application – Nuisance Law

B-S Ch. 2: Property Rights and Nuisance Law

Cases and Readings:

A. Externalities and Inefficiency

a. Internalizing Externalities Through Damage Awards

i. *Orchard View Farms, Inc. v. Martin Marietta Aluminum, Inc.*

b. Internalizing Externalities Through Regulation

i. *United States v. The City of Niagara Falls*

c. Internalizing Externalities Through Privatization

i. Hardin, The Tragedy of the Commons

d. The Prisoner's Dilemma

- B. Assigning and Exchanging Rights
 - a. Competing Uses and the Coexistence of Property Rights
 - i. *Bryant v. Lefever*
 - ii. Coase, The Problem of Social Cost
 - iii. *Sturges v. Bridgman*
 - b. The Coase Theorem and the Efficient Exchange of Rights
 - i. *Fontainebleau Hotel Corp. v. Forty-Five Twenty-Five, Inc.*
 - ii. *Prah v. Maretti*
 - iii. *Booker v. Old Dominion Land Co.*
- C. Transaction Costs and Impediments to Bargaining
 - a. The Coase Theorem and Transaction Costs
 - i. *Ploof v. Putnam*
 - ii. Calabresi and Melamed, Property Rules, Liability Rules, and Inalienability: One View of the Cathedral (first excerpt)
 - iii. *Vincent v. Lake Erie Transport Co.*
 - b. Impediments to Bargaining and the Choice of Remedies
 - i. *Boomer v. Atlantic Cement Company*
 - ii. *Spur Industries, Inc. v. Del E. Webb Development Co.*
 - iii. *Carpenter v. Double R Cattle Company, Inc.*
 - c. Paternalism and Inalienable Rights
 - i. *Samples v. Monroe*
 - ii. Calabresi and Melamed, Property Rules, Liability Rules, and Inalienability: One View of the Cathedral (second excerpt)
 - d. Creating New Entitlements: Property, Liability, or Inalienability?
 - i. *Moore v. Regents of the University of California*
- K** Coase, "The Problem of Social Cost", p. 63
 Demsetz, "Toward a Theory of Property Rights", p. 86
 Calabresi and Melamed, "One View of the Cathedral", p. 94
- O** Important Digression on Takings/Eminent Domain: "Public Use", "Public Purpose" and Personal Property Rights; *Kelo v. City of New London*, including the decision, concurring opinion, two dissenting opinions, oral argument before the Supreme Court, and several amicus curiae briefs.
- O** Parchomovsky, Gideon and Peter Siegelman, "Towards an Integrated Theory of Intellectual Property," Fordham University School of Law, Research Paper 18, April 2002

V. The Economic Analysis of Tort Law

- C-U** Ch. 8: An Economic Theory of Tort Law
 Ch. 9: Topics in the Economics of Tort Liability
- P** Ch. 6: Third Application – Automobile Accidents
- B-S** Ch. 3: The Economic Analysis of Tort Law
 Cases and Readings
 - A. Liability as Incentive for Efficient Behavior
 - a. *Winn Dixie Stores, Inc. v. Benton*
 - b. *Drake v. Lerner Shops of Colorado, Inc.*
 - c. *Schomaker v. Havey*
 - B. The Negligence Standard
 - a. The Cost-Benefit Approach to Liability
 - i. *United States v. Carroll Towing Co.*
 - b. Modern Applications of the Learned Hand Formula
 - i. *McCarty v. Pheasant Run, Inc.*
 - ii. *Davis v. Consolidated Rail Corporation*

- C. Efficiency Defenses to Liability Based on Negligence
 - a. Contributory Negligence
 - i. *Butterfield v. Forrester*
 - ii. *Haeg v. Sprague, Warner & Co., Inc.*
 - iii. *Levi v. Southwest Louisiana Electric Membership Cooperative*
 - b. Last Clear Chance
 - i. *Perin v. Nelson & Sloan*
 - c. Apportioned Comparative Negligence
 - i. *Scott v. Alpha Beta Company*
 - ii. *Golden v. McCurry*
 - d. Nonapportioned Comparative Negligence
 - i. *Galena and Chicago Union Railroad Company v. Jacobs*
 - e. Assumption of Risk
 - i. *Ordway v. Superior Court*
 - ii. *Kelly v. Checker White Cab*
- D. Strict Liability
 - a. Strict Liability and the Best Cost Avoider
 - i. *Spano v. Perini Corporation*
 - ii. Shavell, Strict Liability Versus Negligence
 - b. Strict Liability and Allocative Efficiency
 - i. *Doe v. Miles Laboratories, Inc.*
- E. Problems in Calculating Damages
 - a. The Collateral Source Rule
 - i. *Anheuser-Busch, Inc. v. Starley*
 - b. Measuring Future Losses
 - i. *Kaczowski v. Bolubasz*
 - c. Valuing Human Life
 - i. *Sherrod v. Berry*
 - d. Punitive Damages and Overdeterrence
 - i. *Sturm, Ruger & Co., Inc. v. Day*
- K Posner, "The Learned Hand Formula for Determining Liability", p. 105
- Calebresi, "Some Thoughts on Risk Distribution and the Law of Torts", p. 42
- O Goldberg, John C., "Twentieth Century Tort Theory," Working paper (2002)
- O Polinsky, A. Mitchell and Steven Shavell, "Punitive Damages: An Economic Analysis", 111 *Harvard Law Review* 869-962 (1998).
- O Sebok, Anthony J., "Punitive Damages: From Myth to Theory". *Iowa Law Review*, Vol. 92, 2007
- O Eisenberg, Theodore, LaFountain, Neil, Ostrom, Brian, Rottman, David and Wells, Martin T., "Juries, Judges, and Punitive Damages: An Empirical Study" (Draft, November 1, 2000).
- O Chanenson, Steven L. and Gotanda, John Y., "The Foggy Road for Evaluating Punitive Damages: Lifting the Haze from the BMW/State Farm Guideposts" (August 2003). *Villanova Law/Public Policy Research Paper* No. 2004-1.
- O Cooter, Robert, "Punitive Damages, Social Norms, and Economic Analysis," *Law and Contemporary Problems*, Vol. 73 (Summer 1997), p. 73

VII. The Economics of Contract Law

- C-U Ch. 6: An Economic Theory of Contract
- Ch. 7: Topics in the Economics of Contract Law
- P Ch. 5: Second Application – Breach of Contract
- B-S Ch. 4: Economics of Contract Law
- Cases and Readings (altered order and subtitles from casebook)
- A. Contracts and Contract Defenses

- a. Lack of Consideration and Gratuitous Promises (*promissory estoppel*)
 - i. *Stelmack v. Glen Alden Coal Co.*
 - ii. *Mills v. Wyman*
 - iii. Posner, *Gratuitous Promises in Economics and Law*
 - iv. *Ricketts v. Scothorn*
- b. Impracticability and Impossibility of Performance
 - i. *Rexite Casting Co. v. Midwest Mower Corp.*
 - ii. *Canadian Industrial Alcohol Co. v. Dunbar Molasses Co.*
 - iii. *Transatlantic Financing Corporation v. United States*
 - iv. *Phelps v. School Dist. No. 109, Wayne County*
- c. Illegal Contracts
 - i. *Samples v. Monroe*
 - ii. *Miltenberg & Sampton, Inc. v. Mallor*
- d. Duress
 - i. *Peter Matthews, Ltd. V. Robert Mabey, Inc.*
- e. Mistake
 - i. *Wilkin v. 1st Source Bank*
 - ii. *Sherwood v. Walker* (cited in *Wilkin*)
 - iii. *Harris v. Tyson*
- f. Incapacity
 - i. *Ortelere v. Teachers' Retirement Board of the City of New York*
- g. Unconscionability
 - i. *Williams v. Walker-Thomas Furniture Company (II)*
- B. Introduction to Contract Remedies
 - a. *Redgrave v. Boston Symphony Orchestra*
 - b. *Neri v. Retail Marine Corporation*
 - c. *Deitsch v. Music Company*
 - d. *Security Stove & Mfg. Co. v. American Ry. Express Co.*
 - e. *Hadley v. Baxendale*
 - f. *Lake River Corp. v. Carborundum Co.*
 - g. *Madariaga v. Morris*
- C. Efficient Breach
 - a. *Peevyhouse v. Garland Coal & Mining Company*
- K Ulen, "The Efficiency of Specific Performance: Toward a Unified Theory of Contract Remedies", p. 116
- O Schwartz, Alan and Robert E. Scott, "Contract Theory and the Limits of Contract Law," Working paper (2002).

VII. Overview, Critiques, and Other Topics

- K Cooter, "Unity in Tort, Contract, and Property: The Model of Precaution", p. 51
- Demsetz, "When Does the Rule of Liability Matter", p. 73
- Selected critiques from Section 8
- O Perino, Michael A., "Did the Private Securities Litigation Reform Act Work?" Columbia Law School, The Center for Law and Economic Studies, Working Paper 211 (October 2002)