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 2012  
Prof. Martin Asher

Required Text and Materials:


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: 30 percent
- Paper: 15 percent
- Class Participation: 5 percent

The final examination will be *cumulative over the material from the entire course* but will emphasize material since the last midterm examination. Class participation includes *attendance and the quality of participation through discussions of cases and related theory, as well as answering and asking of relevant questions.*
Schedule of Exams and Paper:

Midterm I: Thursday, February 16 (in class)
Midterm II: Tuesday, March 30 (in class)
Paper: Friday, April 20
Final: Thursday, May 3, 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 20. 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:

Wednesdays, 10:30-11:30 a.m. and 1:30-3:00 p.m., and by appointment at other times.
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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. Cidis 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. Fontainbleau 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.
   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.


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. Buterfield v. Forrester
      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. Kaczkowski v. Bolubasz
   c. Valuing Human Life
      i. Sherrod v. Berry
   d. Punitive Damages and Overdeterrence
      i. Sturm, Ruger & Co., Inc. v. Day
Calebresi, "Some Thoughts on Risk Distribution and the Law of Torts", p. 42
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).

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
   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

VII. Overview, Critiques, and Other Topics
Demsetz, "When Does the Rule of Liability Matter", p. 73
Selected critiques from Section 8