



ECONOMIC ANALYSIS OF LAW
LGST 212 / BEPP 212

SPRING 2016

Prof. Vince Buccola

Legal Studies & Business Ethics Department
649 Jon M. Huntsman Hall
tel: 215.573.4864

e-mail: buccola@wharton.upenn.edu [preferred]
<https://canvas.upenn.edu/courses/1305954>

Class Meetings Tuesdays & Thursdays, 10:30 – noon, Room JMHH TBD
Office Hours Wednesdays, 3:00 – 5:00. Or email to arrange a meeting. Or feel free to stop by any time Tues. or Thurs. afternoon.

Course Description: This course provides an introduction to the economic analysis of law and legal institutions. It explores positive and normative theories of wealth maximization as a goal of law—as well as their critiques—and seeks to develop students’ understanding of the ways law responds to and shapes private incentives to behave (anti-)socially. The first half of the course surveys the application of key economic concepts to basic features of the Anglo-American common law of property, contract, and tort. The second half of the course focuses the tools developed on an in-depth analysis of the law of modern business organizations, principally the corporation. In so doing, the course aims to supply a foundation not only in a mode of analysis, but also in the substance of corporate organizational law.

Prerequisite: Econ 001

Required Texts:

1. Richard A. Posner, *Economic Analysis of Law* (9th ed., 2014)
2. Frank H. Easterbrook & Daniel R. Fischel, *The Economic Structure of Corporate Law* (1993)
3. Selected cases and scholarly articles [to be provided by Buccola via Canvas]

Exams and Grading:

Grading will be based the results of midterm (35%) and final (50%) exams, the format of which will be discussed in class, as well as on professionalism (15%).

Class Format and Policies:

This course will involve some lecture, some group discussion, and some “Socratic” questioning. At times, I will call on students without deference to volunteerism. Therefore, students are expected to have read the assigned materials and to be ready to discuss them critically.

It is not always feasible to complete readings before class. I will not call on a student who emails me to this effect at least an hour before class (max four times during the semester). Please do not pretend to have read what you haven’t.

Electronic devices will not be permitted in class. Shopping, texting, and gaming negatively affect group dynamics. If an emergency requires that you have connectivity, confer with me before class.

More generally, students are expected to behave professionally. Shirking and whining, in particular, are to be discouraged. A secondary goal of this course is to develop social intuitions about how to create a strong reputation within a business organization. Teaser: everyone likes someone who is courteous, punctual, engaged, and positive; everyone dislikes the opposite.

Informal Lunches and Dinners:

I would love to get to know you better and to hear your views on the course (among other things). To that end, I will organize some opportunities to have meals in small groups. This is not, however, a course requirement or expectation.

Readings:

Tentative reading assignments are listed below. If there is to be a change, I will let you know in class and post the updated assignment on Canvas. All readings will be found either in one of the assigned texts or on the course’s Canvas site.

Course Thumbnail (tentative):

1. **1.14.16** — introduction to american legal system; reading judicial opinions; legal rules as price determinants

Readings Kerr, *How to Read a Legal Opinion*, 11 Green Bag 2d 51 (2007)
[available on Canvas]

Talley v. Mathis, 265 Ga. 179 (1995) [available on Canvas]

Posner, §§ 1.1, 1.2

2. 1.19.16 — property rights

Readings Rose, *Possession as the Origin of Property*, 52 U. Chi. L. Rev. 76 (1985)
[available on Canvas]

Demsetz, *Toward a Theory of Property Rights*, 57 Am. Econ. Rev. 347
(1967) [available on Canvas]

Posner, §§ 2.1, 2.2, 2.3, 3.1

3. 1.21.16 — getting property

Readings *Ghen v. Rich* [available on Canvas]

Haslem v. Lockwood [available on Canvas]

South Staffordshire Water Co. v. Sharman [available on Canvas]

4. 1.26.16 — property and the injunction: information and monopoly

Readings *Armory v. Delamirie* [available on Canvas]

Ploof v. Putnam [available on Canvas]

5. 1.28.16 — property and externalities: a basis for regulation?

Readings Coase, *The Problem of Social Cost* [available on Canvas]

6. 2.2.16 — contract remedies: efficient breach and opportunism

Readings *Acme Mills & Elevator Co. v. Johnson* [available on Canvas]

Hadley v. Baxendale [available on Canvas]

7. 2.4.16 — incomplete contracts: default rules

Readings Posner, §§ 4.10 – 4.13

Taylor v. Caldwell [available on Canvas]

Ayres & Gertner, *Filling Gaps in Incomplete Contracts*

Posner, § 4.16

8. 2.9.16 — the mailbox rule: coin-flipping and arbitrary rules

Readings *Caldwell v. Cline* [available on Canvas]

9. 2.11.16 — comparative and contributory negligence: taking precautions

Readings *United States v. Carroll Towing* [available on Canvas]

Indiana Harbor Belt Ry. Co. v. American Cyanamid [available on Canvas]

Posner, §§ 6.1, 6.2, 6.5

10. 2.16.16 — detecting and penalizing torts

Readings Polinsky & Shavell, *Punitive Damages* (pp. 870 – 903) [available on Canvas]

11. 2.18.16 — causation puzzles

Readings *Summers v. Tice* [available on Canvas]

Brauer v. New York Central [available on Canvas]

Posner §§ 6.1, 6.7

12. 2.23.16 — nuisance

Readings Calabresi & Melamed, *One View of the Cathedral* [available on Canvas]

13. 2.25.16 — critiques of the economic analysis of law

Readings Dworkin, *Is Wealth a Value* [available on Canvas]

14. 3.1.16 — **midterm exam**

15. 3.3.16 —agency costs and agency law

Readings *General Automotive Mfg. Co. v. Singer* [available on Canvas]

16. 3.15.16 — general partnership i: partnership opportunities

Readings *Fenwick v. Unemployment Compensation Commission* [available on Canvas]

Meinhard v. Salmon

- 17. 3.17.16** — general partnership ii: understanding default rules
Readings Delaware partnership statute, subchapters II, III, and IV
- 18. 3.22.16** — introduction to the corporate form
Readings Delaware General Corporate Law, §§ 101, 102(a)–(c), 106–09, 121–22, 141(a)
- 19. 3.24.16** — limited liability and aggregation: the tort problem
Readings *Walkovszky v. Carlton* [available on Canvas]
Easterbrook & Fischel, ch. 2 (limited liability)
- 20. 3.29.16** — shareholder and manager i: fiduciary obligations
Readings *Guth v. Loft* [available on Canvas]
- 21. 3.31.16** — shareholder and manager ii: the business-judgment rule
Readings *Aronson v. Lewis* [available on Canvas]
Easterbrook & Fischel, ch. 4 (fiduciary principle)
- 22. 4.5.16** — shareholder and manager iii: markets for corporate control
Readings Easterbrook & Fischel, ch. 5 (corporate control transactions)
- 23. 4.7.16** — controlling and minority shareholder i: opportunities, redux
Readings *Weinberger v. UOP* [available on Canvas]
Delaware General Corporate Law, § 144
Kahn v. Lynch Communications [available on Canvas]
- 24. 4.12.16** — controlling and minority shareholder ii: squeeze-out and appraisal
Readings Delaware General Corporate Law, § 253
Glassman v. Unocal [available on Canvas]
Easterbrook & Fischel, ch. 6 (the appraisal remedy)

25. 4.14.16 — creditor oppression i: asset substitution and dividends

Readings Delaware General Corporate Law, § 170

Uniform Fraudulent Transfer Act, § 4

Jensen & Meckling, *Theory of the Firm* [available on Canvas]

26. 4.19.16 — creditor oppression ii: covenants and monitoring

Readings Levmore, *Monitors and Freeriders* [available on Canvas]

27. 4.21.16 — constituency statutes and benefit corporations

Readings Macey, *Constituency Statutes* [available on Canvas]

28. 4.26.16 — jurisdictional competition

Readings Cary, *Federalism and Corporate Law* [available on Canvas]

Winter, *State Law and Shareholder Protection* [available on Canvas]