



ECONOMIC ANALYSIS OF LAW
LGST 212 / BEPP 212

SPRING 2017

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<https://canvas.upenn.edu/courses/1344291>

Class Meetings Mondays & Wednesdays, 10:30 – noon, Room JMHH F65
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. Our goal is develop intuitions about the ways law simultaneously shapes and responds to private behavioral incentives. In the first half of the course, we will survey the application of key economic concepts to basic features of the Anglo-American common law of property, contract, and tort. In the second half of the course, we will use the tools developed in our survey to focus in depth on antitrust policy in conventional as well as network industries. [Prerequisite: Econ 001]

Required Texts

1. Richard A. Posner, *Economic Analysis of Law* (9th ed., 2014)
2. Course pack [available from study.net]

Exams and Grading

Grading will be based on professionalism (10%), the results of midterm (25%) and final (40%) exams, and the quality of (group) presentations on antitrust topics to be determined (25%).

Class Format and Policies

This course will involve a combination of lecture, discussion, and “Socratic” questioning. “Cold calling” will be a regular feature of class. Therefore, students are expected to read the assigned materials carefully and to be ready to discuss them critically.

Three notable policies:

1. *Electronic devices.* 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.
2. *Unfinished readings.* It is not always feasible to complete readings before class. If you cannot finish an assignment, please let me know by email at least an hour before class, and I will not call you (max four times during the semester). Please do not pretend to have read what you haven’t.
3. *Regrading.* All grades are final. Complaints about grades will result in a one-step grade reduction for the course.

More generally, students are expected to behave professionally. Shirking and whining are especially 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 Get-Togethers

Let’s get coffee or lunch!

Readings

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

1. **1.11.17** —reading judicial opinions; legal rules as price determinants

Readings Kerr, *How to Read a Legal Opinion*

Talley v. Mathis

 Posner, §§ 1.1, 1.2

2. 1.18.17 — property rights

Readings Rose, *Possession as the Origin of Property*
 Demsetz, *Toward a Theory of Property Rights*
 Posner, §§ 2.1, 2.2, 2.3, 3.1

3. 1.23.17 — getting property

Readings *Ghen v. Rich*
 Haslem v. Lockwood
 South Staffordshire Water Co. v. Sharman

4. 1.25.17 — property and the injunction: information and monopoly

Readings *Armory v. Delamirie*
 Ploof v. Putnam

5. 1.30.17 — property and externalities: a basis for regulation?

Readings Coase, *The Problem of Social Cost*

6. 2.1.17 — contract remedies: efficient breach and opportunism

Readings *Acme Mills Elevator Co. v. Johnson*
 Hadley v. Baxendale

7. 2.6.17 — incomplete contracts: default rules

Readings Posner, §§ 4.10 – 4.14
 Taylor v. Caldwell
 Ayres & Gertner, *Filling Gaps in Incomplete Contracts*
 Posner, § 4.16

8. 2.8.17 — the mailbox rule: coin-flipping and arbitrary rules

Readings *Caldwell v. Cline*

9. **2.13.17** — comparative and contributory negligence: taking precautions
Readings *United States v. Carroll Towing*
 Indiana Harbor Belt Ry. Co. v. American Cyanamid
 Posner, §§ 6.1, 6.2, 6.5
10. **2.15.17** — detecting and penalizing torts
Readings Polinsky & Shavell, *Punitive Damages* (pp. 870–903)
11. **2.20.17** — causation puzzles
Readings *Summers v Tice*
 Brauer v. New York Central
 Posner, §§ 6.1, 6.7
12. **2.22.17** — nuisance
Readings Calabresi & Melamed, *One View of the Cathedral*
13. **2.27.17** — critiques of the economic analysis of law
Readings Dworkin, *Is Wealth a Value?*
14. **3.1.17** — **midterm exam**
15. **3.13.17** — theory of monopoly and advent of american antitrust legislation
Readings Posner, § 9.1
 Sherman Act (1890), §§ 1, 2
 Federal Trade Commission Act (1914), §§ 1, 5(a)(1), 5(a)(2)
 Clayton Act (1914), §§ 4, 6
16. **3.15.17** — per se rules and the rule of reason
Readings *Board of Trade of Chicago v. United States*
 United States v. Trenton Potteries

17. 3.20.17 — cartel formation and maintenance

Readings *The Informant* (movie, 2009)
 “Predicting Cartels” (pp. 1–17)
 Stigler, *The Theory of Economic Regulation*

18. 3.22.17 — horizontal agreements: market definition and market power

Readings *NCAA v. University of Oklahoma*
 O’Bannon v. NCAA

19. 3.27.17 — detour: vertical arrangements

Readings *Dr. Miles Medical v. John D. Park & Sons*
 Continental T.V. v. GTE Sylvania
 Posner, § 10.4

20. 3.29.17 — mergers to monopoly

Readings Sherman Act, § 1; Clayton Act, § 7
 FTC v. Staples (1997)
 FTC v. Staples (2016)
 Posner, § 10.5

21. 4.3.17 — monopolization: substitution, durable goods, potential competition

Readings Sherman Act, § 2
 United States v. Alcoa
 Posner, §§ 9.6, 10.8

22. 4.5.17 — leveraging monopoly: tying

Readings Sherman Act, § 2
 Jefferson Parish Hospital District v. Hyde
 Eastman Kodak v. Image Technical Services
 Posner, § 10.10

23. 4.10.17 — natural monopolies: theory and history

Readings *New State Ice v. Liebmann*

Smyth v. Ames

Posner, §§ 10.11, 13.1

24. 4.12.17 — network industries in the new economy

Readings Priest, *Rethinking Antitrust Law in an Age of Network Industries*

25. 4.17.17 — group presentations

Readings none

26. 4.19.17 — group presentations

Readings none

27. 4.24.17 — group presentations

Readings none

28. 4.26.17 — review

Readings none / all

FINAL EXAM

May 8, noon – 2p