



ECONOMIC ANALYSIS OF LAW

SPRING 2019

LGST 212 / BEPP 212

Prof. Vince Buccola

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

e-mail: [buccola@wharton.upenn.edu](mailto:buccola@wharton.upenn.edu) [preferred]  
<https://canvas.upenn.edu/courses/1431026>

**Class Meetings** Mondays & Wednesdays, 10:30 – 11:50, Room TBD  
**Office Hours** Mondays, 3:00 – 5:00. Or email to arrange a meeting. Or stop by any time: my door is open if I'm around.

### 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. [Suggested 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

Grades are 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 be ready to discuss them critically.

Three notable policies:

1. *Electronic devices.* Electronic devices are not 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 on 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. 1.16.19 — 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. 1.23.19 — 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. 1.28.19** — getting property

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

**4. 1.30.19** — property and the injunction: information and monopoly

*Readings*     *Armory v. Delamirie*  
                  *Ploof v. Putnam*

**5. 2.4.19** — property and externalities: a basis for regulation?

*Readings*     Coase, *The Problem of Social Cost*

**6. 2.6.19** — contract remedies: efficient breach and opportunism

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

**7. 2.11.19** — incomplete contracts: default rules

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

**8. 2.13.19** — the mailbox rule: coin-flipping and arbitrary rules

*Readings*     *Caldwell v. Cline*

**9. 2.18.19** — 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. 2.20.19** — detecting and penalizing torts

*Readings*     Polinsky & Shavell, *Punitive Damages* (pp. 870–903)

11. **2.25.19** — causation puzzles

*Readings*     *Summers v Tice*  
                  *Brauer v. New York Central*  
                  Posner, §§ 6.1, 6.7

12. **2.27.19** — nuisance

*Readings*     Calabresi & Melamed, *One View of the Cathedral*

13. **3.11.19** — critiques of the economic analysis of law

*Readings*     Dworkin, *Is Wealth a Value?*

14. **3.13.19** — **midterm exam**

15. **3.18.19** — 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. **3.20.19** — per se rules and the rule of reason

*Readings*     *Board of Trade of Chicago v. United States*  
                  *United States v. Trenton Potteries*

17. **3.25.17** — cartel formation and maintenance

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

18. **3.27.17** — horizontal agreements: market definition and market power

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

19. **4.1.19** — detour: vertical arrangements

*Readings*     *Dr. Miles Medical v. John D. Park & Sons*

*Continental T.V. v. GTE Sylvania*

Posner, § 10.4

**20. 4.3.19** — mergers to monopoly

*Readings* Sherman Act, § 1; Clayton Act, § 7

*FTC v. Staples* (1997)

*FTC v. Staples* (2016)

Posner, § 10.5

**21. 4.8.19** — monopolization: substitution, durable goods, potential competition

*Readings* Sherman Act, § 2

*United States v. Alcoa*

Posner, §§ 9.6, 10.8

**22. 4.10.19** — leveraging monopoly: tying

*Readings* Sherman Act, § 2

*Jefferson Parish Hospital District v. Hyde*

*Eastman Kodak v. Image Technical Services*

Posner, § 10.10

**23. 4.15.19** — natural monopolies: theory and history

*Readings* *New State Ice v. Liebmann*

*Smyth v. Ames*

Posner, §§ 10.11, 13.1

**24. 4.17.19** — network industries in the new economy

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

**25. 4.22.19** — group presentations

*Readings* none

**26. 4.24.19** — group presentations

*Readings* none

**27. 4.29.19** — group presentations

*Readings* none

**28. 5.1.19** — review

*Readings* none / all

## **FINAL EXAM**

TBD