ECONOMIC ANALYSIS OF LAW
LGST 212 / BEPP 212

Prof. Vince Buccola
Legal Studies & Business Ethics Department
649 Jon M. Huntsman Hall
tel: 215.573.4864
buccola@wharton.upenn.edu
https://canvas.upenn.edu/courses/1486055

Class Meetings: Mondays & Wednesdays, 9:00 – 10:20, Room TBD
Office Hours: TBD. Or email to arrange a meeting. Or stop by any time: my door is open if I’m in the building.

Course Description
This course provides an introduction to the economic analysis of law and legal institutions. Our goal is to 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 the law of intellectual property.

Texts
1. Required: Course pack [available from study.net]

Exams and Grading
Grades are based on professionalism (15%) and the results of midterm (35%) and final (50%) exams, the format of which will be discussed in class.
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. 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 have coffee or lunch. We can but needn’t talk about law or economics!

Agenda and Assigned 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 required readings can be found either in the course pack or on the course’s Canvas site. Optional readings are designated with an *.

1. **1.15.20** — 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. **1.22.20** — 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. **1.27.20** — getting property

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

4. **1.29.20** — property and the injunction: information and monopoly

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

5. **2.3.20** — property and externalities: a basis for regulation?

*Readings*  
Coase, The Problem of Social Cost

6. **2.5.20** — contract remedies: efficient breach and opportunism

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

7. **2.10.20** — incomplete contracts: default rules

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

8. **2.12.20** — the mailbox rule: coin-flipping and arbitrary rules

*Readings*  
*Caldwell v. Cline*

9. **2.17.20** — 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. **2.19.20** — detecting and penalizing torts

*Readings*  
Polinsky & Shavell, Punitive Damages (pp. 870–903)
11. **2.24.20** — causation puzzles  
*Readings*  
*Summers v Tice*  
*Brauer v. New York Central*  
*Posner, §§ 6.1, 6.7*

12. **2.26.20** — nuisance  
*Readings*  
Calabresi & Melamed, One View of the Cathedral

13. **3.2.20** — critiques of the economic analysis of law  
*Readings*  
Dworkin, *Is Wealth a Value?*  
Leff, *Economic Analysis of Law: Some Realism about Nominalism*

14. **3.4.20** — midterm exam

15. **3.16.20** — overview of IP regime; characteristics of information goods  
*Readings*  
*International News Service v. Associated Press*  
Arrow, *Economic Welfare and the Allocation of Resources for Invention*  
Demsetz, *Information and Efficiency: Another Viewpoint*

16. **3.18.20** — patents i: patentable ideas; remedies  
*Readings*  
35 U.S.C. §§ 101–03, 111(a), 112, 113, 154(a)  
*Bilski v. Kappos*  
*eBay v. MercExchange*

17. **3.23.20** — patents ii: patent misuse  
*Readings*  
*Motion Picture Patents v. Universal Film Manufacturing*  
Stigler, *A Note on Block-Booking*  
*Morton Salt v. G.S. Suppiger*

18. **3.25.20** — patents iii: search costs, thickets, open source economics  
*Readings*  
Heller & Eisenberg, *Can Patents Deter Innovation?*  
Benkler, *Coase’s Penguin*
19. 3.30.20 — trade secrets

Readings Uniform Trade Secrets Act §§ 1–3
   DuPont v. Christopher
   Waymo v. Uber

20. 4.1.20 — copyright i: originality; substitutes for copyright

Readings 17 U.S.C. §§ 102, 106, 107, 201, 501(a)
   Feist v. Rural Telephone Service
   ProCD v. Zeidenberg

21. 4.6.20 — copyright ii: derivative works; fair use; substantial similarity

Readings Klinger v. Conan Doyle Estate
   Dr. Seuss Enterprises v. Penguin Books
   Computer Associates International v. Altai

22. 4.8.20 — copyright iii: contributory infringement

Readings Sony v. Universal City Studios
   MGM Studios v. Grokster
   17 U.S.C. § 512

23. 4.13.20 — trademarks i

Readings 15 U.S.C. §§ 1051(a), 1111, 1114(1), 1125(a), 1115
   Zatarain’s v. Oak Grove Smoke House

24. 4.15.20 — trademarks ii

Readings Jay Franco & Sons v. Franek
   Two Pesos v. Taco Cabana
   Adidas America v. Skechers USA

25. 4.20.19 — publicity

Readings Illinois Right of Publicity Act
   Jordan v. Jewel Food Stores
   Wendt v. Host International
26. 4.22.20 — intellectual property and cartelization

*Readings*
- *Standard Oil (Indiana) v. United States*
- *FTC v. Actavis*
- ASCAP [Canvas]

27. 4.27.20 — national borders and intellectual property

*Readings* TBD

28. 4.29.20 — review

*Readings* none / all

**FINAL EXAM**

TBD