



AS OF: NOV. 16, 2020

ECONOMIC ANALYSIS OF LAW
LGST 212 / BEPP 212
SPRING 2021

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Canvas <https://canvas.upenn.edu/courses/1555405>

Class Meetings Mondays & Wednesdays, 10:30 – 11:50
[zoom link TBD]

Student Hours TBD, or by appointment
[zoom link TBD]

Course Description

[Note that regrettably this course will be offered online only in Spring 2021.]

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

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.

Idiosyncratic 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 policies to note:

- *Electronic devices.* Electronic devices are not permitted in class. If an emergency requires that you have connectivity, confer with me before class.
- *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.
- *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 like adults. 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 on next page

Agenda (subject to change by announcement on Canvas)

Tentative reading assignments are listed below. Optional readings are designated with an *.

1. 1.20.21 — 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. 1.25.21 — 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. 1.27.21 — getting property

Readings *Ghen v. Rich*

Haslem v. Lockwood

South Staffordshire Water Co. v. Sharman

4. 2.1.21 — property and the injunction: information and monopoly

Readings *Armory v. Delamirie*

Ploof v. Putnam

5. 2.3.21 — property and externalities: a basis for regulation?

Readings Coase, The Problem of Social Cost

6. 2.8.21 — contract remedies: efficient breach and opportunism

Readings *Acme Mills Elevator Co. v. Johnson*

Hadley v. Baxendale

7. 2.10.21 — incomplete contracts: default rules

Readings *Taylor v. Caldwell*

Ayres & Gertner, Filling Gaps in Incomplete Contracts

*Posner, §§ 4.10 – 4.14, 4.16

8. **2.15.21** — the mailbox rule: coin-flipping and arbitrary rules

Readings *Caldwell v. Cline*

9. **2.17.21** — the law of accidents: taking precautions

Readings *United States v. Carroll Towing*

Indiana Harbor Belt Ry. Co. v. American Cyanamid

*Posner, §§ 6.1, 6.2, 6.5

10. **2.22.21** — detecting and penalizing torts

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

11. **2.24.21** — causation puzzles

Readings *Summers v Tice*

Brauer v. New York Central

*Posner, §§ 6.1, 6.7

12. **3.1.21** — nuisance

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

13. **3.3.21** — critiques of the economic analysis of law

Readings Dworkin, *Is Wealth a Value?*

Leff, *Economic Analysis of Law: Some Realism about Nominalism*

14. **3.8.21** — **midterm exam**

15. **3.15.21** — 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. **3.17.21** — 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. **3.22.21** — 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. **3.24.21** — patents iii: search costs, thickets, open source economics
Readings Heller & Eisenberg, Can Patents Deter Innovation?
 Benkler, Coase's Penguin
19. **3.29.21** — trade secrets
Readings Uniform Trade Secrets Act §§ 1–3
 DuPont v. Christopher
 Waymo v. Uber (complaint)
20. **3.31.21** — 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. **4.5.21** — 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. **4.7.21** — copyright iii: contributory infringement
Readings *Sony v. Universal City Studios*
 MGM Studios v. Grokster
 17 U.S.C. § 512
23. **4.12.21** — trademarks i
Readings 15 U.S.C. §§ 1051(a), 1111, 1114(1), 1125(a), 1115
 Zatarains v. Oak Grove Smoke House

24. 4.14.21 — trademarks ii

Readings *Jay Franco & Sons v. Franek*
Adidas America v. Skechers USA

25. 4.19.21 — publicity

Readings Illinois Right of Publicity Act
Jordan v. Jewel Food Stores
Wendt v. Host International

26. 4.21.21 — intellectual property and cartelization

Readings *Standard Oil (Indiana) v. United States*
FTC v. Actavis

27. 4.26.21 — national borders and intellectual property

Readings TBD

28. 4.28.21 — review

Readings none / all

FINAL EXAM

Date and time **TBD**