



AS OF: OCT. 27, 2021

ECONOMIC ANALYSIS OF LAW
LGST 212 / BEPP 212
SPRING 2022

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Canvas []

Class Meetings Mondays & Wednesdays, 10:15 – 11:45
[room #]

Student Hours Tuesdays, 1–4p, or by appointment
Huntsman 649

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.

Assessment

- Professionalism (20%)
- Midterm Exam (40%)
- Final Exam (40%)

Policies

This course will involve a combination of lecture, discussion, and “Socratic” questioning. Cold calling will be a regular feature of class. To make the course as valuable to your friends (and you) as possible, please observe the following norms:

- *Tell Me How to Pronounce Your Name.* Let me know if you prefer to be called something other than the name in Penn's files (or if you think I might mispronounce your name).
- *Do the Reading.* You should complete assigned readings before class. Completion means more than having skimmed. Our class sessions are based on cold calling with "Socratic" questioning. It's therefore important that you be ready to answer questions about the assigned texts and discuss them critically.
- *But Tell Me If You Didn't.* I understand that schedules get busy. It is not always feasible to do the work on time. If you are unable to finish, please email me at least an hour before class, and I will not call on you (max four times in the semester).
- *Don't Pretend to Have Read What You Haven't.*
- *No Electronic Devices in Class.* If you have an emergency requiring connectivity, talk with me before class.

Texts

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

// tentative agenda on next page: * **indicates optional reading**

1. 12 Jan — LEGAL RULES AS PRICE DETERMINANTS

Readings Kerr, How to Read a Legal Opinion
Talley v. Mathis
*Posner, §§ 1.1, 1.2

2. 19 Jan — 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. 24 Jan — GETTING PROPERTY

Readings *Ghen v. Rich*
Haslem v. Lockwood

4. 26 Jan — PROPERTY AND THE INJUNCTION: INFORMATION AND MONOPOLY

Readings *Armory v. Delamirie*
Ploof v. Putnam

5. 31 Jan — PROPERTY AND EXTERNALITIES: A BASIS FOR REGULATION?

Readings Coase, The Problem of Social Cost

6. 2 Feb — CONTRACT REMEDIES: EFFICIENT BREACH AND OPPORTUNISM

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

7. 7 Feb — INCOMPLETE CONTRACTS: DEFAULT RULES

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

8. 9 Feb — THE MAILBOX RULE: COIN-FLIPPING AND ARBITRARY RULES

Readings *Caldwell v. Cline*

9. 14 Feb — 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. 16 Feb — DETECTING AND PENALIZING TORTS

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

11. 21 Feb — CAUSATION PUZZLES

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

12. 23 Feb — NUISANCE

Readings Calabresi & Melamed, One View of the Cathedral

13. 28 Feb — CRITIQUES OF THE ECONOMIC ANALYSIS OF LAW

Readings Dworkin, Is Wealth a Value?
Leff, Economic Analysis of Law: Some Realism about Nominalism

14. 2 Mar — MIDTERM EXAM

15. 14 Mar — 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. 16 Mar — 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. 21 Mar** — PATENTS II: PATENT MISUSE
Readings Stigler, A Note on Block-Booking
Morton Salt v. G.S. Suppiger
- 18. 23 Mar** — PATENTS III: SEARCH COSTS, THICKETS, OPEN SOURCE ECONOMICS
Readings Heller & Eisenberg, Can Patents Deter Innovation?
Benkler, Coase's Penguin
- 19. 28 Mar** — TRADE SECRETS
Readings Uniform Trade Secrets Act §§ 1–3
DuPont v. Christopher
Waymo v. Uber (complaint)
- 20. 30 Mar** — 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 Apr** — 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. 6 Apr** — COPYRIGHT III: CONTRIBUTORY INFRINGEMENT
Readings *Sony v. Universal City Studios*
MGM Studios v. Grokster
17 U.S.C. § 512
- 23. 11 Apr** — TRADEMARKS I
Readings 15 U.S.C. §§ 1051(a), 1111, 1114(1), 1125(a), 1115
Zatarains v. Oak Grove Smoke House
- 24. 13 Apr** — TRADEMARKS II
Readings *Jay Franco & Sons v. Franek*

Adidas America v. Skechers USA

25. 18 Apr — PUBLICITY

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

26. 20 Apr — INTELLECTUAL PROPERTY AND CARTELIZATION

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

27. 25 Apr — REVIEW

Readings none / all

28. 27 Apr — REVIEW

Readings none / all

FINAL EXAM: Date and time TBD