

LAW AND ECONOMICS – Spring 2014

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Office hours:
M 11-1; TTh12-2; by appt.

Economics is a powerful tool for discussing a wide range of legal issues. The basic principle of economics -- that humans make rational decisions to maximize utility, given the constraints they face -- provides the analytical foundation for the economic analysis of law. In effect, the law creates implicit prices and therefore can generate incentives for various sorts of behavior.

The course begins with a review of the theory of individual choice, the rationale for exchange, the role of markets, and the concept of efficiency. This will lead to a discussion of property rights and of problems in the creation, enforcement, and transfer of property rights. We will examine three main areas of the law in detail: property, contract, and tort. We will also pay brief attention to topics in family law, regulatory and administrative law, and criminal law.

Cautionary note: This is NOT a law-school class; it is a course in an economics department at a liberal arts college. We will look at several classic court cases and familiarize ourselves with legal terminology, but our main focus is the analysis of law from an economic viewpoint. We'll talk more about this matter in class.

The course format consists of lectures and discussions. Weights given to various assignments are as follow:

Short paper ^a	20%
Exercises, cases/articles, general participation ^b	15%
One-page response papers ^c	20%
Exams	45% (term 1 25%, term 2 20%).

^aThe short paper should be NO MORE THAN 6 TYPED, SINGLE-SIDED, DOUBLE-SPACED PAGES. The topics and due dates appear on a separate assignment handout. **LATE DRAFTS AND PAPERS WILL BE PENALIZED 1/3 OF A GRADE PER DAY LATE**. Also, review the “writing tips” on the last page of this syllabus. We will discuss this assignment more fully midway through the term. Please turn in **DRAFTS, COMMENTS, AND PAPER AS HARD COPIES (not e-copies)**.

^bYou will be part of a group that will discuss exercises, articles, and cases throughout the course. We will form groups early on in class and I will send you a separate schedule indicating responsibilities. Members from each group are responsible for discussions on assigned cases/articles on the indicated days. Please see penultimate page of the syllabus for more information. We will use other cases/articles for general discussion. I will put exercises in the course folder; **please bring the exercises to class on the dates indicated in the syllabus**. We will generally work on the exercises together in class, although I may ask you to prepare some of them before class. I may add exercises to the ones denoted in the syllabus; if so, I will email these to you.

^cResponse papers must be TYPED AND NO MORE THAN 1 SIDE OF 1 PAGE. Please see last 2

pages of the syllabus for more information. **NO LATE PAPERS ACCEPTED. I will grade as many papers as you turn in but only count the top 5 grades. PLEASE SUBMIT HARD COPIES IN CLASS (not e-copies).**

The required text for the course is Law and Economics by Robert Cooter and Thomas Ulen. (Page numbers in syllabus pertain to the 6th edition. You may use other editions of the text, but you are responsible for figuring out the appropriate chapters and sections to read.) Other required readings are in the course materials folder (FOLDER), on JSTOR, on Lexis-Nexis Academic (L-N) or at the indicated url. Most articles also note the journal and year published, so you can obtain them directly from the source if you wish. You may want to refer to Black's Law Dictionary for unfamiliar legal words and phrases.

PLEASE NOTE: The readings for this course are distributed unevenly over the term, with more in the first half as you acquire tools and expertise. The last half of the course focuses upon case analysis and your short paper.

PREDICTED OUTLINE OF THE COURSE

Apr 1: Introduction; Basic Legal Concepts

Read syllabus and bring questions to next class

Apr 3: PLEASE NOTE – JENNY MAY BE A LITTLE LATE TO CLASS (ARRIVAL AT AIRPORT 9:30 am)

Basic Economic Concepts; Transactions Costs; Game Theory; Legal Remedies

Exercise 1 (FOLDER)

Chapters 1, 2 (through sec. X – this should be review), & 3 (through sec. III)

Bourne readings -- Intro to vol. 1 (intro and property sections) (FOLDER)

Bourne (Wahl), "Twice-Told Tales: An Economist's Re-Telling of the Transformation of American Law" 37 *Tulsa Law Review* 879 (2002) (FOLDER) (pp. 880-889)

Notes on American Courts (FOLDER)

Read all but choose only one of the following for RP #1 (due Apr 3, discuss Apr 8)

Cheung, "Why Are Better Seats Underpriced?" *Eco Inq* 1977 (FOLDER)

Epstein, "Organ Transplantation" *Occ Pap U of C Law School* 1993 (FOLDER)

Landes and Posner, "The Economics of the Baby Shortage" *J Leg Stud* 1978 (JSTOR)

Apr 8: Markets; Externalities; Solutions to Externalities; More Game Theory

Exercises 2 and 3 (FOLDER)

Chapters 4 (appendix optional) & 5 (sec. II A&E, III B-D, and IV A-D)

General discussion:

Coase, "The Problem of Social Cost" (a classic article but quite dense), *J Law Econ* 1960, <http://www.econ.ucsb.edu/~tedb/Courses/UCSBpf/readings/coase.pdf>

"Externalities": Common wall gives vent to fumes and a lawsuit, Cyanide devastates tropical fish, *Off the Walden* issue (FOLDER)

“Prestigious Law Firm,” “A Stinker,” and “The Right to Dry” (FOLDER)

Read all but choose only one of the following for RP#2 (due Apr 8, discuss Apr 10)

Coase, “The Lighthouse in Economics” *J Law Econ* 1974, (FOLDER) **plus** van Zandt, “The Lessons of the Lighthouse” *J Leg Stud* 1993 (JSTOR)

Biber, “House with a View” *Yale L J* 2000 (JSTOR)

Epstein, “The Allocation of the Commons: Parking and Stopping on the Commons” *Olin WP* 134, <http://papers.ssrn.com/abstract=282512> – then download from this page

Apr 10: More on Externalities; Eminent Domain

Read all but choose only one of the following for RP#3 (due Apr 10, discuss Apr 15)

Ellickson, “A Hypothesis of Wealth-Maximizing Norms: Evidence from the Whaling Industry” *J Law Econ Org* 1989 (JSTOR)

Haslem v. Lockwood (Conn. 1871) (L-N)

Apr 15: Assignment of Property Rights;

Read all but choose only one of the following for RP#4 (due Apr 15, discuss Apr 17)

“Assignment of Property Rights”: (1) Whose cells?, (2) Houston woman fights fine for using men's restroom, (3) Judge must decide who gets bag of money, (4) A triple ticket threat, (5) Quaker Oats' Popeye offends pacifist group (FOLDER)

Apr 17-22: Property Cases

Prah v. Maretti (Wisc 1982) (L-N)

Spur v. Webb (Ariz 1972) (L-N)

Boomer v. Atlantic Cement Co. (NY 1970) (L-N) (discussion in book)

Penn. Coal. Co. v. Mahon (USSC 1922) (L-N)

Hall v. Santa Barbara (9th Cir 1986) (L-N)

Apr 22: Finish up and review

Apr 24 --Term Exam 1

Apr 29-May 1:Information, Insurance, Risk, Contracts

Exercise 4 (FOLDER)

Chapters 8 (through sec. IV) & 9 (skip appendix)

Bourne readings -- Intro to vol. II (on contracts) (FOLDER)

Epstein, “Unconscionability; A Critical Reappraisal” *J Law Econ* 1975 (JSTOR)

Read all but choose only one of the following for RP#5 (due Apr 29, discuss May 1)

Umbeck, “A Theory of Contract Choice and the California Gold Rush” *J Law Econ* 1977 (JSTOR)

Knapp v NWU (7th Cir 1996) (L-N)

May 1-6: **Contract Cases**

Williams v. Walker-Thomas Furniture Co. (DC Cir 1965) (L-N) (discussion in book)
Vokes v. Arthur Murray, Inc. (FL 1968) (L-N)
Paris v. Stepney Borough Council (UK 1951) (FOLDER)
Hackbart v. Cincinnati Bengals (10th Cir 1979) (L-N)

Read all but choose only one of the following for RP #6 (due May 6, discuss May 8)

Coase, "The Nature of the Firm" *Economica* 1927 (FOLDER)
Viscusi, "The Lulling Effect" *Am Econ Rev* 1984 (JSTOR)
Mitchell and Maloney, "Crisis in the Cockpit" *J Law Econ* 1989 (JSTOR)
Sunstein, "Probability Neglect: Emotions, Worst Cases, and the Law", *Olin WP* 138,
<http://papers.ssrn.com/abstract=292149> then download from this page
Blalock et al., "The Impact of 9/11 on Driving Fatalities" (FOLDER)
Hahn, "Should you be allowed to use your cell phone while driving?" *Regulation* 2004,
<http://www.cato.org/pubs/regulation/regv23n3/hahn.pdf>

May 8: **Regulation, Antitrust, Safety**

Chapter 7 (sec. IA2)
Bourne readings -- Intro to vol. II (on regulation, antitrust, safety) (FOLDER)
Economics of Prostitution (FOLDER)

May 13: **Torts and the Hand Formula**

Exercise 5 (FOLDER)

Chapter 6
Bourne readings -- Intro to vol. III (on torts, value of life) (FOLDER)

May 15: **Torts: Negligence, duty, trespassers, invitees, causation, Good Samaritan laws**

Chapter 3 (sec. IV)
Berry v. Sugar Notch Borough (Pa 1899) (L-N)
Larson v. St. Francis (Cal 1948) (L-N), Connolly v. Nicollet (Minn 1959) (L-N)
Kumkumian v. New York (NY 1953) (L-N)
Katko v. Briney (IA 1971) (L-N)
Eckert v. LIRR (NY 1871) (L-N)
Adams v. Bullock (NY 1919) (L-N), United Zinc v. Britt (USSC 1922) (L-N)
Osterlind v. Hill (Mass 1928) (L-N)

May 20-22: **Torts: Contributory and comparative negligence, invitees, assumption of risk, custom as a defense, government as a party, joint tortfeasors**

Chapter 7 (sec. IB3)
Wannebo v. Gates (Minn 1948) (L-N)
Guilford v. Yale (Conn 1942) (L-N), Meyer v. Mitchell (Minn 1957) (L-N)
Murphy v. Steeplechase (NY 1929) (L-N)
Springrose v. Willmore (Minn 1971) (L-N)

Lee v. Minnesota and Roseville v. Lee (Minn 1991) (L-N), Johnson v. Minnesota (Minn 1991 -- Johnson v. State, C3-91-893, COURT OF APPEALS OF MINNESOTA, 478 N.W.2d 769; 1991 Minn. App. LEXIS 1182, December 10, 1991, Decided, December 17, 1991, Filed, As Amended.) (L-N)

Hupf v. Appleton (Wisc 1991) (L-N), Lewis v. Miami (Fla 1937) (L-N)

General Discussion:

Harder v. Maloney (Wisc 1947) (L-N)

“Torts”: Heart valve anxiety, Power of 12, Juries (FOLDER)

May 22 -- Paper draft due in class

May 27: **Products Liability**

Chapter 7 (sec. IB4, IIC&D)

Bourne readings -- Intro to vol. III (on products liability) (FOLDER)

Moran v. Faberge (Md 1975) (L-N)

Parks v. Allis-Chalmers (Minn 1979) (L-N)

Coyote v. Acme (Ariz 1990), <http://beebo.org/smackerels/coyote-v-acme.html>

General Discussion:

Bonney, “Manufacturers’ Strict Liability for Handgun Injuries: An Economic Analysis”
Georgetown L J (L-N)

Smith v. Anheuser-Busch (RI 1991) (L-N)

White, “Asbestos and the Future of Mass Torts,” *J Econ Persp* 2004,
<http://www.econ.ucsd.edu/%7Emiwhite/p183.pdf>

May 29 -- Comments on paper draft due, Term Exam 2

June 3: **Criminal Law, Punitive Damages, Econometrics in the Courtroom**

Chapters 12 (skip sec. IIE) & 7 (sec. IIB)

Bourne readings -- Intro to vol. I (on crime) (FOLDER)

Stigler, “Optimum Enforcement of Laws” (JSTOR)

Regina v. Dudley (UK) (FOLDER)

“Adventures of an Econometrician Lawyer” (FOLDER)

Read all but choose only one of the following for RP#7 (due June 3, discuss June 3)

Phillips, Racial Disparities in Capital Punishment,

<http://www.acslaw.org/files/Phillips%20Issue%20Brief.pdf>

Donohue and Levitt, “The Impact of Legalized Abortion on Crime,” *Q J Econ* (JSTOR)

Miron and Zweibel, “The Economic Case Against Drug Prohibition” *J Econ Persp* 1995
(JSTOR)

Ryan, “Revisiting the U.S. Application of Punitive Damages: Separating Myth from Reality,”
<http://papers.ssrn.com/abstract=545243> – then download from this page

No Later than June 9, noon, Jenny’s Office – Paper due

GENERAL GUIDELINES FOR DISCUSSIONS AND RESPONSE PAPERS

DISCUSSIONS

Think about the following as you read and prepare your cases and articles. I suggest that you write down your thoughts, then organize them (in writing) so that you will be articulate in class. BE ORGANIZED AND CREATIVE. USE THE BOARD (OR PROPS) IN DISCUSSION IF YOU WOULD LIKE.

SORTS OF QUESTIONS TO CONSIDER

What are the facts and holding of the case? OR What is the topic of the article?

What are the main questions or issues considered?

What new concepts or terms are introduced?

FOR CASES: Is the holding likely to lead to efficiency? What incentives do future parties have?

Did the court use economic reasoning in arriving at its result?

FOR ARTICLES: What economic theories do the authors use? What sorts of data? Evaluate the theories and data.

PROCEDURE

Each person in the group is responsible for the cases and articles assigned to your group; I will let you know later in the term which groups will do what. You should prepare your assignments together in your group outside class. This way, you can test out your thoughts and work through conclusions before class. I think you will find this a useful exercise that will pay off in the quality of discussion. I expect you to be organized, clear, **CONCISE**, and creative.

Everyone should read all material and be prepared to ask questions of the responsible group members.

YOU MAY ASSUME THAT EVERYONE HAS READ ALL MATERIAL, SO SPEND THE BULK OF YOUR TIME ON ANALYSIS, NOT FACT SUMMARY.

RESPONSE PAPERS

Please choose **any FIVE of the SEVEN** response papers to write. For each paper, please choose one of the indicated articles or cases to review. Isolate the main economic issues and briefly analyze them.

Use space wisely: I do **not** want a summary of the article or case. I expect interesting reactions, persuasive analysis, and clear writing. Due dates appear on the course outline. We will use your papers as a foundation for discussion.

PLEASE READ ALL THE ASSIGNMENTS, NOT JUST THE ONE YOU CHOOSE FOR YOUR RESPONSE PAPER.

A few tips on writing well – J. Bourne

Write from the top down. Start with your most important point, then develop it. Don't keep your reader guessing.

Use good topic sentences. Topic sentences should tell your reader the point of the paragraph.

New thoughts generally require new paragraphs.

Use transition sentences for flow. When you turn to a new thought, be sure your reader can connect backward and forward to other parts of the text.

Eschew the passive voice. "Mary hit the ball" is better than "The ball was hit by Mary." (PASSIVE)

Avoid indirect wording. As much as possible, eradicate the phrases "there are," "it is," and the like from your writing. Use participles and gerunds if appropriate.

Avoid run-on sentences. (R/O)

Vary sentence structure to enliven your writing.

Watch your spelling (sp), grammar, and punctuation. Look out for singular/plural agreement. (S/P) Note: the word "data" is plural. Use semicolons appropriately (that is, to separate complete sentences). Don't overuse parentheticals – dashes can be your friends as well.

Watch for dangling clauses. "Hot from the oven, I ate the pizza." This sentence implies that I (not the pizza) am hot from the oven.

Use parallel phrases. "I like to swim, read, and eat" is better than "I like swimming, to read, and food."

Avoid unclear referents (like "it" without an obvious connection to what "it" is).

Plain English is best. Don't overwrite.

Use your topic paragraph effectively.

Good titles are nice. So are zippy first sentences.

Learn the difference between "because" and "since." "Since" refers to time: "Since 1940, women's hemlines have crept up."

Know the difference between "that" and "which." Generally, if you can use "that," do so.

Don't be wordy. For example, you rarely need to use the term "in order to."

Rewriting is the key to writing well.

Consider your audience. Use the appropriate tone and style; above all, don't be boring!

GOOD WRITING RESOURCES: Strunk and White, Chicago Manual of Style, Zinsser (On Writing Well, Writing to Learn), Turabian, Harcourt-Brace College Handbook