

10164 FUNDAMENTALS OF LAW AND ECONOMICS

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COURSE OVERVIEW

Our topic has two general features (a) an application of economic principles and reasoning to legal data; and (b) a partnership between the study of law, with its deep understanding of institutions, and the rigorous analysis and use of formal and informal models characteristic of economic thinking. I call the first of these “economic analysis of law” and the second “law and economics.”

Economic analysis of law: In some cases, the analysis is empirical. Just as a standard economic study might use statistical instruments to estimate the elasticity of demand in a market based on a data set of prices and other variables, a law-and-economics study might look at data on cigarette prices in order to estimate the effect of a law restricting the marketing of these items. In other cases the analysis is theoretical. A standard economic model presents a simplified picture or model of an area of economic activity in order to understand how the variables in the model are likely to relate to one another. A theoretical law-and-economics study, similarly, might present a theoretical model of the relationship between the amount of a fine for violations and the level of compliance with a rule. Just as in conventional economics, theory and observation are linked in the field of law-and-economics; the researcher first develops a theory of how legal institutions will affect behavior, and then may elect to test the theory by compiling data and performing a statistical analysis.

Law and economics: The other side of our topic is a bit different. It sees the relationship between economics and law as a partnership between autonomous disciplines. Just as lawyers have a great deal to learn from economists about how to analyze legal rules and principles, economists have much to learn from lawyers about how these rules and principles actually function in the real world. Economics supplies the analytic rigor; law supplies the institutional knowledge.

Law and economics has a long history tracing back to Jeremy Bentham, Adam Smith, John Stewart Mill, and Karl Marx; but the modern discipline owes most to Ronald Coase, the winner of the 1991 Nobel Prize in Economics. Coase’s foundational paper, *The Problem of Social Cost* (1960), forms the intellectual core of this course. Although we do not read the paper, we will work through the essential ideas behind the Coase Theorem, the thesis that under certain conditions the allocation of legal rights has no impact on social wealth (although it does have an impact on how that wealth is distributed). The class will examine how the fundamental insight of the Coase Theorem applies in legal contexts such as accident law, contract law, property law, criminal law, and consumer law.

Law and economics, as a field, does not depend on the law of any particular country or jurisdiction. Any country’s laws can be analyzed through an economic lens. This course will look primarily at cases from the United States and the UK, but attention will be given to principles of Swiss and German law as well. Students should come away with an enhanced understanding of the economic dimensions of legal rules, and an ability to understand the possible welfare implications of different regulatory approaches to social problems.

ADMINISTRATION

Course Materials

Course materials consist of reports of legal decisions, plus possibly supplemental materials supplied by the instructor.

You are responsible for reading the cases in advance of class each day, and coming to class prepared to discuss them. The course outline below provides detailed information on cases to be prepared for each class session. Although all students are responsible for all assigned materials, some students will be designated for each class to prepare the materials for discussion. These students will be called on and asked to describe or to analyze the cases or doctrines under review.

Course Scheduling

The class will meet at the times listed in the attached syllabus.

The class will be interactive. Class participation will count considerably to your grade (30%). It is therefore imperative for you to be present and actively participate during classes.

Attendance and Preparation

Attendance and good preparation are prerequisites for being a valuable participant in the class. You are expected to attend every class. If you will be unable to attend a class, please advise me as early as possible. The class will start promptly on time and will run for the entire session, with a break in the middle. Arriving late or leaving early disrupts the class and lessens your contribution; please do so only when absolutely necessary. If you come to class unprepared, please let me know before class starts. Preparation implies that you have completed the assignments, and that you have taken time to think about them, and that you are prepared to discuss them thoughtfully in class.

EVALUATION

Grading

Grading will be based on your performance in class participation and a final exam. The grading weights are as follows:

Class Participation 30%
Final Exam 70%

Class Participation

Students are graded for general class participation in the class as a whole (30%) and for responses to questions on days when they are assigned to prepare cases (70%). Your participation in class is expected to help both your own learning and that of your peers. To participate effectively, offer focused comments which either show how a particular concept is illustrated in the case or how a substantive problem can be solved; avoid repeating case facts. In evaluating class participation, we will ask the following questions:

- Is the participant a good listener?
- Do the comments reflect careful analysis?
- Do the comments add to understanding of the situation?
- Is there a willingness to try new ideas or are all comments “safe”?
- Is the participant considerate of other class members?

Final Exam

The final exam will take place on **25 July 2022, 10:00 – 12:00**. The final examination will cover all of the material assigned for the class. Students are permitted to use class notes and assigned case materials.

Fundamentals of Law and Economics
Professor Geoffrey Miller
University of Basel
Summer 2022

Date/Time	Topic	Assignment
Mon, July 11 9:30 – 12:00	Introduction	- <i>Pierson v. Post</i> - <i>Omnicare Inc. v. NCS Healthcare</i> - <i>Ploof v. Putnam</i>
Tues, July 12 14:00 – 16:30	Efficiency	- No assignment
Weds, July 13 9:30 – 12:00	Nuisance	- <i>Boomer v. Atlantic Cement Company, Inc.</i> - <i>Spur Industries, Inc. v. Del E. Webb Development Co.</i> - <i>Walgreen Company v. Sara Creek Property Company</i>
Thursday, July 14 9:30 – 12:00	Contracts	- <i>Bloor v. Falstaff Brewing Corporation</i> - <i>Hadley v. Baxendale</i> - <i>Wood v. Lucy, Lady Duff-Gordon</i>
Mon, July 18 9:30 – 12:00	Accidents	- <i>United States v. Carroll Towing Co.</i> - <i>Ira S. Bushy & Sons, Inc. v. United States</i>
Tues, July 19 9:30 – 12:00	Agency	- <i>Gordon v. Doty</i> - <i>Mill Street Church v. Hogan</i> - <i>Watteau v. Fenwick</i> - <i>Hoddeson v. Koos Bros.</i> - <i>Humble Oil v. Martin</i> - <i>Hoover v. Sun Oil</i> - <i>Manning v. Grimsley</i>
Weds, July 20 9:30 – 12:00	Securities	- <i>United States v. Texas Gulf Sulphur Co</i> - <i>Basic, Inc. v. Levinson</i>
Thursday, July 21 9:30 – 12:00	Enforcement	- <i>Perez v. Z Frank Oldsmobile, Inc.</i> - <i>United States v. Elliott</i>
Monday, July 25 10:00 – 12:00	Final Exam	