

Spring 2015  
University of Texas  
School of Law

## Law and Economics

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### Course Description

Economic theory provides the jurist and the lawyer with tools to analyze the effects of legal rules on the behavior of individuals and firms. Based on the assumption that individuals act rationally, economic analysis of the law allows one to examine the expected outcomes from adopting a certain legal rule, and the welfare effects of such a rule, including its implications over efficiency, equality and fair distribution.

This course provides a concise introduction to the field of law and economics. Topics to be covered include property law, tort law, contract law, procedure, and criminal law.

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### Grading

Grading will be based on a Final Paper

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### Communication

Whenever you have some questions that you would like to discuss with me, things you did not understand in class or anything else you wish to talk about, you may email me or simply drop by my office.

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### Textbooks

Class discussion will be based on Steven Shavell, *Foundations of Economic Analysis of Law* (2004) (“Shavell”).

There are few recommended books which you may wish to browse in case you find special interest in any of the topics that we will cover. This, however, is not necessary for the successful completion of the course.

- ✚ Richard Posner, *Economic analysis of the Law* (8th ed., 2014) (“Posner”)
  - ✚ A. Mitchell Polinsky, *An Introduction to Law and Economics* (4th ed., 2011) (“Polinsky”)
  - ✚ Robert Cooter and Thomas Ulen, *Law and Economics* (6th ed., 2011) (“Cooter & Ulen”) (see also accompanying [webnotes](#) )
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## Course Outline

- ✚ Required readings
- ♥ Suggested readings (When you have time...)

### Class 1: Welfare, Externalities and the Coase Theorem

- ✚ Basic Concepts: Shavell, p. 1-5
- ✚ Externalities and the Coase Theorem: Shavell, p. 77-92; 101-109
- ♥ Ronald H. Coase, *The Problem of Social Cost*, 3 **J. L. & ECON.** 1 (1960): p. 1-8 (sections 1-4), p. 27-44 (last paragraph of section 7, sections 8-end)

### Class 2: Tort Law: Unilateral Accidents

- ✚ Unilateral Accidents: Level of Care: Shavell, p. 177-182
- ✚ Unilateral Accidents: Level of Activity: Shavell, p. 193-199
- ♥ *United States v. Carroll Towing Co.* 159 F.2d 169 (2d. Cir. 1947)
- ♥ Robert Cooter & Ariel Porat, *Does Risk to Oneself Increase the Care Owed to Others?*, 29 **J. LEGAL STUD.** 19 (2000).

### Class 3: Tort Law: Bilateral Accidents

- ✚ Bilateral Accidents: Level of Care: Shavell, p. 182-193
- ✚ Bilateral Accidents: Level of Activity: Shavell, p. 199-206
- ♥ David Gilo, Ehud Guttel & Erez Yuval, *Negligence, Strict Liability and Collective Action*, 42 **J. LEGAL STUD.** 69 (2013).

### Class 4: Tort Law: Risk Bearing Insurance, and the Liability of Firms

- ✚ Liability, Risk Bearing, and Insurance: 257-275
- ✚ The Liability of Firms: Shavell, p. 207-223
- ♥ A. Mitchell Polinsky & Steven Shavell, *The Uneasy Case for Product Liability*, 123 **HARV. L. REV.** 1437 (2009)

### Class 5: Property Law: Definition and Division of Property Rights

- ✚ Definition and division of property rights: Shavell, p. 9-32
- ✚ Acquisition and transfer of property rights: Shavell, p. 33-55
- ♥ Harold Demsetz, *Toward A Theory of Property Rights*, 57 **AM. ECON. REV.** 347 (1967)
- ♥ Michael A. Heller, *The Tragedy of the Anticommons: Property in Transition from Marx to Markets*, 111 **HARV. L. REV.** 622 (1998)

### **Class 6: Property Law: Public Goods and Public Property**

- ✚ Public Goods and Public Property: Shavell, p. 110-136
- ♥ Property Rights in Information: Shavell, p. 137-150
- ♥ Lawrence Lessig, *Intellectual Property and Code*, 11 **ST. JOHN'S J. LEGAL COMMENT.** 635 (1996)

### **Class 7: Contract Law: Incomplete Contracts and Contract Remedies**

- ✚ Shavell, p. 291-314, 338-367
- ♥ Omri Ben-Shahar & Oren Bar-Gill, *Threatening an Irrational Breach of Contract*, p. 11 **SUP. CT. ECON. REV.** 143 (2003)

### **Class 8: Contract Law: Contract Formation and Interpretation**

- ✚ Contract Interpretation: Shavell, p. 301-304
- ✚ Contract Formation: Shavell, p. 325-337
- ♥ Ian Ayres and Robert Gertner, *Majoritarian vs. Minoritarian Defaults*, 51 **STAN. L. REV.** 1591 (1999)
- ♥ Lisa Bernstein, *Private Commercial Law In the Cotton Industry: Creating Cooperation through Rules, Norms and Institutions*, 99 **MICH. L. REV.** 1724 (2001)

### **Class 9: The Legal Process: Private v. Social Value of Litigation**

- ✚ The Basic Theory of Litigation: Shavell, p. 389-390, 401-411
- ✚ Private v. Social value of litigation. Shavell, p. 391-401, 411-415, 450-456
- ♥ Bruce L. Hay, *Effort, Information, Settlement, Trial*, 24 **J. LEGAL STUD.** 29 (1994)

### **Class 10: The Legal Process: Negative Expected Value Suits**

- ✚ Lucian A. Bebchuk & Alon Klement, *Negative-Expected-Value Suits*, in **Procedural Law And Economics** 341 (Chris William Sanchirico ed., Edward Elgar Publishing, 2012). Available on [ssrn](#)
- ♥ Assaf Hamdani & Alon Klement, *The Class Defense*, 93 **CAL. L. REV.** 685 (2005).

## **Class 11: Public Law Enforcement and Criminal Law**

- ✚ Deterrence with monetary sanctions: Shavell, p. 473-491
- ✚ Deterrence with non-monetary sanctions: Shavell, p. 492-514
  
- ♥ Omri Ben-Shahar & Alon Harel, *The Economics of the Law of Criminal Attempts: A Victim Centered Perspective*, 145 **U. PA. L. REV.** 299 (1996)

## **Class 12: Optimal Structure of Legal Intervention**

- ✚ Shavell, p. 571-592
  
- ♥ Guido Calabresi and A. Douglas Melamed, *Property Rules, Liability Rules, and Inalienability: One View of the Cathedral*, 85 **HARV. L. REV.** 1089 (1972).