This course introduces you to the economics of law. An economic analysis of law comprises two related enterprises. The first enterprise is positive. It uses economic ideas to understand the behavioral consequences of changes in legal rules, an exercise in applying price theory. The second enterprise is normative, and thus more controversial. It appraises legal rules to determine the extent to which they meet the social goal of efficiency, an application of welfare economics. We employ both approaches in analyzing the law — the common law (property, contracts and torts) especially, but also criminal law, and constitutional law.

In so doing, we undertake two ancillary projects. First, we examine the importance of law to economics, that is, consider how legal arrangements enable or impede the functioning of markets. Second, we learn something of legal reasoning, which is traditionally very different from economic reasoning.

What follows are some questions we are likely to encounter during the semester. Is zero the socially best quantity of pollution, and of crime? Are external costs unilaterally or jointly caused (does it take two to tort)? Why is it legal to reveal (true) secrets about others, but illegal to let others pay to keep those secrets secret? Does common ownership of resources always lead to tragedy? Is there a way to realize the benefits of patents without their monopoly costs? Will Congress’s extension of copyright duration to life plus 70 years promote creative expression? Are GooglePrint and GoogleLibrary benefactors or destroyers of free public access to books? Is value-reducing regulation a compensable taking? Under what circumstances, if any, should we condone breaking legal promises? Why are some life-saving vaccines no longer produced? Can the law put a price on human life? Can it not? When, if ever, should the law paternalistically protect informed adult consumers from consumption of cigarettes or other dangerous products? Should consumers of less obviously dangerous products – e.g., McDonald’s coffee – bear any legal responsibility for product accidents? How should we account for judges’ lack of omniscience when devising optimal legal remedies? Can more severe criminal punishments do the work of deterrence more cheaply than greater enforcement? Are the goals of minimizing the social costs of crime and requiring similar conviction rates across demographic groups incompatible? Under what information and procedural circumstances do majority voting schemes lead juries to convict rather than to acquit (and vice versa) in capital cases? What voting rules best protect minority rights?

Personnel and details

My office is 418 Robertson Hall, 8-4036; tleonard@. My office hours are Tu, Th 1:15 - 2:45p. My assistant is Ms. Bernadette Yeager, 423-D Robertson Hall, 8-4830, byeager@. The course AIs are Delwin Olivan (dolivan@) and Kai Steverson (estevers@), both in Fisher B-10. Delwin’s hours: M 1.00-2.30p, W 4.15-5.45p. Kai’s hours: W 4:15-5:45p, F 3.00-4:30p.
Requirements

The course **prerequisite** is Economics 100. More advanced course work will help but is not required. Your **grade** in the course will derive from three sources: (1) four written assignments (of 3,000 words maximum), (2) a take-home mid-term examination (of 4,000 words maximum) and (3) a take-home final examination (of 5,000 words maximum). In determining your course grade, we will use the following weights: assignments (36%), mid-term examination (24%), and final examination (40%). Assignments and exams will be posted on the course page and are due as below.

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<tr>
<th>Assignment</th>
<th>Posted to Course Page on</th>
<th>Due to Robertson 423D &amp; Course Page by 4.00 p.m.</th>
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<tr>
<td>1st</td>
<td>W 9/28/11</td>
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<td>2nd</td>
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<td>Mid-term</td>
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<td>Final</td>
<td>M 1/16/12</td>
<td>M 1/23/12</td>
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For all assignments, please submit one hard copy to Bernadette Yeager and one electronic copy (via the course page on Blackboard). For credit, you must submit both copies. Assignments and exams are open-book and open-notes, so you must credit with citation ideas not your own (citation may be abbreviated). Collaboration with other students is impermissible. Please submit all assignments and exams with a cover sheet containing a signed honor-code pledge. **In all cases, no late submissions can be accepted.**

{{There are four lectures where we will break at 12.00 noon rather than 12.20p. They are Thursdays: 10/6, 10/27, 11/17, 12/8 (and bolded in the course outline, below). A make-up lecture, held during reading period, will be scheduled, time and place TBA, probably Tuesday, January 3, 2012.}}

Readings


Course outline

Week 1 (9/15)  
I. Introduction to law and economics

A. The law in law and economics
  1. Law as an instrument of policy, not of black-letter exegesis
  2. The reason of rules: enabling coordination and cooperation
• *Cooter and Ulen*: chapter 1

Week 2 (9/20, 9/22)

B. The *economics* in law and economics  
1. Review of price theory

• *Cooter and Ulen*: chapter 2  

2. Efficiency as a social goal: Pareto and Kaldor-Hicks welfare criteria  
3. Failure to achieve efficiency: monopoly, externalities, public goods and information problems


Week 3 (9/27, 9/29)

C. Introduction to legal reasoning  
1. Common law tradition and doctrine of *stare decisis*  
2. The U.S. court system

• *Cooter and Ulen*: chapter 3  
Cases: Riggs v. Palmer (1889), *Butterfield v. Forrester* (1809), *Davies v. Mann* (1842), (in *Cooter and Ulen* or on its web-site).

D. Inducing efficient outcomes  
1. Coase, Pigou or other?  
   i. Causality, transactions costs and market failure  
   ii. The Coase “Theorem” and what to do about social costs
• *Cooter and Ulen*, chapter 4

Week 4 (10/4, 10/6)

**II. The economics of property**

A. The Coase Theorem made recognizably Coasean (with transactions costs)
   1. Coase’s four big ideas
   2. So, what are property rights and why have them: to lubricate or allocate?


   3. Flaming rails: Do sparks from locomotives or flammable crops cause crops to burn?


   Case: *Boomer v. Atlantic Cement Co.* (1970) (in *Cooter and Ulen*).

Week 5 (10/11, 10/13)

B. Should property rights over some goods be “inalienable?”
   1. Gifts but not sales: organs, blood, sex

• *Cooter and Ulen*: chapter 5

   2. Pricing life and the evil-deity parable
   3. Blackmail & other puzzles

C. The “tragedy” of common property resources: no one washes a rental car.


Week 6 (10/18, 10/20)

D. Intellectual property (ideas and their expressions as public goods)
   1. Patents, trademarks


   2. Copyright: the right to copy


Week 7 (10/25, 10/27)

E. Taking property (eminent domain)
   1. Is regulation ever a taking?


Cases: Penna. Coal v. Mahon (1922)

III. Contracts: Economics of Promise Keeping
A. Why have contracts?
   1. Sequential exchange and making commitments credible
   2. Breach of Contract and alternative damage remedies: the cows
      • *Cooter and Ulen*: chapter 8
      Cases: *Batsakis v. Demotsis* (1949); *Hamer v. Sidway* (1891); *Sherwood v. Walker* (1887) (in *Cooter and Ulen*); *Laidlaw v. Organ* (1815), (in *Cooter and Ulen*).

Week 8 Fall Break

Week 9 (11/08, 11/10)

B. Other remedies for breach of contract
   1. Specific performance
   2. Efficient breach or opportunism: how to tell
   3. “Unconscionable” contracts and other contract doctrines
      • *Cooter and Ulen*: chapter 9

C. Contracts wrap up

D. Rev. Bayes in the courtroom: eyewitness and conditional probability

Week 10 (11/15, 11/17)

IV. Life is risky: The economics of torts

A. Introduction to torts
   1. Traditional tort doctrine
   2. Economics of torts: Calabresi’s minimum social cost rule
      • *Cooter and Ulen*: chapter 6

B. Drivers & pedestrians: *Caveat Emptor* or negligence or strict liability?
   1. Caveats: activity levels; extent of precaution, administrative costs, court errors.
   2. The Learned Hand rule
      • *Cooter and Ulen*: chapter 7
Studies 9: 210-234.

Case: U.S. v. Carroll Towing (1947)

C. Product liability: privity to negligence to strict liability to absolute liability
   1. Where are the vaccines?
   2. The case of the exploding Pintos
   3. Computing damages: pricing life or pricing risk?


Week 11 (11/22)

V. Crime and punishment

A. The economics of crime and punishment
   1. What is a crime?
   2. Why do we need criminal law when we have tort law?
   3. Why do people commit crimes?
   4. What are the social costs of crime and what is the socially best amount?
   5. Methods of deterrence and punishment and their relative costs
   6. Risk-aversion: the crime of double parking

• Cooter and Ulen: chapter 12
  Detection in a Series of Experiments.” NBER paper W8638.
• Friedman, David. “Rational Criminals and Intentional Accidents: The Economics of

Week 12 (11/29, 12/1)

B. Topics in the economics of crime and punishment
   1. Victimless crimes (attempts and criminalized consensual exchange)
   2. Who commits crime?
   3. Social costs of handguns and of handgun control
   4. The economics of Lojack: deterrence or redistribution?
   5. Minimizing costs of crime and like treatment of groups: a tradeoff?

• Cooter and Ulen: chapter 13
• regarding the gun control and Lojack topics, see the Cooter & Ulen web site.
Decline and Six That Do Not” *Journal of Economic Perspectives* 18(1): 163-190


VI. The economics of constitutional law and social choice

A. Social contract theory of the state
   1. The social contract and its goals
   2. Workings of the social contracts’ provisions
   3. Enforcement of the social contracts’ provisions


Week 13 (12/6, 12/8)

B. Aggregating individual preferences to social preferences choices by voting
   1. Sen’s Lewds & Prudes: when Liberalism and Paretianism conflict
   2. Rawls’s alternative

• *Cooter and Ulen*, appendix to chapter 4


C. Crafting constitutional rules
   1. Buchanan and Tullock on optimal voting rules


Week 14 (12/13, 12/15)

D. Arrow’s “impossibility” result: the very idea of a social ordering
1. Acquit or execute: vote cycling in Supreme Court capital cases


E. Procedural methods for circumventing Arrow’s impossibility result
1. Agenda control, misrepresenting preferences, logrolling

VII. Critiques of the efficiency view of law

1. Public choice: Does the state do what’s socially best, whether or not efficiency is made paramount?
2. The liberal critique: why should efficiency trump distribution? (Dworkin).
2. Ellickson’s critique: what if Coase is right, but people don’t know the law?