Law & Economics – Law 123

Mondays, 6:05 pm – 8:05 pm

Antonin Scalia Law School, George Mason University, Spring 2022

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Office Hours. Wed. 12:30 – 2:30 pm (in-person) & by appt. (including virtual)

Welcome.
The economic analysis of law has had a deep impact on how we think of about the role of the legal system in society, court decisions, and regulatory policy. This course is designed to introduce the economic analysis of legal rules and decision making applied to specific areas of the law including property, torts, contracts, criminal, intellectual property, and legal procedure. This impact is not without controversy as it offers an often-conflicting vision of how we should implement legal rules.

Learning Outcomes.
Students will have the ability to understand and apply economic tools, models, and theories to legal policy discussions; evaluate the effectiveness of legal rules, regulations, and public policies using sound economic techniques; to normatively assess the law in terms of economic efficiency.

Texts & Readings.
- A. MITCHELL POLINSKY, AN INTRODUCTION TO LAW AND ECONOMICS, FIFTH EDITION, 2019.
- STEVEN SHAVELL, FOUNDATIONS OF ECONOMICS ANALYSIS OF LAW, 2004.
- DAVID D. FRIEDMAN, LAW'S ORDER, 2000 (online version: http://www.daviddfriedman.com/laws_order/index.shtml)
- All other readings are available on TWEN.

Class Norms.
Students are expected to have read and thought about the assigned material and to be ready to participate in the discussion. In order to offer a high-quality learning environment and to limit distractions, if you use a laptop, your activity should be limited to notetaking (which excludes messaging, social media, and web browsing). Please feel free to speak up and share your thoughts—as the ability to convey complex ideas is part of the objective of this course.

Course Requirements and Grading.
Your course grade will be determined in the following manner.

- *Written Assignments*. There will be **three written assignments**. Each assignment is worth **15 percent** of your overall grade—for a total of **45 percent**. *All assignments must be submitted in PDF via TWEN before the due date & time.* Late submissions will receive zero credit.
  - *Assignment #1*: **Short Answer Assignment** (Assigned Feb. 14, Due Feb. 25)
  - *Assignment #2*: **Case Analysis Project** (Assigned Mar. 21, Due Apr. 1)
    - Step 1: Identify a case you find interesting related to one of the topics in this course.
    - Step 2: Edit the case down to ½ the size of the original (or less)
    - Step 3: Develop case notes similar to the notes following cases in a casebook.
    - Step 4: Share with the class via email.
  - *Assignment #3*: **Scholarship Project** (Assigned Apr. 11, Due Apr. 22)
    - Step 1: Read one journal article listed under "Additional Readings" on this syllabus.
    - Step 2: Summarize the reading on one page, single-spaced. Focus on distilling the material down to its central points while highlighting the key insights.
    - Step 3: On a separate page, relate the scholarship to the material in the course including the assigned readings, lecture material, and class discussions.
- *Final Exam*. The final exam will be administered on **Monday, May 9 @ 6 – 8 pm** and will count for **35 percent** of your grade.
- *Class Participation*. Class participation will count for **20 percent** of your grade.

Grading Policies. This course follows the grading policies outlined in Academic Regulations (AR) 4-5.7, which may be found at ACADEMIC REGULATIONS, https://www.law.gmu.edu/academics/regulations/.

Honor Code. Students are expected to adhere to the Scalia Law HONOR CODE, which may be found at https://www.law.gmu.edu/academics/honor_code/.

Tentative Syllabus. We may deviate from the tentative syllabus for reasons including current events, scheduling, new cases, *et cetera*. Please make sure you are signed up to receive updates via TWEN.

Intellectual Property. I own all course content that is created (_e.g._, slides, handouts), regardless of format (electronic, print, audio, video). You are forbidden to distribute them to anyone other than your classmates in this course. Pursuant to Academic Regulation 4-2.2, no portion of a class session or an examination may be preserved by means of a recording device such as an audio recording device or camera.

Class Schedule & Reading Assignments

1 Foundational Concepts (Mon., Jan. 24)

- ☐ Polinsky, Chapters 1, 2
- ☐ Shavell, Chapter 1
- ☐ Friedman, Introduction, Chapters 1, 2
- ☐ Steve Landsburg, *Efficiency Experts*,
  http://www.thebigquestions.com/2010/08/30/efficiency-experts/

Additional Readings:
- ☐ Polinsky, Chapter 18
- ☐ Richard A. Posner, *The Ethical and Political Basis of the Efficiency Norm in Common Law Adjudication*, 8 HOFSTRA L. REV. 487 (1980).

2 Property Rights I: Origins & Formation (Mon., Jan. 31)

- ☐ Shavell, Chapters 2, 3
- ☐ Friedman, Chapter 10
- ☐ Terry L. Anderson & P.J. Hill, *The Evolution of Property Rights: A Study of the American West*, 18 J.L. & ECON. 163 (1975).

Additional Readings:
- ☐ Harold Demsetz, *Toward a Theory of Property Rights*, 57 AM. ECON. REV. 347 (1967).
- ☐ Martin J. Bailey, *Approximate Optimality of Aboriginal Property Rights*, 35 J.L. & ECON. 183 (1992).

3 Property Rights II: Conflicts (Mon., Feb. 7)

- ☐ Polinsky, Chapter 3
- ☐ Shavell, Chapter 5
- ☐ Friedman, Chapters 3, 4
- ☐ Boomer v. Atlantic Cement Company, 26 N.Y.2d 219 (1970)

Additional Readings:
- ☐ Polinsky, Chapter 4

☐ Ronald H. Coase, *The Problem of Social Cost*, 3 J. L. & ECON. 1 (1960) (pp. 1-8, 15-19, 28-29, 42-44).

☐ Guido Calabresi & A. Douglas Melamed, *Property Rules, Liability Rules, and Inalienability: One View of the Cathedral*, 85 HARV. L. REV. 1089 (1972).

4 Intellectual Property (Mon., Feb. 14)

☐ Shavell, Chapter 7
☐ Friedman, Chapter 11
☐ Eldred v. Ashcroft, 537 U.S. 186 (2003)

Additional Readings:
☐ Stan J. Liebowitz & Stephen E. Margolis, *Seventeen Famous Economists Weigh in on Copyright: The Role of Theory, Empirics, and Network Effects*, working paper (2003).

☐ Stanley M. Besen & Leo J. Raskind, *An Introduction to the Law and Economics of Intellectual Property*, 5 J. ECON. PERSP. 3 (1991).

5 Torts I: Accidents (Mon., Feb. 21)

☐ Shavell, Chapter 8
☐ Friedman, Chapter 14
☐ Central of Georgia Ry. Co. v. Price, 106 Ga. 176 (Ga. 1898)

Additional Readings:
☐ Polinsky, Chapter 6

6 Torts II: Products Liability (Mon., Feb. 28)

☐ Polinsky, Chapter 14
☐ Shavell, Chapter 9
☐ MacPherson v Buick Motor Co., (N.Y., Mar. 14, 1916)
☐ Sindell v. Abbott Laboratories, 26 Cal.3d 588 (Cal., 1980)

7 Contracts I: Formation (Mon., Mar. 7)

☐ Shavell, Chapters 13 (pp. 291-304), 14
☐ Friedman, Chapter 12
☐ Richard A. Posner, *Gratuitous Promises in Economics and Law*, 6 J. LEGAL STUD. 411 (1977).

☐ Ricketts v. Scothorn, 57 Neb. 51 (Neb. 1898)

Additional Readings:
☐ Anthony T. Kronman, *Mistake, Disclosure, and Information*, 7 J. LEGAL STUD. 1 (1978).

8 Contracts II: Breach of Contract (Mon., Mar. 21)

☐ Polinsky, Chapter 5
☐ Shavell, Chapter 13 (pp. 304-24)
☐ Evra Corp. v. Swiss Bank Corp., 673 F.2d 951 (C.A.Ill., 1982)

Additional Readings:
☐ Daniel Friedmann, *The Efficient Breach Fallacy*, 18 J. LEGAL STUD. 1 (1989).

9 Crime & Punishment (Mon., Mar. 28)

☐ Shavell, Chapter 24
☐ Friedman, Chapter 15

Additional Readings:
☐ Polinsky, Chapters 10, 11
☐ Friedman, Chapter 18
☐ Gary Becker, *Crime and Punishment: An Economics Analysis*, 76 J. POL. ECON. 169 (1968).

10 Litigation and the Legal Process (Mon., Apr. 4)

☐ Polinsky, Chapter 16
☐ Shavell, Chapter 17

11 Is the Common Law Efficient? (Mon., Apr. 11)

☐ Friedman, Chapter 19
☐ Paul H. Rubin, *Why is the Common Law Efficient?*, 6 J. LEGAL STUD. 51 (1977).

Additional Readings:
☐ Todd J. Zywicki, *The Rise and Fall of Efficiency in the Common Law: A Supply-Side Analysis*, 97 NW. U. L. REV. 1551 (2002).

12 <u>Private Law</u> (Mon., Apr. 18)

☐ Shavell, Chapter 19
☐ Friedman, Chapter 17
☐ Robert C. Ellickson, *A Hypothesis of Wealth-Maximizing Norms: Evidence from the Whaling Industry*, 5 J.L. ECON. & ORG. 83 (1989).

Additional Readings:
☐ David Friedman, *Private Creation and Enforcement of Law: A Historical Case*, 8 J. LEGAL STUD. 399 (1979).

13 <u>Behavioral Law & Economics</u> (Mon., Apr. 25)

☐ Christine Jolls, *Behavioral Law and Economics*, working paper (1998).
☐ Joshua D. Wright & Douglas H. Ginsburg, *Behavioral Law and Economics: Its Origins, Fatal Flaws, and Implications for Liberty*, 106 NW. U. L. REV. 1033 (2012).

<u>Final Exam</u> (Mon., May 9, 6 pm – 8 pm)