

**Law and Economics Seminar -- Law 123**  
**Antonin Scalia Law School at George Mason University**  
**Spring 2024**

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**Some sessions will use zoom.**

**Welcome to Law and Economics**

The economic analysis of law had a deep impact on how we think of 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, and legal procedure. This impact is not without controversy as it offers an often-conflicting vision of how we should implement legal rules.

**Student Learning Outcomes**

By the end of the semester, 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.

**Office Hours:** Office hours will be: Thursday, 2.00-3.15pm. I am usually available for shorter questions immediately after class. (I may adjust office hours later in the semester if that time does not prove to be convenient.) I am also generally available via appointment, email, or some other platform such as zoom. Group requests get priority over individual requests.

**Email Communication:** Students must use their MasonLive email account to receive important University information, including communications related to this class. I will not respond to messages sent from or send messages to a non-Mason email address.

**Casebook and Course Materials:** This is a paper-based seminar. All papers as well as supplemental materials will be posted on TWEN.

As background reading and short overview, I recommend Robert Cooter and Thomas S. Ulen, *Law and Economics*, 2012, 6<sup>th</sup> edition, available at <https://lawcat.berkeley.edu/record/1127400?ln=en> (a copy is to be posted at TWEN).

**Paper Presentation:** Each class is based on two or three papers. Each student will be pre-assigned and take the leading role of discussion leader. The discussion leader is responsible for summarizing the papers at the beginning of the class and moderate the debate.

**Class Preparation:** You should prepare for class by reading and thinking carefully through the assigned material. You are expected to be prepared for class. I will assume familiarity with the assigned reading. Since we are going to be a small group, discussion will play a very important role. Speaking in front of a small audience should not be a major problem.

Some general guidelines are as follows: (1) you should attend class in a manner consistent with Law School policies, (2) quality of participation is weighed much more heavily than quantity, (3) failure to prepare for class is the easiest way to assure a downward participation adjustment.

**Written Assignments:** The primary written assignment for this class will be three short take home and open book exams. Each exam must be at least 1,500 words, exclusive of footnotes.

Exam 1 – available February 13, 2024; deadline March 12, 2024.

Exam 2 – available March 12, 2024; deadline April 2, 2024.

Exam 3 – available April 2, 2024; deadline April 29, 2024.

**Grading:** Final course grade is based on the three short exams (75%; 25% each exam) and on leading discussion in class (25%). It can be adjusted by a single increment either upward or downward (e.g., from B to B+) based on more general class participation.

**Syllabus is Preliminary and Subject to Change:** I may deviate from the tentative syllabus with assignments taken from current events, new cases, to accommodate guest speakers, scheduling reasons, etc. Please make sure you sign up to receive updates via TWEN.

**Intellectual Property:** The professors teaching Law and Economics at Scalia Law own all course content we create (e.g., PPT slides), regardless of form (electronic, print, audio/video, etc.), including recordings of class sessions, office hours, and other meetings. You are forbidden to use them with, or distribute them to, anyone other than your classmates on this course.

**Class Recording Prohibited:** 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. Any exceptions to this policy must be expressly permitted in writing by me.

**Academic Integrity:** It is expected that students adhere to the Antonin Scalia Law School Honor Code. The Honor Code prohibits lying, cheating, or stealing. This includes a student obligation to never represent the work of another as their own, and to never provide or accept unauthorized assistance on any school related assignment. The Honor Code is available here: <https://sls.gmu.edu/honor/>.

**Classroom Accommodations:** Disability Services at George Mason University is committed to providing equitable access to learning opportunities for all students by upholding laws that ensure equal treatment of people with disabilities. If you are seeking accommodations for this class, please visit <https://ds.gmu.edu/> for detailed information about the Disabilities Registration Process. Faculty may not receive or respond to requests for an accommodation. All requests must be handled by the office of Disability Services. You may contact Disability Services directly via email at [ods@gmu.edu](mailto:ods@gmu.edu) or phone at (703) 993-2474. If you have any questions about how in-class or testing accommodations are implemented at the law school, please contact the Assistant Dean, Student Academic Affairs for more information.

**General Academic Regulation:** [Available here.](#)

**University Life:** University Life provides student support resources such as **Counseling and Psychological Services** (<https://caps.gmu.edu/>), **Student Health Services** (<https://shs.gmu.edu/>), and the **Student Support and Advocacy Center** (<https://ssac.gmu.edu/>). For more information about University Life on the Arlington Campus, please visit: <https://ularlington.gmu.edu/>

## READING ASSIGNMENTS

### **I. Introduction to Law and Economics (Jan 16)**

Background:

Cooter & Ulen, 1-11

Discussion:

Richard A. Posner, *The Ethical and Political Basis of the Efficiency Norm in Common Law Adjudication*, 8 Hofstra L. Rev. 487 (1980).

Guido Calabresi, *About Law and Economics: A Letter to Ronald Dworkin*, 8 Hofstra L. Rev. 553 (1980).

Ronald M. Dworkin, *Why Efficiency? – A Response to Professors Calabresi and Posner*, 8 Hofstra L. Rev. 563 (1980).

### **II. Efficiency and the Law (Jan 23)**

Discussion:

Richard A. Posner, *Utilitarianism, Economics, and Legal Theory*, 8 J. Legal Stud. 103 (1979).

Ronald M. Dworkin, *Is Wealth a Value?*, 9 J. Legal Stud. 191 (1980).

Richard A. Posner, *Tribute to Ronald Dworkin and a Note on Pragmatic Adjudication*, 63 NYU Annual Survey of American Law 9 (2007).

### **III. Property Law: Formation (Jan 30)**

Background:

Cooter & Ulen, 70-111

Discussion:

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).

### **IV. Property Law: Conflicts (Feb 6)**

Background:

Cooter & Ulen, 112-186

Discussion:

Ronald H. Coase, *The Problem of Social Cost*, 3 J. L. & Econ. 1 (1960).

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

Louis Kaplow & Steven Shavell, *Property Rules versus Liability Rules: An Economic Analysis*, 109 Harv. L. Rev. 713 (1996).

#### **V. Tort Law: Accidents (Feb 13)**

Background:

Cooter & Ulen, 187-229

Discussion:

John P. Brown, *Toward an Economic Theory of Liability*, 2 J. Legal Stud. 323 (1973).

Mark Grady, *A New Positive Economic Theory of Negligence*, 92 Yale L. J. (1983).

#### **VI. Tort Law: Liability versus Regulation (Feb 20)**

Background:

Cooter & Ulen, 230-275

Discussion:

Steven Shavell, *Liability for Harm versus Regulation of Safety*, 13 J. Legal Stud. 357 (1984).

Charles D. Kolstad, Thomas S. Ulen & Gary V. Johnson, *Ex Post Liability vs. Ex Ante Regulation: Substitutes or Complements?*, 80 Am. Econ. Rev. 888 (1990).

Lynn M. LoPucki, *The Death of Liability*, 106 Yale L. J. 1 (1996).

#### **VII. Contract Law: Formation (Feb 27) – zoom session**

Background:

Cooter & Ulen, 276-306

Discussion:

Richard A. Posner, *Gratuitous Promises in Economics and Law*, 6 J. Legal Stud. 411 (1977).

Anthony T. Kronman, *Mistake, Disclosure, and Information*, 7 J. Legal Stud. 1 (1978).

#### **VIII. Contract Law: Breach of Contract (Mar 12) – zoom session**

Background:

Cooter & Ulen, 306-381

Discussion:

Alan Schwartz, *The Case for Specific Performance*, 89 Yale L. J. 271 (1979).

Steven Shavell, *Damage Measures for Breach of Contract*, 11 Bell J. Econ. 466 (1980).

Daniel Friedmann, *The Efficient Breach Fallacy*, 18 J. Legal Stud. 1 (1989).

#### **IX. Civil Procedure (Mar 19)**

Background:

Cooter & Ulen, 382-453

Discussion:

Owen M. Fiss, *Against Settlement*, 93 Yale L. J. 1073 (1984).

John J. Donohue III, *Opting for the British Rule, or If Posner and Shavell Can't Remember the Coase Theorem, Who Will?*, 104 Harv. L. Rev. 1093 (1991)

Andrew F. Daughety & Jennifer Reinganum, *Economic Theories of Settlement Bargaining*, 1 Ann. Rev. Law & Soc. Sci. 35 (2005).

#### **X. The Efficiency of the Common Law Hypothesis (Mar 26) – zoom session**

Discussion:

Paul H. Rubin, *Why is the Common Law Efficient?*, 6 J. Legal Stud. 51 (1977).

Daniel Klerman, *Jurisdictional Competition and the Evolution of the Common Law*, 74 U. Chi L. Rev. 1179 (2007).

#### **XI. Behavioral Law and Economics (Apr 2) – zoom session**

Discussion:

Cass R. Sunstein, Christine Jolls & Richard H. Thaler, *A Behavioral Approach to Law and Economics*, 50 Stanford L. Rev. 1471 (1998).

Russell Korobkin, *Status Quo Bias and Contract Default Rules*, 83 Cornell L. Rev. 608 (1998).

Russell B. Korobkin & Thomas S. Ulen, *Law and Behavioral Science: Removing the Rationality Assumption from Law and Economics*, 88 Cal. L. Rev. 1051 (2000).

#### **XII. Expressive Law and Economics & Law and Macroeconomics (Apr 9)**

Discussion:

Richard H. McAdams, *An Attitudinal Theory of Expressive Law*, 79 Oregon L. Rev. 339 (2000).

Yair Listokin, *Law and Macroeconomics: The Law and Economics of Recessions*, 34 Yale J. Reg. 793 (2017).

#### **XIII. Law and Political Economy & Other Critiques (Apr 16)**

Discussion:

Shawn J. Bayern, *Rational Ignorance, Rational Closed-Mindedness, and Modern Economic Formalism in Contract Law*, 97 California L. Rev. 943 (2009).

Shawn J. Bayern, *The Limits of Formal Economics in Tort Law: The Puzzle of Negligence*, 75 Brook. L. Rev. 707 (2010).

Jedediah Britton-Purdy, David Singh Grewal, Amy Kapczynski & Sabeel Rahman, *Building a Law-and-Political-Economy Framework: Beyond the Twentieth-Century Synthesis*, 129 Yale L. J. 1784 (2020).