

LAW AND ECONOMICS

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Course Material Developed by Department of Economics,
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Syllabus

The goal of the course is to analyse the legal system, especially the essential legal institutions of the market (civil law, company law). Other main areas of economic analysis of law (e.g. criminal law; legal procedure; constitutional law, public choice theory) remain untouched. The main objective is understanding the effects of the legal rules, of the changes in rules. The course tries to provide a list of the main legal questions which are required to consider before a decision in private life (e.g. transferring a property, signing of a contract, funding a company), or in policy making (privatizing, regulation, etc.)

References:

Mandatory:

Cooter, Robert and Thomas Ulen: Law and economics (Cooter –Ulen)

Chapters listing in the syllabus.

Notes on lectures

Recommended: Two classical textbooks:

Posner, Richard A.: Economic Analysis of Law (5th edition). New York, Aspen. 1997 (Posner)

Shavell, Steven: Foundations of Economic Analysis of Law, Belknap Press, 2004 (Shavell)

Others :

Bouckaert, B. and G. De Geest (eds.), Encyclopedia of Law and Economics, Cheltenham, Edward Elgar, 2000 <http://encyclo.findlaw.com/tablebib.html> (Encyclopedia)

Coase, R. H., The firm, the market and law

Friedman, David D.: Law's Order. Princeton – Oxford, Princeton University Press, 2000 (Friedman)

Miceli, Thomas J.: Economics of the Law. New York–Oxford, Oxford University Press, 1997 (Miceli)

Course outline and readings

1. What is the law and economics? Coase-theorem

The aims, themes and methods of the law and economics

Economic way of thinking

Coase-theorem: strong and weak versions

Transaction costs: contract theory of transaction costs; Property right definition of transaction costs

Does law matter?

Allen, D. A., Transaction Costs, in: Encyclopedia

Coase, Ronald: The problem of social cost. in Coase

Medema S. G. and R. O. Zerbe Jr., The Coase Theorem, in: Encyclopedia

Williamson, O. E.: A tranzakciós költségek gazdaságtana: a szerződéses kapcsolatok szabályozása. Kormányzás, Közpénzügyek, Szabályozás 2007/2 pp. 235-255 (http://www.kormanyzas.hu/072/05_Williamson.pdf)

2. Property law 1.: Definition and titles of property

Definitions of property in law and in economics. Absolute and relative rights.

Economic functions of property (incentives). Property or liability rules.

Property law – legal definition of property (in rem); Rights within the property: bundle of rights. Rights of the property owner?

Numerus clausus (What rights are in rem, protected by property rule?)

Roles of registration

Expropriation, eminent domain, confiscation

* Cooter – Ulen Chapter 4.

Friedman Chapter 5, 10

Furubotn, Eirik G. – Rudolf Richter: Institutions and Economic Theory. The Contribution of New Institutional Economics. Ann Arbor, The University of Michigan Press, 2000. Chapter 3

Lueck, Dean – Thomas J. Miceli: Property Law [Forthcoming in Polinsky – Shavell: Handbook of Law and Economics]

Miceli, Chapter 7

Posner, Chapter 3

Shavell, Steven: Economic Analysis of Property Law. Harvard John M. Olin
 Discussion Paper Series No. 399
http://www.law.harvard.edu/programs/olin_center/papers/pdf/399.pdf

3. Property law 2.: Acquisition of property

Acquisition: receiving titles – overview

Original acquisition (First possession, Loss and recovery, Adverse possession)

Transfer from non-owner (Sale, Inheritance)

* Cooter – Ulen Chapter 5

* Shavell, Steven: Economic Analysis of Property Law. Harvard John M. Olin
 Discussion Paper Series No. 399
http://www.law.harvard.edu/programs/olin_center/papers/pdf/399.pdf Chapter 9

Calabresi, Guido – A. Douglas Macneil: Tulajdoni szabályok, felelősségi szabályok és az elidegeníthetetlenség: a székesegyház egyik látképe. in: Harmati – Sajtó

Hansmann, Henry – Reinier Kraakman, Property, Contract, and Verification: The Numerus Clausus Problem and the Divisibility of Rights, Harvard John M. Olin
 Discussion Paper Series No. 388
http://www.law.harvard.edu/programs/olin_center/papers/pdf/388.pdf

Miceli, Chapter 6

Posner, Chapter 3

4. Property law 3.: Intellectual property

Incentives – basic issues of gathering and distributing information

Patents, Copyright, Trade secrets

Personal information

* Shavell, Steven: Economic Analysis of Property Law. Harvard John M. Olin

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http://www.law.harvard.edu/programs/olin_center/papers/pdf/399.pdf Chapter 12

Friedman, Chapter 11

Gordon, Wendy J. – Robert G. Bone: Copyright in: Encyclopedia

Menell, Peter S.: Intellectual Property: General Theories in: Encyclopedia

Posner, Chapter 3.3

5. Contract law 1.: Basic topics

Private (non-legal) law enforcement and its constraints. Credible commitment.

Contract law and cooperation

What is a contract? – Why is there a contract?

Freedom of contract

Economic requirements (Neoclassical: Incentive effects; Non classical)

Mandatory vs. default rules

* Cooter – Ulen Chapter 6

Friedman, Chapter 12

Posner, Chapter 4

Shavell, Steven: Economic Analysis of Contract Law. Harvard John M. Olin

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http://www.law.harvard.edu/programs/olin_center/papers/pdf/399.pdf Chapter 13

6. Contract law 2.: Contracting

What is an enforceable promise? Boilerplate contracts, mandatory rules

Contents of a contract? (Incomplete contract, Enforcement beyond the explicit terms of a contract)

Majority or penalty default rules.

What is not enforceable? Duress (threat, necessity) Information (misrepresentation, disclosure rule, one sided vs. two-sided mistakes)

Impossibility

Modification

* Shavell, Steven: Economic Analysis of Contract Law. Harvard John M. Olin Discussion Paper Series No. 403
http://www.law.harvard.edu/programs/olin_center/papers/pdf/403.pdf Chapter 14

Ayres, Ian and Robert Gertner [1989], 'Filling Gaps in Incomplete Contracts: An Economic Theory of Default Rules', 99 *Yale Law Journal* 87.

Cooter, Robert [1985], 'Unity in Tort, Contract, and Property: The Model of Precaution', 73 *California Law Review* 1

Friedman, Chapter 12

Miceli, Chapter 5

Posner, Eric A. [2003], 'Economic Analysis of Contract Law After Three Decades: Success or Failure?' 112 *Yale Law Journal* 829

Posner, Chapter 4

Posner, Richard A. and Andrew M. Rosenfield [1977], 'Impossibility and Related Doctrines in Contract Law: An Economic Analysis', 6 *Journal of Legal Studies*, 88 (1977).

Trebilcock, Michael J: *The Limits of Freedom of Contract*. Harvard University Press, 1993

Triantis, George G.: Unforeseen Contingencies. Risk Allocation in Contracts
in: Encyclopedia

7. Contract law 3.: Performance of contract

Forms of remedies (damages, specific performance)

Paradox of compensation

Liquidated damages, penalty clauses

Disgorgement

* Cooter – Ulen Chapter 7

Craswell, Richard [1988], 'Contract Remedies, Renegotiation, and the Theory of Efficient Breach', 61 *South California Law Review*. 629

De Geest Gerrit – Filip Wuyts: Penalty Clauses and Liquidated Damages in:
Encyclopedia

Friedman, Chapter 12

Miceli, Chapter 4

Posner, Eric A.: Contract Remedies: Foreseeability, Precaution, Causation and
Mitigation in: Encyclopedia

Posner, Chapter 4

Shavell, Steven: Economic Analysis of Contract Law. Harvard John M. Olin
Discussion Paper Series No. 403
http://www.law.harvard.edu/programs/olin_center/papers/pdf/403.pdf Chapter
15-16

8. Tort law 1.: Basic topics

Aims of the tort law. Basic principles: loss and casualty.

Forms of liability: strict liability, negligence. Learned Hand-rule. Models and
cases of one- and two-sided precaution – the role of victim. Least cost
avoider. Last clear chance.

Incentives – Care (Precaution) and activity

Strict liability vs. negligence – why does the rule of strict liability spread?

* Cooter – Ulen Chapter 8

Friedman, Chapter 6, 14

Miceli, Chapter 2

9. Tort law 2. Liability systems (extensions)

Sequential models: the last mover knows the negligence of the first mover.

Judicial mistakes (False assessment of loss, False setting of the level of due care.)

Causation

Risk-neutrality vs. Risk-avoidance

Joint tortfeasors – vicarious liability

* Cooter – Ulen Chapter 9

Friedman, Chapter 14

Kornhauser, Lewis A. – Richard L. Revesz: Joint Tortfeasors in: Encyclopedia

Kraakman, Reinier H.: Vicarious & Corporate Civil Liability in: Encyclopedia

Landes, William M. – Posner, Richard A.: The Economic Structure of Tort Law, Cambridge, MA: Harvard University Press, 1987

Miceli, Chapter 3

Shavell, Steven: Economic Analysis of Accident Law. Harvard John M. Olin

Discussion Paper Series No. 396

http://www.law.harvard.edu/programs/olin_center/papers/pdf/396.pdf Chapter 3-4

10. Tort law 3.: The level of damages – The role of insurance

Legal vs. economic definitions of loss

Non pecuniary losses – compensation, assessment, reduction in future

earnings, value of human life

Damages vs. loss – punitive damages, pure economic loss

Judgment- proofness

Punitive damages

Role of insurance

Dari-Mattiacci, Giuseppe and Barbara Mangan [2005], Disappearing Defendants v. Judgment Proof Injurers: Upgrading the Theory of Tort Law Failures. George Mason University Law and Economics Working Paper Series 05-01

Friedman, Chapter 6, 14

Miceli, Chapter 3

Shavell, Steven: Economic Analysis of Accident Law. Harvard John M. Olin Discussion Paper Series No. 396

http://www.law.harvard.edu/programs/olin_center/papers/pdf/396.pdf Chapter 4-5

11. Company law 1.: Limited liability

What is a company? – economic models

Basic logic of limited liability

Incentive effects of limited liability (veil- piercing) - Risk-taking, Diversification, Control

Limited liability and economic models of the company

Administration problems

Limited liability and distribution

Misuse – Empty shell

Bainbridge, Stephen M.: Insider Trading in: Encyclopedia

Coase, Ronald D.: A vállalat természete in: Coase

Eggertsson, Thráinn: Economic Behavior and Institutions. Cambridge, Cambridge University Press, 1990. Chapter 2, 5-7

Foss, Nicolai J. – Henrik Lando – Steen Thomsen: The Theory of the Firm in: Encyclopedia

Hart, Oliver: An Economist's Perspective on the Theory of the Firm. 89 Columbia Law Review 1757. o. <http://www-bcf.usc.edu/~etalley/busorg/supp1.pdf>

Posner, Chapter 14. fejezet

Zingales, Luigi: Corporate governance. In: The New Palgrave Dictionary of Economics and the Law. Vol. 1. 497-503. o.

12. Company law 2.: Regulation

Normative company theory: stakeholder vs. shareholder model

Legal personality – separation of mother and daughter companies, asset partitioning.

Distribution of power within company

Hansmann Henry – Reiner Kraakmann: What is Corporate Law? Yale Law School Center for Law, Economics and Public Policy Research Paper No. 300 <http://ssrn.com/abstract=568623>

Bainbridge, Stephen M.: Abolishing Veil Piercing. Journal of Corporate Law 2001 http://papers.ssrn.com/paper.taf?abstract_id=236967

Carney, William J.: Limited Liability in: Encyclopedia

Hansmann Henry – Reiner Kraakmann: Toward Unlimited Liability for Corporate Torts. in: Yale Law Journal, 100 (1991), pp. 1879-1934

LoPucki, Lynn M. [1996], The Death of Liability. in: Yale Law Journal, 106, pp. 1-92

Posner, Chapter 14

13. Law and the economic systems

Law and economic growth

Types of legal systems: law and finance, legal origins theory

Empirical effect of legal system – Doing Business

Bankruptcy and secured credit

Cooter , R. D. and H. B. Schaefer. *Law and the Poverty of Nations*
http://works.bepress.com/robert_cooter/144

Djankov, S., E. Glaeser, R. La Porta, F. Lopez-de-Silanes and A Shleifer, The New Comparative Economics, *Journal of Comparative Economics*, December, 2003.

La Porta, Rafael, Florencio Lopez-de-Silanes, Andrei Shleifer, and Robert Vishny [1998], Law and Finance, *Journal of Political Economy* 106 pp. 1113–1155.

La Porta, R., F. Lopez-de-Silanes, A Shleifer, The Economics Consequences of Legal Origins, *Journal of Economic Literature*, June, 2008.

Rajan, Raghuram G. and Zingales, Luigi [2003], Banks and Markets: The Changing Character of European Finance CRSP Working Paper No. 546. [Online:] <http://ssrn.com/abstract=389100>

Zingales, Luigi [2004], *The Costs and Benefits of Financial Market Regulation*. ECGI – Law Working Paper No. 21/2004