
THE GEORGE WASHINGTON UNIVERSITY
Department of Economics

Law and Economics	Econ 3190.10
Spring 2019	M 3:30 — 6:00
	1957 E - 212

Professor Joseph Pelzman	Office — Monroe 319
Office Hours	By Appointment
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COURSE DESCRIPTION:

This course is designed for undergraduate economics majors. The lectures focus on the economic analysis of law. The readings draw heavily from both the traditional textbooks as well as from selected readings in the economics literature.

Law and economics has achieved prominence if not dominance within most of the legal academic world and certainly in the “high-brow” legal academic world. There is good reason for this. It provides an extremely compelling paradigm from which to understand the law. It provides normative and positive bases from which to evaluate the law and to suggest its reform.

The domain of law and economics has expanded greatly over the past twenty years from its origins in economic efficiency and antitrust law to the entire spectrum of the law curriculum. One of its earlier expansions was in what one might call the first year curriculum: contracts, torts, property, and crime. We're going to cover most of this. The concepts of a competitive general equilibrium, welfare optimality (including Pareto and Kaldor – Hicks efficiency), game theory and the problems posed by market failure via externalities, monopolies and public goods are emphasized.

LEARNING GOALS:

- Students will explain property law litigation and its economic basis;
- Students will explain contract law litigation and its economic basis
- Students will explain tort law litigation and its economic basis
- Students will explain law of non-violent criminal activity litigation and its economic basis

COURSE PREREQUISITS:

This course is designed for undergraduates. The standard pre-requisite of successfully completing Principles of Economics is a must. It is also highly recommended that students

have successfully passed other courses in the department. e.g. development economics and international economics.

AVERAGE MINIMUM AMOUNT OF INDEPENDENT, OUT-OF-CLASS, LEARNING EXPECTED PER WEEK:

We have a 15-week semester, including exam week, and this is a 3-credit course. According to university policy, over these 15 weeks for our 3-credit hour course you should average a minimum of 5 hours of independent learning per week in addition to the 2.5 hours per week of direct instruction. The actual amount of studying required depends on many factors including your background preparation, your study skills, and your target grade. Success in this class in particular is highly likely to require substantially more independent learning. More information about GW's credit hour policy can be found in the university bulletin: <http://bulletin.gwu.edu/university-regulations/>.

UNIVERSITY POLICY ON OBSERVANCE OF RELIGIOUS HOLIDAYS

In accordance with University policy, students should notify faculty during the first week of the semester of their intention to be absent from class on their day(s) of religious observance. For details and policy, see: students.gwu.edu/accommodations-religious-holidays.

ACADEMIC INTEGRITY CODE

Academic dishonesty is defined as cheating of any kind, including misrepresenting one's own work, taking credit for the work of others without crediting them and without appropriate authorization, and the fabrication of information. For details and complete code, see: studentconduct.gwu.edu/code-academic-integrity

SAFETY AND SECURITY

In the case of an emergency, if at all possible, the class should shelter in place. If the building that the class is in, is affected, follow the evacuation procedures for the building. After evacuation, seek shelter at a predetermined rendezvous location.

DISABILITY SUPPORT SERVICES (DSS)

Any student who may need an accommodation based on the potential impact of a disability should contact the Disability Support Services office at 202-994-8250 in the Rome Hall, Suite 102, to establish eligibility and to coordinate reasonable accommodations. For additional information see: disabilitysupport.gwu.edu/

MENTAL HEALTH SERVICES 202-994-5300

The University's Mental Health Services offers 24/7 assistance and referral to address students' personal, social, career, and study skills problems. Services for students include:

crisis and emergency mental health consultations confidential assessment, counseling services (individual and small group), and referrals. For additional information see: counselingcenter.gwu.edu/

REQUIRED TEXT:

Cooter, Robert and Thomas Ulen. *Law and Economics*. Addison Wesley – 6th Edition. (2012). Hereinafter (CU).

Posner, Judge Richard A. *Economic Analysis of Law*. 9th ed. Aspen Case Book Series. Hereinafter (Judge P).

Shavell, Steven. *Foundations of Economic Analysis of Law*. Harvard University Press. (2004). Hereinafter (S).

GRADING AND ATTENDANCE

I expect that you will be in class 100 percent of the time and actively participating in class discussion. Consequently, your level of participation in class will serve as part of the basis for evaluation (10%). The mid-term exam will be on 3/18/2019. The final exam is scheduled for 5/6/2019.

READINGS AND LECTURE LIST:

The dates to the right represent the dates when the material will be discussed in class. The dates on the syllabus are planned presentation dates. We may be able to speed up or slow down depending on the complexity of the topic.

READINGS**INTRODUCTION****1/14****Required:**

CU — Chs. 1 to 3; S — Ch. 25; Judge P — Ch. 1 & 2.

Optional:

Craswell, Richard, “Kaplow and Shavell, on the Substance of Fairness,” 32 *J. Legal Stud.* 245 (2003).

Farber, Daniel A., “What (If Anything) Can Economics Say About Equity?: A Review of Louis Kaplow and Steven Shavell, Fairness Versus Welfare,” 101 *Mich. L. Rev.* 1791 (2003).

Farber, Daniel A., “Rethinking the Role of Cost-Benefit Analysis: A Review of Richard L. Revesz and Michael A. Livermore, *Retaking Rationality: How Cost-Benefit Analysis Can Better Protect the Environment and Our Health*,” 76 *U. Chi. L. Rev.* 1355 (2009).

Kaplow, Louis and Steven Shavell, “Fairness v. Welfare,” 114 *Harv. L. Rev.* 961 (2002).

Kaplow, Louis and Steven Shavell, “Why the Legal System Is Less Efficient Than the Income Tax in Redistributing Income,” 23 *J. Legal Stud.* 667 (1994).

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

Sanchirico, Chris, “Deconstructing the New Efficiency Rationale,” 86 *Cornell L. Rev.* 1005 (2001).

ECONOMIC THEORY OF PROPERTY**1/28 — 2/11****Required:**

CU — Chs. 4 & 5; S — Chs. 2 to 7; Judge P — Ch. 3.

Optional:

Ayres, Ian and Eric Talley, “Solomonic Bargaining: Dividing a Legal Entitlement to Facilitate Coasean Trade,” 104 *Yale L.J.* 1027 (1995).

- Ayres, Ian, "Protecting Property with Puts," 32 *Val. U. L. Rev.* 833 (1998).
- Besen, Stanley M. and Leo J. Raskind, "An Introduction to the Law and Economics of Intellectual Property," 5 *J. Econ. Persp.* 3-27.
- Blair, Roger D. and Thomas F. Cotter, "An Economic Analysis of Damages Rules in Intellectual Property Law," 39 *Wm. & Mary L. Rev.* 1585(1998).
- Calabresi, Guido and A. Douglas Melamed, "Property Rules, Liability Rules, and Inalienability: One View of the Cathedral," 85 *Harv. L. Rev.* 1089 (1972).
- Calabresi, Guido, "The Pointlessness of Pareto: Carrying Coase Further," 100 *Yale L. J.* 1211 (1991).
- Coase, Ronald H., "The Problem of Social Cost," 3 *J. L. & Econ.* 1 (1960).
- Coase, Ronald H., "The Nature of the Firm," 4 *Economica*, pp. 390-397.
- Coase, Ronald H., "Law and Economics and A. W. Brian Simpson," 25 *J. Legal Stud.* 103 (1996).
- Demsetz, Harold, "Toward a Theory of Property Rights," 57 *American Economic Review*, pp. 347-359.
- Ellickson, Robert C., "Of Coase and Cattle: Dispute Resolution Among Neighbors in Shasta County," 38 *Stan. L. Rev.* 623 (1986).
- Ellickson, Robert C., "Property in Land," 102 *Yale L. J.* 1315 (1993).
- Farnsworth, Ward, "Do Parties to Nuisance Cases Bargain After Judgment? A Glimpse Inside the Cathedral," 66 *U. Chi. L. Rev.* 373 (1999).
- Friedman, David D., William M. Landes, and Richard A. Posner, "Some Economics of Trade Secret Law," 5 *J. Econ. Persp.* 61-72 (1991).
- Garabedian, Todd E., Recent Developments in Intellectual Property Law: Avoiding Traps in the Pursuit of University Research, *Research Management Review*, Volume 14, Number 1 (2004).
- Hricik, David, "Remedies of the Infringer: The Use by the Infringer of Implied and Common Law Federal Rights, State Law Claims, and Contract to Shift Liability for Infringement of Patents, Copyrights, and Trademarks," 28 *Tex. Tech L. Rev.* 1027 (1997)
- Hulsey, William N. III, Anthony E. Peterman, and Steven Sprinkle, "Recent Developments in Patent Law," 4 *Tex. Intell. Prop. L.J.* 99 (1995)

Kahneman, Daniel et al., “*Experimental Tests of the Endowment Effect and the Coase Theorem*,” 98 *J. Pol. Econ.* 1325, 1338-39 (1990).

Kaplow, Louis and Steven Shavell, “*Property Rules Versus Liability Rules: An Economic Analysis*,” 109 *Harv. L. Rev.* 713 (1996).

Krimsky, Sheldon, *The Profit of Scientific Discovery and its Normative Implications*, 75 *Chi.-Kent. L. Rev.* 15 (1999).

Landes, William E. & Richard A. Posner, “*An Economic Analysis of Copyright Law*,” 18 *J. Legal Stud.* 325 (1989).

Lemley, Mark A., “*Reconceiving Patents in the Age of Venture Capital*,” 4 *J. Small & Emerging Bus. L.* 137

Lewin, Jeff L., “*Compensated Injunctions and the Evolution of Nuisance Law*,” 71 *Iowa L. Rev.* 775 (1986).

Melville, David W., “*Liability Rules, Property Rules, and Incentives Not to Bargain: The Effect of Competitive Rivalry on the Protection of Legal Entitlements*,” 29 *Seton Hall L. Rev.* 1277 (1999).

Merges, Robert, “*Intellectual Property Rights and Bargaining Breakdown: The Case of Blocking Patents*,” 62 *Tenn. L. Rev.* 75 (1994).

Merges, Robert P., “*Contracting into Liability Rules: Intellectual Property Rights and Collective Rights Organizations*,” 84 *Calif. L. Rev.* 1293 (1996).

Nadal, Alejandro, “*Coasean Fictions: Law and Economics Revisited*,” 5 *Seattle J. for Soc. Just.* 569 (2007).

Nance, Dale A., “*Guidance Rules and Enforcement Rules: A Better View of the Cathedral*,” 83 *Va. L. Rev.* 837 (1997).

Nguyen, Minh-Hien, “*Recent Developments in Patent Law*,” 224 *Texas Intellectual Property Law Journal.* 6:2.

Pistorino, James C., “*Recent Developments in Patent Law*,” 6 *Tex. Intell. Prop. L.J.* 355 (1998).

Pitchford, Rohan and Christopher M. Snyder, “*Coming to the Nuisance: An Economic Analysis From an Incomplete Contracts Perspective*,” *Stanford/Yale Junior Faculty Forum, Research Paper 01-17* (2001), http://papers.ssrn.com/abstract_id=280842.

Ronde, T., “*Trade Secrets and Information Sharing*,” 10 *J. Econ. & Mgmt. Strategy*, 391-417 (2001).

Takenaka, Toshiko, "Patent Law and Policy Symposium: Re-Engineering Patent Law: The Challenge of New Technologies: Part III: International and Comparative Law Issues: Patent Infringement Damages in Japan and the United States: Will Increased Patent Infringement Damage Awards Revive the Japanese Economy?," 2 *Wash. U. J.L. & Pol'y* 309 (2000)

Zabojnik, J., "A Theory of Trade Secrets in Firms," 43 *Int'l Econ. Rev.*, 831 (2002).

THE ECONOMICS OF CONTRACT LAW

2/25 — 3/18

CU — Chs. 8 & 9; S — Chs. 13 to 16; Judge P — Ch. 4.

Ayres, Ian and Robert Gertner, "Filling Gaps in Incomplete Contracts: An Economic Theory of Default Rules," 99 *Yale L. J.* 87 (1989).

Baker, George, Robert Gibbons and Kevin Murphy, "Relational Contracts and The Theory of the Firm," 117 *Q. J. Econ.* 39 (2002).

Bebchuck, Lucian A. & Omri Ben-Shahar, "Precontractual Reliance," 50 *J. Legal Stud.* 423 (2001);

Craswell, Richard, "Offer, Acceptance, and Efficient Reliance," 48 *Stan. L. Rev.* 481 (1996);

Eisenberg, Melvin A., "The Bargain Principle and Its Limits," 95 *Harv. L. Rev.* 741 (1982).

Eisenberg, Melvin A., "Why There Is No Law of Relational Contracts," 94 *Nw. U. L. Rev.* 805 (2000)

Epstein, Richard A., "Unconscionability: A Critical Reappraisal," 18 *J. L. & Econ.* 293 (1975).

Farnsworth, E. Allan, "Precontractual Liability and Preliminary Agreements: Fair Dealing and Failed Negotiations," 87 *Colum. L. Rev.* 217 (1987);

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

Gillette, Clayton P., "Commercial Rationality and the Duty to Adjust Long-Term Contracts," 69 *Minn. L. Rev.* 521 (1985).

Johnston, Jason Scott, "Communication and Courtship: Cheap Talk Economics and the Law of Contract Formation," 85 *Va. L. Rev.* 385 (1999);

Joskow, Paul L., "Commercial Impossibility, the Uranium Market, and the Westinghouse

Case,” 6 *J. Legal Stud.* 119 (1977).

Katz, Avery, “Should an Offer Stick?: The Economics of Promissory Estoppel in Preliminary Negotiations,” 105 *Yale L.J.* 1249 (1996).

Kronman, Anthony, “Mistake, Disclosure, Information, and the Law of Contract,” 7 *J. Legal Stud.* 1 (1978).

Macaulay, Stewart, “Relational Contracts Floating on a Sea of Custom?: Thoughts about the Ideas of Ian Macneil and Lisa Bernstein,” 94 *Nw. U. L. Rev.* 775 (2000).

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

Schwab, Stewart, “A Coasean Experiment on Contract Presumptions,” 17 *J. Legal Stud.* 237 (1988).

Schwartz, Alan and Robert Scott “Precontractual Liability and Preliminary Agreements,” 120 *Harv. L. Rev.* 661 (2007)

THE ECONOMICS OF TORT LAW

3/25 — 4/15

CU — Chs. 6 & 7; S — Chs. 8 to 12; Judge P — Ch. 6.

Ashenfelter, Orley & Michael Greenstein, “Using Mandated Speed Limits to Measure the Value of a Statistical Life,” 112 *J. Pol. Econ.* S226 (2004).

Ashenfelter, Orley, “Measuring the Value of a Statistical Life: Problems and Prospects,” 116 *Econ. J.* C10 (2006).

Avraham, Ronen, “Should Pain-and-Suffering Damages be Abolished from Tort Law?: More Experimental Evidence,” 55 *U. Toronto L. J.* 941 (2005).

Avraham, Ronen, “Putting a Price on Pain-and-Suffering Damages: A Critique of The Current Approaches and a Preliminary Proposal for Change,” 100 *Nw. L. Rev.* 87 (2006).

Ben-Shahar, Omri and Oren Bar-Gill, “The Uneasy Case for Comparative Negligence,” 5 *Am. L. & Econ. Rev.* 433 (2003).

Bowland, Bradley J. and John C. Beghin, “Robust Estimates of Value of a Statistical Life for Developing Economies,” 23 *J. Policy Modeling* 385 (2001).

Calabresi, Guido, “Some Thoughts on Risk Distribution and the Law of Torts,” 70 *Yale L. J.* 499.

Calabresi, Guido and Jon T. Hirschoff, "Toward a Test for Strict Liability in Torts," 81 *Yale L. J.* 1005 (1972).

Croley, Steven P. and Jon D. Hanson, "The Nonpecuniary Costs of Accidents: Pain-and-Suffering Damages in Tort Law," 108 *Harv. L. Rev.* 1785 (1995).

Cooter, Robert, "Unity in Tort, Contract, and Property: The Model of Precaution," 73 *California Law Review*, 1 (1985).

Cooter, Robert D., "Hand Rule Damages for Incompensable Losses," Working paper No. 83, Berkeley Program in Law & Economics, U. Cal. (2003).

Cowen, Tyler, "Caring About the Distant Future: Why It Matters and What It Means," 74 *U. Chi. L. Rev.* 5 (2007).

Demsetz, Harold, "When Does the Rule of Liability Matter?," 1 *J. Legal Stud.* 13.

Eisenberg, Theodore and James A. Henderson, Jr., "The Quiet Revolution Products Liability: An Empirical Study of Legal Change," 37 *UCLA L. Rev.* 479 (1990).

Eisenberg, Theodore and James A. Henderson, Jr., "Inside the Quiet Revolution in Products Liability," 39 *UCLA L. Rev.* 731 (1992).

Geistfeld, Mark, "Placing a Price on Pain and Suffering: A Method for Helping Juries Determine Tort Damages for Nonmonetary Injuries," 83 *Cal. L. Rev.* 773 (1995).

Hersch, Joni and W. Kip Viscusi, "Punitive Damages by the Numbers: *Exxon Shipping Co. v. Baker*," 18 *Sup. Ct. Econ. Rev.*, 259 (2010).

Kenkel, Donald, "Using Estimates of the Value of a Statistical Life in Evaluating Consumer Policy Regulations," 26 *J. Consumer Policy* 1 (2003).

Polinsky, A. Mitchell and Steven Shavell, "Punitive Damages: An Economic Analysis," 111 *Harv. L. Rev.* 870 (1998).

Posner, Eric A. and Cass R. Sunstein, "Dollars and Death," 72 *U. Chi. L. Rev.* 537 (2005).

Posner, Eric, "Agencies Should Ignore Distant-Future Generations," 74 *U. Chi. L. Rev.* 139 (2007).

Schwartz, Gary T., "Reality in the Economic Analysis of Tort Law: Does Tort Law Really Deter?," 42 *UCLA L. Rev.* 377 (1994).

Shavell, Steven, "Strict Liability versus Negligence," 9 *J. Legal Stud.* 1.

Shavell, Steven, "An Analysis of Causation and the Scope of Liability in the Law of Torts," 9 *J. Legal Stud.* 463.

Taylor, Laura and Janus Mozrek, "What Determines the Value of Life? A Meta-Analysis," 21 *J. Policy Analysis & Management* 253 (2002).

Vidmar, Neil, "Empirical Evidence on the Deep Pockets Hypothesis: Jury Awards for Pain and Suffering in Medical Malpractice Cases," 43 *Duke L. J.* 217 (1993).

Viscusi, W. Kip, "The Value of Risks to Life and Health," 31 *J. Econ. Lit.* 1912 (1993).

Viscusi, W. Kip, "The Value of Life in Legal Contexts: Survey and Critique," 2 *Am. Law & Econ. Rev.* 195 (2000).

Viscusi, W. Kip and Joseph E. Aldy, "The Value of a Statistical Life: A Critical Review of Market Estimates Throughout the World," 27 *J. Risk & Uncertainty* 5 (2003).

White, Michelle J., "An Empirical Test of the Contributory and Comparative Negligence Rules in Accident Law," 20 *Rand J. Econ.* 308 (1989)

THE ECONOMICS OF CRIME & PUNISHMENT

4/22 — 5/1

CU — Chs. 12 & 13; S — Chs. 20 to 24; Judge P — Ch. 7.

Anderson, William & Martin T. Wells, "Numerical Analysis in Least Squares Regression with an Application to the Abortion-Crime Debate," 5 *J. Emp. Legal Stud.* 647 (2008).

Baron, Jonathan and Ilana Ritov, "The Role of Probability of Detection in Judgments of Punishment," 1 *J. Legal Analysis* 553 (2009).

Carlsmith, Kevin M. John M. Darley, and Paul H. Robinson, "Why Do We Punish?: Deterrence and Just Deserts as Motives for Punishment," 83 *J. Personality & Soc. Psych.* 284 (2002).

Cook, Philip and Jens Ludwig, "The Economist's Guide to Crime Busting," *Wilson Quarterly* (Winter, 2011).

Donohue, John J., III, & Steven D. Levitt, "The Impact of Legalized Abortion on Crime," 116 *Q. J. Econ.* 379 (2001).

Donohue, John J., III, & Steven D. Levitt, "Further Evidence That Legalized Abortion Lowered Crime: A Reply to Joyce," 39 *J. Hum. Resources* 29 (2004).

Donohue, John J. III and Steven D. Levitt, "Measurement Error, Legalized Abortion, and the Decline in Crime: A Comment on Foote & Goetz," (January, 2006). Published at 123 *Q. J. Econ.* 425 (2008).

Ehrlich, Isaac, "Participation in Illegitimate Activities: An Economic Analysis," in Gary Becker & William M. Landes, eds., *Essays in the Economics of Crime and Punishment* 68. 87 (1974).

Fajnzylber, Pablo, Daniel Lederman, & Norman Loayaza, "Inequality and Violent Crime," 45 *J. Law & Econ.* 1 (2002).

Foote, Christopher L. and Christopher F. Goetz, "The Impact of Legalized Abortion on Crime: A Comment," Federal Reserve Bank of Boston, Working Paper No. 05-15 (January 31, 2008; orig. 2005). Published at 123 *Q. J. Econ.* 407 (2008).

Gottfredson, Michael R. and Travis Hirschi, *A General Theory of Crime* 85 – 129 (1990)

Hsieh, Ching-Chi and M.D. Pugh, "Poverty, Income Inequality, and Violent Crime: A Meta-Analysis of Recent Aggregate Data Studies," 18 *Crim. Just. Rev.* 182, 198 (1993)

Joyce, Ted, "Did Legalized Abortion Lower Crime?," 39 *J. Hum. Resources* 1 (2004).

Joyce, Ted, "A Simple Test of Abortion and Crime," 9 *Rev. Econ. & Stat.* 112 (2009).

Joyce, Ted, "Abortion and Crime: A Review," NBER Working Paper 15098 (June, 2009).

Lott, John and John Whitley, "Abortion and Crime: Unwanted Children and Out-of-Wedlock Births," 45 *Econ. Inq.* 304 (2007).

Morenoff, Jeffrey D., Robert J. Sampson, Stephen W. Raudenbush, "Neighborhood Inequality, Collective Efficacy, and the Spatial Dynamics of Urban Violence," 39 *Criminology* 517 (2001).

Neumayer, Eric "Inequality and Violent Crime: Evidence from Data on Robbery and Violent Theft," 42 *J. Peace Res.* 101 (2005).

Posner, Richard A. "An Economic Theory of the Criminal Law," 85 *Colum. L. Rev.* 1193, 1195 (1985).

Robinson, Paul J. and John M. Darley, "The Utility of Desert," 91 *Nw. U. L. Rev.* 453 (1997).

Sampson, Robert J. and John H. Laub, "Crime and Deviance Over the Life Course: The Salience of Adult Social Bonds," 55 *Am. Sociol. Rev.* 609 (1990).

Sampson, Robert J., Stephen W. Raudenbush & Felton Earls,” Neighborhoods and Violent Crime: A Multilevel Study of Collective Efficacy,” 277 *Science* 918 (1997).

Soares, Rodrigo Reis, “Development, Crime, and Punishment: Accounting for the International Differences in Crime Rates,” 73 *J. Dev. Econ.* 155 (2004).

Sunstein, Cass R., David Schkade, and Daniel Kahneman, “Do People Want Optimal Deterrence?,” 29 *J. Legal Stud.* 237 (2000).

Wilson, James Q. & Richard J. Herrnstein, *Crime and Human Nature* 430 – 37 (1985).

FBI’s Uniform Crime Report (http://www.fbi.gov/stats-services/crimestats/crime_statistics)

The Bureau of Justice Statistics (<http://bjs.ojp.usdoj.gov/>).