

## Law and Economics

Course Content: This course will explore the field of law and economics. We will use microeconomic tools to examine torts, contracts, and property law as well as the theory and empirical evidence on the economics of crime and punishment. This course is taught with the expectation that students have completed Economics 201.

Office Hours: Office hours will be held on Mondays, Wednesdays and Thursdays from 3:15-4:15pm in Vollum 227. Students who are unable to come during these times are encouraged to make an appointment.

Text and Required Reading: The principal textbook for this course is *Law and Economics* (5<sup>th</sup> edition) by Robert Cooter and Thomas Ulen. Readings will also be drawn from Dau-Schmidt and Ulen's *Law and Economics Anthology*. Students are responsible for the required readings on the attached list and for additional readings that will occasionally be announced in class. Students are expected to contribute to the class by posting examples of relevant legal issues from news sources such as *The Wall Street Journal*, *The New York Times*, and *The Economist* on the course Moodle site.

Evaluation: Evaluation will be based on a paper that analyzes a recent property, contract, or tort case, a midterm and final examination, and class participation.

Assignment List, Due Dates, and Exam Schedule: The following is a list of assignments and due dates. All assignments are due in-class on the date listed below. In fairness to other students, late assignments will be penalized 1 letter grade for each day past the due date. Assignments handed in more than 3 days after the due date will not be accepted. Please contact me as soon as possible if there are extenuating circumstances (illness, personal emergency) that justify an extension.

The comprehensive final examination will be administered during finals week. The date for the final examination will be confirmed by the Registrar's Office at mid-semester.

### Examinations:

Midterm Examination: Friday, March 12<sup>th</sup>

Final Examination: Set by the Registrar's Office at mid-semester

### Course paper deadlines:

Prospectus	Friday, March 5 <sup>th</sup>
Rough Draft	Friday, April 16 <sup>th</sup>
Final Paper	Due at the start of the final examination

Reserve Materials: The following books are on two-hour reserve:

- Cooter, Robert and Thomas Ulen. 2008. *Law and Economics* (5<sup>th</sup> edition) Boston, MA: Pearson Addison.
- Dau-Schmidt Kenneth G. and Thomas Ulen. 1998. *Law and Economics Anthology* Cincinnati, OH: Anderson Publishing Co.
- Burnham, William. 2002. *Introduction to the Law and Legal System of the United States* (3<sup>rd</sup> edition) St. Paul, MN: West Group.
- Sunstein, et al. 2002. *Punitive Damages: How Juries Decide* Chicago, IL: University of Chicago Press, Chicago: IL.

Reference Materials: The following materials are located in the reference room of the Reed Library:

- Peter Newman (editor). 1998. *The New Palgrave Dictionary of Economics and the Law* New York, NY: London Macmillan Reference; Stockton Press.
- Cohen, Morris L., Robert C. Berring and Kent C. Olson. 1989. *How To Find The Law* (9<sup>th</sup> edition) St. Paul, MN: West Publishing Co.
- Black, Henry Campbell. 1990. *Black's Law Dictionary* St. Paul, MN: West Publishing Co.
- Janosik, Robert J. 1987. *Encyclopedia of the American Judicial System: Studies of the Principal Institutions and Processes of Law* New York, NY: Schribner.

## Course Outline and Readings<sup>1</sup>

### **I. Introduction (January 25)**

Cooter and Ulen, Chapter 1

### **II. Introduction to the Legal System and to the Common Law of Property, Contracts, and Torts (January 27)**

Cooter and Ulen, Chapter 3

Kerr, Orin S. 2007. How to Read a Legal Opinion: A Guide for New Law Students. *The GREEN BAG, An Entertaining Journal of Law* 11 (1) 51-63.

\**The Administrative Office of the U.S. Courts*. 1999. Understanding the Federal Courts Washington D.C.

\*Cohen, Berring, and Olson. *How to Find the Law*, Chapters 1 and 2.

\*Hegland, Kenney. 2000. *Introduction to the Study and Practice of Law* (3<sup>rd</sup> edition) St. Paul, MN: West Publishing Co.

\*Glendon, Mary Ann, Michael W. Gordon, and Paolo G. Carozza. 1999. *In a Nutshell: Comparative Legal Traditions* St. Paul, MN: West Publishing Co.

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<sup>1</sup> Readings marked with a \* are optional

### III. Economic Approach to Law (January 29 and February 1)

Cooter and Ulen, Chapter 2

Posner, Richard A. 1992. The Economic Approach to Law, Chapter 2 from *Economic Analysis of Law* (4<sup>th</sup> edition). In Dau-Schmidt and Ulen: 15-20.

Veljanovski, Cento G. 1980. The Economic Approach to Law: A Critical Introduction, 7 *Brit. J. Law & Society* 158. In Dau-Schmidt and Ulen: 21-36.

Ellickson, Robert C. 1989. Bringing Culture and Human Frailty to Rational Actors: A Critique of Classical Law and Economics, Symposium on Post-Chicago Law and Economics, 65 *Chicago-Kent Law Review* 23. In Dau-Schmidt and Ulen: 66-79.

\*Posner, Richard A. 1992. The Nature of Economic Reasoning, Chapter 1 from *Economic Analysis of Law* (4<sup>th</sup> edition) in Dau-Schmidt and Ulen: 1-14.

### III. The Economics of Property Law

A. *An Economic Theory of Property Law* (February 3, 5 and 8)

Cooter and Ulen, Chapter 4 and Appendix

Coase, Ronald H. 1960. The Problem of Social Cost *Journal of Law and Economics* 3 (October): 1-44. (focus on pages 1-28)

Calabresi, Guido and A. Douglas Melamed. 1972. Property Rules, Liability Rules, and Inalienability: One View of the Cathedral *Harvard Law Review*. In Dau-Schmidt and Ulen: 193-198.

Ellickson, Robert C. 1993. Property in Land *Yale Law Journal* In Dau-Schmidt and Ulen: 178-192.

B. *Applications: Intellectual Property* (February 10, 12 and 15)

Cooter and Ulen, Chapter 5 (to page 143)

Jaffe, Adam and Josh Lerner. 2005. Innovation and Its Discontents. *The Milken Institute Review* (First Quarter) 59-82.

Gill, Dee. 2000. Defending Your Rights: Protecting Intellectual Property Is Expensive -- and Often Crucial *The Wall Street Journal* (September 25): 6.

*The Economist*. 2001. A War over Drugs and Patents; Drugs, Patents and AIDS. (March 10) 43.

Porter, Eduardo. 2004. Do New Drugs Always Have to Cost So Much? *The New York Times* (November 14) BU5.

*The Economist*. 2009. Patents as Financial Assets: Trolls Demanding Tolls (September 10) 84.

Varian, Hal. 2005. Copying and Copyright *Journal of Economic Perspectives* 19(2) 121-138.

Egan, Timothy. 2006. Glass Artists Face Off in Court *The New York Times* (June 1) A1.

Courant, Paul. N. 2009. The Stakes in the Google Book Search Settlement *The Economists' Voice* 6 (9) Article 7.

Samuelson, Pamela. 2009. The Google Book Settlement: Real Magic or a Trick *The Economists Voice* 6 (10) Article 4.

Rob, Rafael and Joel Waldfoegel. 2006. Piracy on the High C's: Music Downloading, Sales Displacement, and Social Welfare in a Sample of College Students. *Journal of Law and Economics* XLIX (April): 29-62.

*The Economist*. 2009. Music Piracy: Singing a Different Tune (November 12) 73-74.

- \*Friedman, David, William Landes and Richard Posner. 1991. Some Economics of Trade Secret Law *Journal of Economic Perspectives* 5 (Winter): 61-72.
- \*Landes, William and Douglas Lichtman. 2003. Indirect Liability for Copyright Infringement: Napster and Beyond *Journal of Economic Perspectives* 17(2) 113-124.
- \*Lemley, Mark A. and Carl Shapiro. 2005. Probabilistic Patents *Journal of Economic Perspectives* 19(2) 75-98.
- \*Posner, Richard A. 2005. Intellectual Property: The Law and Economics Approach *Journal of Economic Perspectives* (Spring) 57-73.
- \**The Economist*. 2005. A Market for Ideas: A Survey of Patents and Technology (October 22).
- \*Vaidhyathan, Siva. 2004. The State of Copyright Activism *First Monday* 9(4)  
[http://firstmonday.org/issues/issue9\\_4/siva/index.html](http://firstmonday.org/issues/issue9_4/siva/index.html)

C. *Establishment, Verification and Use of Property Rights (February 17 and 19)*

- Cooter and Ulen, Chapter 5 (pages 143-174).
- Tomsho, Robert. 2010. Scraping Bottom, Some in Maine Look to Seaweed for Salvation *The Wall Street Journal* (January 4) A1.
- The Economist*. 2003. Economics Focus: Should Radio Spectrum be Treated as Property, or as a Common Resource? (May 31) 76.
- Tabarrok, Alexander. 2009. Life-Saving Incentives: Consequences, Costs and Solutions to the Organ Shortage. *The Library of Economics and Liberty*
- Brown, Susan and David Glenn. 2007. The True Price of a Human Organ. *The Chronicle of Higher Education* (March 23).
- \*Newman, Janet C. 2004. The Good, The Bad, and the Ugly: The First Ten Years of the Oregon Water Trust *Nebraska Law Review* Vol. 83: 432-484.
- \*Kaffine, Daniel. 2009. "Quality and the Commons: The Surf Gangs of California. *Journal of Law and Economics* 52 (November) 727-743.

D. *Eminent Domain, Regulation and Takings (February 22 and 24)*

- Cooter and Ulen, Chapter 5 (pages 174-end).
- 60 Minutes*. 2003. Eminent Domain (September 28).
- The Economist*. 2005. Hands Off Our Homes (August 20): 21-22.
- McGeehan, Patrick. 2009. Pfizer to Leave City that Won Land-Use Case *The New York Times* (November 12)  
[http://www.nytimes.com/2009/11/13/nyregion/13pfizer.html?\\_r=1](http://www.nytimes.com/2009/11/13/nyregion/13pfizer.html?_r=1)
- Poletown Neighborhood Council v. City of Detroit* 410 Mich. 616 (1986)
- Blume, Lawrence and Daniel Rubinfeld. 1984. Compensation for Takings: An Economic Analysis, *California Law Review*, Vol. 72. In Dau-Schmidt and Ulen: 226-234.
- Lucas v. South Carolina Coastal Commission* 112 S. Ct. 2886 (1992)
- Penn Central Trans. Co. v. City of New York*, 438 U.S. 104 (1978)
- McConnell, Virginia and Margaret Walls. 2009. U.S. Experience with Transferable Development Rights *Review of Environmental Economics and Policy* 3 (2) 288-303.

*Session with Dena Hutton in Library 17: February 26<sup>th</sup>*

**IV. The Economics of Contract Law**

*A. An Economic Theory of Contract Law (March 1 and 3)*

Cooter and Ulen, Chapter 6

Ayres, Ian and Robert Gertner. 1989. Filling Gaps in Incomplete Contracts: An Economic Theory of Default Rules *Yale Law Journal* Vol. 99. In Dau-Schmidt and Ulen: 254-261.

\*Posner, Richard A. 1977. Gratuitous Promises in Economics and Law 6 *J. Legal Stud.* 411. In Dau-Schmidt and Ulen: 275-183.

\*Johnston, Jason S. 1990. Strategic Bargaining and the Economic Theory of Contract Default Rules *Yale Law Journal* Vol. 100. In Dau-Schmidt and Ulen: 262-274.

*B. Applications of the Economic Theory of Contract (March 5, 8 and 10)*

Cooter and Ulen, Chapter 7 and Appendix

Hagerty, James R. and Nick Timiraos. 2009. Debtor's Dilemma: Pay the Mortgage or Walk Away *The Wall Street Journal* (December 17) A22.

Joskow, Paul L. 1997. Commercial Impossibility, the Uranium Market, and the Westinghouse Case *Journal of Legal Studies* Vol. 6. In Dau-Schmidt and Ulen: 317-327.

Posner, Richard A. 1998. Family Law and Sex Law, Chapter 5 in *The Economic Approach to Law* Aspen Law & Business: New York, NY.

*The Economist*. 2006. Buying babies, bit by bit (December 19) 117-118.

Marketplace. 2007. 'Wombs for Rent' Grows in India (December 27) Audio.

\*Basu, Kaushik. 2003. The Economics and Law of Sexual Harassment in the Workplace *Journal of Economic Perspectives* 17 (3) 141-157.

\*Smith, Ian. 2003. The Law and Economics of Marriage Contracts. *Journal of Economic Surveys* 17(2) 201-225.

*Midterm Exam on Friday, March 12<sup>th</sup>*

**V. The Economics of Tort Law**

*A. An Economic Theory of Tort Liability (March 22, 24 and 26)*

Cooter and Ulen, Chapter 8 and Appendix.

*B. Applications of the Economic Theory of Tort Law*

Extending the Basic Model (March 29)

Cooter and Ulen, Chapter 9 (to page 389)

Orwall, Bruce. 2000. Film Industry to Unveil Self-Policing Mechanisms *Wall Street Journal* (September 26) B10.

Schwartz, Gary T. 1994. Reality in the Economic Analysis of Tort Law: Does Tort Law Really Deter? *UCLA Law Review* Vol. 42. In Dau-Schmidt and Ulen: 388-416.

### Computing Damages (March 31 and April 2)

Cooter and Ulen, Chapter 9 (pages 389-398)

Sunstein, et al. 2002. *Punitive Damages: How Juries Decide* University of Chicago Press, Chicago: IL. Chapters 1, 2, 7, 13 and Appendix.

\*Aldy, Joseph E. and W. Kip Viscusi. 2007. Age Differences in the Value of Statistical Life: Revealed Preference Evidence *Review of Environmental Economics and Policy* 1(2) 241-260.

\*Krupnick, Alan. 2007. Mortality-risk Valuation and Age: Stated Preference Evidence *Review of Environmental Economics and Policy* 1(2) 261-282.

\*Viscusi, W. Kip. 1993. The Value of Risks to Life and Health *Journal of Economic Literature* 31(4) 1912-1946.

### Breast Implants on Trial Video (April 5 and 7)

Fairclough, Gordon and Milo Geyelin. 2000. Tobacco Companies Rail Against Verdict, Plan to Appeal \$144.87 Billion Award *The Wall Street Journal* (July 17) A3.

Glaberson, William. 1999. The Courts vs. Scientific Certainty *The New York Times* (June 27) Sec. 4:5.

Bandow, Doug. 1999. Rule of Law: Keeping Junk Science Out of the Courtroom *The Wall Street Journal* (July 26) A23.

### Product Liability and Tort Reform (April 9 and 12)

*Wile E. Coyote v. Acme Company*

Cooter and Ulen, Chapter 9 (pages 398-end)

Surowiecki, James. 2005. Don't Do the Math *New Yorker* (January 24) 38.

Ben-Shahar, Omri. 2006. The (Legal) Pains of Vioxx: Why Product Liability Can Make Products More Dangerous *Economists' Voice* 3(7).

Vance, Ashlee and Matt Richtel. 2010. Driven to Distraction: Despite Risks, Internet Creeps Onto Car Dashboards *The New York Times* (January 6) A1.

White, Michelle J. 2004. Asbestos and the Future of Mass Torts *Journal of Economic Perspectives* 18(2) 183-204.

Rubin, Paul H. and Joanna M. Shepherd. 2007. Tort Reform and Accidental Deaths *The Journal of Law and Economics* 50 (2) 221-238.

*The Economist*. 1996. No Paint, No Gain (May 25) 67.

*The Economist*. 2002. Gun Control: From the Hip (November 23) 30-34.

Bravin, Jess. 2000. Surprise: Judges Hand Out Most Punitive Awards *The Wall Street Journal* (June 12) B1.

\*Helland, Eric, Jonathan Klick and Alexander Tabarrok. 2005. Data Watch: Tort-uring the Data. *Journal of Economic Perspectives* 19(2): 207-220.

## VIII. The Economics of Litigation and the Efficiency of the Common Law Practice (April 14, 16 and 19)

Cooter and Ulen, Chapter 10

Posner, Richard A. 1980. The Ethical and Political Basis of Efficiency Norm in Common Law Adjudication *Hofstra Law Review* Vol. 8. In Dau-Schmidt and Ulen: 531-540.

Veljanovski, Cento G. 1981. Wealth Maximization, Law and Ethics - On the Limits of Economic Efficiency *International Review of Law and Economics* Vol. 5. In Dau-Schmidt and Ulen: 549-561.

Morgenson, Gretchen. 2007. When Arbitrators Are Their Own Judges *The New York Times* (August 12)

Glater, Jonathan D. 2008. Study Finds Settling is Better Than Going to Trial *The New York Times* (August 7)

## IX. The Economics of Crime and Punishment

A. *Economic Theory of Crime and Punishment (April 21 and 23)*

Cooter and Ulen, Chapter 11

Posner, Richard A. 1985. An Economic Theory of the Criminal Law *Columbia Law Review* Vol. 85. In Dau-Schmidt and Ulen: 453-467.

Coleman, Jules L. 1985. Crime, Kickers, and Transaction Structures in *NOMOS XXVII: Criminal Justice* (J. Pennock & J. Chapman, editors). In Dau-Schmidt and Ulen: 477-481.

\*Becker, Gary S. 1968. Crime and Punishment: An Economic Approach *Journal of Political Economy* Vol. 76. In Dau-Schmidt and Ulen: 438-452.

B. *Topics in the Economics of Crime and Punishment*

### Impact of Crime (April 26)

Cooter and Ulen, Chapter 12 (to page 483)

Amy Farmer and Dek Terrell. 2001. Crime Versus Justice: Is There A Trade-Off? *Journal of Law and Economics* XLIV (October) 345-366.

Levitt, Steven D. 2004. Understanding Why Crime Fell in the 1990s: Four Factors that Explain the Decline and Six that Do Not *Journal of Economics Perspectives* 18(1): 163-190.

\* Anderson, David A. 1999. The Aggregate Burden of Crime *Journal of Law and Economics* Vol. XLII (October): 611-642.

### Punishment and Deterrence (April 28)

Cooter and Ulen, Chapter 12 (pages 525-end)

Jordans, Frank. 2010. Europe Slapping Rich with Massive Traffic Fines *The Washington Post* (January 10).

Katz, Lawrence, Steven D. Levitt, and Ellen Shustorovich. 2003. Prison Conditions, Capital Punishment, and Deterrence *American Law and Economics Review* 5(2) 318-343.

Levitt, Steven D. 1999. The Changing Relationship between Income and Crime Victimization. *FRBNY Economic Policy Review* (September) 87-98.

Bazelon, Emily. 2005. Sentencing by the Numbers *The New York Times* (January 2) 18.

- \*Ayres, Ian and John J. Donohue III. 1999. Nondiscretionary Concealed Weapons Laws: A Case Study of Statistics, Standards of Proof, and Public Policy *American Law and Economics Review* 1(1/2) 436-470.
- \*Becker, Gary. 2006. On the Economics of Capital Punishment. *Economists' Voice* (March).
- \*Bedau, Hugo A. (editor). 1982. *The Death Penalty in America* (3<sup>rd</sup> edition) Oxford University Press, NY: New York.
- \*Bedau, Hugo A. (editor). 1998. *The Death Penalty in America: Current Controversies* Oxford University Press, NY: New York.
- \*Clement, Douglas. 2002. A Punishing Debate *The Region* (June 12-15) 40-43.
- \*Donohue, John H. and Justin Wolfers. 2006. Uses and Abuses of Empirical Evidence in the Death Penalty Debate NBER Working Paper No. 11982 (January).
- \*Donohue, John J. and Steven D. Levitt. 2001. The Impact of Legalized Abortion on Crime *The Quarterly Journal of Economics* CXVI (2) 379-420.
- \*Donohue, John J. 1998. Did Miranda Diminish Police Effectiveness? *Stanford Law Review* 50 (4) 1147-1180.
- \*Donahue, John J. and Justin Wolfers. 2006. The Death Penalty: No Evidence for Deterrence. *Economists' Voice* (April).
- \*Donohue, John. 2005. Fighting Crime: An Economist's View *The Milken Institute Review* (First Quarter) 46-58.
- \*Lott, John R. and David B. Mustard. 1997. Crime, Deterrence, and Right-to-Carry Concealed Handguns *Journal of Legal Studies* XXVI (January) 1-68.
- \*Levitt, Steven D. 1998. Juvenile Crime and Punishment *The Journal of Political Economy* 106 (6) 1156-1185.
- \*Posner, Richard. 2006. The Economics of Capital Punishment. *Economists' Voice* (March).
- \*Rubin, Paul H. 2006. Response to Donohue and Wolfers on the Death Penalty and Deterrence. *Economists' Voice* (April).

#### Economic Returns to Crime (April 30)

- Levitt, Steven D. and Sudhir Alladi Venkatesh. 2000. An Economic Analysis of a Drug-Selling Gang's Finances *The Quarterly Journal of Economics* 115 (3): 755-789.
- \*Fagan, Jeffrey and Richard B. Freeman. 1999. Crime and Work *Crime and Justice* 25: 225-290.
- \*Kuziemko, Llyana and Steven D. Levitt. 2004. An Empirical Analysis of Imprisoning Drug Offenders *Journal of Public Economics* 88: 2043-2066.