

Economic Analysis of the Law
Economics 317(1), Spring 2019
Tuesdays and Thursdays, 11:00 A.M. – 12:15 P.M.
Classroom CPS 310, Office CPS 336D
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Office Hours: T R 10:00 – 10:50 AM, 1:00 – 1:50 PM

About the Course.

This course is an introduction to the fundamentals of law and economics. We will use microeconomic tools to examine the common law areas of torts, contracts, and property. The common law is the body of law that is the result of courts resolving legal disputes. Decisions by appellate courts create common-law rules (precedents) that inform and constrain the decisions of lower courts in future cases. We analyze how these precedents shape economic incentives and thus affect the behavior of individuals. In addition, the course uses economic logic to evaluate the efficacy of common law rules in achieving social goals.

This course presumes that students have completed a principles of microeconomics course (Econ 111) but no background knowledge of law. The primary reading for this course is:

Thomas Miceli, *The Economic Approach to Law*, Second Edition, Stanford University Press (2008).

Course Requirements.

Your grade in the course will be based on class participation/attendance, homework, two midterm exams, and a final exam. The breakdown of your final grade will be as follows:

Class Participation/Attendance	20%	
Homework	20%	Periodically
First Exam	20%	Thursday, February 28
Second Exam	20%	Thursday, April 11
Final Exam	20%	Wednesday, May 15 (8:00–10:00 AM)

Class attendance and class participation are required. In addition to lecture, we will be doing in-class exercises that will require your participation. The in-class exercises are designed to illustrate the important economic concepts and ideas introduced during the class lecture and in the textbook. You will face similar questions on your homework assignments and exams. It is critical that you make every effort to attend each class. There is a stiff penalty for those who do not regularly attend class. A student is allowed four absences without penalty. Every subsequent absence will result in subtracting ten points from your class participation/attendance grade.

Homework will largely consist of analytical problem solving and short answer questions. These questions will provide valuable practice for exams. Student cooperation and discussion of the material and homework is encouraged, but the homework you hand in must be your own work. Any evidence to the contrary will result in a zero grade for your homework. All homework is due at the beginning of the class period. No late homework will be accepted. In calculating your homework average, I will drop the lowest score.

Exams will consist of a mixture of definitions, short essays, and problem-solving questions. I do not give make up exams. Only under the most extraordinary of circumstances will I excuse a student from taking an exam. You will need my prior consent and proof of the relevant circumstances to be excused. If you do miss an exam (legitimately), I will reallocate the its weight onto the final exam to compensate for the missed exam.

Your final grade will be based upon the calculation of your final average based upon the above weights.

A	92.5+
A-	90.0 – 92.4
B+	87.5 – 89.9
B	82.5 – 87.4
B-	80.0 – 82.4
C+	77.5 – 79.9
C	72.5 – 77.4
C-	70.0 – 72.4
D+	65.0 – 69.9
D	60.0 - 64.9
F	59.9 and Below

Course Outline and Reading Assignments.

I. Introduction to Law and Economics

A. Introductory Concepts (Miceli, Chapter 1)

1. What is Law and Economics?
 - a. Positive Analysis
 - b. Normative Analysis

2. Efficiency Concepts
 - a. Pareto Efficiency
 - b. Kaldor-Hicks Efficiency

3. The Coase Theorem
 - a. Externalities and Market Failure
 - b. Coase Theorem and Legal Rules
 - c. Resolving Nuisance Disputes
 - d. Implications of the Coase Theorem

4. The Law in “Law & Economics”
 - a. Three Sources of American Law
 - b. Nature and Efficiency of the Common Law
 - c. Three Tier Court System

II. Tort Law

A. An Economic Model of Tort Law (Miceli, Chapter 2)

1. What is a Tort?
 - a. Definition
 - b. The Social Function of Tort Law
 - c. Cause-in-Fact and the But-For Test
 - d. Proximate Cause
 - e. Introduction to Liability Rules

2. An Economic Model of Precaution: The Unilateral Care Model
 - a. Actual Care Choice and No Liability Rule
 - b. Actual Care Choice and Strict Liability Rule
 - c. Actual Care Choice and Negligence Rule
 - d. Administrative Costs and Liability Rules
 - e. Court Errors and Liability Rules

3. The Bilateral Care Model
 - a. Actual Care Choice and No Liability Rule
 - b. Actual Care Choice and Strict Liability Rule
 - c. Achieving Bilateral Responsibility
 - d. Negligence Law

4. The Hand Rule
 - a. U.S. v. Carroll Towing Co. (1947)
 - b. The Hand Rule
 - c. The Marginal Hand Rule

5. The Reasonable-Person Standard
 - a. Differing Costs of Care Among Injurers
 - b. The Reasonable Person Standard
 - c. Single Due Care Standard: Two Types of Inefficiency

6. Contributory Negligence
 - a. Butterfield v. Forrester (1809)
 - b. Negligence with Contributory Negligence
 - c. Negligence v. Negligence with Contributory Negligence
 - d. Strict Liability with Contributory Negligence

7. Comparative Negligence
 - a. Definition
 - b. Incentives
 - c. Problems

8. Punitive Damages
 - a. Compensatory and Punitive Damages
 - b. Special Cases
 - c. Deterrence
 - d. Unilateral Care Model with Strict Liability
 - e. Should Punitive Damages be Capped?

9. Intentional Torts
 - a. Two Meanings
 - b. Liability Rules and Incentives

B. Applying the Model of Accidents – Product Liability (Miceli, Chapter 3, pp. 58 -72)

1. A Brief History of Products Liability
 - a. Doctrine of “Privity”
 - b. MacPherson v. Buick (1916)
 - c. Escola v. Coca-Cola Bottling Co. (1944)
 - d. Henningsen v. Bloomfield (1960)
 - e. Restatement (Second) of Torts (1965)

2. An Economic Model of Products Liability
 - a. Equilibrium Price and Output for a Safe Product
 - b. Equilibrium Price and Output for a Dangerous Product
 - c. Liability Rules and Equilibrium Price and Output for a Dangerous Product
 - d. Liability Rules and Efficiency
 - e. Care Choices by Manufacturers and Consumers
3. Consumers' Perceptions of Risk
 - a. Misperceptions of Risk and Market Failure
 - b. Consumer Perceptions of Risk: Supply and Demand
 - c. Supply and Demand under No Liability & Strict Liability Rules
 - d. Conclusions and Recent Trends

III. Contract Law

A. Defining a Valid Contract (Miceli,, Chapter 4)

1. Contracts and Efficient Exchange
 - a. Introduction
 - b. Problem of Incomplete Contracts
 - c. Competitive Market Paradigm
 - d. Coase Theorem and Contract Law
2. Elements of a Valid Contract
 - a. Offer
 - b. Acceptance
 - c. Consideration
3. Reasons for Invalidating Contracts
 - a. Mental Incapacity or Incompetence
 - b. Coercion or Duress
4. Mistake and the Duty to Disclose Private Information
 - a. Mutual vs. Unilateral Mistakes
 - b. Duty to Disclose Private Information
 - c. Purely Distributive Information
 - d. Socially Valuable Information
 - e. Casual v. Deliberate Acquisition of Information
 - f. Disclosure of Unfavorable Information

5. Unconscionability
 - a. Unconscionability Doctrine
 - b. Burden of Proof
 - c. Add-On Clauses
 - d. Invoking Unconscionability: Trade-offs

B. Remedies for Breach of Contract (Miceli,, Chapter 5)

1. The Efficient Breach Model
 - a. Introductions
 - b. Efficient Breach and Contractual Incompleteness
2. Court Remedies for Breach of Contract Cases
 - a. Expectation Damages and Efficient Breach
 - b. Incentives to Breach under Expectation Damages
 - c. Reliance Damages
 - d. Incentives to Breach under Reliance Damages
 - e. Incentives to Breach under Zero Damages
3. Incentives for Efficient Reliance
 - a. Uncertainty and Efficient Reliance
 - b. Expectation Damages and Problem of Overreliance
 - c. Hadley v. Baxendale Rule
4. Mitigation of Damages
 - a. Efficient Risk Sharing
 - b. Commercial Impracticability
5. Excuses for Non-Performance
 - a. Doctrine of Impossibility
 - b. Frustration of Purpose
 - c. Commercial Impracticability
6. Efficient Risk-Sharing
 - a. Prevention
 - b. Insurance
7. Commercial Impracticability Redux

- a. Commercial Impracticability Rule
 - b. Incentives for Efficient Reliance
 - c. Hadley v. Baxendale Rule
8. Specific Performance
- a. Transaction Costs
 - b. Subjective Value and Efficient Breach
 - c. The Value of Consent
9. Self-Enforcement of Contracts – Liquidated Damage Clauses

IV. Property Law

A. The Economics of Property Law (Miceli, Chapter 6)

- 1. The Nature and Function of Property Rights
 - a. Definition of Property Rights
 - b. Property Rights and Incentives
 - c. The Emergence of Property Rights
- 2. Fundamentals of the Economics of Property Law
 - a. The Coase Theorem
 - b. Enforcement Rules
 - c. The General Transaction Structure
- 3. Limited and Divided Ownership
 - a. Leasing
 - b. Private v. Group Ownership
- 4. Intellectual Property
 - a. Patents
 - b. Copyrights
 - c. Trademarks

B. Involuntary Transfers and Regulation of Property (Miceli, Chapter 7)

- 1. The Eminent Domain Clause
 - a. Public Use and the Scope of the Takings Power
 - b. The Meaning of Just Compensation
- 2. Government Regulation of Property
 - a. The Compensation Question
 - b. An Economic Model of Regulatory Takings
- 3. Regulation v. the Common Law

