

## Economics 365 - Economics of the Law

Instructor: D. Vandegrift

Office: Business Building 218

Office Hours: Office Hours: Thursday 4-5pm, Tuesday 2-4pm, or by appointment

Telephone: 771-2294

e-mail: vandedon@tcnj.edu

Web page: <http://vandegrift.intrasun.tcnj.edu>

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**Text:** Miceli, Thomas J., 2009, *The Economic Approach to Law*, 2<sup>nd</sup> ed. (Stanford University Press, Stanford, CA).

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**Course Objective:** This course applies economic analysis to common law rules (i.e., contract, property and tort law) and legal procedure. You might think that applying economic analysis to common law rules is like applying relish to ice cream. Isn't law about justice and fairness? Well, maybe. But even if this is true, economics still has an important role in analyzing the law. Remember that the first law of economics is that people respond to incentives. Because common law rules sanction or reward different types of behavior (e.g., speeding, breaching a contract, polluting a common waterway), they form incentive systems that people respond to as if they were prices. We can then use economics to consider the way that people will respond to different legal rules. In addition, we can determine the efficiency and distributive consequences of various legal rules.

Economic analysis modifies the fairness view of the law in two ways. First, we may consider efficiency and fairness as competing goals and attempt to balance them. For instance, compensating people injured in auto accidents (fair) may cause them to take less precaution to avoid accidents (inefficient). Second, the economic analyses of behavior may influence what we see as fair. For instance, we may impose safety regulations on airlines to reduce the probability of airline disasters. But the regulations raise costs for airlines and economic analysis shows that higher costs translate into higher ticket prices. Higher airline ticket prices cause some travelers to drive rather than fly. Thus, the regulations may have no positive effect on safety because the per-mile death rate is much higher for cars than commercial airlines.

By the end of the course, you will understand: 1) the elements and characteristics of the common law; 2) how to use economic analysis to determine the effect of changes in legal rules; 3) how to apply economic analysis to criticize outcomes in particular legal cases; 4) the way that various laws and legal institutions support market exchange; and 5) the methods to determine the efficiency consequences of various legal rules.

**Exams and Grading:** You will receive a grade based on your performance on two midterm exams, a final and a short paper. All exams are essay-type exams and the final is cumulative. Although I will make accommodations in the event that you are sick, there are no make-up exams. The weights for each course requirement are listed below:

Problems:	10%	92-100 - A	80-81 - B-	67-69 - D+
Midterms:	45%	90-91 - A-	77-79 - C+	62-66 - D
Paper	15%	87-89 - B+	72-76 - C	0-62 - F
Final:	<u>30%</u>	82-86 - B	70-71 - C-	
	100%			

**The Paper:** To successfully complete this course, you must write a 5-7 page paper analyzing a specific common law decision from a law-and-economics perspective. I will provide some examples of well-written papers. In general, the paper must meet the following guidelines:

- 1) Do not discuss any cases discussed in class or currently in litigation.
- 2) Do not merely describe the case. Make an argument concerning the court decision based on economic principles. (Please try to confine yourself to about one page of description. The rest of the paper should be argument.)
- 3) To make this argument, you need only class materials (e.g., books and notes). However, you may use outside materials.
- 4) There a number of on-line search engines for court cases (e.g. [www.findlaw.com](http://www.findlaw.com) and [www.lexis-nexis.com/universe](http://www.lexis-nexis.com/universe)). These are a good place to begin.
- 5) Your paper will be graded on the strength and clarity of the argument.
- 6) The paper is due on December 2.
- 7) If the case has several facets, it is better to cover one thoroughly than to attempt to cover the entire case.

## **Course Organization**

### **I. Introduction**

- a. What is Law and Economics? (p. 1-3)
- b. Efficiency Concepts (p. 4-7)
- c. The Coase Theorem (p. 7-9) (p. 147-155)  
Coase, Ronald H., 1960, "The Problem of Social Cost," *Journal of Law and Economics*, 3, 1-44.
- d. Introduction to Law and Legal Institutions (p.10-12)  
Cooter, Robert and Ulen, Thomas, 2004, *Law and Economics*, 4th ed. (Addison-Wesley, New York) (Chapter 3).

### **II. An Economic Model of Tort Law**

- a. What is a Tort? (p. 15-18)
- b. The Economic Model of Accidents: Precaution (p. 19-32)  
Peterson, S., Hoffer, G. and Millner, E., 1995, "Are Drivers of Air-Bag-Equipped Cars More Aggressive? A Test of the Offsetting Behavior Hypothesis," *Journal of Law and Economics*, 38, 251-264.
- c. Sequential Care Accidents (p. 32-36)
- d. Causation and Liability (p. 36-43)
- e. Activity Levels (p. 43-46)
- f. Punitive Damages (p. 46-48)
- g. Precaution with Insufficient Assets, Insurance, Litigation Costs (p. 48-53)
- h. Valuing Human Life and Safety (p. 53-55).

### III. Applying the Economic Model of Tort Law

- a. Products Liability (p. 58-72)  
Nelson, Randy A. and Drews, James N. 2008, "Strict Product Liability and Safety: Evidence From the General Aviation Market," *Economic Inquiry*, 46, 425-437.
- b. Workplace Accidents (p. 72-74)
- c. Environmental Damages (p. 75-82)
- d. Medical Malpractice (p. 82-85)

### **Problem Set #1 -- Due Thursday, October 7**

#### **Midterm #1 – Monday, October 11**

### IV. The Economics of Contract Law: Formation Defenses and Performance Excuses

- a. Contracts and Efficient Exchange (p. 88-91)  
A. Grief, 2006, "The Birth of Impersonal Exchange: The Community Responsibility System and Impartial Justice" *Journal of Economic Perspectives*, 20, 221-236.
- b. Contract Formation and Formation Defenses (p. 91-105)

### V. Remedies for Breach of Contract

- a. The Efficient Breach Model (p. 107-117)
- b. Impossibility and Related Excuses (p. 117-123)  
Vandegrift, D., 1997, "Decision Costs, Contract Excuse and the Westinghouse Commercial Impracticability Case," *European Journal of Law and Economics*, 4, 41-54.
- c. Specific Performance (p. 123-128)
- d. Self-Enforcement of Contracts (p. 128-137)

### VI. The Economics of Property Law: Fundamentals

- a. The Nature and Function of Property Rights (p. 140-147)  
Anderson, T. and Hill, P., 1975, "The Evolution of Property Rights: A Study of the American West," *Journal of Law and Economics*, 18, 163-179
- b. The Coase Theorem and Enforcement of Property Rights (p. 155-166)
- c. Consensual Transfers of Property (p. 166-172)

### **Problem Set #2 -- Due Thursday, November 11**

#### **Midterm #2 – Monday, November 15**

### VII. Involuntary Transfers and Regulation of Property

- a. Adverse Possession (p. 189-196)
- b. Eminent Domain (p. 196-208)
- c. Government Regulation of Property (p. 208-219)
- d. Regulation versus the Common Law (p. 219-222)

### VIII. Dispute Resolution

- a. The Litigation Process (p. 226-229)
- b. The Causes of Trials (p. 229-236)  
Goodman-Delahunty, J., Granhag, P., Hartwig, M., and Loftus, E. 2010. "Insightful or Wishful: Lawyers' Ability to Predict Case Outcomes," *Psychology, Public Policy and Law*, 16, 133-157.
- c. Procedural Rules and Litigation Costs (p. 236-251)
- d. Evolution of the Law (p. 251-265)

**Problem Set #3 Due – Thursday, December 9**  
**Final Exam**

**The College requires that this course adhere to the following policies:**

*College Attendance Policy:*

<http://www.tcnj.edu/~academic/policy/attendance.html>

*College Academic Integrity Policy:*

<http://www.tcnj.edu/~academic/policy/integrity.html>

*Disabilities Policy:*

<http://www.tcnj.edu/~affirm/ada.html>