

Lectures on MoWeFr 1:00PM - 1:59PM, 180 Tan Hall with Professor Bruno Meyerhof Salama, brunosalama@law.berkeley.edu. **Office Hours** at 2240 Piedmont # 212, Wed 2:30-3:30 or by appointment on Mo/Fri after class. **GSI** is Meredith Spoto, mspoto@berkeley.edu. 101-DIS: Mo 3:00PM - 3:59PM; 102-DIS: We 10:00AM - 10:59AM, Etcheverry 3105.

Summary: The course introduces economics as a tool for analyzing, evaluating and interpreting the laws that underpin a market economy. **The first part** examines property, contract, tort and criminal law. Students must turn in a weekly review quiz (10% of total grade) and take a mid-term exam (40% of total grade). **The second part** covers corporate, bankruptcy, labor, family, consumer, antitrust, and patent law. It also discusses the role of efficiency considerations in law and policy, public choice theory and the role of courts. In Part two there are no weekly assignments. Students must turn in a term paper (50% of total grade). There is no final exam.

PART ONE

A. Bibliography

The main source is Robert Cooter and Thomas Ulen, *Law & Economics*, 6th ed., 2016 (“Cooter & Ulen”), available for free download from campus.

Additional sources are Richard Posner, *Economic Analysis of Law*, 7th ed. (“Posner EAL”) and A. Mitchell Polinsky, *An Introduction to Law and Economics*, 3rd. ed., 1989 (“Polinsky ILE”). Excerpts indicated as mandatory readings will be available on the course website. Students are encouraged to consult the Encyclopedia of Law and Economics, edited by Gerrit De Geest, 2nd. ed., available for free download from campus, as well as additional literature suggested in class.

Students who have not taken an introductory course in economics should study Cooter & Ulen’s chapter 2 (which reviews microeconomic theory). The Khan Academy website contains excellent videos on introductory economics.

B. Sequence

Students are expected to do a **short reading** in preparation for the lectures as indicated below.

1. Property law

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|---|-----------------------|
| 1.1. Private coordination and efficiency | Cooter & Ulen 73-76 |
| 1.2. Private property and incentives to produce | Cooter & Ulen 76-80 |
| 1.3. Externalities and the Coase Theorem | Cooter & Ulen 81-86 |
| 1.4. Efficient remedies | Cooter & Ulen 94-102 |
| 1.5. Limitations to private property | Cooter & Ulen 174-178 |
| 1.6. Public and private property on balance | Cooter & Ulen 139-142 |

2. Contract law

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|---------------------------------|------------------------------|
| 2.1. Cooperation and commitment | Cooter & Ulen 33-37, 283-286 |
| 2.2. Risk allocation | Polinsky ILE 57-62 |

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|---|---------------------------|
| 2.3. Costly contracting | Cooter & Ulen 291-299 |
| 2.4. Remedies | Cooter & Ulen 307-318 |
| 2.5. Defenses | Cooter & Ulen 342-353 |
| 2.6. Limitations to freedom of contract | Cooter & Ulen 32-3; 518-9 |

3. Tort law

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| 3.1. Efficient liability rules | Cooter & Ulen 199-204 |
| 3.2. Negligence vs. strict liability | Cooter & Ulen 204-208 |
| 3.3. Defenses | Cooter & Ulen 208-217 |
| 3.4. Administrative costs and regulation | Cooter & Ulen 223-224, 235-236 |

4. Public enforcement of the law

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|------------------------------|-----------------------|
| 4.1. Enforcement using fines | Polinsky ILE 79-90 |
| 4.1. Criminal law | Cooter & Ulen 460-463 |

C. Weekly assignments

Students must turn in a weekly review quiz. GSI sessions will be dedicated to studying quizzes. Additional doubts will be addressed during lectures as needed. The quizzes will not be graded. By turning in all quizzes students attain 10% of the total grade in the course.

D. Mid-term exam

The mid-term will take place towards the end of October. In preparation for the exam, students should **study the review quizzes, the lecture power points and a sample midterm exam that will be posted online.** The exam is closed book and corresponds to 40% of the total grade.

PART TWO

A. Bibliography will be made available in the course website.

B. Sequence

1. The normative debate concerning efficiency

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| 1.1. The wealth maximization principle | Richard Posner, <i>The Problems of Jurisprudence</i> , 1990, 374-392 |
| 1.2. Efficiency, rights and justice | Robert D. Cooter, <i>The Strategic Constitution</i> , 1981, 243-259,
<i>or</i> Guido Calabresi, <i>The Costs of Accidents: A Legal and Economic Analysis</i> , 1970, 14-33 |

2. Regulation of private arrangements

2.1. Corporate law	Posner EAL 419-421
2.1. Bankruptcy law	Posner EAL 431-435
2.2. Labor law	Posner EAL 352-355
2.3. Family law	Posner EAL 143-152
2.4. Cartels and consumer protection	Cooter & Ulen 363-366
2.5. Patent law	Cooter & Ulen pp. 113-118

3. Additional topics (to be covered insofar as we have time and based on students' interests)

3.3. Efficiency and equity in Law & Economics	Cooter & Ulen 7-8
3.1. Public choice: politicians	James M. Buchanan, Politics without Romance, Policy, the quarterly review of The Centre for Independent Studies, spring 2003
3.2. Public choice: courts	Bernardo Guimaraes & Bruno Salama, Permitting Prohibitions: Theory and Application to Usury Laws, 5-8
3.4. The law and economics of money	TBD

C. Weekly assignments. There are none.

D. Term paper. The due date is Dec. 12, 2018 at midnight. Paper corresponds to 50% of final grade. Length: no longer than 8 pages based on font times new roman size 12 and line spacing of 1.5.

The paper should be based on any one of the topics discussed during the course. You have to choose one of these topics, but you don't have to address a specific question discussed during the lecture. For example: suppose you choose to write on the economics of family law. If the lecture covered only the economics of marriage and child upbringing, that does not prevent you from writing on the law and economics of surrogate motherhood.

There are three ways to write the term paper:

1. Discuss the **incentives created by a new law or court holding**. Find a recent magazine or newspaper article outlining the legal setting and discuss the pros and cons of the proposed or implemented change. Alternatively, focus on a law or rule that affects student life including admissions, financial aid, graduation requirements, housing, honor code, extracurricular activities, etc. Whatever your choice, you should consult the literature while writing your paper.
2. **Review the Law and Economics literature on a certain topic**. Find a controversy or a problem, summarize the main arguments, and sketch a brief conclusion with your take on the subject.
3. Discuss **how a recent technological innovation is challenging established ways of thinking within the Law and Economics literature**. For example, commons-based peer-production and blockchain technology challenge the traditional (Coasean)

distinction between production in markets and in firms (discussed in the section on the economics of Corporate Law). Problems of that sort can make great papers!

To help and complement your independent research:

- In the second part of the course, **GSI discussion sessions will be devoted to helping you** find a topic and bibliography, refine your arguments, improve your writing and generally perfect the term paper.
- Feel free to come to **office hours**.
- Post general questions concerning the term paper on the **online discussion board**.
- We will continuously talk about the term paper in class during the lectures.
- The professor will continuously post helpful bibliography online.

What is valued in grading the paper?

- Thoroughness: your paper gets better as you research more on the topic.
- Clarity: take time to review/rewrite your paper.
- Creativity: write something that is not completely obvious.
- Cohesion: write arguments that don't contradict each other.
- Citations: cite your sources in footnotes that can be easily accessed by the professor.

Start thinking about your term paper as early as possible!

Voice your concerns.

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This syllabus may be adjusted slightly to accommodate topics of students' interest and other circumstances. Any changes will be posted on the course website.