

Lectures on TuTh from 9:30-11am at Kroeber 155 with Professor Bruno Meyerhof Salama, brunosalama@law.berkeley.edu. **Office Hours** at 2240 Piedmont # 212 on Thursdays from 12h45-1h45pm, or by appointment. GSI is Doug Sangster, doug.sangster@berkeley.edu.

Summary. The economic analysis of law is one of the major theoretical perspectives in the study of law in American universities. Law and Economics I (Legal Studies 145) addresses core Common Law topics such as property, torts, contracts and crimes. Law and Economics II (Legal Studies 147) complements that introduction by addressing topics such as corporate, bankruptcy, labor, antitrust, family, and constitutional law, among others, as well as by surveying some of the debates that sustain the vitality of the field of Law and Economics.

Bibliography. No need to buy books.

Sequence (tentative).

A. Introduction

1. Rational choice and the law David Friedman, *What Does Economics Have to Do with Law?*, at http://www.daviddfriedman.com/Laws_Order_draft/laws_order_ch_1.htm
2. Efficiency and the law David Friedman, *Efficiency and All That*, at http://www.daviddfriedman.com/Laws_Order_draft/laws_order_ch_2.htm
3. Coordination and the law David Friedman, *What's Wrong with the World, Part 1*, at http://www.daviddfriedman.com/Laws_Order_draft/laws_order_ch_3.htm
4. Coase and law and economics David Friedman, *What's Wrong with the World, Part 2*, at http://www.daviddfriedman.com/Laws_Order_draft/laws_order_ch_4.htm
5. First quiz (10%)

B. Selected topics in law and economics (readings available at the course website)

6. Family law David Friedman, *Marriage, Sex and Babies*, http://www.daviddfriedman.com/Laws_Order_draft/laws_order_ch_13.htm
7. Corporate law Richard Posner, *Economic Analysis of Law*, 9th ed. (2014), pp. 533-544
8. Bankruptcy law Posner *EAL* 9th ed., pp. 548-555
9. Legal process Robert Cooter and Thomas Ulen, *Law & Economics*, 6th ed., 2016, 382-396
10. Public enforcement Mitchell Polinsky, *An Introduction to Law and Economics*, 3rd. ed., 1989, 79-90
11. Legislation James M. Buchanan, *Public Choice: Politics Without Romance*. Policy, the quarterly review of The Centre for Independent Studies, Spring 2003

12. Antitrust David Friedman, *Antitrust*, at http://www.daviddfriedman.com/Laws_Order_draft/laws_order_ch_16.htm
13. The Wealth maximization principle Richard A. Posner, *Wealth Maximization Revisited*, 2 Notre Dame Journal of Law, Ethics and Public Policy 85 (1985)
14. Review session
15. Second quiz (30%)

C. Selected debates in law and economics (readings available at the course website)

16. Where do preferences come from? Thomas S. Ulen, *The Importance of Behavioral Law*, in The Oxford Handbook of Behavioral Law and Economics 93 (Eyal Zamir & Doron Teichman eds.) 2014
17. Does economics increase objectivity in law? Eric Posner, *Economic Analysis of Contract Law after Three Decades: Success or Failure?*, 112 Yale Law Journal 829 (2003). Read introduction (pp. 829-832) and I.F (Impossibility, pp. 848-849)
18. Is *counterintuitive* a virtue? David Friedman, *Should the Rich Pay Higher Fines?*, a section at http://www.daviddfriedman.com/Laws_Order_draft/laws_order_ch_15.htm
19. Do the empirics hold? Minimum Wage at Wikipedia, https://en.wikipedia.org/wiki/Minimum_wage#Research_subsequent_to_Card_and_Krueger's_work
20. Is the Common Law efficient? David Friedman, *Is the Common Law Efficient?*, at http://www.daviddfriedman.com/Laws_Order_draft/laws_order_ch_19.htm
21. Does Law and Economics sweep distributional concerns under the rug? Robert Cooter and Thomas Ulen, *Law & Economics*, 6th ed., 2016, pp. 7-8 & Anne Fennell & Richard H. McAdams, *The Distributive Deficit in Law and Economics*, 100 Minn. L. Rev. 1051 (2016)
22. Should consumers be king in antitrust analysis? Tim Wu, *After Consumer Welfare, Now What? The 'Protection of Competition' Standard in Practice*, at https://papers.ssrn.com/sol3/cf_dev/AbsByAuth.cfm?per_id=159088
23. Are banks different? Steven L. Schwarcz, *Banking and Financial Regulation*, The Oxford Handbook of Law and Economics: Volume 2: Private and Commercial Law (2017)
24. Should there be a law and macroeconomics? Bruno M. Salama, *Macroeconomic Analysis of Law Versus Law and Macroeconomics*, Journal of Law and Contemporary Problems, 2020 (forthcoming, 2020)
25. What do judges maximize? Richard A. Posner, *What Do Judges and Justices Maximize? (The Same Thing Everybody Else Does)*, Supreme Court Economic Review, Vol. 3 (1993), pp. 1-41
26. Conclusion

This sequence may be adjusted to accommodate topics of students' interest and other circumstances. Any changes will be announced in class and posted on the course website.

Grading.

- First quiz: 10%
- Second quiz: 30%
- Two reflection papers covering topics of Part (C) of student's choice: 25% each, 50% total
- Participation in discussion sections: 10%

Instruction for exams. In preparation for exam, students should review the lecture PPTs and the assigned readings.

Instruction for reflection papers. Students must write two short papers of approximately 1,200–1,400 words each on the selected readings for two classes of Part (C) of their choice, as follows:

- Deadline: the first paper will be due around April 20 and the second one around May 15 (the exact days are yet to be confirmed).
- Format: Use 12-point Times New Roman, 1.5 spaced with 1-inch margins.
- Don't forget to write your name and section number at the top of the page

Some frequent questions:

1. *What are you looking for?* Papers should ideally summarize the reading, *but not* simply summarize the reading. I am interested in your reflections upon the readings. Your paper should have one main idea/argument, spelled out at the outset of the paper and developed throughout. Possible strategies *include*:

- A contrast with topics developed in previous classes
- Finding an application that seemingly proves or disproves the point made in the reading, such a new or old law or court holding or policy
- Comparing a standard legal view to the one developed from the economic standpoint
- A technological innovation that seems to challenge or confirm a point made in the reading

2. *Do you want us to summarize the main arguments in the readings before providing our analysis?* That often helps us assess your comprehension of the readings and also helps the flow of the paper, but given the paper's length you should do so briefly.

3. *There are a number of factors that students must trade-off against each other in defining their main argument. For example, students can choose between: creative thinking; detailed analysis of a specific policy design; broader implications/generalizations that come out of the readings; criticizing the approach or perspective given by a particular author (pointing out the flaws in the paper). Do you have a preference?* No, I don't. Creative and critical thinking is what we are looking for, but it will only get a high grade if is well supported and articulated.

4. *How much time should we spend on citations, page numbers, using quotations?* Not much. We are more concerned with ideas and how well you articulate them. However, it is important for you to clearly separate what is coming from the readings and what is part of your own thinking and to avoid plagiarism at all costs.

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