

**Lectures** on Tu-Thu from 2:00 pm - 3:30 pm over zoom at <https://berkeley.zoom.us/j/93377580666?pwd=eHhRdWpwUTF5Rm1SczRjZW9YVUZCZz09>, Meeting ID: 933 7758 0666, Passcode: 223265, or in person at Anthro/Art Practice Bldg. 155 with Bruno Meyerhof Salama, [brunosalama@law.berkeley.edu](mailto:brunosalama@law.berkeley.edu). **The first two weeks of instruction are expected to take place exclusively over zoom.**

**Office Hours** on Mondays 9-10am via Skype. To schedule a meeting, just add brunosalama18 over Skype and send a message.

**GSI** is Alex Huang, [alexwong@berkeley.edu](mailto:alexwong@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 the economics of core Common Law topics such as property, contract and tort law. Law and Economics II (Legal Studies 147) complements that introduction by addressing topics such as corporate, family, and antitrust law, among others, as well as by engaging with some of the debates that sustain the vitality of the field of Law and Economics.

**Bibliography.** No need to buy books. Readings are available online or through bcourses.

### **Grading.**

Two reflection papers: 35% of total grade each (see instructions). Homework: 20%. Students should turn in 5 quizzes. Each quiz corresponds to 4% of your total grade. The quizzes and their due dates will be made available during the semester. Participation in discussion sections: 10%.

### **Sequence (tentative).**

#### A. The building blocks: rationality, efficiency, incentives

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| 1. Rational choice and the law                 | David Friedman, <i>What Does Economics Have to Do with Law?</i> , at <a href="http://www.daviddfriedman.com/Laws_Order_draft/laws_order_ch_1.htm">http://www.daviddfriedman.com/Laws_Order_draft/laws_order_ch_1.htm</a> |
| 2. Market coordination and wealth maximization | David Friedman, <i>Efficiency and All That</i> , at <a href="http://www.daviddfriedman.com/Laws_Order_draft/laws_order_ch_2.htm">http://www.daviddfriedman.com/Laws_Order_draft/laws_order_ch_2.htm</a>                  |

#### B. Regulation and externalities

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| 3. Coordination and the law  | David Friedman, <i>What's Wrong with the World, Part 1</i> , at <a href="http://www.daviddfriedman.com/Laws_Order_draft/laws_order_ch_3.htm">http://www.daviddfriedman.com/Laws_Order_draft/laws_order_ch_3.htm</a> |
| 4. Coasean law and economics | David Friedman, <i>What's Wrong with the World, Part 2</i> , at <a href="http://www.daviddfriedman.com/Laws_Order_draft/laws_order_ch_4.htm">http://www.daviddfriedman.com/Laws_Order_draft/laws_order_ch_4.htm</a> |

#### C. Production: market vs. hierarchy

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| 5. Economics of corporate law | Richard Posner, <i>Economic Analysis of Law</i> , 9 <sup>th</sup> ed. (2014), pp. 533-544 (pdf at bcourses) |
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6. Bankruptcy law  
Posner EAL 9<sup>th</sup> ed., pp. 548-555 (pdf at bcourses)
- D. Are people rational?
7. The challenge of behavioral economics  
Thomas S. Ulen, *The Importance of Behavioral Law*, in *The Oxford Handbook of Behavioral Law and Economics* 93 (Eyal Zamir & Doron Teichman eds.) 2014. Access through UCB library.
8. Do ideas matter? The case of family law  
David Friedman, *Marriage, Sex and Babies*, [http://www.daviddfriedman.com/Laws\\_Order\\_draft/laws\\_order\\_ch\\_13.htm](http://www.daviddfriedman.com/Laws_Order_draft/laws_order_ch_13.htm)
- E. Is Law and Economics conservative?
9. Love over the Common Law  
David Friedman, *Is the Common Law Efficient?*, at [http://www.daviddfriedman.com/Laws\\_Order\\_draft/laws\\_order\\_ch\\_19.htm](http://www.daviddfriedman.com/Laws_Order_draft/laws_order_ch_19.htm)
10. Readings of the Coase Theorem  
Nicholas Mercuro and Steven G. Medema, *Economics and the Law: From Posner to Postmodernism and Beyond*, Princeton University Press, 2<sup>nd</sup> ed., 2020, p. 107-113 (pdf at bcourses)
- F. Should law and econ focus on distribution alongside efficiency?
11. The wealth maximization principle and its discontents  
Richard A. Posner, *Wealth Maximization Revisited*, 2 *Notre Dame Journal of Law, Ethics and Public Policy* 85 (1985)
12. The technical debate  
Robert Cooter and Thomas Ulen, *Law & Economics*, 6th ed., 2016, pp. 7-8; Robert Cooter, *Law and Unified Social Theory*, 22 *Journal of Law and Society* 50 (1995), pp. 57-58 (available online)
- G. Innovation in Law and Econ
13. Static or dynamic efficiency?  
Robert Cooter and Aaron Edlin, *The Falcon's Gyre: Legal Foundations of Economic Innovation and Growth*, 2014, Preface and chapter 1 (available at <https://lawcat.berkeley.edu/record/1126190?ln=en>)
14. What role for antitrust?  
Herbert Hovenkamp, *The Looming Crisis in Antitrust Economics* 101 *Boston University Law Review* 489 (2021)
- H. Conclusion
15. 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 item I.F (Impossibility, pp. 848-849)
16. Should there be a law and macroeconomics?  
Bruno Meyerhof Salama, *Law and Macroeconomics as Mainstream: Review Essay of Yair Listokin*, *Law and*

Macroeconomics: Legal Remedies for Recessions (Uni of Toronto Law Journal, 2020)

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

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**Instructions for the reflection paper.**

- The reflection paper consists of a critique (that is, a comment) to one of the readings mentioned in this syllabus.
- Some samples have been posted online.
- You must include your student ID and the reading's title in the file name (e.g. Critique of Wealth Maximization\_\_CalID)
- Size: between 700 and 1,000 words.
- Deadlines (tentatively):
  - March 27, 2022
  - May 12, 2022
- 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 front page.

**Frequent questions about the reflection paper.**

**1. What are you looking for?** Papers should briefly summarize the reading or the aspect of the reading you are concerned with – but not simply summarize. I am interested in your thoughts upon the reading or upon a specific idea contained in the reading and (ideally) also explored in class. Your paper should have one main idea/argument, spelled out at the outset of the paper and developed throughout. Possible strategies include (but are not limited to) the following:

- Contrast an idea developed in the selected reading with topics or ideas developed in other parts of the syllabus or in other classes you took at UC Berkeley or elsewhere.
- Find an application that seemingly proves or disproves the point made in the reading, such as a new or old law, court holding or policy.
- Compare a standard legal view to the one developed based on the economic standpoint.
- Discuss a technological innovation that challenges 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 several 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 I am 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.

**Grading rubric**

<b>Understanding and Creativity of Topic:</b> How clearly and thoroughly you demonstrate your understanding of your topic		
<i>Unsatisfactory</i> The student fails to justify, or poorly justifies, their opinion and demonstrates a poor understanding of their topic, presenting ideas about key concepts in an incoherent or confusing manner.	<i>Satisfactory</i> The student demonstrates a good understanding of their topic, using research material to provide coherent support for arguments in the paper.	<i>Excellent</i> The student demonstrates an excellent, clear understanding of their topic, as described in a number of arguments in the paper. There is depth and breadth in those arguments, which are made coherently.
<b>Structure, Clarity, and Cohesion:</b> How clearly you articulate arguments		
<i>Unsatisfactory</i> The paper is organized incoherently. Thoughts are disorganized. It is not clear what the thesis of the paper is, and/or there is significant disconnect between the arguments and the thesis.	<i>Satisfactory</i> The paper is organized coherently. There is a clear structure, including an identifiable thesis and logical flow, but some aspects of the paper are unclear or poorly structured.	<i>Excellent</i> The structure of the paper is excellent, and ideas are articulated concisely and intuitively, in an ordered manner. There is a clear introduction, thesis, and conclusion, with a logical and coherent flow of argumentation throughout the paper.
<b>Opposing Arguments and Persuasiveness:</b> How thoroughly you address, analyze, and refute arguments against your opinion		
<i>Unsatisfactory</i> The student demonstrates a poor understanding of opposing arguments, either failing to present them at all, or presenting them in an incoherent manner.	<i>Satisfactory</i> The student makes at least one supported counter-argument, and refutes that argument systematically and coherently.	<i>Excellent</i> The student demonstrates a good understanding of a number of opposing arguments, presenting them coherently, and with appropriate evidence. The student refutes these arguments systematically and convincingly.
<b>Research and Thoroughness:</b> How well you integrate appropriate and compelling research into your paper		
<i>Unsatisfactory</i> The paper is poorly and narrowly referenced. If research is included at all, it is in an incoherent or confusing manner.	<i>Satisfactory</i> The paper is referenced adequately but not comprehensively. The paper includes appropriate research, although the integration of this information is neither exhaustive nor seamless.	<i>Excellent</i> Arguments in the paper are comprehensively and accurately referenced. There is broad integration of compelling research. The integration of this information is intuitive and seamless. <u>Notice:</u> relying primarily on class materials is

		fine.
<b>Grammar and Citations:</b> How concise, free of typos/spelling errors, and grammatically correct your paper is		
<i>Unsatisfactory</i> Grammar /spelling are poor.	<i>Satisfactory</i> G&S are of a good standard.	<i>Excellent</i> G&S are mostly flawless.

**How this rubric relates to your paper grade:** You can assume that a paper receiving Unsatisfactory scores will receive a C or below, a paper that Satisfactorily meets the requirements of the assignment will receive in the B range, and an Excellent paper will receive in the A range.

**Final observations:**

- **Thoroughness:** your paper gets better as you research more on the topic.
- **Clarity:** take time to review/rewrite your paper and ensure that there are no grammatical errors.
- **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.

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