

Lectures on Tu-Thu from 2:00 pm - 3:30 pm at Wheeler 102 with Bruno Meyerhof Salama, brunosalama@law.berkeley.edu.

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

GSI is Alex Huang, 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, antitrust, and family 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. Mandatory readings are listed below and are made available online or through bcourses. The mandatory readings introduce the discussions. You should do your readings before class. Lectures expand on the topics presented in the readings. Additional readings will be indicated during lectures and will be made available at bcourses as needed. You are encouraged read the additional bibliography and to participate actively in class discussions.

Grading.

1. Three take-home quizzes: 15% of total grade (5% for each quiz).
 - Quizzes, due dates, and instructions to be made available at bcourses).
2. One midterm covering part B of this syllabus: 35% of total grade.
 - Exam is closed book. Exam questions are based on the mandatory readings, take-home quizzes, and lecture PPTs. Lecture PPTs will be made available at bcourses, but only after they have been presented in class.
 - To do well in the exam, do the readings, the quizzes, and attend lectures. In lecture, ask questions to make sure you understand the materials.
3. One reflection paper covering a topic mentioned in part C: 40% of total grade.
 - Instructions below.
4. Participation in discussion sections: 10%.
 - In section you will review the content of lectures, get prepared for the exam, and seek help with the writing
 - Attendance in discussion sections is mandatory (unlike lectures, where attendance is not mandatory). If you can't attend a discussion section meeting, make sure to write to your GSI.

Sequence (topic and mandatory reading).

A. Introduction: rationality, efficiency, incentives

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. Market coordination and wealth maximization David Friedman, *Efficiency and All That*, at http://www.daviddfriedman.com/Laws_Order_draft/laws_order_ch_2.htm
3. Internalization: the case of enforcement using fines Mitchell Polinsky, *An Introduction to Law and Economics*, 3rd. ed., 1989, 79-90 (pdf at bcourses)

B. Production: market vs. hierarchy

4. The economics of corporate law Richard Posner, *Economic Analysis of Law*, 9th ed. (2014), pp. 533-544 (pdf at bcourses)
5. Stakeholderism and shareholderism Lucian A. Bebchuk and Roberto Tallarita, *The Illusory Promise of Stakeholder Governance*, 106 CORNELL L. REV. 91 (2020) (pdf and authors' ppt available at bcourses)
6. Bankruptcy law Posner EAL 9th ed., pp. 548-555 (pdf at bcourses)
7. Antitrust: the tradition of Law and Economics and the renewed push for enforcement David Friedman, *Antitrust*, at http://www.daviddfriedman.com/Laws_Order_draft/laws_order_ch_16.htm; and Lina Khan, *The New Brandeis Movement: America's Antimonopoly Debate*, *Journal of European Competition Law & Practice*, 2018, Vol. 9, No. 3 (pdf at bcourses).

Midterm covering part B above; exact date is to be determined.

C. Topics in Law and Economics

8. *Rationality* in Law and Economics: 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.
9. *Ethics* in Law and Economics: the wealth maximization principle and its discontents Eric Posner, *The Boundaries of Normative Law and Economics*, Coase-Sandor Working Paper Series in Law and Economics No. 914, available at <https://ssrn.com/abstract=3693142>
10. *Technology* in Law and Economics: determinism and the case of family law David Friedman, *Marriage, Sex and Babies*, http://www.daviddfriedman.com/Laws_Order_draft/laws_order_ch_13.htm
11. *Objectivity* in Law and Economics: is there an economic theory of 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)
12. *Method* in Law and Economics: is there 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)

Term paper due on May 8

Instructions for the reflection paper

- The reflection paper consists of a critique (that is, a comment, discussion, or extension) to one of the readings mentioned in Part C of this syllabus or in one of the PPTs for the classes of Part C of this syllabus.
- Structure: a good paper will clearly state an argument and then provide reasons. You might be tempted to describe various themes or events without really presenting an argument; you should avoid doing that. Clear theses that are supported with evidence and reasons and are well organized will typically be awarded higher grades.
- Read the grading rubric!
- Some samples will be 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.
- 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.
- Deadline May 8, 2024.

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, and then discuss it. 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.
- Etc.

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 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

1. Pertinence of the Chosen Topic: Are you discussing an assigned reading or are you simply talking about a question that seems interesting to you? (10% of paper grade)		
<i>Unsatisfactory</i> The topic is unrelated to the reading at hand and the questions discussed in class.	<i>Satisfactory</i> The topic was covered in the reading, but the analysis is disconnected from the approaches and questions addressed in class.	<i>Excellent</i> The topic is well chosen, and the analysis relates to questions discussed in class.
2. Quality of the abstract: Is the paper's abstract adequately summarizing the paper? (10%)		
<i>Unsatisfactory</i> There is no abstract, or it is confusing or unrelated to the paper	<i>Satisfactory</i> The abstract is unclear, but helps the reader understand the concept developed in the paper	<i>Excellent</i> The abstract summarizes the paper's argument reasoning.
3. Understanding of the Chosen Topic: How clearly and thoroughly you demonstrate your understanding of your topic? (20%)		
<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.
4. Structure, Clarity, and Cohesion: How clearly do you articulate your analysis and your main argument? (20%)		
<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.
Opposing Arguments and Persuasiveness: How thoroughly you address, analyze, and refute arguments against your opinion? (10%)		
<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.

Research and Thoroughness: How well you integrate appropriate and compelling research into your paper? Do you bring concrete examples or are you simply articulating abstract ideas? (20%)		
<p><i>Unsatisfactory</i> The paper is poorly and narrowly referenced. If research is included at all, it is in an incoherent or confusing manner. The paper contains no examples.</p>	<p><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. The examples chosen, if any, are inconsistent with the analysis.</p>	<p><i>Excellent</i> Arguments in the paper are comprehensively, accurately referenced, and illustrated with good examples. There is broad integration of compelling research. The integration of this information is intuitive and seamless.</p>
Grammar and Citations: How concise, free of typos/spelling errors, and grammatically correct your paper is (10%)		
<p><i>Unsatisfactory</i> Grammar and spelling are poor.</p>	<p><i>Satisfactory</i> G&S are of a good standard.</p>	<p><i>Excellent</i> G&S are mostly flawless.</p>

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.

Course format (remote/recording/asynchronous participation). This course does not accommodate asynchronous participation. Recording of lectures without a verified DSP accommodation or express permission from instructor is prohibited.

Quizzes and paper submissions at bcourses. It is your responsibility to ensure that the correct file is accessible to your GSI at the time of submission and in advance of the deadline. Absent an error on the part of the bCourses platform, submissions not accessible to the GSI at the deadline will be marked late. **Late submissions** will be accepted with a 0.5 point per hour (on the hour) penalty (e.g., quiz submitted Monday 12:30am will receive a 0.5-point penalty; Monday at 1:30 am will receive a 1-point penalty, etc.), up to 20 hours after the regular deadline.

Disability-related accommodations. If you need disability-related accommodations in this class, you must arrange to meet with your GSI during the first week of class to discuss your requirements. Please remember that accommodations and extensions are meant to specifically address the impact of a student's disability on their ability to fully participate or to complete an assignment by the deadline provided to the other students.

Statement on copyright and recording. Materials in this course are protected by copyright law. Materials are presented in an educational context for personal use and study and should not be shared, distributed, or sold in print or digitally outside the course without permission. Video and audio recording of lectures and sections without instructor and fellow classmates' consent is prohibited. You may not reuse or circulate or post to websites (e.g., Course Hero, Quizlet, etc.) any recorded lectures, slides, exams, or other course resources authored by the teaching team without permission. This includes screenshots of course materials and/or participants, unauthorized recording of lectures, presentations, and discussions.

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