

Chapter 9

1. Consider a 100% contingency contract between a client and a lawyer whereby the lawyer pays the client a fixed amount up front and then the lawyer retains the full amount of whatever recovery the case yields in a settlement or trial. What are the incentive and risk-sharing aspects of this contract? Can you think of any arguments for why such an arrangement should not be allowed?
2. Discuss the problem of court delay in a supply-demand framework. Does it reflect an excess supply or demand? How should the cost of filing a lawsuit be adjusted to eliminate the delay? Can you think of a reason why this might not be a good policy? (Hint: Think of the rationale for laws against ticket scalping.)
3. Statutory sentencing guidelines place tight restrictions on the ability of judges to exercise discretion in determining criminal penalties after the fact. Provide an argument for or against such guidelines based on the economic theory of law enforcement.
4. Discuss the trade-offs involved in the plea bargaining system as a means of achieving a criminal conviction.
5. What does it mean to say that judges decide cases by precedent? In what ways does decision by precedent promote efficient rule-making, and in what ways does it impede it?
6. Contingent fees for lawyers essentially give lawyers a share of the proceeds from a settlement or trial. Compare this to sharecropping contracts. Do the two arrangements serve the same purpose? Are there any differences?
7. How do economists define “frivolous suits”? Why are they sometimes successful in yielding positive settlements for plaintiffs? Do they necessarily impede the efficient operation of the tort system?
8. Some participants in the legal process are one-time, but others are repeat players. How does that difference affect their incentives regarding settlement of lawsuits, whether civil or criminal?
9. Appellate courts are not supposed to re-examine the facts of the cases that come before them, but only the application of the relevant legal rule. Does this make economic sense?