

SAMPLE SYLLABUS

Economics XXX Law and Economics

This course provides a graduate level introduction to the field of law and economics. The course makes no attempt to provide an exhaustive survey of the field, but instead offers an in-depth analysis of a few core topics while highlighting methodology and the ability of economic theory to unify disparate fields of law. Because the course emphasizes a mathematical treatment of the subject, students are presumed to have either a master's or an advanced undergraduate level of training in microeconomics. They are not, however, expected to have any background knowledge of law.

The primary readings for the course are from the following text:

Thomas J. Miceli, *The Economic Approach to Law*, 3rd Edition, Stanford University Press, 2017.

In addition, several key articles and cases are provided as a resource for further inquiry, class discussion, and/or written assignments. Graduate level notes for each chapter are also available as a supplement on the book's companion web site: <http://sup.org/economiclaw/>

Course Outline and Reading List

I. Introduction: Efficiency Concepts and Themes

Text, Chapter 1.

Coase, Ronald (1960) "The Problem of Social Cost," *J. Law and Econ.* Vol. 3, pp. 1-44.

Coleman, Jules (1982) "The Economic Analysis of Law," in *Ethics, Economics, and the Law: NOMOS XXIV*.

Posner, Richard (1980) "The Ethical and Political Basis of the Efficiency Norm in Common Law Adjudication," *Hofstra L. R.* Vol. 8, pp. 487-507.

II. Tort Law

A. The Basic Accident Model

Text, Chapter 2.

Brown, John (1973) "Toward an Economic Theory of Liability," *J. Legal Stud.*, Vol. 2, pp. 323-349.

Cooter, Robert (1985) "Unity in Tort, Contract, and Property: The Model of Precaution," *Cal. L. R.*, Vol. 73, pp. 1-51.

B. The Hand Rule and Causation

Grady, Mark (1989) "Untaken Precautions," *J. Legal Stud.*, Vol 18, pp. 139-156.

Miceli, Thomas (1996) "Cause in Fact, Proximate Cause, and the Hand Rule: Extending Grady's Positive Economic Theory of Negligence," *Int'l Rev. of Law and Econ.*, Vol 16, pp. 473-482.

U.S. v. Carroll Towing, 159 F.2d 169 (1947).

C. Activity Levels

Shavell, Steven (1980) "Strict Liability vs. Negligence," *J. Legal Stud.*, Vol. 9, pp. 1-25.

D. Sequential Care Torts and Strategic Behavior

Grady, Mark (1988) "Common Law Control of Strategic Behavior: Railroad Sparks and the Farmer," *J. Legal Stud.*, Vol. 17, pp. 15-42.

Shavell, Steven (1983) "Torts in Which Victim and Injurer Act Sequentially," *J. Law and Econ.*, Vol. 26, pp. 589-612

Wittman, Donald (1981) "Optimal Pricing of Sequential Inputs: Last Clear Chance, Mitigation of Damages, and Related Doctrines," *J. Legal Stud.*, Vol 10, pp. 65-91.

E. The Impact of Litigation Costs

Shavell, Steven (1982) "The Social versus Private Incentive to Bring Suit in a Costly Legal System," *Journal of Legal Studies*, Vol. 11, pp. 333-339.

Hylton, Keith (1990) "The Influence of Litigation Costs on Deterrence Under Strict Liability and Under Negligence," *Int'l Rev. of Law and Econ.*, Vol. 10, pp. 161-171.

F. The Impact of Uncertainty

Craswell, Richard and John Calfee, (1986) "Deterrence and Uncertain Legal Standards," *J. Law, Econ., and Org.*, Vol. 2, pp. 279-303.

Hylton, Keith (1990) "Costly Litigation and Legal Error Under Negligence," *J. Law, Econ. and Org.*, Vol. 6, pp. 433-452.

Shavell, Steven (1992) "Liability and the Incentive to Obtain Information About Risk," *J. Legal Stud.*, Vol. 21, pp. 259-270.

Shavell, Steven (1985) "Uncertainty Over Causation and the Determination of Civil Liability," *J. Law and Econ.*, Vol. 28, pp. 587-609.

G. Products Liability

Text, Chapter 3.

Landes, William and Richard Posner (1985) "A Positive Economic Analysis of Products Liability," *J. Legal Stud.*, Vol. 14, pp. 535-567.

MacPherson v. Buick, 217 N.Y. 382, 111 N.E. 1050 (1916).

III. Contract Law

A. Contract Formation

Text, Chapter 4.

Hamer v. Sidway, 124 N.Y. 538, 27 N.E. 256, Court of Appeals of New York (1891).

B. Contract Modification

Posner, Richard (1977) "Gratuitous Promises in Economics and Law," *J. Legal Stud.*, Vol. 6, pp. 411-426.

Aivazian, Varouj, Michael Trebilcock, and Michael Penny (1984) "The Law of Contract Modifications: The Uncertain Quest for a Benchmark of Enforceability," *Osgoode Hall Law Journal*, Vol. 22, pp. 173-212.

Miceli, Thomas (2002) " 'Over a Barrel': Contract Modification, Reliance, and Bankruptcy," *International Review of Law and Economics*, Vol. 22, pp. 41-51.

Alaska Packers' Assn. v. Domenico, 117 F. 99, 9th Cir. (1902).

Goebel v. Linn, 47 Mich. 489, 11 N.W. 284 (1882).

C. Mistake and the Duty to Disclose Information

Hirshleifer, Jack (1971) "The Private and Social Value of Information and the Reward to Inventive Activity," *American Economic Review*, Vol.61, pp. 561-574.

Kronman, Anthony (1978) "Mistake, Disclosure, and Information," *J. Legal Stud.*, Vol. 7, pp. 1-34.

Sherwood v. Walker, 66 Mich. 568, 33 N.W. 919, Mich. (1887).

D. Remedies for Breach

Text, Chapter 5.

Shavell, Steven "Damage Measures for Breach of Contract," *Bell J. Econ.*, Vol. 11, pp. 466-490.

Rogerson, William (1984) "Efficient Reliance and Damage Measures for Breach of Contract," *Rand J. Econ.*, 15, pp. 39-53.

E. The *Hadley v. Baxendale* Rule

Bebchuk, Lucian and Steven Shavell (1991) "Information and the Scope of Liability for Breach of Contract: The Rule of *Hadley v. Baxendale*," *J. Law, Econ, and Org.*, Vol. 7, pp. 284-312.

Hadley v. Baxendale, 9 Ex. 341, 156 Eng. Rep. 145 (1854).

F. Impossibility and Efficient Risk Sharing

Polinsky, A. Mitchell (1983) "Risk-Sharing Through Breach of Contract Remedies," *J. Legal Stud.*, Vol. 12, pp. 427-444.

Posner, Richard and Andrew Rosenfield (1977) "Impossibility and Related Doctrines in Contract Law: An Economic Analysis," *J. Legal Stud.*, Vol. 6: 83-118.

White, Michelle (1988) "Contract Breach and Contract Discharge Due to Impossibility: A Unified Theory," *J. Legal Stud.*, Vol. 17, pp. 353-376.

Sykes, Alan (1990) "The Doctrine of Commercial Impracticability in a Second-best World," *J. Legal Stud.*, Vol. 19, pp. 43-94.

G. Specific Performance

Friedmann, Daniel (1989) "The Efficient Breach Fallacy," *J. Legal Stud.*, Vol. 18, pp. 1-24.

Peevyhouse v. Garland Coal Mining, 382 P.2d 109 (Okla. 1962).

IV. Property Law

A. Defining and Enforcing Property Rights

Text, Chapter 6.

Demsetz, Harold (1967) "Toward a Theory of Property Rights," *American Economic Review*, Vol. 57, pp. 347-359.

Demsetz, Harold (1972) "When Does the Rule of Liability Matter?" *Journal of Legal Studies*, Vol. 1, pp. 13-28.

Merrill, Thomas (1985) "Trespass, Nuisance, and the Cost of Determining Property Rights," *J. Legal Stud.*, Vol. 14, pp. 13-48.

B. Ownership and Transfer of Land

Baird, Douglas and Thomas Jackson (1984) "Information, Uncertainty, and the Transfer of Property," *J. Legal Stud.*, Vol 13, pp. 299-320.

Miceli, Thomas and C.F. Sirmans (1995) "The Economics of Land Transfer and Title Insurance," *Journal of Real Estate Finance and Economics*, Vol. 10, pp. 81-88.

Baker, Matthew, Thomas J. Miceli, C.F. Sirmans, and Geoffrey Turnbull (2002) "Property Rights by Squatting: Land Ownership Risk and Adverse Possession Statutes," *Land Economics*, Vol. 77, pp. 360-370.

C. Regulation of Private Property

Text, Chapter 7.

Polinsky, A. Mitchell (1979) "Controlling Externalities and Protecting Entitlements: Property Right, Liability Rule, and Tax-Subsidy Approaches," *J. Legal Stud.*, Vol. 8, pp. 1-48.

Calabresi, Guido, and A. Douglas Melamed (1972) "Property Rules, Liability Rules, and Inalienability: One View of the Cathedral," *Harvard Law Review*, Vol. 85: 1089-1128.

Boomer v. Atlantic Cement Company, 26 N.Y.2d 219, 309 N.Y.S.2d 312, 257 N.E.2d 870, Court of Appeals of New York (1970).

Spur Industries v. Del E. Webb Development Co., 108 Ariz. 178, 494 P.2d 700 (1972).

D. Eminent Domain

Blume, Lawrence, Daniel L. Rubinfeld, and Perry Shapiro (1984) "The Taking of Land: When Should Compensation Be Paid?" *Quarterly J. Econ.*, Vol. 99, pp. 71-92.

Miceli, Thomas and Kathleen Segerson (1994) "Regulatory Takings: When Should Compensation be Paid?" *Journal of Legal Studies*, Vol. 23, pp. 749-776.

Miceli, Thomas J. and Kathleen Segerson (2007) *The Economics of Eminent Domain: Private Property, Public Use, and Just Compensation*, Foundations and Trends in Microeconomics, Vol. 3, Issue 4.

Pennsylvania Coal v. Mahon, 260 U.S. 393 (1922).

Mugler v. Kansas, 123 U.S. 623 (1887).

Penn Central Transportation Co. v. City of New York, 438 U.S. 104 (1978).

Lucas v. South Carolina Coastal Council, 112 S.Ct. 2886 (1992).

Kelo v. New London, 125 S.Ct. 2655, 545 U.S. 469 (2005).

V. The Economics of Crime and Law Enforcement

Text, Chapter 8.

Becker, Gary (1968) "Crime and Punishment: An Economics Analysis," *Journal of Political Economy*, Vol. 76, pp. 169-217.

Stigler, George (1970) "The Optimum Enforcement of Laws," *Journal of Political Economy*, Vol. 78, pp. 526-536.

Polinsky, A. Mitchell and Steven Shavell (2000) "The Economic Theory of Public Enforcement of Law," *Journal of Economic Literature*, Vol. 38, pp. 45-76.

Schenk v. United States, 249 U.S. 47 (1919).

VI. Legal Procedure

A. Models of Settlement and Litigation

Text, Chapter 9.

Cooter, Robert and Daniel L. Rubinfeld (1989) "Economic Analysis of Legal Disputes and Their Resolution," *Journal of Economic Literature*, Vol. 27, pp. 1067-1097.

Bebchuk, Lucian (1984) "Litigation and Settlement Under Uncertainty," *Rand J. Econ.*, Vol. 15, pp. 404-415.

B. The Impact of Different Cost Allocation Rules

Shavell, Steven (1982) "Suit, Settlement, and Trial: A Theoretical Analysis Under Different Methods for the Allocation of Legal Costs," *J. Legal Stud.*, Vol. 11, pp. 55-81.

C. Frivolous Litigation

Katz, Avery (1990) "The Effect of Frivolous Lawsuits on the Settlement of Litigation," *Int'l Rev. of Law and Econ.*, Vol. 10, pp. 3-27.

Bebchuk, Lucian (1988) "Suing Solely to Extract a Settlement Offer," *J. Legal Stud.*, Vol 17, pp. 437-450.

Miceli, Thomas (1994) "Do Contingent Fees Promote Excessive Litigation?" *J. Legal Stud.*, 23, pp. 211-224.

D. Selective Litigation and Legal Change

Rubin, Paul (1977) "Why is the Common Law Efficient?" *Journal of Legal Studies*, Vol. 6, pp. 51-63.

Priest, George (1977) "The Common Law Process and the Selection of Efficient Rules," *Journal of Legal Studies*, Vol. 6, pp. 65-82.

Priest, George and Benjamin Klein (1984) "The Selection of Disputes for Litigation," *J. Legal Stud.*, Vol. 13, pp. 1-55.

E. Plea Bargaining

Reinganum, Jennifer (1988) Plea Bargaining and Prosecutorial Discretion," *American Economic Review* Vol. 78: pp. 713-728.

VII. Antitrust Law

Text, Chapter 10.

Gilbert, Richard and Oliver Williamson (1998) "Antitrust Policy," in *The New*

Palgrave Dictionary of Economics and the Law, P. Newman, ed., Vol. 1, pp. 82-88.

Standard Oil Co. v. United States, 221 U.S. 1, (1911).