

Syllabus 40041

Law and Economics (24 hours, 6 Weeks, 2 Units per Week)

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Course description and objectives

Over the last decades, the economic approach to law has become an important part of the canon in Anglo-American scholarship. In Europe, though still far from being widely accepted, it is progressively gaining theoretical interest and exercising practical influence in legal thought and discourse.

The aim of this course is to present some basic *theoretical tools* of the economic approach to law, and discuss two major pictures of law and economics: the *conventional* and the *behavioral*, the former being a standard view which has been challenged by the latter in the last years. The course will also consider, to this purpose, the accounts that the two pictures give of some particular areas of law (such as contract law and property law).

The course is structured in six weeks. W1 and W2 provide a general overview of the law and economics movement, address some methodological issues and distinctions, and give a basic toolkit for economic analysis. In particular, focus is placed on the varieties of economic efficiency and on Coase Theorem.

W3 and W4 present the two rival pictures. First, the Conventional picture is considered, focusing on the standard conception of economic rationality and the basic idea of legal rules as incentives. Second, the Behavioral picture is considered, starting from the studies on human heuristics and biases, and discussing the nudge approach as a form of “libertarian paternalism”.

W5 and W6 explore the differences between the two pictures with respect to contract law and property law, respectively. On the one hand, there are economic assumptions that allegedly explain and justify such law, at least in part. On the other hand, there are behavioral findings that challenge those conventional accounts.

Students are expected to learn the relevant notions, use the basic theoretical tools, and critically discuss the reading materials that will be provided.

Weeks

Week 1: Theoretical Tools, Efficiency and its Varieties

1. The varieties of efficiency, I: productive efficiency; Pareto superiority and Pareto optimality
2. The varieties of efficiency, II: Kaldor-Hicks criterion; wealth maximization

Readings:

Coleman, J.L. 1980, *Efficiency, Exchange, and Auction: Philosophic Aspects of the Economic Approach to Law*, California Law Review, 68: 221-249.

Week 2: Theoretical Tools, Coase Theorem

3. Efficient resource allocation: Coase theorem
4. Transaction costs and property rights

Readings:

Coase, R. 1960, *The Problem of Social Cost*, The Journal of Law and Economics, 3: 1-44.

Week 3: The Conventional Picture

5. Economic rationality and the law
6. The use of economics for understanding law

Readings:

Posner, R. 2014, *Economic Analysis of Law*, 9th ed., Wolters Kluwer, pp. 3-35.

Miceli, T.J. 2017, *The Use of Economics for Understanding Law: An Economist's View of the Cathedral*, in T.S. Ulen (ed.), "Methodologies of Law and Economics", Edward Elgar, pp. 18-43.

Week 4: The Behavioral Picture

7. Behavioral law and economics
8. Paternalism and nudges

Readings:

Ulen, T.S. 2017, *Behavioral Law and Economics*, in T.S. Ulen (ed.), "Methodologies of Law and Economics", Edward Elgar, pp. 203-243.

Sunstein, C. 2014, *Nudges.Gov*, in E. Zamir and D. Teichman (eds.), "Behavioral Economics and the Law", OUP, pp. 719-747.

Week 5: Contract Law

9. The conventional picture: benefits of exchange; contract validity; remedies for breach of contract
10. The behavioral picture: consumer transactions and behavioral market failures

Readings:

Miceli, T. 2004, *The Economic Approach to Law*, Stanford UP, pp. 109-160.

Bar-Gill, O. 2014, *Consumer Transactions*, in E. Zamir and D. Teichman (eds.), "Behavioral Economics and the Law", OUP, pp. 465-490.

Week 6: Property Law

11. The economics of property law: fundamentals
12. Behavioral economics and property law: achievements and challenges

Readings:

Miceli, T. 2004, *The Economic Approach to Law*, Stanford UP, pp. 161-206.

Lewinsohn-Zamir, D. 2014, *Behavioral Law and Economics of Property Law: Achievements and Challenges*, in E. Zamir and D. Teichman (eds.), "Behavioral Economics and the Law", OUP, pp. 377-404.

Requirements and Assessment

Two assessment options:

A. Essay

After the end of the course (deadline: end of February 2024), submission of a final essay (from 5,000 up to 7,000 words) on any of the topics discussed, possibly related to the student's doctoral interests.

Also participation in class discussion will be taken into account for the final grade.

B. Oral presentation and discussion

From Unit 5 to 12, presentation of one reading material and discussion of someone else's presentation. Before presentation, submission of a written outline (1 page) for the benefit of the participants.

Also the quality of the written outline will be taken into account for the final grade.