

SOCS 645
Spring 2009
Mondays, 6:00 - 8:30 p.m.

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X2366

LAW AND ECONOMICS

One of the most interesting and important developments in social science since 1970 has been the "discovery" of a consistent economic logic underlying the great common law subjects of property, contract, tort and crime, the thousand-year-old bedrock of the English and American legal systems. Property and contract, scholars have argued, provide the institutional scaffolding that makes free exchange in markets possible, while the liability systems of tort and crime mimic market exchange in areas of human activity where market exchange itself, for well-defined reasons, is not possible. This course seeks to expose this underlying economic logic through the close investigation of a series of paradigmatic problems and examples in light of some simple but powerful economic analysis.

No prior background in economics or law is required. There is no textbook; all readings for the course are available for viewing and downloading on the Olin Library electronic reserve, at <http://eres.olin.wesleyan.edu>. The password is *socs645*. Beyond the readings assigned below, course requirements include three seven-page essays, due in class on March 2, April 6 and May 4.

Reading Assignments

I. Property (January 26)

1. Adelstein, "The Origins of Property and the Powers of Government," in Samuels and Mercurio, eds., *The Fundamental Interrelationships Between Government and Property* (1999), pp. 25-35.

II. Exchange and Efficiency (February 2)

1. Coase, "The Problem of Social Cost (1960)," excerpted in Ogus and Veljanovski, eds., *Readings in the Economics of Law and Regulation* (1984), pp. 72-84.
2. Coater, "Coase Theorem," in Eatwell, Milgate and Newman, eds., 1 *The New Palgrave: A Dictionary of Economics* (1987), pp. 457-460.
3. Seelye, "Utility Buys Town It Choked, Lock, Stock and Blue Plume," *New York Times*, May 13, 2002, pp. A1, A14.

III. Transaction Cost (February 9)

1. Posner, *Economic Analysis of Law* (1972), pp. 10-21.
2. *Leroy Fibre Co. v. Chicago, Minneapolis and St. Paul R.R.*, 232 U.S. 340 (1914).
3. *King v. Mister Maestro*, 224 F. Supp. 101 (S.D.N.Y. 1963).

IV. Externality (February 16)

1. Orr, *Property, Markets and Government Intervention* (1976), pp. 285-302.
2. Calabresi and Melamed, "Property Rules, Liability Rules and Inalienability: One View of the Cathedral," 85 *Harvard Law Review* (1972), pp. 1089-1127.

V. Retribution and Deterrence (February 23)

1. Adelstein, "Retribution and Deterrence in Markets for Goods," unpublished manuscript (1998).
2. *McGautha v. California*, 402 U.S. 183 (1971), opinion of Harlan, J.

Written Assignment #1: Punishments and Prices (due in class, March 2)

1. Bentham, *Principles of Penal Law* (excerpt), in Kadish and Paulsen, *Criminal Law and Its Processes* (1969), pp. 83-84.
2. Andenaes, "General Prevention: A Broader View of Deterrence," in Gerber and McAnany, eds., *Contemporary Punishment: Views, Explanations and Justifications* (1972), pp. 108-119.
3. Packer, *The Limits of the Criminal Sanction* (1968), pp. 35-61.

VI. Eminent Domain (March 2)

1. Review Adelstein, "The Origins of Property and the Powers of Government."
2. Miceli and Segerson, *The Economics of Eminent Domain: Private Property, Public Use, and Just Compensation* (2007), pp. 1-10.
3. Cole and Grossman, *Principles of Law and Economics* (2005), pp. 144-154.
4. Epstein, *Takings: Private Property and the Power of Eminent Domain* (1985), pp. 57-66.

VII. Property and Technology (March 23)

1. Goldstein, *Copyright's Highway* (1994), pp. 3-36.
2. Adelstein and Peretz, "The Competition of Technologies in Markets for Ideas: Copyright and Fair Use in Evolutionary Perspective," 5 *International Review of Law and Economics* (1985) pp. 209-238.

VIII. Fair Use (March 30)

1. Faden, "A Fair(y) Use Tale," accessible at

<http://cyberlaw.stanford.edu/documentary-film-program/film/a-fair-y-use-tale>

2. Sony Corporation of America v. Universal City Studios, 464 U.S. 417 (1984).
3. A&M Records v. Napster, 114 F. Supp. 2d 896 (N.D. Cal. 2000).

Written Assignment #2: Copyright in the Digital Age (due in class, April 6)

1. Litman, *Digital Copyright* (2001), pp. 151-170.
2. Vaidhyathan, "MP3: It's Only Rock and Roll and the Kids Are Alright," *The Nation*, July 24/31, 2000, pp. 31-34.
3. Ku, "The Creative Destruction of Copyright: Napster and the New Economics of Digital Technology," *69 University of Chicago Law Review* (2002), pp. 263-324.

IX. Markets for Crimes (April 6)

1. Miceli, *The Economic Approach to Law* (2004), pp. 283-295.
2. Adelstein, "Victims as Cost Bearers," *3 Buffalo Criminal Law Review* (1999), pp. 131-173.

X. Plea Bargaining I (April 13)

1. Langbein, "On the Myth of Written Constitutions: The Disappearance of Criminal Jury Trial," *15 Harvard Journal of Law and Public Policy* (1992), pp. 119-127.
2. Uviller, *Virtual Justice: The Flawed Prosecution of Crime in America* (1996), pp. 177-199 ("Plea Bargaining").
3. United States v. Jackson, 390 U.S. 570 (1968).

XI. Plea Bargaining II (April 20)

1. Miller, Dawson, Dix and Parnas, *Prosecution and Adjudication* (1982), pp. 866-894, 909-913:
 - Brady v. United States, 397 U.S. 742 (1970)
 - Bordenkircher v. Hayes, 434 U.S. 357 (1978)
 - Santobello v. New York, 404 U.S. 257 (1971).

XII. Comparative Criminal Procedure (April 27)

1. Adelstein, "The Plea Bargain in England and America: A Comparative Institutional View," in Burrows and Veljanovski, eds., *The Economic Approach to Law* (1981),

pp. 226-252.

2. Adelstein, "Plea Bargaining -- A Comparative Approach," 3 *The New Palgrave Dictionary of Economics and the Law* (1998), pp. 46-50.
3. Jörg, Field and Brants, "Are Inquisitorial and Adversarial Systems Converging?" in Fennell, Harding, Jörg and Swart, eds., *Criminal Justice in Europe: A Comparative Study* (1995), pp. 41-56.

Written Assignment #3: German Plea Bargains? (due in class, May 4)

1. Goldstein and Marcus, "The Myth of Judicial Supervision in Three 'Inquisitorial' Systems: France, Italy, and Germany," 87 *Yale Law Journal* (1977), pp. 240-283.
2. Langbein, "Land Without Plea Bargaining: How the Germans Do It," 78 *Michigan Law Review* (1979), pp. 204-225.
3. Dubber, "American Plea Bargains, German Lay Judges, and the Crisis of Criminal Procedure," 49 *Stanford Law Review* (1997), pp. 547-605.

XIII. Concluding Class (May 4)