

Economic Analysis of Law  
**ECO 320H**  
Fall, 2011  
Course Outline

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Class times: Section L0101      Wed, 2-4 PM,      SS 2135  
                  Section L5101      Wed, 6-8 PM,      UC 140

Tutorials:    Friday, Oct. 14, 2-4 PM, SS 2135, Monday, Oct. 17, 6-7:30 PM, SS 1087 before term test; Friday, Nov. 4, 2-4 PM, RW 117, Thursday Nov. 10, 6-7:30 PM, SS1083 after term test; Thursday, December 8, 2-4 PM, tba, 6-8 PM tba final course review session.

TAs: David Dueck, Sameer Nurmohamed.

### Administrative Matters

**Prerequisites:** ECO 200Y/204/206Y and MAT 133Y/123&4H/135&6H/137Y/157Y; time and energy for reading and thinking about the course, good English language skills – this is a verbal course.

**Marking Scheme:** mid-term test 40%, short in-class and take-home exercises 5%, final exam 55%. **Term test October 19.** Short exercises – 2, each worth 5%, **best 1 out of 2 count**, done at end of class or due at start of class, in which case 50% late penalty up to 1 hour, 100% penalty after 1 hour, **no make-up**. Absence from the test will only be excused for serious illness, notified to me no later than the day after the test, with a note from a doctor that I deem sufficient. Workforce absenteeism averages 3%. An excused absence leads to a make-up term test.

**Office hours:** Max Gluskin House 323, Tuesday, 3-4 PM, Thursday, 5-6 PM.  
Ask questions about the course in these office hours after studying relevant readings.

Web support: this is a **Blackboard course**. Blackboard will have announcements, handouts, class notes and a discussion board. Please submit general questions to the discussion board. Your classmates may answer them; if not, I will try to answer within two working days. Everyone can benefit from the question and answers. Access the course website at <http://portal.utoronto.ca> and log in using your UTORid and password. Once in, look for the **My Courses** module, where you will find the link to the ECO 320 course website and links to your other Blackboard-based courses.

**Email policy:** Please address questions about the course ideas, materials, substance and procedure to the discussion board. For personal issues only, email me at: [dewees@chass.utoronto.ca](mailto:dewees@chass.utoronto.ca). I will try to respond within two working days. Use your UTORmail account and include ECO 320 and your name in the subject line.

## 1. Course Materials

### BUY:

Cooter, Robert and Thomas Ulen, *Law and Economics*, 6<sup>th</sup> edn., 2012, Pearson Addison Wesley, 500+ pages. UofT Bookstore. Referred to below as C&U. Used copies of the 5<sup>th</sup> edition are available locally but you may need to look at bits of the 6<sup>th</sup> edition to get the complete picture. Chapters and pages of the 5<sup>th</sup> edition are indicated in brackets [] where they are different from the 6<sup>th</sup> edition as: [5th edn pp. 1-10.] You may share a book with another student, but **studying Cooter & Ulen is essential**.

### Reference:

S.M. Waddams, *Introduction to the Study of Law*, 6<sup>th</sup> edn, 2004, Carswell. Written for beginning law students. Explains what the law is, where it comes from, the role of legislatures, courts and lawyers, the structure of Canadian courts. Optional.

### Other Law and Economics books of interest (optional):

Polinsky, A.M, *An Introduction to Law and Economics*, 3<sup>rd</sup> edn., 2003, Aspen Publishers. 126 pages. Basic application of economic principles to property, contracts, torts, criminal law.

Posner, Richard A., *Economic Analysis of Law*, 6<sup>th</sup> edn., 2003, Aspen Publishers. 747 pgs. Extensive application of economics to all areas of law by a leading scholar, now a judge.

Shavell, S., *Foundations of Economic Analysis of Law*, 2004, Belknap Press of Harvard University Press. 768 pages. Broad coverage, short chapters, many legal doctrines.

Wittman, Donald A., ed., *Economic Analysis of the Law*, 2003, Blackwell. 352 pgs, paper. A collection of classic articles on property, crime, contracts, family law, the firm. No torts.

Polinsky, A. Mitchell and Steven Shavell, 2006, "Economic Analysis of Law," Stanford L&E Olin WP 316, <http://ssrn.com/abstract=859406> . 42 pages. Survey of: property; torts; contracts; litigation; and criminal law. Includes some criticisms of the economic analysis of law.

*The New Palgrave Dictionary of Economics and the Law*, 1998, 2004, ed. Peter Newman, Palgrave MacMillan.

### Finding Journals:

The reading list includes some journal articles or working papers. The journals are available to UofT students through the UofT library on JSTOR, <http://www.jstor.org> . A link is provided below to the particular journal. Browse for the issue, click on the article.

For off-campus access to journals, go to:

<http://myaccess.library.utoronto.ca/login?url=http://www.jstor.org/search> .

You will be asked to provide your library barcode and a PIN, which should be the last 4 digits of your student number, unless you have changed it. Once you log in, you can access all JSTOR articles. Use the search function to search for the name of the article. The article you want may

not be at the top of the results, so check the article with the exact title as listed in the outline. Once you find the article, click on it, and view it online or download it as a pdf file.

## 2. Course Goals

- Learn basic elements of the law, predominantly Canadian and US common law and some statutory law. Learn how the basic elements of the legal system work.
- Learn how to use economic tools to analyse and understand the efficiency and distributional effects of alternative legal doctrines.
- Understand the implications of costly information, limited information and transactions costs for the application of economic models to real-world problems.

## 3. Course Topics and Readings

### 1. Introduction to law, legal institutions and language,

C&U, Chapter 1: Introduction to L&E (pp. 1-10) [5th edn pp. 1-13].

Chapter 3: Introduction to Law and Legal Institutions (55-69) [5th edn 59-73]

Background: C&U, Chapter 2 Microeconomics Review; Waddams, Chs. 1, 3, 10.

### Weeks 2 & 3:

### 2. Property Rights

C&U, Chapter 4: An Economic Theory of Property (70-108) [74-114].

Property as bargaining, a social contract. Coase, transactions costs. Protecting property rights: damages versus injunctions.

Chapter 5: Topics (112-186, ex as noted below, net 47 pgs) [5th edn 119-194, net 45 pgs.]

Patents, copyright; **skip I.C (135-138) [5th edn 143-147]**; public and private property; establishing property rights; **skip II.E and III (153-166) [5th edn 161-174]**; remedies, **skip IV.D and E (174-184) [5th edn 182-192]**.

D.N. Dewees, M. Halewood, "The Efficiency of the Common Law: Sulphur Dioxide Emissions in Sudbury", *U. of Toronto Law J.* 42, 1992, pp. 1-21, draft excerpts. (H)

Bate, Roger, 2006, "Water, Water Everywhere, But . . ." American Enterprise Institute, Articles and Commentary, August 3, 2006, <http://www.aei.org/article/24743> . (2 pgs)

**Background, optional:** *The Economist* 22 May 2010 "For Want of a Drink" special report; R. Coase, "The Problem of Social Cost", *Journal of Legal Studies* (1960).

### Weeks 4 & 5:

### 3. Torts

C&U, Chapter 6: An Economic Theory of Tort Law (187-227). [5th edn Ch. 8, 322-364.]

Chapter 7: Topics (230-274 except as noted below, net 41 pgs) [5th edn Ch 9, 367-413 net 42]; read I.A: relaxing the core assumptions: rationality, regulations, insurance, bankruptcy, litigation costs; **skip I.B.1&2 (244-247) [5th edn 381-385]**; read I.B.3&4, read II. computing damages (248-261) [5th edn 385-398]; read III empirical assessment.

P. Coyte, D. Dewees, M.J. Trebilcock, "Medical malpractice - The Canadian Experience," *N.E. J. Medicine* 324 (1991) pp. 89-93. (H)

Omri Ben-Shahar (2006) "The (Legal) Pains of Vioxx: Why Product Liability Can Make Products More Dangerous," *The Economists' Voice*: Vol. 3: Iss. 6, Article 6:  
<http://www.bepress.com/ev/vol3/iss6/art6> . (4 pages)

Ted Frank, 2006, "Justice Scams" New York Sun, August 8, 2006. Attack on Vioxx and other mass tort litigation. [http://www.aei.org/publications/pubID.24756/pub\\_detail.asp](http://www.aei.org/publications/pubID.24756/pub_detail.asp) .

Kitchen Aid Toaster Safeguards (H)

Re: product liability, see Wacky Warning Label Contest site:  
<http://www.wackywarninglabelstv.com/> .

## Week 6 Term Test

### Weeks 7 & 8:

#### 4. Contracts

C&U, Chapter 8: An Economic Theory of Contract (276-305) [5th edn Ch. 6, 195-244].

Bargaining theory vs economic theory of contract; remedies; default rules and gap-filling.

Chapter 9: Topics (307-372) [5th edn Ch. 7, 245-310], math appendix ? (373-381) [5th edn 311-321].

Remedies, contingencies, reliance, defences & excuses.

Rogers comma dispute. Toronto Globe and Mail, Report on Business: August 7, 2006, p. B1, August 16, p. B6. (H)

Dell Dimension One-Year Limited Warranty (H)

**Background, optional:** Shavell, Steven, 1980, "[Damage Measures for Breach of Contract](#)," *The Bell Journal of Economics*, Vol. 11, No. 2 (Autumn, 1980), pp. 466-490.

### Weeks 9 & 10:

#### 5. Procedure

C&U, Chapter 10: An Economic Theory of the Legal Process. (pp. 382-418) [5th edn 417-473]

The value of a claim, when to sue, the agency problem with your lawyer; information and the settlement process; cost and fee rules in the trial; appeals.

Chapter 11: Topics. (pp. 419-453) [5th edn Ch. 10, Sec. VII, 474-484. **Study 6<sup>th</sup> edition.**]

The market for legal services, class actions, nuisance suits, empirical assessment.

M.L. Schwartz and D.J.B. Mitchell, "An Economic Analysis of the Contingent Fee in Personal-Injury Litigation", *Stanford L. Rev.*, 22 (1970), pp. 1125-1148.

<http://www.jstor.org/journals/00389765.html> . Omit footnotes – the main text is not long.

L. Kaplow, "Private Versus Social Costs in Bringing Suit", *J. Legal Studies* 15:2, June 1986, pp. 371-383. <http://www.jstor.org/journals/00472530.html>. Skip the footnotes.

Lexington, "Law v Common Sense" *The Economist*, 17 January, 2009, p. 38. Available through the UofT Library, e-journals.

E.J. Lopez, ed., *The Pursuit of Justice: Law and Economics of Legal Institutions*, read the promotional material only (Highlights and Synopsis) at:  
[http://www.independent.org/publications/books/book\\_summary.asp?bookID=86](http://www.independent.org/publications/books/book_summary.asp?bookID=86) .

Weeks 11 & 12:

## 6. Crime

C&U, Chapter 12: An Economic Theory of Crime and Punishment. (pp. 454-484.) [5th edn Ch. 11, pp. 485-518]

Chapter 13, Topics (pp. 485-532). [5th edn Ch. 12, pp. 519-567.]

Criminal law theory; rational crime; intent and irrationality; optimal enforcement and deterrence; private enforcement and deterrence, death penalty, drugs, guns, US trends.

Donohue, John and Justin Wolfers, 2006, "The Death Penalty: No Evidence for Deterrence," *The Economists' Voice*: 3:5, # 3. <http://www.bepress.com/ev/vol3/iss5/art3> .

K. Avio and C.S. Clark, 1978, "The Supply of Property Offences in Ontario: Evidence on the Deterrent Effect of Punishment", *Canadian J. of Econ*, February, pp. 1-19. See JSTOR: <http://www.jstor.org/journals/00084085.html> .

Crime and Politics: The Velvet Glove, *The Economist*, 24 October 2009, pp. 33-34.  
Available through the UofT Library, e-journals, ProQuest.

"Government of Canada Re-Introduces Bill Seeking to Create Mandatory Jail Sentences for White Collar Crime," *Blakes Bulletin* 5 May, 2010,  
<http://www.blakes.com/english/view.asp?ID=3944> .

"Accused Ponzi schemer won't be prosecuted," CBC news story 15 November 2010.  
<http://www.cbc.ca/canada/story/2010/11/15/tzvi-erez.html> .

**Background:** Polinsky, A. Mitchell and Steven Shavell, 2000, "The Economic Theory of Public Enforcement of Law" *J. Econ. Literature* 38:1, March, 45-76.  
<http://www.jstor.org/journals/00220515.html> . Entirely optional.