

Economic Analysis of Law
ECO 320H
Fall, 2013
DRAFT Course Outline

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Class times: Section L0101	Wed, 2-4 PM,	SS 2135
Section L5101	Wed, 6-8 PM,	UC 244
Tutorials: L0101 and L5101	Mon, 4-5 PM	Brennan 200
Tests: L0101 and L5101	Mon, 4-5 PM, Oct. 7, Nov. 4	EX 100

Tutorials: **Before and after term tests:** Sept. 30, Oct. 14, Oct. 28, Nov. 11. Other times as needed. **Final review:** Wednesday, December 4, 2-4 PM, **TBA**, 6-8 PM **TBA**.
TAs: **TBA**

Administrative Matters

Prerequisites: ECO 200Y/204/206Y and MAT 133Y/123&124H/135&136H/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 tests 20% for the first test, 25% for the second test, in-class exercise 5%, final exam 50%. **Term tests Mon., October 7, Mon., November 4, 4-5PM.** Short exercise worth 5% done at end of class on September **18? no make-up.** Absence from the tests 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. An unexcused absence leads to a zero.

Office hours: Max Gluskin House 323, **Monday, 5-6PM,** Thursday, **4-5 PM.** Ask questions about the course in these office hours after studying relevant readings. See this video for motivation: <http://www.youtube.com/watch?v=576TsBiJpm4> .

Web support: this is a **Blackboard course.** Blackboard will have announcements, readings, 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 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 . Use your UTORe-mail account and write ECO 320 and your name in the subject line. I will try to respond within two working days.

1. Course Materials

BUY:

Cooter, Robert and Thomas Ulen, *Law and Economics*, 6th edn., 2012, Pearson Addison Wesley, 500+ pages. UofT Bookstore. Referred to below as C&U. Used copies of the 5th edition are available locally but check the 6th edition for a complete picture. Chapters and pages of the 5th edition are indicated in brackets [] where they are different from the 6th edition as: [5th: pp. 1-10.] Share a book if you want. **Studying Cooter & Ulen is essential.**

Reference:

S.M. Waddams, *Introduction to the Study of Law*, 7th edn, 2010, Carswell. Written for beginning law students. Explains what the law is, where it comes from, the role of legislatures, courts and lawyers and the structure of Canadian courts. Optional.

Other Law and Economics books of interest (all entirely optional):

Polinsky, A.M, *An Introduction to Law and Economics*, 4rd edn., 2011, Aspen Publishers. 216 pages. Basic application of economic principles to property, contracts, torts, criminal law.

Posner, Richard A., *Economic Analysis of Law*, 8th edn., 2010, Aspen Publishers. 1040 pgs. Extensive application of economics to all areas of law by a leading scholar, 7th cir. CofA 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, eds, *Handbook of Law and Economics*, 2007, North-Holland. Survey of: property, torts, contracts, litigation, legal process, environment, tax.

The New Palgrave Dictionary of Economics and the Law, 2004, ed. Peter Newman, Palgrave MacMillan. 2216 pages. Also available online.

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

Week 1

1. Introduction to law, legal institutions and language,

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

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

Background: Waddams, Chs. 1, 3, 10.

Optional: short overview of the Canadian court system by the federal Department of Justice, see: <http://www.justice.gc.ca/eng/dept-min/pub/ccs-ajc/index.html> .

Week 2

2. Application of Economics to Legal Issues

Finish the readings listed for Week 1.

C&U, Chapter 2 Microeconomics Review, review your micro theory notes especially for Pareto, Kaldor-Hicks, welfare comparisons.

Read C&U, Chapter 4: An Economic Theory of Property (half: 70-91) [5th: 74-96].

Economic theory of property, property as bargaining.

Weeks 3 & 4:

3. Property Rights

C&U, Chapter 4: An Economic Theory of Property (pp. 70-108) [5th: 74-114] - finish.

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

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

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

Aaron, Bob, "Is construction crane 'trespassing?'", *Toronto Star*, September 16, 2011, <http://www.yourhome.ca/homes/columnsblogs/article/1054499--aaron-is-construction-crane-trespassing> .

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); Percy, David R.,

2012, "Resolving Water-Use Conflicts: Insights from the Prairie Experience for the Mackenzie River Basin," CD Howe Commentary #341.

October 7: Term Test, Monday, 4PM.

Weeks 5 & 6:

4. Torts

C&U, Chapter 6: An Economic Theory of Tort Law (pp. 187-227) [5th: Ch. 8, 322-364.]
Chapter 7: Topics (pp. 230-274 except as noted below, net 41 pgs) [5th: 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: 381-385]**; read I.B.3&4, read II. computing damages (248-261) [5th: 385-398]; read III empirical assessment.

Optional: D. Dewees, "The Efficiency of Comparative Negligence," 1-page summary. (P)

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

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 .

Kitchen Aid Toaster Safeguards (P)

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

Weeks 7 & 8:

5. Contracts

C&U, Chapter 8: An Economic Theory of Contract (pp. 276-305) [5th: Ch. 6, 195-244].
Bargaining theory vs economic theory of contract; remedies; default rules and gap-filling.
Chapter 9: Topics (pp. 307-372) [5th: Ch. 7, 245-310]. **Optional:** skim math appendix (373-381) [5th: 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. (P)

Dell Dimension One-Year Limited Warranty (P)

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.
[Philip Preville, "Faulty Towers," Toronto Life, July, 2012](#), pp. 36-44. Illustrates imperfections in the market for constructing and purchasing condominium units in Toronto.

Test: November 4: Contracts & Torts, Monday 4PM

Weeks 9 & 10:

6. Procedure

C&U, Chapter 10: An Economic Theory of the Legal Process. (pp. 382-418) [5th: 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: Ch. 10, Sec. VII, 474-484.]
The market for legal services, class actions, nuisance suits, empirical assessment. **Skip sections G & H (pp. 433-436); skim section II. (pp. 442-452).**

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 .

Background: McMillan, 2011, "Litigating in Canada," short overview of differences from US procedure. (P)

Weeks 11 & 12:

7. Crime

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

Chapter 13, Topics (pp. 485-532). [5th: 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*, Vol. 11, No. 1, 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> .

Dee, Thomas S. and Brian A. Jacob, 2010, “Rational Ignorance in Education: A Field Experiment in Student Plagiarism,” NBER Working Paper No. 15672. Read S. 1 (pp. 1-3), S 5.3 and S. 6 (pp. 25-28). <http://cepa.stanford.edu/sites/default/files/w15672.pdf> .

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.