

# 848: ECONOMIC ANALYSIS OF LAW

Winter Term 2011

**Class Times:** Mondays 11.30am-1.00pm<sup>1</sup>, Thursdays 1.00pm-2.30pm Dunning 10

**Office Hours:** Wednesdays 10.00am – 12noon or by appointment

## *Introduction and Background to the Course*

The origin of this course lies with a new joint degree program offering an MA in Economics and a J.D. offered by the Queen's Department of Economics and Faculty of Law. The course is also open to any MA student in Economics and to qualified students from the Faculty of Law.

The field of Law and Economics (or the Economic Analysis of Law, which I prefer) is a young one dating back to the work of Ronald Coase and later Gary Becker, who both received Nobel prizes for their pioneering work. The Economic Analysis of Law imposes the rigorous modeling methodology of microeconomic theory on to the framework of laws and legal sanctions, and asks, broadly “what is the effect of a given legal framework from an efficiency perspective?” (the positive question) and “what would an optimal legal framework look like?” (the normative question). These are not questions that legal scholars had traditionally asked. Indeed, there is still a debate as to whether the economists' concept of efficiency has much relevance to a legal scholar, who is more concerned with ideas of justice and fairness.

## *Prerequisite Courses*

There are none, except that a Law Student taking this course (other than those already enrolled in the joint program) must satisfy the admission requirements to the MA Economics program.

## *Text*

I have decided to use a textbook for the course. The book is Cooter, R. and Ulen, T. *Law and Economics* 5<sup>th</sup> edition 2007, Pearson-Addison Wesley, Boston (hereafter CU). Although this book is technically an undergraduate text, it is an excellent and thoughtful book, and the material is in most cases at the right level for this course. In addition we will be making frequent reference to chapters from the two volume *Handbook of Law and Economics* edited by: A.M. Polinsky and S. Shavell (North-Holland) (hereafter HLE). My recommendation is that some of you purchase the Cooter and Ulen book, but it should be perfectly possible to share copies among a few students. The *Handbook* is available online.

Other required readings are indicated in the reading list.

## *Reference Books*

There are several excellent books in the field, mostly by its pioneering scholars. I list them here

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<sup>1</sup> This time will almost certainly need to be rescheduled.

for reference.

Landes, W. and R. Posner *The Economic Structure of Intellectual Property Law* , Harvard 2003.

Polinsky, M. *An Introduction to the Economic Analysis of Law* 3<sup>rd</sup> edition 2003, Aspen.

Posner, Richard. *Economic Analysis of Law*, 2010 8<sup>th</sup> edition, Aspen.

Shavell, Steven. 2004. *Foundations of Economic Analysis of Law*. Harvard.

### ***Course Requirements***

There will be a midterm exam and a final exam. In addition, students will be required to do a presentation in the last two weeks of term. Presentations will be organized in groups of 2 or 3 students (depending on how large the enrolment turns out to be). Again, depending on numbers, the presentation may be of a single published article from *The Journal of Law and Economics*, *The Journal of Legal Studies*, *Law, Economics and Organization* and *The European Journal of Law and Economics* (although articles from other journals may be allowed) or may be a summary of current research from an area of law and economics that is active in research. When the class enrolment has settled down I will discuss further guidelines on these presentations.

### ***Evaluation***

There will be a mid-term examination and a final. Your grade is computed according to the formula:

$$FG = \text{MAX}\{.7F+.15MT+.15P, .6F+.25MT+.15P\}$$

Special Accommodation on grading may be made for anyone who has a strong wish to write a term paper.

### ***Course Website***

<http://qed.econ.queensu.ca/faculty/ware/848/index.html>

## *Outline*

### **I. Property Rights: basic theory. COASE, COASE AND MORE COASE**

CU Ch 4,5  
HLE Ch 3

### **II. Extensions of Property Rights theory**

*The Takings debate*

CU Ch. 5.

Miceli, T.J. and K. Segerson *Compensation for Regulatory Takings: An Economic Analysis with Applications* (1996)

Blume, L. and D. Rubinfeld "Compensation for Takings: An Economic Analysis" 72 CAL L REV. 569 (1984)

### **III. Economic Theory of Contracts**

CU Ch 6

Hermalin, B.E., A.W.Katz, and R. Craswell, "The Law and Economics of Contracts" in Polinsky and Shavell, eds HANDBOOK OF LAW AND ECONOMICS v.1 (2007)

Trebilcock, M.J. *The Limits of Freedom of Contract* (1993)

### **IV. Extensions of economic theory of contracts**

CU Ch 7

### **V. Economic Theory of Tort Liability**

CU Ch 8, 9

HLE, Ch 2

### **VI. Litigation**

HLE, Ch 4

### **VII. More extensions of Tort theory**

### **VIII. Antitrust Law and Economics (a guest lecture will be given by senior managers from the Canadian Competition Bureau)**

### **IX. Antitrust Law and Economics 2**

**X. The Law and Economics of Intellectual Property 1**

Menell, P. and S. Scotchmer “Intellectual Property Law” Ch 19 of Handbook of Law and Economics Vol 2.

**XI. Student Presentations**

**XII. Student Presentations**