LAW & ECONOMICS
PROFESSOR THOMAS A. LAMBERT
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COURSE OVERVIEW

The law and economics movement examines legal rules and standards through the lens of microeconomics. Some law and economics scholarship has been descriptive, assessing the degree to which the law *in fact* promotes efficiency. Other scholarship has been more normatively focused, *critiquing* rules and standards according to the degree to which they promote efficiency. An understanding of law and economics is immensely valuable to practicing lawyers, who may employ economic insights in making legal and policy arguments.

Following the template of Judge Richard Posner’s classic text, *Economic Analysis of Law*, most law and economics courses focus on the common law—tort, contracts, property, and the traditional criminal law. This course diverges from that path somewhat by focusing primarily on regulation (what F.A. Hayek would call “thesis” as distinct from the common law’s “nomos”). While we will examine a number of common law doctrines, we will mainly consider post-New Deal efforts to regulate market failures and other defects in private ordering.

In terms of structure, we will begin with the common law, briefly considering some classic analyses of tort, contract, and agency doctrines. We will then turn to regulation. We will examine the primary bases for regulating: the classic market failures of externalities, public (and quasi-public) goods, market power, and information asymmetry; agency costs (a combination of two market failures); and the cognitive and volitional deficiencies identified by behavioral economists. For each basis for regulation, we will consider the adverse “symptoms” that may warrant a regulatory fix, the “disease” giving rise to those symptoms, the “remedies” that may be used to address each, and the “side effects” resulting from the various remedies.

REQUIRED MATERIALS

The primary text for the course is:

As of the beginning of the semester, the book is not yet available for order. It is scheduled to be released on August 27, 2017. I will post to TWEN electronic copies of any book sections that are assigned before the book is available.

In addition to the required text, I will post a number of readings to TWEN. Please sign up for the course TWEN page as soon as possible.

**TOPICS COVERED**

Following is a list of the topics we will consider over the course of the semester:

I. **Foundational Concepts**
   a. What is Law and Economics? (Positive vs. Normative)
   b. Why Study It?
   c. What Is Efficiency?
   d. Nomos vs. Thesis

II. **Nomos: The Common Law**
   a. Posner’s Efficiency Assertion
   b. Analysis of Various Common Law Doctrines
      i. Negligence
      ii. Contributory Negligence
      iii. Contract Damages
      iv. Punitive Damages
      v. Breach of Fiduciary Duty
      vi. Fraudulent Concealment
   c. Counterexamples

III. **Thesis – e.g., Regulation**
   a. Regulation Generally
      i. What is Regulation?
      ii. The Regulator’s Conundrum
      iii. The Overarching Model
   b. The Private Ordering Ideal
      i. Demand
      ii. Supply
      iii. Equilibrium
   c. Externalities
      i. Symptoms/Disease
      ii. Remedies/Side Effects
1. Command and Control
2. Pigouvian Taxes/Subsidies
3. Coasean Solutions

d. Public and Quasi-Public Goods
   i. Categorization
   ii. Symptoms/Disease
   iii. Remedies and Side Effects
       1. Club Goods
       2. Pure Public Goods
       3. Commons Goods

e. Agency Costs
   i. Symptoms/Disease
   ii. Remedies and Side Effects
       1. Fiduciary Duties and Shareholder Suits
       2. Mandatory Structural Rules
       3. Market Mechanisms

f. Market Power
   i. Symptoms/Disease
   ii. Remedies and Side Effects
       1. Antitrust
       2. Direct Regulation
          a. Price Controls
          b. Franchise Bidding
          c. Government Ownership

g. Information Asymmetry
   i. Symptoms/Disease
   ii. Remedies and Side Effects
       1. Remedies for Moral Hazard
       2. Remedies for Adverse Selection
          a. Licensure
          b. Mandatory Disclosure
          c. Voluntary Disclosure

h. Cognitive and Volitional Limitations
   i. Symptoms/Disease
       1. Imperfect Optimization
       2. Bounded Willpower
       3. Endogenous Preferences
   ii. Remedies and Side Effects
1. Libertarianism
2. Paternalism
3. Libertarian-Paternalism

i. Open Questions
   i. Institutional Issues
   ii. The Efficiency-Equity Tradeoff

**LEARNING OUTCOMES**

Students in this course will:

- Learn basic microeconomic theory;
- Learn to assess the efficiency of legal rules;
- Learn to identify market failures;
- Become familiar with the traditional tools for addressing market failures and the pros and cons of each;
- Examine how the Hayekian knowledge problem may create problems for regulatory regimes;
- Consider how adverse public choice concerns may afflict regulatory regimes;
- Explore the basic findings of behavioral economics;
- Practice policy analysis;
- Practice policy advocacy (written and oral).

As explained in more detail below, assessment in this course will be both summative (a final examination) and formative (drafting and critiquing policy proposals).

This course is **NOT** Standard 303 compliant (simulation, law clinic, field placement).

**GRADING**

There will be a **final examination** in this course. In addition, students will prepare a 15 to 20-page paper applying the lessons learned in the course to a contemporary regulatory issue. Each student will **present** her or his paper (a regulatory proposal) to the class, and the other students will **provide critical feedback**.

Each student’s course grade will be determined as follows:

- Examination score: 50% of course grade
- Paper score: 30% of course grade
- Presentation score: 10% of course grade
- Critique of others’ proposals: 10% of course grade
READING ASSIGNMENTS

I will post daily reading assignments. I have listed below most of the reading on the topics we will consider, and I have set forth tentative dates on which we will consider each topic. Please note four caveats:

(1) I will supplement the listed readings with some additional reading assignments that are not set forth below. At each class, you should check the precise reading assignment for the following class.

(2) The schedule below is likely to change. This is my first time teaching this course, and I cannot predict how long it will take us to cover each of the topics on the syllabus. The following represents my best guess as to how we will proceed through the course material.

(3) For each main topic (in bold), I have listed most of the assigned reading on that particular topic. I will divide the reading up into daily assignments as we progress through the semester.

(4) While you may certainly read ahead, I will sometimes have you read material on a topic after we have discussed the topic in class. (For some topics, class discussion may be better if we just “think through” the issues before you do the reading pertinent to those topics.)

Class 1 (August 21) – Foundational Concepts
• F.A. Hayek, The Confusion of Language in Political Thought

Class 2 (August 23) – Nomos: The Common Law
• David Friedman, Is the Common Law Efficient?
• Walgreen Co. v. Sara Creek Property Co.

Class 3 (August 25) – Common Law, Cont’d

Class 4 (August 28) – An Economic Approach to Regulation
• How to Regulate, Chapters 1 and 2

Class 5 (August 30) – The Private Ordering Ideal
• How to Regulate, Chapter 3

Class 6 (September 1) – Externalities
• How to Regulate, Chapter 4

Class 7 (September 6) – Externalities, Cont’d

Class 8 (September 8) – Externalities, Cont’d
Class 9 (September 11) – Externalities, Cont’d

Class 10 (September 13) – **Public and Quasi-Public Goods**
  - *How to Regulate*, Chapter 5

Class 11 (September 15) – Public and Quasi-Public Goods, Cont’d

Class 12 (September 18) – Public and Quasi-Public Goods, Cont’d

Class 13 (September 20) – **Agency Costs**
  - *How to Regulate*, Chapter 6

Class 14 (September 22, *likely rescheduled*) – Agency Costs, Cont’d

Class 15 (September 25) – Agency Costs, Cont’d

Class 16 (September 27) – Agency Costs, Cont’d

Class 17 (September 29) – **Market Power**
  - *How to Regulate*, Chapter 7

Class 18 (October 2) – Market Power, Cont’d

Class 19 (October 4) – Market Power, Cont’d

Class 20 (October 6) – Market Power, Cont’d

Class 21 (October 9) – Market Power, Cont’d

Class 22 (October 11) – **Information Asymmetry**
  - *How to Regulate*, Chapter 8

Class 23 (October 13) – Information Asymmetry, Cont’d

Class 24 (October 16) – Information Asymmetry, Cont’d

Class 25 (October 18) – Information Asymmetry, Cont’d

Class 26 (October 20) – **Behavioral Economics (Cognitive and Volitional Limitations)**
  - *How to Regulate*, Chapter 9

Class 27 (October 23, *likely rescheduled*) – Behavioral Economics, Cont’d

Class 28 (October 25) – Behavioral Economics, Cont’d
ATTENDANCE AND CLASSROOM PARTICIPATION

Attendance – Regular class attendance is expected. I may adjust a student’s grade downward if she or he misses more than four classes.

Class participation – I expect that you will do the reading assignment each day and be prepared to discuss it in class. I will “cold call” on students to discuss the reading. When a student is called on and is unprepared, the entire class suffers. Accordingly, if you have not done the reading, please let me know in advance of class so that I do not call on you. You may avail yourself of this option a couple of times without penalty. Thereafter, or if you are unprepared when called upon, you risk being penalized for deficient classroom performance. In general, I reserve the right to reward exceptional class participation or penalize poor or inappropriate class participation in determining the final grade. I may adjust grades one or two points. Note also that your participation in critiquing your classmates’ regulatory proposals (discussed above) will be considered in determining your grade, as noted.
OFFICE HOURS

I maintain an “open door” office policy, which means that you may come by my office (Room 316) any time to discuss questions concerning the course material. I trust you’ll be understanding if I’m busy at the moment and suggest that we get together later.

I frequently work outside the office, so feel free to call or email me to set up a pre-arranged meeting time. You’re always welcome to call or text my mobile number, 773.580.7123. I turn the phone off when I don’t want to be disturbed.

INFORMATION REGARDING DISABILITIES

If you need accommodations because of a disability, if you have emergency medical information to share with me, or if you need special arrangements in case the building must be evacuated, please inform me immediately. Please see me privately after class, telephone me (773.580.7123), or come by my office (Room 316). Alternatively, you may contact Associate Dean Rafael Gely to discuss potential accommodations.

STATEMENT REGARDING INTELLECTUAL PLURALISM

You are encouraged to think for yourself in this course. You need not agree with me, and you are most welcome to argue different sides on the issues we will confront. I will endeavor to treat you with respect, even when I disagree with your arguments, and I will expect you to afford similar treatment to me and your classmates. Participants in this course—including me—should endeavor to understand each other, not necessarily to agree with one another. If you believe at any point that your point of view (or that of another student) is being stifled or is not being given a fair hearing, please let me know.