

# SOUTHEAST MISSOURI STATE UNIVERSITY

## COURSE SYLLABUS

Updated Spring 2010

Department of: Economics and Finance

Course No: UI366

Title of Course: Law and Economics

### I. Catalog Description and Credit Hours of Course

An analysis of the application of economic principles to all aspects of law; including contract law, torts, and criminal law. 3 credit hours.

### II. Interdisciplinary Nature of the Course

Economics, as a discipline, is concerned with the problem of making decisions when resources are scarce. As such, it is concerned with topics such as efficiency, incentives and rational behavior. Law, on the other hand, is a discipline that is concerned with justice and fairness. Hence, there might appear to be little in common between the two disciplines.

But the reality is that the concepts of economics, (in particular, efficiency, incentives, rationality) can be used to understand and explain decisions made by courts of law. Just as an economist is concerned with the efficient use of resources, so a judge making a decision will be guided, implicitly or explicitly, by rules of efficiency.

The economist also emphasizes incentive effects which markets present to economic actors. Proper incentives can promote efficient use of scarce resources, while distorted or ineffective incentives will lead to waste. In a similar fashion, incentives will be influenced by decisions made in courts of law. Decisions can be framed so as to give proper incentives to individuals in such areas as contract-making, torts, etc. Poorly framed decisions will lead to wrong incentives and subsequent waste.

As can be seen, potentially, there is much overlap between the disciplines of law and economics. The field itself is fairly new (early 1970's), but both economists and lawyers have benefited from the economic analysis of law.

### III. Prerequisites

EC101 or EC215 and PS103 or PS104.

### IV. Purposes and Objectives of the Course

After completion of the course, students will:

- a) Have knowledge and understanding of the basic approach of the economic analysis of law. (2,6)
- b) Understand how economic efficiency is promoted through court decisions. (2,6,9)
- c) Have an understanding of the contributions economics can make to the development of property law, contract law, torts and criminal law. (2,3,6,9)

### V. Expectations

Students are expected to attend class regularly and participate in class discussions and exercises. All assignments must be completed on time for credit. Students will need to demonstrate critical thinking skills both in class and in written work.

### VI. Course Outline

### WEEKS

- I. Review of Economics and Legal Institutions
  - A. Maximization, Equilibrium and Efficiency

2

B. Theory of Consumer Choice	
C. Theory of Markets	
D. Common Law System	
E. Federal and State Court Systems	
II. Property Law	3
A. An Economic Theory of Property	
1. Legal Concept of Property	
2. Property Ownership	
3. Protection of Property Rights	
4. Use of Property	
B. Topics in the Economics of Property Law	
1. Establishing and Verifying Property Rights	
2. Deciding What Resources Should be Private	
3. Eminent Domain	
III. Contract Law	3
A. Economic Theory of Contract	
1. Classical Contract Theory	
2. Purposes of Contract Law	
B. Topics in the Economics of Contract Law	
1. Enforcement of Contracts	
2. Remedies for Breach of Contract	
IV. Torts	5
A. Economic Theory of Torts	
1. Elements of a Tort	
2. Economic Analysis of a Tort	
B. Topics in the Economics of Tort Law	
1. Applying the Economic Model	
2. Modern Products Liability Law	
3. No-Fault Alternative to Torts	
C. Common Law and Efficiency	
V. Criminal Law	3
A. Economic Theory of Criminal Law	
1. Defining Crime	
2. Strict Liability Crimes	
3. Punishment and Deterrence	
B. Topics in the Economics of Crime	
1. Optimal Punishment	
2. Forms of Punishment	
3. The Death Penalty	

**VII. Textbook**  
 Deserpa, **Economics and Common Law**, Thompson Publishing, 2005

**VIII. Basis for Student Evaluation**

Four Tests	60%
Homework and Case Studies	25%
In-Class Exercises	15%

**IX. Instructor Qualifications**

The course would require an individual with knowledge of economic principles (at least at the intermediate level of microeconomics) and familiarity with the common law system in the U.S. and England.

**X. Justification for Inclusion in University Studies Program**

**Objective 1: Demonstrate the ability to locate and gather information.** Emphasis: Some

## Content

In order to complete some assignments, it will be necessary for students to access court cases. Time will be taken in class to instruct students in understanding and accessing law citations.

### **Objective 2: Demonstrate capabilities for critical thinking, reasoning, and analyzing.**

Emphasis: Significant.

## Content

The economic analysis of law involves the use of economic concepts to understand decisions made at law. The application of concepts such as efficiency, rationality and incentives to an understanding of common law decisions will be a primary focus of the course. For example, suppose A, a German company, contracts with B, a Middle Eastern company to purchase a certain quantity of oil weekly. War breaks out in the Middle East, making fulfillment of the contract impossible. On whom should the liability for the loss fall if the contract is silent concerning this contingency? Efficiency demands that the liability for the loss be assigned to the party that could have foreseen or insured against the contingency at lowest cost. In this case, it likely would be B, since he is more likely to have better knowledge of the situation in the Middle East than would A. It would be found that decisions at common law would tend to agree with this economic analysis; that is, judge-made law tends to lead to efficiency.

## Teaching Strategy

The essence of the economic analysis of law can be culled from a review of various court cases. Students will be exposed to a wide variety of cases that will be analyzed from an economic point of view.

## Student Assignments

Students will read extensively about the basic approach of the economic analysis of law and will also look at many actual court cases. In addition, students will be assigned case studies which require them to make a decision, based on the principles they have learned in the course.

## Student Evaluation

The four exams will be designed to test students' understanding of the economic approach to law and these will constitute 60% of the students' grade. In addition, homework and case studies will be graded and constitute a significant portion of the final grade (25%).

### **Objective 3: Demonstrate effective communication skills.** Emphasis: Considerable.

## Content

Class discussion will be used extensively, especially in discussion of court cases and the use of the economic approach.

## Teaching Strategies

Court cases will be analyzed in class using one of two methods: 1) the entire class will consider such cases, led by the instructor; 2) the class will be divided into small groups to discuss and arrive at a decision for a particular case. In both instances, emphasis will be upon the economic approach. Written communication will be required of students through essay exams and court cases.

### Student Assignments

Students will be expected to participate in class discussions. In addition, they will be required to complete written analyses of court cases which are assigned.

### Student Evaluation

Students will be graded on their class participation (15%) as well as the quality of their written analysis and homework (25%). In all written assignments, a portion of the student's grade will depend on the written component (i.e., clarity, organization, focus, etc.).

**Objective 4: Demonstrate an understanding of human experiences and the ability to relate them to the past.** Emphasis: Significant.

### Content

Common law plays a crucial role in the legal system of the U.S. Decisions in contemporary court cases are, by necessity, based upon precedents established in earlier cases, many from several centuries ago. Therefore, an analysis and understanding of court cases from the past several centuries are crucial to an understanding of common law today.

### Teaching Strategies

Many early (as well as more recent) court cases will be analyzed in order to demonstrate how many common law decisions, either implicitly or explicitly, embody the essence of the economic analysis of law, which emphasizes the promotion of efficiency and rationality.

### Student Assignments

Students will study many of the early cases and will be assigned case studies which are based on these precedent setting cases. Through detailed analysis, they will discover how an economic approach to law will lead to precisely the same decision made by a judge who may be following some other criteria for decision-making (eg., fairness, equity, morality).

### Student Evaluation

Students will be graded on their case studies and homework. In addition, on the hourly exams, they will be responsible for knowledge of court cases, which are studied in class.

**Objective 5: Demonstrate an understanding of various cultures and their inter-relationships.** Emphasis: Some.

### Content

The roots of the American legal system are found in common-law decisions originating in England. Therefore, by necessity, an analysis of the common-law system in that country will be an important part of the course. There will only be cursory analysis of legal systems which are found in other countries.

**Objective 6: Demonstrate the ability to integrate the breadth and diversity of knowledge and experience.** Emphasis: Significant.

### Content

Court cases are like baseball games in that there is an infinite variety of situations that could arise. This makes it necessary to study many different court cases to search for common themes that might connect them. This requires the development of concepts and principles that can be used to understand the many situations that arise and the reasons for particular court decisions. The economic approach to law is the unifying approach which will be used to accomplish this

integration. By the completion of the course, students will understand how economics can explain legal decisions and lead to efficiency.

### Teaching Strategies

Considerable class time will be used to discuss the influences, both past and present, on common-law decisions. There will be special emphasis, of course, on the concepts of economics: efficiency, rationality and incentives, and how they influence legal decisions.

### Student Assignments

Case studies will involve students in the application of the economic approach to law to a variety of legal issues. In this way, they will be required to integrate the principles which they learn in the course.

### Student Evaluation

Case studies and homework, as well as exams, will be graded and will constitute a significant portion of the student's final grade.

## **Objective 7: Demonstrate the ability to make informed, intelligent value judgments.**

Emphasis: Some.

### Content

Ideally, matters at law should be decided using informed, objective criteria. This leaves little room for the consideration of personal values when decisions are made. Yet, it is impossible to ignore personal values completely when making judgments. In fact, in many cases, decisions which seem fair on the basis of personal values or morals, are also efficient from an economic point of view. In other cases, there may be a trade-off between a decision which is efficient and one which appears to be fair based on individual values. This relationship between efficiency and equity will be explored in the course.

### Student Assignments

Students will be required, when performing case studies, to indicate whether they believe the efficient decision (using the economic approach) is consistent with what they believe is the fair decision, based on their own personal beliefs and values. They will be required to explore in depth, those cases where there is apparent conflict between equity and efficiency.

## **Objective 8: Demonstrate the ability to make informed, sensitive aesthetic responses.**

Emphasis: Some.

### Content

Students will be exposed to many court cases, including the original text of judicial decisions. They will learn to read and understand judicial reasoning and, it is hoped, acquire an appreciation of the logical development of a legal point of view. Especially complex cases require an extensive chain of reasoning by judges; learning to follow and appreciate such reasoning will be an important part of the course.

### Student Assignments

Students, in their analyses of court cases, will be required to involve themselves in the judicial reasoning process as they act as judges deciding cases. This will heighten their understanding and appreciation of the reasoning process.

**Objective 9: Demonstrate the ability to function responsibly in one's natural, social, and political environment.** Emphasis: Considerable.

### Content

Students will learn an economic approach which can be used in many different contexts, not just for interpreting law. The "economic way of thinking" is a powerful tool that can be used by decision-makers in a wide variety of contexts, including law. Efficiency to economists means that for a particular decision, the benefits outweigh the costs. By learning to look at benefits and costs and to balance the two, students will acquire an approach that is virtually unlimited in its application.

Students will also gain knowledge of property law, contract law, torts and criminal law. Such knowledge will help them to participate more meaningfully in their natural, social and political environment. More specifically, a day seems to be a collection of interactions with other people over a twenty-four hour period. Such interactions are made easier by an understanding of the principles of law in areas where individuals' interests are most likely to overlap.

### Teaching Strategies

Early in the course students will be introduced to the basic economic approach and its application to matters at law. In-class exercises will be used to illustrate the economic approach as applied to legal questions. Discussion of these exercises will be used to explore these applications.

### Student Assignments

Students will learn the economic approach through application in case studies and homework. In addition, exams will test student understanding of the concept.

### Student Evaluation

Case studies and homework will be graded and will constitute approximately 25% of the student's final grade. Exams will comprise 60% of the student's grade.

**XI. The optimal class size would be thirty students.**