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This course introduces the economic analysis of the law of property, contracts, and torts—the common law of the United States and the United Kingdom. The texts are

- Richard A. Posner, *Economic Analysis of Law*, 7th edition. Aspen Law & Business, 2006.
- Steven H. Gifis, *Law Dictionary*. Barron's Legal Guides, 2003.

There is also a packet of course materials available for purchase that includes the cases we will cover as well as the articles listed in the course outline below.

The course requires your active participation. Class sessions will ideally involve a good bit of discussion. Each student will present at least two cases to the class—each time by preparing a written brief for all class members and doing an oral presentation. These presentations will emphasize the economic implications of the cases. (Students may do more than two presentations, in which case the best two grades will be counted, and students will receive some extra credit for class participation even if they do not improve their grade relative to earlier presentations.)

Please read all items in the course outline prior to the class session during which they will be covered. We will try to stay very close to the schedule shown in the course outline, but it will be hard to stay exactly on it. Not all cases listed in the course outline will be covered, but all are included in the packet of course materials.

The course grade will be determined as follows:

Three short papers (4-6 pages each)	30%
Presentation of two legal cases	20%
Research paper (12-18 pages)	20%
Final in-class examination	20%
Attendance and class participation	10%

The first short paper will be on a single topic, while the other two will be akin to multipart essay examinations. Dates on which the papers are planned to be due are shown shaded on the course outline that follows. The research paper will be an in-depth analysis of a legal case of your choice; the process will include a proposal, first draft, and final draft. All written work must be handed in at the start of the class session at which it is due, except if the instructor has granted an advance dispensation due to dire circumstances, such as a serious health problem. The case book will be on our Sakai site, reachable via [http://www.economics.pomona.edu/Marks/Econ\\_155/](http://www.economics.pomona.edu/Marks/Econ_155/), along with all other articles assigned in the course. This may be useful to you because I have hidden portions of the cases in the printed version, in order to save you time and enhance readability. (Click on the Show/Hide button (¶) in Word to see all hidden materials in the case book.) You may wish to consult the complete version of a case that you will present to the class, for example, or one that is to be covered in a short paper.

## **COURSE OUTLINE**

### **1. Introduction: The Economic Approach to Law (9/2)**

Posner, chapters 1 and 2

### **2. Library Resources for Law and Economics (9/4)**

Meet in Honnold Library, Keck Learning Room

### **3. Property Law**

#### **3.1. The Economic Roles of Property (9/9)**

Posner, 3.1 and 3.2

Harold Demsetz, "Toward a Theory of Property Rights," *American Economic Review* 57 (May 1967), 347-59.

Cases: Haslem v. Lockwood

Pierson v. Post

Ghen v. Rich

#### **3.2. Acquisition and Other Ownership Issues (9/11)**

Posner, 3.3

Cases: Edwards v. Sims

Guckeen Farmers Elevator v. South Soo Grain

Cheney Brothers v. Doris Silk

#### **3.3. Incompatible Uses: Introduction (9/16, 9/18)**

Posner, 3.6 and 3.8

Ronald Coase, "The Problem of Social Cost," *Journal of Law and Economics* 3 (October 1960), 1-44.

Cases: Mitchell v. Hines

Fontainebleau Hotel Corp. v. Forty-Five Twenty-Five

#### **3.4. Incompatible Uses: Other Solutions (9/23)**

Posner, 3.9 and 3.10

Cases: Boomer v. Atlantic Cement

Village of Euclid v. Ambler Realty Co.

#### **3.5. Takings and Eminent Domain (9/25)**

Posner, 3.7 and 3.14

Cases: Pennsylvania Coal Co. v. Mahon

Hadacheck v. Sebastian

Miller v. Schoene

### **3.6. Further Topics in Property Law (9/30)**

Posner, 3.11 - 3.13

Cases: *Suydam v. Jackson*  
*Brand v. Prince*

## **4. Contract Law**

### **4.1. The Economic Roles of Contract Law (9/30)**

Posner, 4.1

### **4.2. Consideration (10/2)**

Posner, 4.2

Cases: *Hamer v. Sidway*  
*Mills v. Wyman*  
*Alaska Packers Association v. Domenico*

### **4.3. Offer and Acceptance (10/7, 10/9)**

Posner, 4.3 and 4.4

Cases: *Minneapolis & St. Louis Railway v. Columbus Rolling Mill*  
*Fuller v. Kemp*  
*Sherwood v. Walker*  
*Wood v. Boynton*

### **4.4. Impossibility and Frustration (10/9)**

Posner, 4.5

Cases: *Paradine v. Jane*  
*Taylor v. Caldwell*

### **4.5. Fraud, Duress, Unconscionability (10/14)**

Posner, 4.7 and 4.9

Cases: *Obde v. Schlemeyer*  
Denise Gellene, "Winston Tire Agrees to \$1.4-Million Settlement in Vehicle Repair Case", *Los Angeles Times*, October 26, 1993.  
*Hackley v. Headley*  
*Williams v. Walker-Thomas Furniture*

### **4.6. Breach of Contract and Damages (10/16, 10/23)**

Posner, 4.10

Cases: *Clark v. Marsiglia*  
*Furlan v. Rayan Photo Works*  
*Neri v. Retail Marine Corp.*  
*Peevyhouse v. Garland Coal & Mining*

#### **4.7. Consequential Damages (10/23)**

Posner, 4.11

Cases: Hadley v. Baxendale

#### **4.8. Other Provisions and Remedies (10/28, 10/30)**

Posner, 4.12 - 4.13

Cases: Muldoon v. Lynch

Wise v. United States

Lumley v. Wagner

Dover Shopping Center v. Cushman's Sons

### **5. Tort Law**

#### **5.1. Negligence and the Hand Rule (10/30, 11/4)**

Posner, 6.1 and 6.2

Cases: Blyth v. Birmingham Waterworks

United States v. Carroll Towing Co.

Adams v. Bullock

Byrne v. Boadle

#### **5.2. Custom as a Defense (11/6)**

Posner, 6.3

Cases: The T.J. Hooper

Saglimbeni v. West End Brewing Co.

#### **5.3. Contributory Negligence (11/11, 11/13)**

Posner, 6.4

Robert D. Cooter, "Economic Theories of Legal Liability," *Journal of Economic Perspectives* 5 (Summer 1991), 11-30.

Cases: Butterfield v. Forrester

Davies v. Mann

Anderson v. Payne

#### **5.4. Assumed Risk; Trespassers (11/18)**

Posner, 6.4

Cases: Murphy v. Steeplechase Amusement Co.

Lee v. Milwaukee Baseball Club

Ploof v. Putnam

Ehret v. Village of Scarsdale

### **5.5. Causation and Foreseeability (11/20)**

Posner, 6.7

Cases: Berry v. Sugar Notch Borough  
Gorris v. Scott  
Palsgraf v. Long Island Railway Co.

### **5.6. Joint Torts (11/25)**

Posner, 6.8

Cases: Summers v. Tice  
Gray v. Boston Gas Light Co.  
Union Stock Yards v. Chicago B&Q Railroad  
Norfolk and Southern Railroad v. Beskin

### **5.7. Strict Liability (12/2)**

Posner, 6.5, 6.17

Cases: Spano v. Perini Corp.  
Guille v. Swan  
Madsen v. East Jordan Irrigation Co.

### **5.8. Product Liability (12/4)**

Posner, 6.6

Cases: MacPherson v. Buick Motor Co.  
Reyes v. Wyeth Laboratories

### **5.9. Intentional Torts (12/9)**

Posner, 6.10, 6.15

A. Mitchell Polinsky and Steven Shavell, "Punitive Damages: An Economic Analysis," *Harvard Law Review* 111 (February 1998), 869-962.

Cases: Mohr v. Williams  
Goddard v. Grand Trunk Railway  
State Farm v. Campbell

FINAL EXAMINATION, Friday, December 19, 9:00 AM