

研究生班《法律经济学》教学大纲

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每周一 6:40-9:30pm，北大朗润园万众楼小教室

课程简介

本课程是为北京大学国家发展研究院研究生开设的选修课。“法律经济学”是从1950年代起在美国以芝加哥大学的经济系和法学院为中心兴起的一门交叉学科。它以价格理论为分析工具，将英美各个分立的部门法以及形形色色的政府管制现象，纳入其深入剖析的视野，以探索这些法律与管制现象内在的相关逻辑，并为法律和政策的制定和实施提供理论和实证的依据。

本课程力图通过阅读经典和研究设计，将“法律经济学”的方法论基础与前沿实践运用紧密地结合起来，从而帮助学生在扎实掌握“法律经济学”的核心思想的同时，创造性地探索可将上述研究角度和方法付诸实践的课题，从而转入以问题为导向的深度阅读和实证研究的轨道上去。

教材和阅读

- Posner, R. A. (2007) *Economic Analysis of Law*, 7th Edition, Aspen.
- 其他文章

授课和学习

本课程由教师讲解、嘉宾专题讲座、同学领读论文、同学提交研究设计、以及课堂讨论等五部分组成。

考核方式

课堂表现及领读论文（40%）和研究设计（60%）组成。

Reading List for “Law and Economics, Graduate Level, Fall, 2011”

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- 1 The Movement of Law and Economics
 - 1.1 *Ibid*
 - 1.1.1 Kitch, E. W. (1983). "The Fire of Truth: A Remembrance of Law and Economics at Chicago, 1932-1970." *Journal of Law and Economics* 26(1): 163-234.
 - 1.1.2 Manne, H. G. (2005). *How Law and Economics Was Marketed in a Hostile World: A Very Personal History*.
 - 1.1.3 Teles, M. S. (2008). *The Rise of the Conservative Legal Movement: The Battle for Control of the Law*, Princeton University Press.
- 2 The Law and Economics Approach
 - 2.1 Principle Economics
 - 2.1.1 Alchian, A. A. (1950). "Uncertainty, Evolution, and Economic Theory." *The Journal of Political Economy* 58(3): 211-221.
 - 2.1.2 Alchian, A. A. (1968). Cost. *International Encyclopedia of Social Sciences*. New York, Macmillan. 3: 404-415.
 - 2.1.3 Alchian, A. A. (2000). Rent. *The New Palgrave: A Dictionary of Economics*. M. M. John Eatwell, Peter Newman, Palgrave Macmillan.
 - 2.1.4 Hayek, F. A. 'The Use of Knowledge in Society' in Rowley (ed.) Volume 1, pp.406-417.
 - 2.1.5 Cheung, S. N. S. (1974). "A Theory of Price Control." *Journal of Law and Economics* 17(1): 53-71.
 - 2.2 Intellectual Foundations
 - 2.2.1 Kitch, E. W. (1983). "The Intellectual Foundations of "Law and Economics"." *Journal of Legal Education* 33(184).
 - 2.2.2 Calabresi, G. 'About Law and Economics: A Letter to Ronald Dworkin' *Hofstra Law Review* Spring 1980, pp. 553-562. (Posner and Parisi chapter 2)
 - 2.2.3 Coase, R. H. (1978). 'Economics and Contiguous Disciplines', *Journal of Legal Studies*, VII (2) June, 201-11.
- 3 Economics and the Property Right Law
 - 3.1 Property Right
 - 3.1.1 Alchian, A. A. and H. Demsetz (1973). "The Property Right Paradigm." *The Journal of Economic History* 33(1, The Tasks of Economic History): 16-27.
 - 3.1.2 Macey, J. (1992). "Some Causes and Consequences of the Bifurcation of Rights." *Social Philosophy and Policy*. Vol 9. No. 1.
 - 3.1.3 Demsetz, H. 'Toward a Theory of Property Rights' *American Economic Review*, May 1967, pp. 347-359.
 - 3.1.4 Demsetz, H. (2002). "Toward a Theory of Property Rights II: The Competition between Private and Collective Ownership." *The Journal of*

- Legal Studies 31(2): S653-S672.
- 3.1.5 Cohen, L. (1989). "Increasing the Supply of Transplant Organs: The Virtues of a Futures Market." *George Washington Law Review*, 58.
- 3.2 Externality
- 3.2.1 Coase, R. H. (1960). "The Problem of Social Cost." *Journal of Law and Economics* 3: 1-44.
- 3.2.2 Epstein, R. A. (1993). 'Holdouts, Externalities and the Single Owner: One more salute to Ronald Coase' *Journal of Law and Economics* XXXVI April, 553-86.
- 3.2.3 Demsetz, H. (2008). *Reinterpreting the Externality Problem. From Economic Man to Economic System*. New York, Cambridge University Press.
- 3.2.4 Anderson, T. L. (2004). "Markets and the Environment: Friends or Foes?" A Lecture given at Case Western Reserve School of Law.
- 4 Economics and the Tort Law
- 4.1 Tort from the perspective of transaction cost
- 4.1.1 Calabresi, G. and A. D. Melamed (1972). "Property Rules, Liability Rules, and Inalienability: One View of the Cathedral." *Harvard Law Review* 85(6): 1089-1128
- 4.1.2 Bebchuk, L. A. (2001). "Property Rights and Liability Rules: The Ex Ante View of the Cathedral." *Michigan Law Review* 100.
- 4.1.3 Landes, W.M. and Posner, R.A. 'The Positive Economic Theory of Tort Law' *Georgia Law Review* Summer 1981, pp. 851-924.
- 4.2 The evaluation of the effects of tort laws
- 4.2.1 Demsetz, H. 'When Does the Rule of Liability Matter?' *Journal of Legal Studies*, January 1972, pp. 13-28. (Posner and Parisi chapter 11)
- 4.2.2 Shavell, S. 'Strict Liability Versus Negligence' *Journal of Legal Studies* January 1980, pp. 1-25.
- 4.2.3 Shavell, S. 'Liability for Harm Versus Regulation for Safety' *Journal of Legal Studies*, June 1984, pp. 357-374.
- 4.2.4 Epstein, R. A. (1973). "A Theory of Strict Liability." *Journal of Legal Studies* 2.
- 4.2.5 Priest, G. L. (1987). "The Current Insurance Crisis and Modern Tort Law." *Yale Law Journal* 96(1521).
- 5 Economics and the Contract Law
- 5.1 Asymmetric information
- 5.1.1 Akerlof, G. A. (1970). "The Market for "Lemons": Quality Uncertainty and the Market Mechanism." *Quarterly Journal of Economics* 84.
- 5.1.2 Barzel, Y. (1982). "Measurement Cost and the Organization of Markets." *Journal of Law and Economics* 25(1): 27-48.
- 5.1.3 Klein, B. and K. B. Leffler (1981). "The Role of Market Forces in Assuring Contractual Performance." *The Journal of Political Economy* 89(4): 615-641
- 5.2 The nature of "unfair" contracts

- 5.2.1 Epstein, R. A. (1983). "A Common Law for Labor Relations: A Critique of the New Deal Labor Legislation." *Yale Law Journal* 92.
- 5.2.2 Epstein, R. A. (1984). "In Defense of the Contract at Will." *51 U. Chi. L. Rev.* 947 1984
- 5.2.3 Klein, B. "Transaction Cost Determinants of Unfair Contractual Arrangements" *American Economic Review*, 1980, pp. 356-362.
- 5.3 Family
 - 5.3.1 Cheung, S. N. S. (1972). "The Enforcement of Property Rights in Children, and the Marriage Contract." *The Economic Journal* 82(326): 641-657.
 - 5.3.2 Cohen, L. (1987). "Marriage, Divorce, and Quasi Rents; Or, "I Gave Him the Best Years of My Life" " *The Journal of Legal Studies* 16(2): 267-303..
- 6 Six. Economics and Competition Law
 - 6.1 Positive Competition Law
 - 6.1.1 Director, A. and E. H. Levi (1956). "Law and the future: trade regulation." *Northwestern University Law Review* 51: 281-296.
 - 6.1.2 Telser, L. G. (1960). "Why Should Manufacturers Want Fair Trade?" *Journal of Law and Economics* 3: 86-105.
 - 6.1.3 Coase, R. H. (1972). "Durability and Monopoly." *Journal of Law and Economics* 15(1): 143-149.
 - 6.1.4 Demsetz, H. (1968). "Why Regulate Utilities?" *Journal of Law and Economics* 11(1): 55-65.
 - 6.1.5 Klein, B. (2004). *Tying*. The New Palgrave Dictionary of Economics and the Law, Palgrave Macmillan. 3.
 - 6.1.6 Schmalensee, R. (2007). "Thoughts on the Chicago Legacy in U.S. Antitrust." eSapience Center for Competition Policy May 2007.
 - 6.2 Normative Competition Law
 - 6.2.1 Easterbrook, F. H. (1984). "The Limits of Antitrust." *Texas Law Review* 63.
 - 6.2.2 Langenfeld, J. & C. Alexander (2008). "Daubert Challenges of Antitrust Experts." SSRN: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1337081.
 - 6.2.3 Manne, G. A. and M. Williamson (2007). "Hot Docs vs. Cold Economics." *Arizona Law Review* 47
 - 6.3 Competition law from the public choice perspective
 - 6.3.1 McChesney, F. S. (2003). "Talking 'Bout My Antitrust Generation: Competition for and in the Field of Competition Law." *Emory Law Journal* 52.
 - 6.3.2 Tullock, G. (1975). "The Transitional Gains Trap." *The Bell Journal of Economics* 6(2): 671-678.
 - 6.3.3 Tullock, G. (2000). *Rent Seeking*. The New Palgrave: A Dictionary of Economics. M. M. J. Eatwell and P. Newman, Palgrave Macmillan.
 - 6.3.4 McChesney, F. S. (1987). "Rent Extraction and Rent Creation in the Economic Theory of Regulation." *The Journal of Legal Studies* 16(1): 101-118.
 - 6.3.5 Caplan, B. (2001). "What Makes People Think Like Economists? Evidence

on Economic Cognition from the Survey of Americans and Economists on the Economy." *Journal of Law and Economics* 44(2), pp.395-426.

7 Legal Process

7.1 *Ibid*

- 7.1.1 Rubin, P. H. (1977). "Why Is The Common Law Efficient?" *Journal of Legal Studies*(6): 51-63.
- 7.1.2 Zywicki, T. J. and A. B. Sanders (2008). "Posner, Hayek & the Economic Analysis of Law." *Iowa Law Review* 93(2): 559-603.
- 7.1.3 Tullock, G. (1998). *Juries. The New Palgrave Dictionary of Economics and the Law*. P. Newman. London, Palgrave Macmillan: 395-400.
- 7.1.4 Tullock, G. (1997). *The case against the common law*. Durham, N.C., Carolina Academic Press.
- 7.1.5 Zywicki, T. J. (2007). "Gordon Tullock's Critique of the Common Law." *George Mason University Law and Economics Research Paper Series* 07-13.