

European Master in Law and Economics

University of Hamburg, Faculty of Law

Course: **Economic Analysis of Property Law**
Prof. Dr. Thomas Eger
Second Term (2017)

Working Materials:

- A. A. Alchian: „Some Economics of Property Rights“
- E. G. Furubotn/ S. Pejovich: „Property Rights and Economic Theory: A Survey of Recent Literature“
- H. de Soto: „The Mystery of Capital. Why Capitalism Triumphs in the West and Fails Everywhere Else“, chapter 2
- A. Bouckaert/B. Depoorter: „ Adverse Possession – Title Systems“
- S. Levmore: „Variety and Uniformity in the Treatment of the Good-Faith Purchaser“
- H. Demsetz: „Toward a Theory of Property Rights“
- G. G. Stevenson: „Common Property Economics“, Chapter 3.
- J. Buchanan/ J. Y. Yoon: „Symmetric Tragedies: Commons and Anticommons”
- T. Eger/M. Scheufen: “The Past and the Future of Copyright Law: Technological Change and Beyond”, in: J. De Mot (ed.): Liber Amicorum Boudewijn Bouckaert, Brugge: die Keure 2012, pp. 37 – 64.

EMLE 2nd Term (2017)

The Law and Economics of Corporate Law

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Haim Striks School of Law, College of Management, Israel

Summary

This is an advanced EMLE course. As a 2nd term course it seeks to enable students to understand the state to the art discussions in law & economics. The course aims to enhance the understanding of the interaction between markets, contracts, corporations and capital markets.

The course thus tackles questions such as the reason for the incorporation of firms, their optimal size, the reasons for some of the core structural elements of corporate law, what is corporate governance, what are gatekeepers and why they sometimes fail, etc.

The course may include a screening of a documentary film and the last class may be devoted in part to a training session in view of the final exam.

Reading List

Note: Obligatory texts are marked with an asterisk.

Basic Background Texts

- Reinier Kraakman, John Armour, Paul Davies, Luca Enriques, Henry Hansmann, Gerard Hertig, Klaus Hopt, Hideki Kanda, Edward Rock, "The Anatomy of Corporate Law: A Comparative and Functional Approach" Oxford University Press, 2nd ed. 2009) – (hereinafter: "**Anatomy**").
- Klaus J. Hopt, Comparative Corporate Governance: The State of the Art and International Regulation, 59 Am. Jour. of Comp. Law 1 (2011) (hereinafter: "**Hopt**").

Topic I: Why Incorporate?

1. (*) Alchian/Demsetz, Production, Information Costs, and Economic Organization, American Economic Review, Vol. 62, No. 5 (Dec., 1972), pp. 777-795.
2. Coase, 4 *Economica* 386 (1937) –
3. Klein, 4 J. L. Econ. & Organ. 199 (1988), esp. p. 199-208
4. Williamson, 22 J. L. Econ. 233 (1979)

Topic II: The Characteristics of the Firm

1. (*) **Anatomy**, 1-34.
2. Hopt, Comparative Company Law, in: Reimann/Zimmermann, ed., The Oxford Handbook of Comparative Law, Oxford 2006, S. 1161.

Topic III: Corporate Governance

1. (*) **Anatomy**, 35- 87 (focus on 35-50, 55-78)
2. (*) Cheffins, The History of Corporate Governance (2012), SSRN.
3. Zingales, Luigi, in: Newman/Palgrave, eds., The New Palgrave Dictionary of Economics and the Law, New York, 1998, www.ssrn.com.

Topic IV: Ownership, Control & Global Trends

1. (*) **Anatomy**, 225-238, 267-273
2. W. Bratton and J. McCahery, "Comparative Corporate Governance and the Theory of the Firm: The Case against Global Cross-Reference," 38 Columbia Journal of Transnational Law 213 (1999).
3. Paul Davies & Klaus J. Hopt, "Corporate Boards in Europe – Accountability and Convergence", 61 Am. J. Comp. L. 301 (2013).

Topic V: Gatekeepers

1. (*) Kraakman, Reinier, Gatekeepers: the Anatomy of a Third Party Enforcement Strategy 2 J of L Econ & Org 53 (1986).
2. Ido Baum, "Attorney Corporate Client Privilege: Who Represents the Corporation?" 3 Rev. of Law & Economics, Art. 5 (2007).
Case Law:
 - a. [Upjohn Co. v. United States](#) 449 U.S. 383 (1981)
 - b. ECJ C-550/07 [Akzo Nobel Chemicals and Akros Chemicals v Commission](#) [2010]
3. Mauro Bussani "Credit Rating Agencies' Accountability: Short Notes on a Global Issue", Global Jurist, Vol. 10: Iss. 1, Article 1, Available at: <http://www.bepress.com/gj/vol10/iss1/art1>

Additional Bibliography

- 1) Isaksson, M. and S. Çelik "Who Cares? Corporate Governance in Today's Equity Markets" (2013) [OECD Corporate Governance Working Papers](#), No. 8, OECD Publishing.
- 2) The EU Commission Corporate Governance Framework [Green Paper](#) (2011)
- 3) Rafael La Porta, Lopez-de-Silanes and Andrei Shleifer, "Corporate Ownership around the World", 54 J. Fin. 471 (1999).
- 4) John C. Coffee, "Dispersed Ownership: The Theories, the Evidence and the Enduring Tension between the Lumpers and the Splitters" SSRN Columbia University Working Paper 363 (2010).

- 5) John C. Coffee Jr., "What Caused Enron?: A Capsule Social and Economic History of the 1990's", SSRN Columbia Law and Economics Working Paper No. 214.
- 6) Wolf-Georg Ringe, "No freedom of emigration for companies?" 16 Eur Business L Rev 621 (2005).
- 7) Tyler Weigel, A New Universal Language?: An Overview of Adopting the International Financial Reporting Standards in the United States, 80 UMKC L. Rev. 1239 (2012).

Public Law & Economics II: Constitutional Economics

Prof. Dr. Stefan Voigt

Institute of Law & Economics,
University of Hamburg

Contents – Overview:

I Prolegomena

1. Research program
2. Why *economic* theory of constitutions?
3. Democratic – Autocratic: does it matter?

Contents – Overview (2)

II The Constitution as Explanans

4. Economic Effects of Electoral Rules
5. Economic Effects of Form of Government (Presidential vs. Parliamentary Systems)
6. Economic Effects of Federalism / Decentralization
7. Economic Effects of Direct Democracy
8. Economic Effects Basic Rights
9. When are Constitutions likely to be enforced?

Contents – Overview (3)

III The Constitution as Explanandum

10. Why – and when – do Countries Change their Form of Government?
11. Getting Started: The Constitutional Assembly

IV Normative Theories

12. John Rawls
13. James Buchanan

References

Required reading marked “*”

A good overview over the **prolegomena** is:

- *Voigt, S. (1997); "Positive Constitutional Economics - A Survey", *Public Choice*, 90: 11-53.

And a good overview over the rest is:

- *Voigt, S. (2011); "Positive Constitutional Economics II—A Survey of Recent Developments", *Public Choice* 146(1-2):205-256.

One of the **foundations** of Positive Constitutional Economics is:

- Buchanan, J. and Tullock, G. (1962). *The Calculus of Consent* - Logical Foundations of Constitutional Democracy. Ann Arbor:University of Michigan Press (of which chapter 6 is *)

The possible functions of constitutions in **autocratic regimes** are nicely discussed in

- *Elkins, Z., Ginsburg, T. & Melton, J (2014). The Content of Authoritarian Constitutions, In: Ginsburg, T., & Simpser, A. (Eds.). *Constitutions in authoritarian regimes*. Cambridge University Press, pp. 141-164.

References (2)

An important contribution to **Positive Constitutional Economy** is:

- Persson, T., & Tabellini, G. (2003). *The Economic Effects of Constitutions*. Cambridge, MA: The MIT Press.

For the chapters on **electoral rules** and **forms of government**:

- *Persson, T. and G. Tabellini (2004); Constitutions and Economic Policy, *Journal of Economic Perspectives*, 18(1):75-98.

And

- *Blume, L., Müller, J., Voigt, S., & Wolf, C. (2009). The Economic Effects of Constitutions: Replicating – and Extending – Persson and Tabellini, *Public Choice* 139:197-225.

The Economic Effects of **Human Rights** are analyzed in:

- *Blume, L and S. Voigt (2007); “The Economic Effects of Human Rights”, *Kyklos* 60(4):509-38.

The following two papers deal with the economic consequences of **federalism**:

- Blume, L and S. Voigt (2011); “Federalism and Decentralization – A Critical Survey of Frequently Used Indicators”, *Constitutional Political Economy* 22(3):238-264;

available at: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1263995.

- Blume, L. and S. Voigt (2012); “The Economic Effects of Federalism – A Cross-Country Assessment. *Public Choice* 151:229-254.

available at: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1307169.

References (3)

This is the first paper that assesses the economic consequences of **direct democracy** on a cross-country basis:

- *Blume, L, J. Müller and S. Voigt (2009); “The Economic Effects of Direct Democracy – A First Global Assessment”, *Public Choice* 140:431-61 (2009).

And here is an excellent „3rd generation“ paper:

- Funk, P., & Gathmann, C. (2011). Does direct democracy reduce the size of government? New evidence from historical data, 1890–2000. *The Economic Journal*, 121(557), 1252-1280.

A „gap“ in the implementation of constitutional text is discussed by

- *Chilton, A. S., & Versteeg, M. (2015). Do Constitutional Rights Make a Difference?. *American Journal of Political Science*.

A fantastic paper on whether the way in which constitutions are produced really matters is

- *Ginsburg, T., Z. Elkins and J. Blount (2009). Does the Process of Constitution-Making Matter? *Am. Rev. of Law and Soc Science* 201-23.

One of the few papers trying to **endogenize** constitutional rules is this:

- Hayo, B. and S. Voigt (2012); “Endogenous Constitutions: Politics and Politicians Matter, Economic Outcomes Don’t.” *Journal of Economic Behavior and Organization*

Two “**classics**” from Rawls and Buchanan are:

- Rawls, J. (1971). *A Theory of Justice*. Cambridge: Harvard University Press.
- Buchanan, J. (1975). *The Limits of Liberty - Between Anarchy and Leviathan*. Chicago: University of Chicago Press.



Contract Law and Economics

– Academic Year 2016/17 –

Franziska Weber

Syllabus

Introduction

Welcome to “Contract Law and Economics”!

The goal of the course is two-fold:

- 1) We will carry out an incentive based analysis of classical contract law matters taking the rationality assumption as a starting point (remedies, breach, warranties, disclosure duties etc.). In doing so we will explore the costs and benefits of different legal regimes.
- 2) We will discuss by way of looking at experimental literature when the rationality of contracting parties is impeded and consider the consequences of these findings.

Having established the relevance of behavioural insights for contract law, we will conclude by discussing how (and if) such insights can be introduced to and considered in law- and policy-making – *an as of now unresolved challenge!*

Reading materials will be uploaded before class. Slides will be made available after class.

Come prepared!



Lecture 1: “Introduction to contracts and experiments”

Reading material:

- ✓ Schäfer/Ott (2004), The economic analysis of Civil Law, 273-278
- ✓ Camerer/Talley (2007), Experimental Study of Law, in Handbook of Law and Economics, Vol.2, Polinsky/Shavell (ed.), 1623-1928
- ✓ Cartwright (2014), Behavioural Economics, 2nd edition, 19-26

Familiarize yourself with the basic concepts of contract law. You can look at your own country's law or consider one of the optional readings that have been uploaded:

- ✓ Zweigert/Kötz in a comparative perspective 356 – 365 (Option 1)
- ✓ Zumbansen on German contract law 188-199 (Option 2)

Lecture 2: “Paternalism vs. autonomy in contract law”

**during this class the groups for the presentations in lecture 5/6 will be formed*

Reading material:

- ✓ Thaler/Sunstein, Libertarian Paternalism, The American Economic Review 93: 2, Papers and Proceedings of the One Hundred Fifteenth Annual Meeting of the American Economic Association, Washington, 2003, 175-179
- ✓ Tannenbaum et al (2015), On the misplaced politics of behavioral policy interventions, Study 1 and 2

Optional:

- ✓ Arad/Rubinstein (2015), The People's Perspective on Libertarian- Paternalistic Policies, study 2

Lecture 3: “Mandatory and default rules”

Reading material:

- ✓ Schäfer/Ott (2004), 278-281
- ✓ Cooter/Ulen (2011), 292-295
- ✓ Ayres (2012), 2034-7, 2068-84

Optional:

- ✓ Mackaay (2011) ‘Good faith in civil law systems’
- ✓ Listokin (2010), The Meaning of Contractual Silence: A Field Experiment, 2 J. Legal Analysis 399
- ✓ Arad/Rubinstein (2015), The People's Perspective on Libertarian- Paternalistic Policies, study 1



Lecture 4: “Efficient Breach”

Reading material:

- ✓ Bigoni et al (2014), Unbundling Efficient Breach
** you can skip section 2*
** we will save the discussion of section 5 for later when we will learn more about specific performance, but do already prepare it!*

Optional:

- ✓ Ogus on efficient breach
- ✓ Mackaay on efficient breach
- ✓ Wilkinson-Ryan/Baron (2009), Moral Judgment and Moral Heuristics in Breach of Contract, *Journal of Empirical Legal Studies* 6:2, 405–423

Lecture 5: “Specific performance vs. expectation damages”

&

Lecture 6: “Unbundling the effects of different types of damages”

**“your time to shine”*

Reading material:

- ✓ Cooter/Ulen (2011), 287-91, 307-317; 325-41
- ✓ Shavell (2005) ‘Specific performance vs. damages for breach of contract’, 1-37
- ✓ Cooter/Ulen (2011) 325-331

Optional:

- ✓ Schweizer (2015), Efficient Incentives from Obligation Law and the Compensation Principle
- ✓ Posner (1999) ‘Contract remedies: foreseeability, precaution, causation and mitigation, *Encyclopedia of Law and Economics*’ (available online)
- ✓ Schäfer/Ott (2004), 320-335

Lecture 7: “Consumer contracts & behavioural insights”

Reading material:

- ✓ Schäfer/Ott 370-374 (standard contract terms)
- ✓ Schäfer/Ott, 336-343; 351-353 (warranties)
- ✓ Rekaiti and Van den Bergh 2000, 373-384 (withdrawal)

Optional:



- ✓ Werth (2011), Contract Law and Economics, Encyclopedia, 256-277

Lecture 8 “Long term contracts & behavioural insights”

Reading material:

- ✓ Gilson (2003), Engineering a venture capital market: Lessons from the American Experience, focus on 1076-1092

Optional:

- ✓ C/U 299-305 (long run)

Lecture 9: “Exploring the marketing side”

Reading material:

- ✓ Bar-Gill (2008) The Behavioral Economics of Consumer Contracts, 749-802
- ✓ Hoffman (forthcoming), From Promise to Form: how contracting online changes consumers, 37-41.

Optional:

- ✓ Wright (2007) Behavioral Law and Economics, Paternalism, and Consumer Contracts: An Empirical Perspective, 470-511

Lecture 10: “Harmonization of contract law & the role of behavioural economics”

Reading material:

- ✓ Van den Bergh (2002), Towards a European Private Law – to harmonize or not to harmonize, that is the question, 327-343
- ✓ Alemanno/Sibony (2015) Nudge and the Law: A European Perspective, Hart Publishing, Epilogue, pp. 12-21