

Course Manual
2016/2017

Contract Law & Economics



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Course manual

Contract Law & Economics

Content

Contract drafting requires much more than knowing the legal boundaries within which parties have to operate. Lawyers (and economists) also need an in-depth understanding of the functions of contract types and clauses. This course analyzes contracts in terms of costs, incentives, risks and transaction costs. It also discusses strategic aspects, such as the (re)negotiation position before and during the contract, and the signing-without-reading problem. General issues include: the optimal level of detail and third-party governance in contracts; the optimal amount of pressure on obligations; the optimal allocation of commercial and other risks; the optimal timing of performance and payment; self-enforcing contracts; and general techniques to incentivize monitors and hard-to-monitor promisors. Applications include franchise contracts, lease contracts, lawyer-client contracts, contractual arrangements in agriculture, royalty contracts, contracts in the entertainment industry, oil production contracts, penalty clauses warranty clauses, forum clauses, futures, severance pay, termination clauses, covenants not to compete, automatic renewal clauses, warranties, and the duty to inform.

Learning objectives

After the course the student is able to:

- give legal advice or do consultancy services to contract choice and contract design;
- do scientific research on the intersection of Economics and Law.
- apply legal and economic contract theories and practices interchangeably;

Format

Lectures with class discussion of applications and assignments. Students are required to be prepared for active class discussions by completing all reading assignments and writing assignments, and by actively participating in oral discussions.

Assessment method/Examination

Students performance is tested by means of his/her performance on a final examination (80 % of the final grade) and on written assignments during the course (20 % of the final grade)

- Final written test: written exam at the end of the course, closed book (80 % of the final grade).
- Written assignments during the course (20% of the final grade). Assignments should be made individually at home and handed in before class (by sending them to management@emle.org), according to the schedule below (see program). The assignments can be found below (see assignments).

Exam material:

Course material, class content and class discussion notes, slides and other material made available.

Course material

- Course materials and lecture slides distributed during or after each lecture
- Working papers, articles and chapters, all freely downloadable:
 - De Geest, Gerrit, *Signing Without Reading* (April 23, 2015). Marciano, Alain and Ramello, Giovanni Battista (eds.), *Encyclopedia of Law and Economics: Basic Areas of Law*, Springer, Forthcoming; Washington University in St. Louis Legal Studies Research Paper No. 16-09-01. Available at SSRN: <https://ssrn.com/abstract=2834314>
 - De Geest, Gerrit, *N Problems Require N Instruments* (June 7, 2012). *International Review of Law and Economics*, Vol. 35, 2013; Washington University in St. Louis Legal Studies Research Paper No. 12-05-20. Available at SSRN: <https://ssrn.com/abstract=2079747>
 - De Geest, Gerrit, *The Death of Caveat Emptor* (2014), University of Chicago Law School, Law and Economics Workshop, http://www.law.uchicago.edu/files/files/degeest_paper_0.pdf
 - Posner, Eric A., *Agency Models in Law and Economics* (2000). University of Chicago Law School, John M. Olin Law and Economics Working Paper No. 92. Available at SSRN: <https://ssrn.com/abstract=204872>
 - Vandenberghe, A-S., 'Employment Contracts', in Dau-Schmidt et al (eds.), *Labor and Employment Law and Economics*, Edward Elgar, Cheltenham, 2009, 61 -95.
 - Ayres, Ian and Schwartz, Alan, *The no-reading problem in consumer contract law* (2014), http://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=5881&context=fss_papers
 - Hermalin, Benjamin E. and Katz, Avery W. and Craswell, Richard, *The Law and Economics of Contracts*. *Handbook of Law and Economics*, Forthcoming; Columbia Law and Economics Working Paper No. 296. Available at SSRN: <https://ssrn.com/abstract=907678>.
 - Cooter, Robert and Ulen, Thomas, *Law and Economics*, 6th Edition, chapters 8 and 9
 - Shavell, Steven, *Economic Analysis of Contract Law* (February 2003). Harvard Law and Economics Discussion Paper No. 403. Available at SSRN.

Program: Schematically, theme of the lectures, reading and written assignments.

Date	Theme	Task	Format/Assessment
Whole course	Contract law and economics	Read Hermalin, Katz and Craswell (2006); Shavell (2003); Cooter and Ulen (6th ed. Chapters 8 and 9)	
1) 6 Feb.	Introduction. Benefits of and costs associated with contractual cooperation. Incentive, transaction costs and risk analysis. Efficient clauses. Signing without reading.	Read De Geest, Signing Without Reading (2015).	Lecture
2) 13 Feb.	Techniques to solve incentive problems in contracts.	Read De Geest, N Problems Require N Instruments (2012). Prepare: assignments 1 (unfair terms) and 2 (contract breach)	Lecture with class discussions of assignments
3) 20 Feb.	Techniques to solve incentive problems in contracts.	Read Posner, Agency Models in Law and Economics (2000).	Lecture
4) 22 Feb	Risk allocation. Commercial risks	Prepare assignment 3 (inc, risk, TAC analysis).	Lecture with class discussion of assignment
5) 27 Feb.	Monopoly situations. Duress, necessity and related doctrines	Prepare assignment 4 (futures)	Lecture with class discussion of assignment
6) 1 Mar.	Pre-contractual negotiations. Information exchange	Read De Geest, The Death of Caveat Emptor (2013). Prepare assignment 5 (duty to disclose)	Lecture with class discussion of assignment
7) 6 Mar.	Long-term contracts	Prepare assignment 6 (24-year beer tie).	Lecture with class discussion of assignment
8) 7 Mar.	Employment contracts	Read Vandenberghe (2009); Prepare assignment 7 (seniority rule)	Lecture with class discussion of assignment.
9/10) 13 Mar	Consumer contracts	Read Ayres and Schwartz (2014) Prepare assignment 8 (automatic renewal clauses)	Lecture with class discussion of assignment. Guest lecture
11/12) 15 Mar	Final conclusions		Lecture and questions
20 Mar			Final Exam (written test)

Course outline

Lecture 1 – Introduction.

Topics: Introduction. Benefits and costs of contractual cooperation. What should contracts maximize? INC/TAC/RISK analysis. Efficient clauses. Coase-theorem. Signing-without-reading. Applications.

Lectures 2 – General incentivizing techniques

Topics: Opportunistic breach of contract. General solutions to a Prisoners' dilemma. Opportunistic renegotiation of contracts. Relationship-specific investments. Optimal sanctions for contract breach (how much pressure should be put on obligations)? Informal Strategies (how to solve incentive problems in the absence of a binding contract).

Applications.

Lecture 3:- General incentivizing techniques

Topics: Principal-agent problems: concept. Principal-agent problems: input versus output monitoring. Variable pay. Bonuses or sanctions? Paying 'rents' to improve agents' incentives? Multi-tasking agent. Type I and type II error. Residual claimant mechanism (incentives to monitor). Liability for losses caused by others (incentives to monitor). Bilateral incentive problems. Team production.
Applications.

Lecture 4 – Risk Analysis. Commercial risk allocation. Techniques to prevent involuntary commercial risk taking. Incentivizing entrepreneurs.

Topics: Incentive problems between entrepreneur and owner of capital. Commercial risk rights. Optimal timing of payment. Risk analysis (general). Are firms risk neutral? Why are people not interested in insurance for non-pecuniary risks? Who is the least cost insurer (insurable risks)? Who is the superior risk bearer (non-insurable risks)? Uninsurable risks in contracts: general. (Unintended) risk creation by contracts. Risk allocation: higher third party bid. Risk allocation: higher/lower production costs.
Applications.

Lecture 5 – Monopoly situations, duress, and related doctrines

Topics: Contract renegotiation. Limits of freedom to contract.
Applications.

Lecture 6 – Precontractual negotiations – information exchange

Topics: Precontractual negotiations. Information exchange. Least-cost-information-gatherer principle. Applications.

Lecture 7 – Transaction cost analysis. Incomplete and long-term contracts

Topics: Transaction costs in contracts. The complete contract concept. How detailed should contracts be? Long-term contracts: ex ante lack of information to determine detailed obligations + relation-specific investments. Solutions to long-term contracts. Self-enforcing contracts. Applications.

Lecture 8 – Employment contracts

Topics: Employment contracts (theory). The right-to-leave. Just cause versus at-will. Sanctions for contract breach when breach is unverifiable or non-observable. You quit first game. Severance pay. Notice periods and probationary periods. Covenants not to compete.

Lectures 9 and 10 – Consumer contracts

Topics: Right to withdraw. Automatic renewal clauses. Warranty clauses. Privacy.

Lectures 11 and 12 – final conclusions – synthesis - applications

Assignments:

1.Regulation of unfair terms in consumer contracts

The Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts has to a large extent harmonized the rules on unfair contract terms in the member states of the European Union.

(1) Is this directive compatible with Law & Economics theory on signing-without-reading problems?

(2) Comment on the following article:

Article 3 (3): “The Annex shall contain an indicative and non-exhaustive list of the terms which may be regarded as unfair.” The annex lists “Terms which have the object or effect of:” (e) *requiring any consumer who fails to fulfil his obligation to pay a disproportionately high sum in compensation;*

2. Contract breach: ordering a boat at six dealers.

Mr. Waters placed orders for delivery of a boat at six different dealers. When the first boat comes in, he immediately cancels the other orders. Should he be able to cancel without penalty, or should the law discipline such breachers? And what is the best sanction? (damages? specific performance? a criminal sanction?)

3. Incentives, risks and transactions costs

Contractual arrangements in agriculture:

In pre-industrial times, different contractual arrangements in agriculture existed. (1) the fixed rent contract, (2) sharecropping or (3) the fixed wage contract. Under the fixed rent contract, the farmer paid a fixed rent to the landowner. Under sharecropping, the farmer and the landowner share the harvested crops (e.g. each gets 50 %). Under the fixed wage contract, the landowner hires workers to do farm work and pays them a fixed wage.

Compare the incentives, transaction costs and risks under the different contractual arrangements.

Lawyer-client contracts:

Different contractual arrangements between a lawyer and his client exist. (1) the fixed fee contract, (2) the hourly fee contract or (3) the contingency fee contract.

Compare the incentives, transaction costs and risks under the different contractual arrangements.

California gold-rush:

Two general types of contracts were used in the California gold-mining rush of the 19th century: (1) the sharing contract and (2) the land allotment contract

Under the *sharing contract*, each miner in the group agreed to work a certain number of hours per day. At the end of the day, all the gold collected by the members was deposited into a common pool. It was then measured and divided among the members of the group according to a specific formula, usually an equal share for each member. Under the *land allotment contract*, each individual in the group was assigned a separate parcel of land within the mining district. Each miner got to keep all the gold he extracted from his own parcel.

Compare both types of contracts in terms of a) incentives created b) transaction costs and c) risk allocation.

4. Futures

A grower of carrots has a contract to deliver his entire output to a large soup company. There is a tremendous shortage of this type of carrot and the market price rises to three times the contract price. The grower threatens to breach unless the soup company agrees to a modification. The company does so because it believes that if it does not get these carrots it would have to close down some of its production lines for the entire canning season and that it would not be able to recover these damages if it refused to negotiate and later sued the grower for breach. After the season is over, the soup company sues for the difference between the prices in the original and modified contracts. It argues that there was no consideration for the second promise and that the modified contract was signed under conditions of duress.

- (a) How should its claim be resolved?
- (b) Should there be a duty to negotiate? Or should it be forbidden to (re)negotiate the contract terms (renegotiation proof contract)?
- (c) What should be the sanction for contract breach?

5. Duty to disclose

Professor Schmidt, a geologist, has agreed to purchase McDonald's farm for a price of \$ 2,000 per acre, which corresponds to the price of good quality farmland in the vicinity. However, Schmidt, on the basis of his own geological studies, is convinced that McDonald's farm contains valuable mineral deposits, which make the property worth \$ 25,000 per acre. Schmidt's true motive is discovered by McDonald before he takes possession, and McDonald refuses to hand over the property. Schmidt sues for breach of contract. McDonald defends on the ground that Schmidt had a duty to disclose the results of his studies. According to economic analysis, who should win? Explain why.

6. The 24-year Beer Tie

(Excerpt from Beale, Hugh, Hartkamp, Arthur, Kötz, Hein, and Tallon, Dennis (2002), *Cases, Materials and Text on Contract Law*, Hart Publishing, p. 313-314) “*Facts*: The defendants, owners of a restaurant, had agreed in 1954 to buy all their requirements of beer and non-alcoholic beverages exclusively from the plaintiff, a brewery, for a period of twenty-four years ending on 31 October 1978. The defendants terminated the agreement on 31 October 1964, *i.e.* after ten years. The plaintiff brought an action against the defendants relying on a clause in the contract providing that in the event of a termination prior to 31 October 1978 the defendants were to pay a penalty of 15% of the amount they would have paid for purchases of beer and non-alcoholic beverages during the remainder of the agreed contract period.”

“*Held*: The Bundesgerichtshof held that the penalty should be assessed for the period that would have been justified (a sixteen-year tie would have been reasonable, a twenty-four year tie was considered to be contrary to public policy).”

Note. In the 1950s and 1960s, it was very common in Germany and Belgium to let a brewer finance a part of the cafe or bar. In return, the cafe owner had to promise to buy all drinks (at that time mainly beer and water) from that brewer during a long period. In the 1960s and 1970s these contract came under pressure, because customers started to demand wine and products like Coca-Cola (local brewers started to make their own cola, but customers generally believed that their taste was not as good as the real one).

Questions:

- (a) Analyze: ex post opportunism by the brewer (compare to opportunism by a franchisor), risk allocation (unintended risk creation?), efficient breaching decisions by the restaurant and cafe owner.

(b) In these contracts, brewers delivered both beer and capital. Is it not unlikely that the same company will be the best choice for both beer and capital? Can this type of tying contractual arrangements ever make economic sense? Should not those bundling contracts be forbidden from the start? Or can they make sense in some cases?

(c) What would you have decided if you would have been the judge?

7. Seniority rule

According to the seniority rule, the longer you work at a place, the higher you get paid. Since the true productivity is not always directly related to the wage received (most people are more productive when they are 35-40 than what they are 60-65), this actually means that people are underpaid when they are 30 and overpaid when they are 55.

The seniority rule is used by most bureaucracies, by most European universities, by some big firms, and by some law firms.

(a) Discuss all the incentive problems that are solved as well as created by the seniority rule.

(b) If a seniority system is used, should it be possible for each of the parties to terminate the contract at will? Or only on a just cause basis?

(c) Describe very precisely under what conditions this contractual arrangement can make sense.

8. Automatic renewal clauses

Many consumer subscription contracts contain an automatic renewal clause. According to this clause the contract is automatically renewed for a new period of time unless it is cancelled. As it turns out many consumers forget to cancel in due time in which case they are bound for a new term.

Would rational parties ever agree to include such a clause in the contract? Or should regulators forbid such a clause?

European Master in Law & Economics

Empirical Legal Studies

Rotterdam, Term 2

Version 1.0 (January 10, 2017).

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SCHEDULE

Lectures

Lecture 1. Descriptive Statistics and intro to STATA (January 19)

Mandatory reading: OpenIntro Statistics (pp. 9-14, 26-42, 127-137).

Lecture 2. Formulating Hypotheses (January 23)

Mandatory reading: Klick (2006).

Lecture 3. Inference (January 24)

Mandatory reading: OpenIntro Statistics (chapter 4 & 5 without special topics).

Lecture 4. Regression (January 25)

Mandatory reading: OpenIntro Statistics (chapter 7)

Lecture 5. Correlation vs. causation (January 26)

Mandatory reading: Gelbach & Klick (2014).

Lecture 6. Causal inference (January 27)

Mandatory reading: Gelbach & Klick (2014).

Lecture 7. Panel data (February 27)

Mandatory reading: Klick & Stratmann (2003).

Lecture 8. Regression discontinuity (February 28)

Mandatory reading: MacDonald et al. (2016).

Lecture 9. Event studies (March 1)

Mandatory reading: Klick & Sitkoff (2008).

Lecture 10. Empirical Work in Litigation (March 2)

Lecture 11. TBD (March 3)

Tutorials

Tutorial 1. Descriptive statistics (February 2)

Tutorial 2. Regression (February 9)

Tutorial 3. Panel data (February 28)

Tutorial 4. Regression discontinuity (March 14)

Tutorial 5. Event studies (March 16)

LITERATURE

Mandatory readings

1. Diez, David, Christopher Barr and Mine Cetinkaya-Rundel (2015). OpenIntro Statistics. Third Edition. available under a Creative Commons license. Visit www.openintro.org for a free PDF, to download the textbook's source files, or for more information about the license.
2. Gelbach, Jonah & Jonathan Klick (2014). Empirical Law and Economics. U of Penn, Inst for Law & Econ Research Paper No. 14-39 (Forthcoming in Oxford Handbook of Law and Economics, edited by Francesco Parisi).
3. Klick, Jonathan & Thomas Stratmann (2003). The Effect of Abortion Legalization on Sexual Behavior: Evidence from Sexually Transmitted Diseases. Journal of Legal Studies. Vol. 32(2). pp. 407-434.
4. Klick, Jonathan (2006). Salvation as a Selective Incentive International Review of Law and Economics. International Review of Law & Economics. Vol. 26(1). pp. 15-32.
5. Klick, Jonathan & Robert Sitkoff (2008). Agency Costs, Charitable Trusts, and Corporate Control: Evidence from Hersheys Kiss-Off. Columbia Law Review. Vol. 108(4). pp. 749-838.
6. MacDonald, John, Jonathan Klick & Ben Grunwald (2016). The Effect of Private Police on Crime: Evidence from a Geographic Regression Discontinuity Design. Journal of the Royal Statistical Society Series A (forthcoming).

Further readings

1. Reference Manual on Scientific Evidence (2011). Reference Guide on Statistics & Reference Guide on Multiple Regression. pp. 211-358.
2. Khandker, Shahidur R., Gayatri B. Koolwal and Hussain A. Samad (2010). Handbook on Impact Evaluation: Quantitative Methods and Practices. World Bank. Visit <https://openknowledge.worldbank.org/handle/10986/2693> to download a free copy. License: CC BY 3.0 IGO.
3. Sykes, Alan (1993). An Introduction to Regression Analysis. Chicago Working Paper in Law & Economics.

SOFTWARE

This course will use STATA as a primary statistical package in the applied sessions. Free resources to help you learn and use STATA are available [here](#). STATA Learner videos can be accessed [here](#) and visual overview for creating graphs [here](#). More STATA Tutorials: (1) [Princeton](#), (2) [UNC](#).



Corporate Law & Economics

Patrick C. Leyens

Syllabus

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Class 5: Regulatory challenges (incl. revision)	3
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Summary

“Corporate Law & Economics” is an advanced EMLE course. As a 2nd term course it seeks to enable students to follow and contribute to the state of the art discussions in law & economics. Corporations are taken as an example for illustrating an L&E view of transaction governance. The course aims to enhance the understanding of the interaction between markets, contracts and corporations. Fields of the law treated are corporate and capital market law, including references to contract law.

The course covers questions such as: (1) When is a corporation a functional transaction structure? (2) For which of the core structural elements of corporations is law needed? (3) Which corporate governance problems does the law have to solve? (4) To what extent do specific problems of control transactions interact with corporate governance? (5) In view of one to four, which are the challenges a functional rule making take should care of?

Course readings are taken mainly from the ‘Anatomy of Corporate Law’, edited by *Kraakman et al.*, 2nd ed., 2009. Selected chapters of the ‘Anatomy’, additional readings and further materials are available online. Parts of the last class will be devoted to a training session exclusively dealing with possible answers to exam questions.

Class 1-2: Transaction governance and corporations

Summary: course aim, the firm and its size, transaction governance, governance and costs, incomplete contracts, hold ups, modes of governance.

Main question: When is a corporation a functional transaction structure?

Topics:

- Coase's world: transaction costs
- Klein's world: hold-ups
- Williamson's world: critical dimensions

Readings

- Coase, 4 *Economica* 386 (1937)
- Klein, 4 *J. L. Econ. & Organ.* 199 (1988), esp. p. 199-208
- Williamson, 22 *J. L. Econ.* 233 (1979)

Class 3-4: Corporations and the law

Summary: characteristic elements of corporations (large business enterprises), evolution and role of corporate law, market failure, information asymmetry, moral hazard.

Main Question: For which of the core structural elements of corporations is law needed?

Topics:

- What is a corporation?
- What is corporate law?
- What drives corporate law?
- Outlook: how to analyse agency problems?

Obligatory reading:

- Anatomy, p. 1-34.

Voluntary readings:

- Hopt, *Comparative Company Law*, in: Reimann/Zimmermann, ed., *The Oxford Handbook of Comparative Law*, Oxford 2006, S. 1161.
- Leyens, 6 *German L. J.* 1407 (2005).

Class 5-6: Corporate governance

Summary: agency costs, regulatory and governance strategies to reduce agency costs, incompatibilities b/w shareholder and management incentives, compliance enforcement strategies, board models.

Main question: Which corporate governance problems does the law have to solve?

Topics:

- How to reduce agency costs?
- How to enforce compliance?
- Why do managers not comply?
- What is the role of the board of directors?

Obligatory readings:

- Anatomy, 35- 87 (focus on 35-50, 55-78)
- *Hopt/Leyens*, ECFR 2004, 135, www.ssrn.com (focus on overview, not details)

Voluntary readings:

- *Ferrarini/Guidici/Richter*, *RabelsZ* 69 (2005) 658.
- *Hopt*, *Comparative Corporate Governance*, 59 *Am J. Comp. L.* 1 (2011). *comprehensive!
- *Zingales, Luigi*, in: Newman/Palgrave, eds., *The New Palgrave Dictionary of Economics and the Law*, New York, 1998, www.ssrn.com.

Class 7-8: Control transactions

Summary: agency problems, market-based corporate governance, interdependence between internal and external corporate governance.

Main question: To what extent do specific problems of control transactions interact with corporate governance?

Topics:

- What are the core agency problems in takeovers?
- How does EU law address agency problems (as opposed to the U.S.)?
- When are takeovers functional for corporate governance?
- What do takeovers tell about modes of regulation?

Readings:

- Anatomy, 225-256, (267-273)

Voluntary readings:

- *Bebchuk*, 12 *Del. J. Corp. L. (DJCL)* 911 (1987)
- *Easterbrook/Fishel*, 94 *Harvard L. Rev.* 1161 (1981)
- *Hopt*, 20 *Australian J. Corp. L.* 244 (2007).

Class 9-11: Regulatory challenges (incl. revision)

Summary: These classes will be devoted to open questions and tailored to the progress made so far. General issues concern regulatory modes, path dependence and institutional capacities as well as our joint reflexion on future challenges.

Main question: In view of the foregoing classes, which are the challenges corporate law making should take care of?

Topics:

- What are the chances of new modes of regulation (esp. comply or explain)?
- Why is corporate law path-dependent (esp. privatisation failures in Russia)?
- What next in corporate law (esp. core assumptions in economic theory)?

Obligatory readings:

- Anatomy, 305-317
- T.b.a.

Voluntary readings:

- *Fox/Heller*, ed., in: Corporate Governance Lessons from Transition Economy Reforms, Princeton 2006, p. 3; also NYU L. Rev. (2000), www.ssrn.com
- *Bratton/McCahery*, 38 Colum. J. Transnat'l L. 213 (1999).
- *Bebchuk/Roe*, 52 Stanford L. Rev. 127 (1999).

Bibliography

a) Internet Resources

- Berlin Center of Corporate Governance (BCCG): <http://www.bccg.tu-berlin.de>.
- California Public Employees' Retirement System (CalPERS): <http://www.calpers-governance.org>.
- Conference Board: <http://www.conference-board.org>.
- Corporate Governance Network: <http://www.CorpGov.net>.
- Corporate Library: <http://www.thecorporatelibrary.com>.
- Encyclopedia about Corporate Governance: <http://www.encycogov.com>.
- **Encyclopedia of Law and Economics, all fields of L&E, <http://encyclo.findlaw.com/>**
- European Commission (Single Market), Information on state of company and capital market law in the EU, http://ec.europa.eu/internal_market/index_en.htm
- **European Corporate Governance Institute, Corporate governance codes, corporate governance research (law paper series, finance paper series), <http://www.ecgi.org>**
- Global Corporate Governance Forum: <http://www.gcgf.org>.
- **Journal Storage (JSTOR), large database, mainly on economics, many original texts, <http://www.jstor.org>**
- Max Planck Institute for Comparative and International Private Law, Bibliographical links to foreign and international law, legal history and library catalogues, http://www.mpipriv.de/ww/en/pub/library/research_tools/bibliographical_links.htm
- Regierungskommission Deutscher Corporate Governance Kodex: <http://www.corporate-governance-code.de>.
- **Social Science Research Network, largest international research database <http://www.ssrn.com>**

b) General monographs and edited volumes

- *Cooter/Ulen*, Law and Economics, 5th ed., Boston 2007.
- *Furubotn/Richter*, Institutions & Economic Theory, 2nd ed., Michigan 2005.
*Note: This volume includes a comprehensive L&E Glossary.
- *Towfigh/Petersen* (eds.), Economic Methods for Lawyers, Cheltenham 2015.

- *Grundmann*, European Company Law, 2nd ed., Antwerp 2009.
- *Posner*, Economic Analysis of the Law, 7th ed., Austin 2007.
- *Reimann/Zimmermann*, eds., Oxford Handbook on Comparative Law, Oxford 2008.
- *Schäfer/Ott*, The Economic Analysis of Civil Law, London 2004.

c) Corporate Law

- Selection of leading works on corporate governance for further purposes of research (important papers highlighted); for comprehensive compilations see *Leyens*, in: Hopt/Wiedemann (eds.), Kommentierung zu § 161 AktG, Berlin 2012, and *same* in: Hommelhoff et al. (eds.), Handbuch Corporate Governance, 2nd ed., 2009) –
- *American Law Institute*, Principles of Corporate Governance, Philadelphia 1994.
- ***Armour, John/McCahery, Joseph A., ed., After Enron, Improving Corporate Law and Modernising Securities Regulation in Europe and the US, Oxford 2006.***
- *Bainbridge, Stephen M.*, Corporate governance after the financial crisis, Oxford 2012.
- *Barca, Fabrizio/Becht, Marco*, ed., The Control of Corporate Europe, Oxford 2001.
- *Bebchuk, Lucian A./Roe, Marc J.*, A theory of path dependence in corporate ownership and governance, 52 Stanford L. Rev. 127 (1999).
- *same/Hamdani, Assaf*, The Elusive Quest for Global Governance Standards, 157 U. Pa. L. Rev. 1263 (2009).
- *Bratton, William W./McCahery, Joseph A.*, Comparative Corporate Governance and the Theory of the Firm, 38 Colum. J. Transnat'l L. 213 (1999).
- *Cheffins, Brian R.*, Law, Economics and the UK's System of Corporate Governance, 1 J. Corp. L. Stud. 71 (2001).
- *Clarke, Thomas*, ed., Theories of Corporate Governance, Oxon 2005, Reprint 2007.
- *Coase, R. H.*, The Nature of the Firm, 4 *Economica* 386 (1937).
- ***Easterbrook, Frank H./Fischel, Daniel R., The Economic Structure of Corporate Law, 4th ed., Cambridge 1998.***
- *Eidenmüller, Horst*, Free Choice in Corporate Law, in: Jürgen Basedow/Toshiyuki Kono, ed., An Economic Analysis of Private International Law, Tübingen 2006, S. 187.
- ***Enriques, Luca/Volpin, Paul, Corporate Governance Reforms in Continental Europe, 21 J. Econ. Persp. 117 (2007).***
- *Fama, Eugene F./Jensen, Michael C.*, Separation of ownership and control, 26 J. L. & Econ. 301 (1983).
- *Ferran, Eilís*, The Company Law Reform in the United Kingdom, *RabelsZ* 69 (2005) 629.
- *Ferrarini, Guido/Guidici, Paolo/Richter, Mario Stella*, Company Law Reform in Italy, *RabelsZ* 69 (2005) 658.
- *Fleischer, Holger*, Opening the “Black Box” in Law and Economics, *JITE* 162 (2006) 101.
- *Fox, Merritt B./Heller, Michael A.*, ed., Corporate Governance Lessons from Transition Economy Reforms, Princeton 2006.
- *Ghezzi, Federico/Malberti, Corrado*, The Two-Tier Model and the One-Tier Model of Corporate Governance in the Italian Reform of Corporate Law, *ECFR* 2008, 1.
- *Gilson, Ronald J.*, Corporate Governance and Economic Efficiency, 74 Wash. Univ. L. Q. 327 (1996).
- *Holland, P. R. J./Prentice, D. D.*, Contemporary Issues in Corporate Governance, Oxford 1993.
- ***Hopt, Klaus J., Comparative Corporate Governance, 59 Am J. Comp. L. 1 (2011).***

- *same*, Comparative Company Law, in: Mathias Reimann/Reinhard Zimmermann, ed., The Oxford Handbook of Comparative Law, Oxford 2006, S. 1161.
- *same/Kanda, Hideki/Roe, Mark J./Wymeersch, Eddy/Prigge, Stefan*, ed., Comparative Corporate Governance – The State of the Art and Emerging Research, Oxford 1998.
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Property Law and Economics – Judge Kerkmeester

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Lecture 2 Property Rights and the Theory of the Firm

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Lecture 3 Commons and Anti-Commons

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Lecture 4 The Relations Between Neighbours; I: Bargaining in the Shadow of the Law

- R.H. Coase, *The Problem of Social Cost*, 3 *Journal of Law and Economics*, 1960, p. 1.

Lecture 5 The Relations Between Neighbours; II: Order Without Law

- R.C. Ellickson, *Of Coase and Cattle: Dispute Resolution Among Neighbors in Shasta County*, 38 *Stanford Law Review*, 1986, p. 623.

Lecture 6 Externalities and Entitlements

- A.M. Polinsky, *Controlling Externalities and Protecting Entitlements: Property Right, Liability Rule, and Tax-Subsidy Approaches*, 8 *Journal of Legal Studies*, 1979, p. 1.

Lecture 7 Original Assignment of Private Property

- T.L. Anderson and P.J. Hill, *The Race for Property Rights*, 33 *Journal of Law and Economics*, 1990, p. 177.
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Lecture 8 Possession and Limitation Statutes

- B. Bouckaert and B.W.F. Depoorter, *Adverse Possession – Title Systems*, *Encyclopedia of Law and Economics*, Vol. II, Cheltenham, 2000, p. 18.

Lecture 9 Zoning Law

- Literature to be announced

Lecture 10 Auctions of Rights in Public Property

- R.P. McAfee and J. McMillan, Auctions and Bidding, 25 Journal of Economic Literature, 1987, p. 699.

Lecture 11 Property Rights in the Electromagnetic Spectrum

- Advice on the features of the forthcoming multi-band radio spectrum auction in the Netherlands, November 2010, DotEcon Ltd, London.

Lecture 12 Sample exam

- Exam 2016

**EUROPEAN MASTER PROGRAMME IN
LAW & ECONOMICS
2nd term – Rotterdam – 2016/2017**

**LAW AND ECONOMICS IN THE COURTS
Version: 01 February 2017**

1. There will be 5 sessions in this course, in each of them one case to be discussed by two teams (plaintiffs / defendants).
2. Each team has 5 or 6 members, as is shown in the table below. You have to contact your colleagues in your team in time to prepare for your sessions. For this, please read the overview table below. **The division of students per group is decided by us and cannot be changed/discussed.**
3. Each student will be in a team in two sessions: to prepare the case and to give a presentation in the specific session; **all individual team members have to present a part of the presentation.**
4. In the three sessions in which you do not have a specific role (= not presenting as being a member of one of the teams), you are expected to be familiar with the case materials and to participate in the class discussions as much as possible. Your involvement in the sessions where you do not have to present will help you write a better essay. Do not forget that **attendance is anyway mandatory.**
5. For this course, we will NOT have an exam at the university. The final mark for this course will be:
 - 50% for the presentation in class (including, eventually, any written paper to be submitted; this might be different per session), for those two sessions in which you have a specific role as a team member;
 - 50% for writing a short (individual) essay (max length 1000 words) for every session in which you do not present. The essays have to be handed in within two weeks after the session (to be sent by email to: management@emle.org. The total of these three (individual) essays will count as your (take-home) exam (to be graded).
 - Name your file [EMLE_ID]_Courts_1(2, 3, 4, 5).docx
 - Do not write your name on the essay or in the file name.
6. The study materials will be available – per session – on Google Drive around 1 week in advance of the specific session. At Google Drive, Rotterdam 2nd term – L&E in the Courts – per session.
7. More specific instructions per session will be in the materials per Session / Case on Google Drive.

Date, time & classroom	Case & lecturer
Friday 27 January 2017 / 09.00 – 11.45 (Y1-20)	Case 1 – Visscher
Friday 3 February 2017 / 9.00 – 11.45 (Y3-09)	Case 2 – Paccès
Tuesday 21 February 2017 / 10.00 – 12.45 (T3-13)	Case 3 – Kovac
Monday 13 March 2017 / 13.00 – 15.45 (Y1-17)	Case 4 – Camesasca
Friday 17 March 2017 / 09.00 – 11.45 (tba)	Case 5 – Keske

	Topic	Lecturer	Roles to be played (number student)
Case 1	Product liability: the Halcion case	Vischer	Team 1 (1-5): the attorney of the plaintiffs Team 2 (6-10): the attorney of the defendant
Case 2	Liability of Corporate Directors	Paccas	Team 1 (1-5): the attorney of the plaintiffs Team 2 (6-11): the attorney of the defendant
Case 3	Unforeseen contingencies, impossibility and excessively onerous performance: The Alcoa Case.	Kovac	Team 1 (1-5): the attorney of the plaintiffs Team 2 (6-10): the attorney of the defendant
Case 4	Multilateral Interchange Fees	Camesasca/J anutta	Team 1 (1-5): the attorney of the plaintiff Team 2 (6-11): the attorney of the defendant
Case 5	“Bureaucratia”	Keske	Team 1 (1-5): the attorney of the plaintiff Team 2 (6-10): the attorney of the defendant