

# Colloquium in Law and Economics

This research colloquium is aimed at deepening students' understanding of economic analysis of law and to improve their ability to critically review current studies in the field. It does so by bringing scholars from all over the world to present cutting edge law and economics research to the students. Six classes will be devoted to scholars presenting their papers to the students. In the remaining classes, participants will critically discuss the research presented in the previous classes, and the instructor will give introductory comments about the paper which will be presented in the following meetings. Students will be required to present their written comments for each of the papers presented in the colloquium.

Grades: 75% papers, 25% class participation. Attendance and participation is mandatory.

Classes start at 18:00 and last two full hours, unless otherwise specified.

Office Hours (email if you will arrive): **Miller**, Tues 15–16, Room 7068.

For students looking for a general reference on Law and Economics, we recommend the following books: (1) *Law and Economics*, by Robert Cooter and Thomas Ulen, and (2) *Economic Analysis of Law*, by Richard Posner. It is not necessary to use the most recent edition of these books.

Schedule of the Colloquium (subject to change):

## First Part (Haifa Students Only)

1. February 27. Introduction to the colloquium and to Law and Economics
2. March 6. Discussion
3. March 13. **Speaker #1**
4. March 20. Discussion
5. March 27. **Speaker #2**

## Second Part (with the EMLE students)

6. April 10. Introduction to the EMLE students and preparation for the next paper
- April 17. No class
7. April 24. **Speaker #3**
8. May 1. Discussion
9. May 8. **Speaker #4**
10. May 15. Discussion
11. May 22. **Speaker #5**
12. May 29. **Speaker #6**

This syllabus is subject to change.

Faculty of Law  
University of Haifa

**Dr. Alan Miller**

הפקולטה למשפטים  
אוניברסיטת חיפה

**ד"ר אלן מילר**

## ***Behavioral Law and Economics***

**Avishalom Tor**

University of Haifa Faculty of Law (Spring 2018)

**Welcome! You will find below all the administrative details relating to the class. Please read carefully and pay particular attention to highlighted sentences.**

**Course Description:** This course will introduce students to the behavioral analysis of law. A behavioral approach to legal analysis asserts that the efficacy of the law depends on its understanding of relevant patterns of human behavior. We will review the ways in which the scientific study of human judgment and decision making can inform the positive and normative analysis of legal rules and institutions.

The behavioral approach differs from both its economic counterpart and traditional legal scholarship: From the former, in recognizing that decision makers are not strictly rational; from the latter, in proposing an empirically based view of human behavior, instead of an intuitive one, as a foundation for law. We will examine critically how behavioral findings on systematic patterns of behavior that deviates from strictly rational utility maximization are applied to the law, recognizing the unique promise of this approach as well as the limitations of its methodology.

**Office Hours:** By appointment. I can be reached by email at [Avishalom.tor@gmail.com](mailto:Avishalom.tor@gmail.com).

**Grading/Final Exam:** The final exam will account for 100% of your grade, subject to a class participation adjustment of up to 5% in either direction, for either exceptional or inadequate participation. You should come to class having read and thought about the material, and ready to participate in a critical discussion of the sources.

The final exam will test for a) your close familiarity with the mandatory readings and class discussions and b) your understanding of the behavioral approach as reflected in your ability to apply this methodology to problems not discussed in the class.

You should note that the final exam will be a “take home” exam.

**Readings:** The assigned readings for each class appear in the readings list below. The materials are selected from law review articles or other academic journals. **The readings are mandatory, unless designated with an asterisk “\*”, and whether or not they are explicitly discussed in class they may be included in the exam.**

Finally, I may modify either the materials or specific reading assignments to account for our progress in class, recent developments in the field, or for other pedagogical reasons, throughout the class.

### **Optional Background Materials**

- Christine Jolls et al., *A Behavioral Approach to Law and Economics*, 50 STAN. L. REV. 1471 (1998).
- Russell B. Korobkin & Thomas S. Ulen, *Law and Behavioral Science: Removing the Rationality Assumption from Law and Economics*, 88 CAL. L. REV. 1053 (2000).
- Avishalom Tor, *The Methodology of the Behavioral Analysis of Law*, 4 HAIFA L. REV. 237 (2008).

## *Class Schedule*

### 9/5 CLASS 1: INTRODUCTION

No readings.

### CLASS 2: THE BASICS—JUDGMENT

- Avishalom Tor, *The Methodology of the Behavioral Analysis of Law*, 4 HAIFA L. REV. 237, 245-257 (2008).
- Amos Tversky & Daniel Kahneman, *Judgment under Uncertainty: Heuristics and Biases*, 185 SCIENCE 1124 (1974) (offprint pp. 38-55). [HEBREW VERSION AVAILABLE]

### 13/5 CLASS 3: BIASED JUDGES? LIABILITY IN HINDSIGHT

- Jeffrey J. Rachlinski, *A Positive Psychological Theory of Judging in Hindsight*, 65 U. CHI. L. REV. 571 (1998) (file pp. 1-25).
- \* Jeffrey J. Rachlinski, *Heuristics and Biases in the Courts: Ignorance or Adaptation?*, 79 ORE. L. REV. 61 (2000) (selection).

### CLASS 4: LITIGATION AND SETTLEMENT—EGOCENTRIC JUDGMENTS

- Linda Babcock & George Loewenstein, *Explaining Bargaining Impasse: The Role of Self-Serving Biases*, 11 J. ECON. PERSP. 109, 109-16, 119-22 (1997).
- \* George Loewenstein & Don A. Moore, *When Ignorance is Bliss: Information Exchange and Inefficiency in Bargaining*, 33 J. LEG. STUD. 37, 37-51 (2004).

### 15/5 CLASSES 5-6: THE BASICS—DECISION MAKING

- SCOTT PLOUS, *THE PSYCHOLOGY OF JUDGMENT AND DECISION MAKING* 79-82 (from Ch. 7), 88-92 (from Ch. 8) (1993).
- Mark Kelman et al., *Context Dependence in Legal Decision Making*, 25 J. LEG. STUD. 287-300 (1996) (file pp. 1-14).

### 24/5 CLASS 7: PROSPECT THEORY

- Daniel Kahneman & Amos Tversky, *Choices, Values, and Frames*, 39 Am. Psychol. 341 (1984). [HEBREW VERSION AVAILABLE]

### CLASS 8: PROSPECT THEORY AND LITIGATION

- Jeffrey J. Rachlinski, *Gains, Losses, and the Psychology of Litigation*, 70 S. CAL. L. REV. 113 (1996) (file pp. 1-27).
- \* Chris Guthrie, *Framing Frivolous Litigation: A Psychological Theory*, 67 U. CHI. L. REV. 163, 176-95 (2000).

**28/5** CLASS 9: ENDOWMENT EFFECT

- Daniel Kahneman, Jack L. Knetsch & Richard H. Thaler, *The Endowment Effect, Loss Aversion, and Status Quo Bias*, 5 J. ECON. PERSP. 193, 194-204 (1991).
- Russell Korobkin, *The Endowment Effect and Legal Analysis*, 97 NW. U. L. REV. 1227 (2003) (excerpt pp. 1-13).

CLASS 10: DEFAULT RULES

- Russell Korobkin, *The Status-Quo Bias and Contract Default Rules*, 83 CORNELL L. REV. 613 (1998) (excerpt pp. 1-21).
- Colin Camerer et al., *Regulation for Conservatives: Behavioral Economics and the Case for “Asymmetric Paternalism”*, 151 U. PA. L. REV. 1211, 1224-30 (2003).

**30/5** CLASS 11: LIQUIDATED DAMAGES AND BEYOND

- Melvin Eisenberg, *The Limits of Cognition and the Limits of Contract*, 47 STAN. L. REV. 211 (1995) (excerpt pp. 1-15).
- Robert A. Hillman, *The Limits of Behavioral Decision Theory in Legal Analysis: The Case of Liquidated Damages*, 85 CORNELL L. REV. 717 (2000) (excerpt pp. 1-8).
- Jeffery Rachlinski, *The New Law and Psychology: A Reply to Critics, Skeptics, and Cautious Supporters*, 85 CORNELL L. REV. 739 (2000) (excerpt pp. 1-7).

CLASS 12: RATIONALITY THROUGH LAW?

- RICHARD H. THALER & CASS R. SUNSTEIN, *NUDGE* (2008) (Ch. 1, 4, 5, 17 selections).
- Avishalom Tor, *The Critical and Problematic Role of Bounded Rationality in Nudging in NUDGING—POSSIBILITIES, LIMITATIONS, AND APPLICATIONS IN EUROPEAN LAW AND ECONOMICS* 3-10 (K. Mathis & A. Tor eds., 2016).
- \* Colin Camerer et al., *Regulation for Conservatives: Behavioral Economics and the Case for “Asymmetric Paternalism”*, 151 U. PA. L. REV. 1211 (2003).