

ECONOMIC ANALYSIS OF PRIVATE LAW

Course description

This double course aims at giving students an overview of the most important insights from the economic analysis of private law. It combines economic analysis of property law, tort law, and contract law. As far as property law is concerned, the course integrates the legal and the economic approach to ownership and illustrates costs and benefits of different ways to protect entitlements. For tort law, the course offers a comparative analysis of the legal principles from an economic perspective, particularly regarding the structure of liability, the damage compensation, and the insurance. Concerning contract law, the course illustrates its goals and functions from an economic perspective. Moreover, it aims to provide a functional understanding of the spectrum of feasible contracts and of their use in legal practice.

Teaching team

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|-------------------------------|----------------------------|
| Prof. Georg Ringe | georg.ringe@uni-hamburg.de |
| Prof. Ann-Sophie Vandenberghe | vandenberghe@law.eur.nl |

Teaching venue

Room 1083a, Von-Melle-Park 5

General background literature

- Robert D. Cooter & Thomas Ulen, *Law and Economics* (6th edition, Addison-Wesley 2016, online version)
- Hans-Bernd Schäfer & Claus Ott, *The Economic Analysis of Civil Law* (Edward Elgar 2004)
- Steven Shavell, *Foundations of Economic Analysis of Law* (Harvard University Press 2004)

Working paper versions:

<http://www.nber.org/papers/w9694> (accident law);

<http://www.nber.org/papers/w9695> (property law)

<http://www.nber.org/papers/w9696> (contract law)

SYLLABUS

I. Introduction

Class 1

Introduction Class to Law & Economics of Private Law (Ringe)

Tuesday 19 November 2019, 14-16h

II. Property Law & Economics (Ringe)

Class 2

Theory of Property

Tuesday 19 November 2019, 16-18h

Reading:

- Eirik G. Furubotn and Svetozar Pejovich, 'Property Rights and Economic Theory: A Survey of Recent Literature' (1972) 10 *Journal of Economic Literature* 1137

Class 3**The emergence of property rights**

Wednesday 20 November 2019, 14-16h

Reading:

- Harold Demsetz, 'Toward a theory of property rights' (1967) 57 *American Economic Review* 347
- Garrett Hardin, 'The Tragedy of the Commons' (1968) 162 *Science* 1243

Class 4**Problems with the Transfer of Property**

Monday 25 November 2019, 12-14h

Reading:

- Ronald H. Coase, 'The problem of social cost' (1960) 3 *Journal of Law and Economics* 1
- Harold Demsetz, 'Toward a theory of property rights' (1967) 57 *American Economic Review* 347

Class 5**Protection of private ownership rights against interference**

Tuesday 26 November 2019, 14-16h

Reading:

- Guido Calabresi and Douglas Melamed, 'Property Rules, Liability Rules, and Inalienability: One View of the Cathedral' (1972) 85 *Harvard Law Review* 1089

Class 6**Different types of ownership**

Wednesday 27 November 2019, 10-12h

Reading:

- Armen A. Alchian, 'Property Rights' in David R. Henderson (ed.), *Concise Encyclopedia of Economics* (Liberty Fund, 2nd edition 2007)
- Robert Cooter & Hans-Bernd Schäfer, *Solomon's Knot – How law can end the poverty of nations* (2012), ch 6

III. Tort Law & Economics (Ringe)**Class 7****Introduction to torts****Harm, causation, and foreseeability**

Wednesday 27 November 2019, 15-17h

Reading:

- Marcel Kahan, 'Causation and Incentives to Take Care under the Negligence Rule' (1989) 18 *Journal of Legal Studies* 427
- Omri Ben-Shahar, 'Causation and Foreseeability', in Boudewijn Bouckaert and Gerrit de Geest (eds), *Encyclopedia of Law and Economics* (Edward Elgar, 2000)

Class 8**Standards of liability**

Thursday 28 November 2019, 9-11h

Reading:

- *Steven Shavell, Economic Analysis of Accident Law (2003) chapters 2-4*

Class 9**Calculation of damages, punitive damages, and pure economic loss**

Thursday 28 November 2019, 11-13h

Reading:

- *Giuseppe Dari-Mattiacci and Hans-Bernd Schäfer, 'The Core of Pure Economic Loss' (2007) 27 International Review of Law and Economics 8*
- *V. P. Goldberg, Recovery for Pure Economic Loss in Tort: Another Look at Robins Dry Dock v. Flint, Journal of Legal Studies 1991, 249 ff.*

Class 10**Bilateral accidents**

Tuesday 3 December 2019, 14-16h

Reading:

- *Steven Shavell, Economic Analysis of Accident Law (2003) chapters 2-4*

Class 11**Torts based on level of activity**

Tuesday 3 December 2019, 16-18h

Reading:

- *Steven Shavell, Economic Analysis of Accident Law (2003) chapters 2-4*

Class 12**Liability, risk bearing, and insurance**

Wednesday 4 December 2019, 15-17h

Reading:

- *Steven Shavell, Economic Analysis of Accident Law (2003) chapter 5*

Class 13**Product liability; victims as customers**

Thursday 5 December 2019, 10-12h

Reading:

- *Mathias Reimann, 'Liability for Defective Products at the Beginning of the Twenty-First Century: Emergence of a Worldwide Standard?' (2003) 51 American Journal of Comparative Law 751*

IV. Contract Law & Economics (Vandenbergh)

Class 14

Costs and benefits of contractual cooperation. General incentivizing techniques. Why do parties need a contract?

Monday 9 December 2019, 10-12h

Reading:

- *Friedman (2000), Law's Order, chapter 12: The Economics of Contract*
- *Cooter and Ulen, Law & Economics, chapter 6: An Economic Theory of Contract*

Class 15

Informal strategies: How to solve incentive problems in the absence of a binding contract? Incomplete, long-term contracts.

Monday 9 December 2019, 13-15h

Reading:

- *Cooter and Ulen, Law & Economics, chapter 6: An Economic Theory of Contract.*

Class 16

Optimal sanctions for contract breach: How much pressure should be put on obligations?

Wednesday 11 December 2019, 10-12h

Reading:

- *De Geest, 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. Available at SSRN.*

Class 17

Contractual risk allocation.

Wednesday 11 December 2019, 13-15h

Reading:

- *Friedman(2000), Law's Order, chapter 6: An Economic Theory of Contract*

Class 18

Efficient contract terms. Contracts with monopolists. Signing-without-reading problem.

Friday 13 December 2019, 10-12h

Reading:

- *De Geest, Signing Without Reading (April 23, 2015). Marciano, Alain and Ramello, Giovanni Battista (eds.), Encyclopedia of law and Economics: Basic Areas of Law, Springer; Washington University in St. Louis Legal Studies Research Paper. Available at SSRN*
- *Cooter and Ulen, Law & Economics, chapter 7: Topics in the Economics of Contract Law*

Class 19

Pre-contractual information exchange: doctrines of mistake and fraud

Friday 13 December 2019, 13-15h

Reading:

- *De Geest and Kovac (2009), The Formation of Contracts in the Draft Common Frame of Reference, 17 European Review of Private Law 113.*
- *Cooter and Ulen, Law & Economics, Chapter 7: Topics in the Economics of Contract Law*

V. Conclusion

Class 20

Conclusion, revision, and exam preparation (Ringe)

Tuesday 17 December 2019, 10-12h