

Economics and the Law Seminar (LAW 723)
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University of Nevada Las Vegas
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Syllabus (Director's Cut)

A shipwreck has left a physicist, a chemist, and an economist without food on a deserted island. A few days later a can of beans washes up on the shore. The physicist proposes the following method of opening the can: "I've calculated that the terminal velocity of a one-pound object – the weight of the can – thrown to a height of twenty feet is 183 feet per second. If we place a rock under the can the impact should just burst the seams without spilling the beans."

The chemist's response is: "That's too risky since we can't be sure we will throw the can to the correct height. I've got a better idea. Let's start a fire and heat the can on the coals for one minute, thirty-seven seconds. I've calculated that this should just burst the seams. This method is less risky since we can always push the can off the fire if it starts to burst sooner."

The economist's reaction is: "Both of your methods may work, but they are too complicated. My approach is much simpler: Assume [you have] a can opener."¹

Goals and Objectives (a.k.a. The Purpose of This Course)

I aspire, at a minimum, to:

- ◆ (re-)introduce you to the basic methods of economic analysis and some of the ways in which they can – indeed, in many cases, already do – help us (1) understand existing legal rules and institutions and at least some of their underlying rationales, (2) critique existing legal rules and institutions and at least some of their underlying rationales, and (3) improve legal rules, institutions, and processes or at least some of their underlying justifications;
- ◆ discuss some of the many ways lawyers, judges, and lawmakers use economics and economists to assess a legal issue or dispute, advocate a position, reach a decision, and justify that decision;

¹ A. MITCHELL POLINSKY, AN INTRODUCTION TO LAW AND ECONOMICS 1 (3d ed. 2003). This joke was old when I began studying economics nearly (gulp!) 30 years ago. Those who find yourselves “adrift” (pun intended) this semester as we work our way through the assigned and recommended readings may want to read some or all of Professor Polinsky’s book, which is completely devoid of graphs and virtually devoid of math. It may help you better understand some of the concepts we are studying. The reason I did not require or recommend it is that it not only assumes no prior knowledge of economics, *it also assumes no prior knowledge of law*. I certainly hope that is a faulty assumption for students in this class. If it isn’t, please don’t disabuse me of my blissful ignorance.

- ◆ further hone your analytical and writing skills in ways that will serve you well in your future legal endeavors;
- ◆ apply those skills to discussing and assessing the explanations and arguments made in the assigned course materials and in one another's written work, in-class discussion, and presentations; and
- ◆ enable those of you who have chosen to do so to satisfy the graduation writing requirement by writing a paper on any topic you choose, provided that you utilize and critique one or more of the methodological tools in an economist's tool kit.

Class Meetings and Individual Conferences

Unless I announce otherwise, class will meet **every Tuesday** between January 19th and April 20th (except March 30th, which falls during spring break) from **9:00 to 10:55 a.m.** in **Room 106**. I reserve the right to schedule a make-up for any class I must miss or that a critical mass of you misses. I also reserve the right to extend our class meeting time once or twice, with prior notice, to afford every student the opportunity to present and discuss her or his topic or paper-in-progress.

I will also meet with each of you individually once during the semester to discuss your choice of paper topic and at least once later in the semester to discuss the status of your paper.

Office Hours

My office is **RAJ 428**. My office hours are **Tuesdays from 2:00 to 5:00 p.m.** (If I have a conflict on a given Tuesday, I'll schedule make-up office hours as soon as possible). I will also be available **immediately after class** Tuesday mornings. I am in my office (except for occasional forays to the library or committee meetings) most afternoons and many mornings, too. Feel free to "drop in." I will either see you at that time, or arrange a time to meet with you. I will also make every effort to accommodate you in the event that you would like to schedule an appointment either during or outside of my posted office hours. You may also e-mail me at keith.rowley@unlv.edu. I check my e-mail frequently, usually beginning around 8:00 a.m. and often as late as 1:00 a.m., whether I am in town or not. I will respond to your e-mails as promptly as I can, and will generally "cc" the whole class if doing so is appropriate.

Course Materials

Our primary texts will be **Richard A. Posner, *Economic Analysis of Law* (7th ed. Aspen 2007)**, which provides a brief introduction to economic methods and reasoning and then explores, at considerable breadth and varying degrees of depth, insights economic principles and reasoning offer on a wide array of legal subjects, and **Eric M. Posner ed., *Chicago Lectures in Law and Economics* (Foundation 2000)**, which collects a series of original essays on methodology and applications. Each book concludes each chapter with a number of questions, which may help you understand the reading and facilitate in-class discussion.

Because Judge Posner's book presents such a brief introduction to the economic methods and reasoning that you will need to get the most out of this course and to write your required paper, I strongly recommend one (or more) of the following for anyone who lacks a good foundation in microeconomic methods and reasoning or who wants to refresh or supplement it: **Howell E. Jackson et al., *Analytical Methods for Lawyers* (Foundation 2003)**, provides an accessible survey of relevant topics in microeconomics, decision analysis, and game theory (including incorporating principles from decision analysis into game theory), as well as basic and more advanced statistics, which may come in handy for some of your papers; **Richard A. Ippolito, *Economics for Lawyers* (Princeton 2005)**, provides a more sophisticated introduction to microeconomics and game theory (albeit without incorporating decision analysis), as well as more elaborate examples than Jackson and his co-authors; or **Mark Seidenfeld, *Microeconomic Predicates to Law and Economics* (LexisNexis 1996)**, which is much shorter and less expensive than either Jackson or Ippolito, yet does a pretty good job of what it sets out to do: "present[ing] the microeconomic fundamentals necessary to evaluate legal doctrines in a rigorous manner without . . . what many law students consider to be complex mathematics such as calculus or even sophisticated analytic geometry." (I realize that some of you may have still been in elementary school when Seidenfeld was published, but little of his discussion suffers from age.) Students interested in additional or more in-depth discussion of microeconomics and the law will find some in most of the books I am recommending, and I'll be happy to talk with you about other resources. Students seeking more in-depth discussion of game theory or statistics and their application to legal issues and analysis should consult **Douglas G. Baird, Robert H. Gertner & Randal C. Picker, *Game Theory and the Law* (Harvard 1998)**, or **Michael O. Finkelstein, *Basic Concepts of Probability and Statistics in the Law* (Springer 2009)**, respectively.

Judge Posner's treatise, despite his best efforts, is unavoidably biased to some degree by *his* perspective on applying economic methods and reasoning to legal issues (although he does discuss other perspectives throughout the book). Because I want to expose you to a more heterodox approach, I strongly recommend **Nicholas L. Georgakopoulos, *Principles and Methods of Law and Economics: Basic Tools for Normative Reasoning* (Cambridge 2005)**, and **Nicholas Mercuro & Steven G. Medema, *Economics and the Law: From Posner to Post-Modernism and Beyond* (2d ed. Princeton 2006)**, as well as one or more of the following: Martha Albertson Fineman & Terence Dougherty eds., *Feminism Confronts Homo Economicus: Gender, Law & Society* (Cornell 2005); David D. Friedman, *Law's Order: What Economics Has to Do with Law and Why It Matters* (Princeton 2000); Emma Coleman Jordan & Angela P. Harris, *Beyond Rational Choice: Alternative Perspectives on Economics* (Foundation 2005); Robin Paul Malloy, *Law and Market Economy: Reinterpreting the Values of Law and Economics* (Cambridge 2000); Klaus Mathis, *Efficiency Instead of Justice?: Searching for the Philosophical Foundations of the Economic Analysis of Law* (Deborah Shannon trans., Springer 2009); Margaret Oppenheimer & Nicholas Mercuro eds., *Law and Economics: Alternative Economic Approaches to Legal and Regulatory Issues* (M.E. Sharpe 2004); Francisco Parisi & Vernon L. Smith eds., *The Law and Economics of Irrational Behavior* (Stanford 2005); Maxwell L. Stearns & Todd J. Zywicki, *Public Choice Concepts and Application in Law* (West 2009); Cass R. Sunstein ed., *Behavioral Law and Economics* (Cambridge 2000); Cento G. Veljanovski, *Economic Principles of Law* (Cambridge 2007); and Lars Werin, *Economic Behavior & Legal Institutions: An Introductory Survey* (World Scientific 2003).

I have placed copies of each of these books, and many others, in the Wiener-Rogers Law Library Reserve Room. Many of the books on reserve (as well as some still in the stacks at the law library and at Lied Library) focus on one or more particular areas of law (e.g., tort, intellectual property, family law, conflicts of law), while others focus on legal systems or institutions (e.g., common law vs. civil law, judge-made law vs. statutory law, litigation vs. ADR), legal doctrine (e.g., *how* tort law allocates the risk of injury between two or more persons, *how* intellectual property law allocates rights between patent or copyright holders and licensees or “public-domain” users, *how* family law allocates parental rights and custodial responsibilities between adoptive parents and biological ones or between divorced adoptive or biological parents, *how* a court with personal and subject-matter jurisdiction over a lawsuit balances a plaintiff’s right to recourse in a competent forum of her choosing and deference to another court), or legal theory (e.g., *why* tort law allocates the risk of injury between two or more persons the way it does and whether it *should* do otherwise; *why* intellectual property law allocates rights between patent or copyright holders and licensees or “public-domain” users the way it does and whether it *should* do otherwise; *why* family law allocates parental rights and custodial responsibilities between adoptive parents and biological ones or between divorced adoptive or biological parents the way it does and whether it *should* do otherwise; *why* a court with personal and subject-matter jurisdiction over a lawsuit balances a plaintiff’s right to recourse in a competent forum of her choosing and deference to another court the way it does and whether it *should* do otherwise).

Reading Assignments

I will assign readings from the books identified above in bold face, as well as other book chapters and essays (generally, though not necessarily exclusively, from books I have placed on reserve), law review articles, essays, and notes, and working papers, which I will distribute in class, post copies of or links to on the class web site, or make available at the law library.

Because I want to customize the course readings to some extent based on your interests, I have not prepared a Reading List for the full semester and I reserve the right to modify the assigned readings as the semester progresses. I also intend to make some “menu” reading assignments, giving you a choice of what to read (and hoping that each reading will appeal to at least one student), so that we can benefit from a greater variety of perspectives without requiring everyone to read everything. We’ll talk more about this the first day of class.

You will (obviously, I hope) have to do additional reading in the process of choosing and refining your paper topic and writing and revising your paper. I will be happy to suggest additional readings for each of you as we narrow in on your topic and work through your drafts.

Grades

Unlike most (or all) of the courses you have taken to date in law school, your grade in this seminar will not be determined primarily (much less, exclusively) by your performance on an end-of-semester exam. Instead, your grade will be based on your contributions to class discussions, your performance on written or oral assignments I make during the course of the semester, and the paper you will write this semester.

Class Attendance, Preparation, and Discussion

I envision this class being highly interactive and, to some extent at least, directed by your interests and intellectual curiosity. Therefore, whether you enrolled for the two- or three-credit version of this course, I expect you to attend *every* class meeting, to come prepared, and to participate in our discussion of the assigned readings, your and other students' paper topics, and your and other students' written work. **I reserve the right to drop any student from this class who misses (with or without excuse) three or more class meetings or individual conferences. Alternatively, I reserve the right to reduce your course grade by up to one-half letter grade (e.g., B+ to B, B- to C+) for each class meeting you miss following your second such absence.**

Periodic Written Assignments

I may periodically assign discussion questions – including but not limited to questions and problems contained in the assigned readings – to which I will expect you to prepare short written answers – either as preparation for a day's discussion or as a follow-up. I will grade your written answers or copy and distribute them for class discussion and evaluation.

Papers and Presentations

Students who enroll for two credits must write an original 15-25 page paper during the course of the semester. ***This paper will not satisfy your graduation writing requirement.*** I must pre-approve your topic, which you should choose no later than Friday, **March 12th**. You must discuss your topic or work-in-progress in class no later than Tuesday, **April 13th**. While I do not require students writing short papers to submit a draft before submitting your final paper, I encourage you to do so. All short papers are due no later than Monday, **May 10th**.

Students who enroll for three credits must write an original 30-50 page paper during the course of the semester. ***This paper will satisfy your graduation writing requirement.*** I must approve your topic, which you should choose no later than Friday, **March 5th**. You must present your work-in-progress in class no later than Tuesday, **March 23rd** and submit a substantial **first draft** of the paper to me no later than Thursday, **March 25th**. You must, class time permitting, make a second in-class presentation no later than Tuesday, **April 20th**, and submit a **second draft** to me no later than Wednesday, **April 28th**. You must submit the **final draft** of your paper no later than Monday, **May 24th**.

I will grade each paper based on its substantive quality and your use and critique of economic reasoning, as well as the paper's structure, grammar, punctuation, style, and citation form. You must ensure that all citations conform to *The Bluebook: A Uniform System of Citation* (18th ed. 2005), as updated at <http://www.legalbluebook.com/Public/5thPrintingUpdates.pdf>. For guidance on grammar, punctuation, and style, I recommend Bryan A. Garner, *The Elements of Legal Style* (2d ed. 2002).² For insights into selecting and refining a topic and writing your

² Bryan Garner, *Legal Writing in Plain English* (2001), is a bit more elementary and hands-on than *The Elements of Legal Style*, but also discusses ways to embrace constructive criticism and to continue improving as a writer – both of which are critical to success in and after law school. Lynne Truss, *Eats, Shoots & Leaves: A Zero-Rowley/L&E Seminar Syllabus (Director's Cut)*

paper, I recommend the relevant portions of Eugene Volokh, *Academic Legal Writing: Law Review Articles, Student Notes, Seminar Papers, and Getting on Law Review* (3d ed. Foundation 2007), Elizabeth Fajans & Mary R. Falk, *Scholarly Writing for Law Students: Seminar Papers, Law Review Notes, and Law Review Competition Papers* (3d ed. West 2005), or Jessica L. Clark & Kristin E. Murray, *Scholarly Writing: Ideas, Examples, and Execution* (Carolina Academic Press 2010). Copies of all these titles are (or soon will be) in the Weiner-Rogers Law Library Reserve Room.

I will calculate your course grade in the following manner:

Paper	60 to 70%
Periodic Written Assignments	0 to 10%
Class Participation	30%

A Cautionary Note

While our class discussions will (I hope) be highly collaborative, your written answers to any assignments I make during the semester and your course paper must be your own. You may not work on any graded assignment with another student, and you may seek only comments and editorial suggestions from your classmates or others regarding your course paper. **Submitting someone else's work for credit is an Honor Code violation and may result in a failing grade in this course.**

LexisNexis Web Course/Public Web Site/Law School Portal

I will create a LexisNexis Web Course, which will include an interactive “discussion board” and e-mail list. **If you do not have a LexisNexis Custom ID or a Lexis password, please get one as soon as possible. If the e-mail address associated with your current LexisNexis Custom ID or a Lexis password is not the e-mail address you normally use, please update your e-mail address.** You should periodically check the Web Course (and your e-mail) for announcements, assignment changes, electronic versions of assigned, recommended, and suggested readings, and other important course information. I will also post public-domain materials to <http://www.law.unlv.edu/faculty/rowley.htm> and may post announcements about class meetings and assignments to the law school's portal. I do not contemplate posting anything to my Boyd web site or the portal that I do not post to the LexisNexis Web Course. (I will post content to the LexisNexis Web Course that I do not post to my Boyd web site or the portal.)

Tolerance Approach to Punctuation (2004), tackles one of the two most pervasive problems (passive voice being the other) in legal writing. Although Truss did not write her book for judges, lawyers, or law students, its insights should benefit – and its humor should amuse – any reader. For more general writing guidance, you may want to consult *The Chicago Manual of Style* (15th ed. 2003) or the *MLA Style Manual and Guide to Scholarly Publishing* (3d ed. 2008). For the true philologists, grammarians, and linguists among us, there are many resources you may consult, including, for example, Bryan A. Garner, *Garner's Modern American Usage* (3d ed. 2009), and Patricia T. O'Conner, *Woe is I: The Grammarphobe's Guide to Better English in Plain English* (3d ed. 2009). The latter, as its title suggests, takes a light-hearted approach to its subject comparable to Lynne Truss's *Eats, Shoots & Leaves*.

Accommodating Disabilities

UNLV complies with the provisions set forth in Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990, offering reasonable accommodations to qualified students with documented disabilities. If you have a documented disability that may require accommodations, you will need to contact the Disability Resource Center (DRC). The DRC coordinates all academic accommodations for students with documented disabilities. The DRC reviews and houses disability documentation for students and provides them with an official Academic Accommodation Plan to present to their professors if an accommodation is warranted. UNLV strongly discourages faculty from accommodating students without an Academic Accommodation Plan.

The DRC is located in the Student Services Complex (SSC), Room 143. Its contact numbers are: Tel: (702) 895-0866; TTY: (702) 895-0652; Fax: (702) 895-0651. *For additional information, visit: <http://studentlife.unlv.edu/disability/>.*