

Fundamentals of Law and Economics

Professor Ryan Bubb

Summer 2025

Course Description

This course provides a foundational understanding of how economic analysis can illuminate the operation of legal rules and institutions. We will focus primarily on private law areas, such as the law of accidents (torts), property, and contracts. For example, we will analyze the economic rationale for property rights, examining how they address externalities and facilitate efficient resource allocation. We will also delve into contract law, investigating how it promotes mutually beneficial exchange by providing a framework for agreement and enforcement. Our exploration of tort law will consider how different liability rules affect incentives for precaution and influence the allocation of accident costs. In addition to considering canonical economic analyses of these topics based on the standard rationality assumption of neoclassical economics, we will also consider how insights from behavioral economics—incorporating more realistic psychological assumptions into our economic analyses—can enrich our understanding of legal institutions. In addition, we will consider the operation of new legal tools suggested by behavioral economics, often referred to as “nudges.”

We will also examine some more fundamental aspects of legal design, including the choice between rules and standards, the optimal degree of legal complexity, how legal uncertainty affects the incentives produced by the legal system, and the choice between protecting legal entitlements with property rules or with liability rules.

While the course emphasizes positive economic analysis of law, explaining how legal rules work and what their consequences are likely to be, we will also consider normative implications. We will evaluate the efficiency of different legal rules and explore how they can be designed to promote social welfare.

While the course will focus on U.S. law, given the instructor’s background, the legal and economic issues we will analyze emerge in every jurisdiction, and we will on occasion take a comparative perspective.

Prerequisites

The course is designed for both business and law students or students interested in the subject. No prerequisites are required. However, the lecture *Introduction to Economics* (Einführung in die

Volkswirtschaftslehre, 10130) is recommended as a prerequisite.

Assessment

Grading will be based on class participation (30%) and a final written, closed-book examination (70%).

Final Examination

Date: Friday, 11 July 2025

Time: 12:15 – 13:45

Location: Faculty of Business & Economics
Peter Merian-Weg 6, Seminar Room S 15

Reading Policy & Resources

- **Required Readings:** You are expected to complete the reading assignments for each class session prior to class. The entire article or book chapter has been posted on the course website for each reading assignment. While you are required to read only the specific page numbers assigned, you are of course welcome to read beyond those pages if you wish.
- **Optional Readings:** I have also included for some class meetings additional readings that provide further treatment of the issues that you may read at your option.
- **Primary Text:** “Shavell” in the list of reading assignments below refers to Steven Shavell, *Foundations of Economic Analysis of Law* (2004).

Course Schedule & Reading Assignments

Week 1: Foundations

Monday, 30 June 2025

Session 1. What is Economic Analysis of Law?

09:30–10:40

- Shavell, Chapter 1, pp. 1–5.

- *United States v. Carroll Towing Co.*, 159 F.2d 169 (2d Cir. 1947).

Session 2. Externalities & the Coase Theorem

10:50–12:00

- Shavell, pp. 77–92 (§§ 5.1–5.4).
- **Optional:** R. H. Coase, *The Problem of Social Cost*, 3 J.L. & Econ. 1, pp. 1–19 (1960).

Tuesday, 1 July 2025

Session 3. Property I — Allocation & the Commons

09:30–10:40

- Shavell, pp. 9–26 (§§ 2.1–2.3).
- **Optional:** Harold Demsetz, *Toward a Theory of Property Rights*, 57 Am. Econ. Rev. 347 (1967).
- **Optional:** Ryan Bubb, *The Evolution of Property Rights: State Law or Informal Norms?*, 56 Journal of Law and Economics 555 (2013).

Session 4. Property II — Use Conflicts & Takings

10:50–12:00

- Shavell, pp. 92–101 (§ 5.5) & 123–131 (§ 6.2 excerpt).
- *Kelo v. City of New London*, 545 U.S. 469 (2005), pp. 469–483; 494–502.

Wednesday, 2 July 2025

Session 5. Torts I — Unilateral vs. Bilateral Care

09:30–10:40

- Shavell, pp. 177–192 (§ 8.1–8.2).

Session 6. Torts II — Activity Levels

10:50–12:00

- Shavell, pp. 193-206 (§§ 8.3-8.4).
- *Indiana Harbor Belt Railroad Co. v. American Cyanamid Co.*, 916 F.2d 1174 (7th Cir. 1990).

Thursday, 3 July 2025

Session 7. Contracts I — Formation & Interpretation

09:30–10:40

- Shavell, pp. 291-304 (§§ 13.1-13.5).
- Ian Ayres & Robert Gertner, Filling Gaps in Incomplete Contracts, 99 Yale L.J. 87 (1989), pp. 91–106.

Session 8. Contracts II — Remedies

10:50–12:00

- Shavell, pp. 304-314 (§§ 13.6-13.7).
- *Hawkins v. McGee*, 146 A. 641 (N.H. 1929).

Week 2: Advanced Topics

Monday, 7 July 2025

Session 9. Rules vs. Standards

09:30–10:40

- Louis Kaplow, Rules Versus Standards: An Economic Analysis, 42 Duke L.J. 557 (1992), pp. 568–586.
- Shavell, pp. 571–583 (§§ 25.1–25.3.1)

Session 10. Administrative Costs & Optimal Legal Complexity

10:50–12:00

- Shavell, pp. 280–287 (§§ 12.1-12.3).
- Omri Ben-Shahar & Ariel Porat, *Personalizing Negligence Law*, 91 NYU L. Rev. 627 (2016), pp. 628-636, 647-655, and 676-679.

Tuesday, 8 July 2025

Session 11. Legal Uncertainty & Incentives

09:30–10:40

- Shavell, pp. 450–456 (§19.2)
- Ryan Bubb & Giuseppe Dari-Mattiacci, *Differentiation through Legal Uncertainty* (draft 2025), pp. 1–7, 33–38.

Session 12. Property Rules vs. Liability Rules

09:30–10:40

- Guido Calabresi & A. Douglas Melamed, *Property Rules, Liability Rules, and Inalienability: One View of the Cathedral*, 85 Harv. L. Rev. 1089 (1972), pp. 1092–1115.
- Shavell, pp. 572–575 (§ 25.1 excerpts)

Wednesday, 9 July 2025

Session 13. Behavioral Foundations

10:50–12:00

- Christine Jolls, Cass R. Sunstein & Richard H. Thaler, *A Behavioral Approach to Law and Economics*, 50 Stan. L. Rev. 1471 (1998), pp. 1475–92.
- Shavell, pp. 595–605 (§ 26.1–26.3)

Session 14. Behavioral Applications in Private Law

09:30–10:40

- Russell Korobkin, *The Status-Quo Bias and Contract Default Rules*, 83 Cornell L. Rev. 608 (1998), pp. 625–634 and 664–670.

Thursday, 10 July 2025

Session 15. Nudges & Choice Architecture

10:50–12:00

- Richard H. Thaler & Cass R. Sunstein, *Nudge: Improving Decisions About Health, Wealth, and Happiness* (2008), pp. 1-14, 83-119.

Session 16. Critique of Nudges & Wrap-Up

10:50–12:00

- Ryan Bubb & Richard Pildes, How Behavioral Economics Trims Its Sails and Why, 127 *Harvard Law Review* 1593 (2014), pp. 1595 - 1635.
- Shavell, pp. 661–664 (§ 29.1–29.2)