

1-1-2009

(2) Sample Syllabus: Econ 4008

Charles Breeden

ECONOMICS AND LAW
ECON 4008
Fall 2009

INSTRUCTOR: Dr. Charles Breeden [E-mail:charles.breeden@mu.edu]
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OFFICE HOURS: Tues/Thurs 9:30-11:30AM; Wed 1-3PM & by appointment

REQUIRED TEXT: The Economic Analysis of Law, Richard Posner [7th edition]
+ Readings (see attached reading list)

PURPOSE OF THE COURSE:

Economics is typically concerned with the behavior of consumers and producers in a commercial context. Partial equilibrium analysis is used to derive qualitative predictions and explanations. However, activities of '*homo economicus*' take place within particular legal, cultural, and institutional frameworks. Historically, the existence of these frameworks was taken for granted by the economist.

Around fifty years ago, economists and legal scholars began to appreciate the limitations of economic analysis that abstracted totally from the institutional environment. They began to examine questions surrounding the legal rules governing property, contract, and tort. Why those rules? Could it be that some of those legal rules evolved because of economic considerations? Could legal doctrines be shaped by economic forces? Should the law be based on principles of economic efficiency? Is there a tradeoff between equity and efficiency and should judges consider such tradeoffs?

The purpose of this course is to interpret and analyze legal rules using economic concepts and methods. We examine the traditional legal realms of property, contract, tort, and others. Our analysis will be both positive and normative, that is, we will interpret how the law is and we will speculate on how the law should be.

While the economic analysis of law is well established as a sub-discipline of both economics and law, there remain critics who question the legitimacy of the combination. There is an active scholarly debate over the appropriate role, if any, for economics in the design of optimal legal rules. Later in the semester, these controversial issues will be taken up in readings from the *Hofstra Law Review* symposium on 'efficiency as a legal concern' and from other sources. Students are invited to develop their own critical interpretations of the economic perspective.

ACADEMIC INTEGRITY:

The educational mission of Marquette University encompasses many dimensions, with the moral dimension unquestionably one of the most important. Academic honesty is therefore expected of all students at all times. We believe that a policy of strictly enforcing sensible rules of academic honesty is in the long run interest of every student. Simply put, the personal integrity of a Marquette student is much more important than a

point or two on an economics exam or paper. Concretely, if a student buys a research paper or tries to recycle a paper from another previous class, I will find out. When I find out, I will give a grade of 0 for that assignment, which in almost all cases will result in a course grade of F. Your paper had better be original and you had better be able to document it with a file of research materials such as literature searches, draft copies of the paper, and notes or copies of articles primarily used in the paper. Where articles that you utilize as source material are viewed online, print the pages from which quotes and important ideas were taken.

- **This file folder of materials is required to be turned in with the paper.**
- **Your final research paper must be submitted to ‘turnitin.com’ [details given later in semester]**

Marquette’s policy on academic honesty can be found at : <http://www.marquette.edu/rc/academichonesty.shtml> and you are encouraged to review it.

TEXT AND READINGS:

The required text will be Richard Posners' Economic Analysis of Law, 7th. The Posner text is the leading text in its field.

Additionally, certain top academic journals, the Journal of Law and Economics, The Journal of Legal Studies, The International Review of Law and Economics, Research in Law and Economics, Economic Inquiry, and the Journal of Law, Economics and Organization, and the best law reviews, U of Chicago, Harvard, Yale, Stanford, Michigan, contain many excellent economic articles which can and probably should be used in research for your papers.

GRADES:

Grades will be based on a series of four equally weighted essay exams covering the assigned material, plus a research paper grade, a grade for paper presentation, a grade for class participation, and a comprehensive final worth about ½ of the 4 earlier exams. The class participation grade is based on attendance (College of Business rules regarding attendance will be honored), demonstrated motivation, and initiative displayed throughout the semester.

The weights will be:

Exams [4]	50% [4 @ 12.5%]
Paper	35%
Paper/Mock trial presentation	5%
Daily Class Participation & attendance	10%

EXAM FORMAT:

Exams will be essay and will cover material since the last exam. Each exam will consist of 4 questions drawn from the list of study questions made available at the beginning of each segment of the course. You will select and answer two of the four. Students are encouraged to develop answers to the study questions in preparation for the exam and are

also encouraged to discuss their preliminary answers during class discussions, with each other and with the instructor. Makeup exams are discouraged, but when given, will consist of two questions only (no choices).

CLASS STRUCTURE and PARTICIPATION:

The course will utilize a lecture and class discussion format. Students are expected to come to class having read the assigned materials and prepared to participate in discussion of the topics. Students will also be expected to ask and answer questions from the materials. Student presentations will consist of the presentation of the research paper or participation in one of the four mock trials for the four sections of the class. Below is an overview of the semester's plan.

ECON and LAW – Semester in Brief

Intro and Economics of Property Law	7 meetings
Economics of Contract Law	7
Economics of Tort Law	6
Efficiency vs. Equity as a Legal Norm	6
Guest Speakers	2

TERM PAPERS:

Research papers on a topic of the student's choice (with approval) will be a significant part of the course learning experience. A list of past paper titles is on D2L.

RETAIN ALL SCRATCH PAPER, NOTE CARDS, AND PRINTED PAGES FROM ONLINE ARTICLES USED IN PREPARING THE PAPER. The paper will be turned in along with all scratch paper in a folder with the paper. **NOTE THE SOURCE OF ALL REFERENCES.** The REFERENCES page should show the library from which the article was obtained. These and other points are elaborated in the attached ECON 182 term paper guidelines available on D2L.

Paper deadlines:

Topic approval/abstract due Oct 9

Outline/revised abstract/references due Nov 17

Final paper due Dec 7

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Date **Topic**
Sep 1 Orientation and “On Writing...”
George Orwell, “Politics and the English Language”, in *Collected Essays* D2L
D. McCloskey, “Economic Writing”, *Economic Inquiry*, Apr. 1985 (abstract on D2L)
“Customer finds Rat Parts in food” CNN.com 10/15/04 9 D2L

Property-----

Sep 3,8,10 - Economics of Property Law
Posner: Ch.3 in its entirety, except sections 11,13,15
"Property Gains: *Lucas v. South Carolina Coastal Council*, *Wall Street Journal* editorial, 1 July 1992, p.A14 D2L
Sep 15 - Intellectual Property and Property rights in broadband
Michele Boldrin and David K. Levine, 2003 Lawrence Klein Lecture: “The Case Against Intellectual Monopoly”, *International Economic Review*, [May, 2004, 45 (2), pp. 327-350; however **Omit entire section 4, pp. 338-348**]; article can be found online at Raynor Library website
“Do we have too many intellectual property rights?”, Richard A. Posner, *Marquette Univ. Intellectual Property Law Review*, Vol. 9, No. 2, pp. 173-85 article can be found online at Raynor Library website

Sep 17 **Mock Trial - Property**
Sep 22 **One hour essay exam #1 : Property Law**

Contract-----

Sep 24, 29, Oct 1,6 – Economics of Contract Law
Posner: Ch. 4 all sections except 8, 14 16
Oct 8 Janet T. Landa, “The Law and Bioeconomics of Ethnic Cooperation and Conflict: a Theory of Chinese Merchant Success”, *Journal of Bioeconomics*, 1, pp. 269-284, D2L
Oct 9 ** Topic Approval deadline!!!!
Oct 13 **Mock Trial – Contract**

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Oct 15 Economics and Law: A View of Economics from the Bench & Bar
Guest Speaker: To be determined
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Oct 20 **Exam #2 – Contract Law**
Oct 22 Mid-semester Break

Tort-----

Oct 27, 29, Nov 3 – Economics of Tort Law

Posner:Ch.6 [except sections 15,16,17]

Nov 5 Marcia Angell, “Science on Trial: Medical Evidence and the Law in the Breast Implant Case” *Civil Justice Memo(Manhattan Institute)*, Aug. 1996, p.1-7; intro and link on D2L

Review of Angell’s book in Harvard Journal of Law and Technology, 10(3), pp. 683-87
D2L

Nov 10 **Mock Trial – Tort Law**

Nov 12 **Exam #3 – Economics of Tort Law**

Efficiency vs. Equity as Legal Norm-----

Nov 17 Resource Allocation: Judicial, Legislative, Market

Posner: Ch. 19 [except sections 4 and 9]

****Outline/revised abstract/references due Nov 17**

Nov 19 Efficiency and Law

Ronald Dworkin, "Why Efficiency?", *Hofstra Law Review*, Vol.8, No.3 [Spr. 1980, pp.573-590] [D2L Note: not beginning of article]

Nov 24 Efficiency and Law

Jules Coleman, "Economics and the Law: Critical Review of the Foundations of the Economic Approach to Law", *Ethics*, Vol.94, [7/84, pp.661-679] D2L

Nov 26 Thanksgiving Break

Dec 1 Richard A. Posner, “Reply to critics of “The Problematics of Moral and Legal Theory”, *Harvard Law Review*, Vol. 111, No. 7, [may 1998], pp. 1796-1823

Dec 3 **Exam #4 - Efficiency v. Equity as a Legal Norm**

****Dec 7 Final Paper deadline**

Dec 8 Mock Trial – Efficiency as a legal norm

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Dec 10 Economics and Law: A View of Economics from the Bench & Bar
Guest Speaker: To be determined
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SAMPLE INSTRUCTIONS FOR MOCK TRIALS

Example Case: *Breeden(pl) v. Brush(def) personal injury case*

Be prepared to argue for either side but give below your choice.

Yes I will participate and prefer to represent: [CIRCLE one side]

For the plaintiff: Breeden

For the defendant: Brush

Each team will be expected to give:

- **a three minute presentation of their side's case (each team member)**
- **a two minute rebuttal of the other side's case (each team member)**
- **a five minute question/answer direct examination with an 'expert witness'**
- **one question (with follow-up) cross examination from each member for the other side's expert witness**
- **one paragraph closing statement from one team member**
- **be prepared to take questions from the jury [the rest of the class & instructor]**

To avoid duplication, you should have met at least once as a group to work out your presentations. We'll alternate between the two sides as we go through the hour.