

Economics 460 – Economic Analysis of Law, Spring 2020

Professor Stafford

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Office Hours: Wednesday and Thursday 2-3

As suggested by the title, this course applies the basic methods of economics to the analysis of legal problems and issues. We will use economic concepts to explain how the law can increase economic efficiency and to understand and predict the effects of specific legal rules. This course should be of interest to students who are considering law school, who want a better understanding of the law and the legal system, or who want to use microeconomic theory to decipher current events.

This course employs the Socratic method, a teaching technique that is commonly used in law school. The method is named after Socrates, a Greek philosopher who engaged in questioning of his students in an unending search for truth. The goal of the Socratic method is to help students process information and engage in deeper understanding of topics. The method uses a dialogue between the teacher and students, facilitated by the continual questioning of the teacher, to explore the underlying beliefs that shape the students' views and opinions. What distinguishes the Socratic method from traditional in-class questioning is the sustained effort to explore the consequences of certain opinions or assumptions and to offer compelling objections and alternatives. Ideally the dialogue is a cooperative one in which the teacher and students work to understand an issue more completely. The Socratic method will help you learn how to analyze legal issues, to reason by analogy, and to think critically about your own arguments and those put forth by others. Socratic discourse requires participants to articulate, develop and defend positions that may at first be imperfectly defined and thus helps students to develop strong critical thinking skills.

Since Econ 303 is a prerequisite for this class, I assume that you have a working knowledge of utility functions, opportunity cost, profit maximization, perfect competition, monopoly, consumer surplus, taxation and deadweight loss. These concepts are all discussed in intermediate level textbooks, should you feel the need to refresh your memory.

Course Requirements/Grading:	<i>Midterm Exam</i>	20%
	<i>Final Exam</i>	35%
	<i>Case Assignment</i>	35%
	<i>Participation</i>	10%

Exams will be based on the readings and lectures. **The midterm exam will take place on Thursday, March 5** (just before Spring Break) and **the final exam will be on Friday, May 8 from 2 to 5 pm**. Details about the case assignment are provided later in the syllabus, as are details about the participation grade.

Class Conduct: Please make every effort to be in class on time. All cell phones should be silenced and put away during class. If you choose to use a laptop in class, please close all programs other than the program you use to take notes prior to the beginning of class. Email,

messaging and other programs interfere with your ability, and the ability of those around you, to focus on the material in class. As noted above, this class will be taught using the Socratic method and students should expect to be called on randomly in class. (Repeated absences when called upon will be noted.) Since a key component of the Socratic method is the participation of students, students will be graded on participation. However, you will be graded on your willingness to participate and the effort you put forward, not whether your participation is “correct.” I know that some students are worried about speaking in front of others. However, the ability to present ideas clearly and effectively in public is an important skill, and one that this class will help you to develop. If you are worried about making mistakes when you participate in a Socratic dialogue, please remember that making mistakes in such a dialogue is inevitable and ultimately helpful as we work toward a better understanding of both the law and the economic processes that affect how the law ultimately impacts society. The goal of the Socratic method is to develop stronger critical thinking skills and the process of discovering a right answer is often more important than the answer itself.

Lecture Topics:

The primary text for this class is Thomas J. Miceli’s Contemporary Issues in Law and Economics. Additional readings will be assigned from various journal articles and books. We will also read a number of law cases and decisions. These additional readings will be posted on the Blackboard site at least two days prior to each lecture. I will also try to remember to announce reading assignments at the end of each lecture, but if I forget, it is your responsibility to check the website for readings and read the material prior to coming to class. The reading assignments for this class are very reasonable. I have kept the volume of reading at this level on purpose to guarantee that you will be able to complete it. I trust you to do the reading on time and be able to draw from the reading during class discussions. As noted above you should expect to be called on randomly.

The topics that we will address in this class are listed below. The Socratic method requires flexibility, as the in-class dialogues will determine exactly what we cover and how quickly we cover it. Thus I have not provided exact dates for each lecture topic. Most topics will take two or three class periods to cover adequately.

- I. What is an Economic Analysis of Law?
- II. Efficiency and Welfare
- III. Resource Allocation, Transaction Costs and Market Failure
- IV. Risk and Imperfect Information
- V. Property Rules vs. Liability Rules
- VI. Property Law
- VII. Intellectual Property
- VIII. Contracts
- IX. Family Law
- X. Torts
- XI. Product Liability
- XII. Criminal Law

Case Assignment:

This assignment provides you with the opportunity to apply the theories explored in this course to an actual case.

Step 1: Find a case that you think has interesting implications. You do not necessarily have to choose a property, contract, or tort case. However, the case must have been filed or decided within the past 10 years and cannot have been selected by anyone in the Fall 2019 class (list provided on the Blackboard site). You may want to select a case that has relevance for another class, or where you find the subject to be personally interesting. Alternatively, you may want to pick a case that you think has interesting implications for society – either positive or negative. Cases can be found in Lexis-Nexis, which you can access from the Swem library home page. You can also use the search engine to find cases related to a specific topic, but before doing that, check out the William and Mary Law Library, which has subject-specific research guides. You may also want to consider current or recent Supreme Court cases.

Step 2: **Write a one to two page prospectus, due March 5** (same day as the midterm) that:

- Indicates the case that you intend to explore (with appropriate legal citation);
- Briefly summarizes the facts of the cases; and
- Identifies the legal and economic issues that you will analyze.

I will review all prospectuses and provide you with comments on your choice of case. While I will not disallow any case explicitly, if I believe that you will be unable to conduct a reasonable economic analysis of the case, I may recommend that you select another.

Note: Each student must select a unique case and it can't be a case analyzed by any students in the Fall 2019 section. There can be no duplication. Cases will be assigned on a first come, first served basis, so the earlier you get your prospectus in, the sooner you will be able to ensure that you can work on a particular case. I will list the cases that have already been selected by other students (and last semesters class) on the Blackboard site, so you should check that list prior to beginning research on a particular case.

Step 3: Analyze the case using the tools and methods we discuss in class. For cases that have been decided, identify the various incentives that the ruling will have for other individuals involved in similar situations in the future and what you expect the likely behavior of those individuals to be as well as your assessment of whether the ruling will lead to efficiency in the long run. If the case has not yet been decided, identify the various incentives that the decision will have if the court finds in favor of the plaintiff and the incentives it will have if the court finds in favor of the defendant and provide your assessment of which ruling is more efficient.

Step 4: Develop a short oral presentation of your case (10 minutes). In this presentation, provide a short synopsis of the case, the incentives you identified that the ruling will have, and your final assessment of its efficiency implications. You will deliver this presentation to the class during the last week of classes. Your intended audience for the presentation is the court itself. Thus avoid any complicated economic theory or terms. Focus on explaining to the court the economic impact of the decision in layman's terms.

Step 5: Write an 8 to 10 page paper presenting your analysis of the case in question. **A draft of your paper is due on April 14 and the final paper is due on May 8**, but feel free to turn it in earlier. The paper should include:

- A complete description of the case: who are the plaintiff and defendant, what are the facts of the case, what is the legal history (i.e., what happened before the case got to the court in which it was finally decided or where the decision is currently pending);
- The legal and economic issues involved;
- Your analysis of the incentives involved; and
- Your assessment as to whether the ruling will lead to efficiency in the long run.

In discussing the economic issues, make sure to include any specific economic theories or models that are relevant for the case. If you believe that the ruling will lead to efficiency in the long run, you need to explain why. If you believe it will not, you should provide an alternate ruling that would be more efficient.

Evaluation of the cases assignment:

80 percent of the case grade will be determined by your grade on the final paper – I will comment on the draft but it will not be graded. Your final paper will be graded on both the content and on how well it is written. Obviously your grade will be lowered if you omit any of the required elements listed above. Another key evaluation criteria will be the quality of your assessment of the incentives that this ruling creates and your final analysis of the long-run efficiency of the ruling. With respect to the writing, one stray comma will not be severely penalized, but repeated typos and grammatical mistakes will lower your grade. Additionally, your grade will depend on how well your paper is organized and how concisely and precisely you write.

Remember that using any information from a source without proper citation is considered to be plagiarism. Papers that contain plagiarized material will receive a failing grade. There are two types of plagiarism:

- Using ideas, information, or language without crediting the source.
- Documenting the source, but paraphrasing the language or the sentence structure too closely without using quotation marks to indicate what words or phrases have been borrowed.

Therefore, document all contributions made by other writers whose work you are drawing from, including, direct quotations from a source, a summary or paraphrase of a source, and ideas and details you obtain from a source including statistics, tables and diagrams. You do not need to document your own ideas or opinions or common knowledge (what an average college student who has not done research would know). In addition, and only for this paper, you do NOT need to provide a citation for the facts of the case. More specifically, any facts that are taken from the court opinion do not need to be cited in this paper. However, you do need to cite any interpretations that are provided in the opinion. If you are unclear as to what should be cited, please come ask me.

To document sources use footnotes (not endnotes). Use a standard bibliographic format (MLA is preferred) for all sources. The library website has plenty of reference works on how to cite different types of sources. Additionally, at the end of the paper, please provide a complete list of reference.

20 percent of your case grade will depend on your in-class presentation. Presentations must include some form of visual support such as a Powerpoint. **The visual support must be submitted to me (via email) before the beginning on your presentation.** You will be graded based on how well you explain and present the key elements of your analysis in layman's terms. Thus a non-economics major should be able to understand from your presentation the impact you expect the case to have on society and the economy in the future.

Other Important Information

If you want to drop the course without having it appear on your transcript as a course from which you have withdrawn, you must do so by January 31. If you want to withdraw from the course unilaterally, you must do so by March 23. After that date, you must receive permission to withdraw and can only do so for limited reasons.

The College of William & Mary has had an honor code since at least 1779. Academic integrity is at the heart of the university, and we all are responsible for upholding the ideals of honor and integrity. The student-led honor system is responsible for resolving any suspected violations of the Honor Code, and I will report all suspected instances of academic dishonesty to the honor system. The Student Handbook (www.wm.edu/studenthandbook) includes your responsibilities as a student and the full Code. Your full participation and observance of the Honor Code is expected. To read the Honor Code, see www.wm.edu/honor.

William & Mary accommodates students with disabilities in accordance with federal laws and university policy. Any student who feels they may need an accommodation based on the impact of a learning, psychiatric, physical, or chronic health diagnosis should contact Student Accessibility Services staff at 757-221-2509 or at sas@wm.edu to determine if accommodations are warranted and to obtain an official letter of accommodation. For more information, please see www.wm.edu/sas.