

Harvard University Department of Economics

Fall 2021

Leader: Ken Felter

Emails: ken.felter@ropesgray.com (preferred)
and ken_felter@harvard.edu

Location: Sever Hall 111

Times: Tuesdays and Thursdays: 3:00 PM - 4:15 PM

Weekly Office Hours: Tuesdays and Thursdays: 1:30 PM - 3:00 PM

I will also be available at additional times by appointment.
Please email me to schedule a mutually convenient time to meet.

[Downloadable Syllabus](#) [download](#)

Tutorial Description:

In 1897, Oliver Wendell Holmes presciently prophesized that, “[f]or the rational study of the law, the blackletter man may be the man of the present, but the man of the future is the man of statistics and the master of economics.” Oliver W. Holmes, *The Path of the Law*, 10 Harv. L. Rev. 457, 469 (1897). Today, the application of economic theory in the practice of law is ubiquitous.

Many lawyers and economists point to two groundbreaking articles published in the early 1960’s as the advent of the modern collaboration of law and economics. See Ronald H. Coase, *The Problem of Social Cost*, 3 J. L. & Econ. 1 (1960), and Guido Calabresi, *Some Thoughts on Risk Distribution and the Law of Torts*, 70 Yale L. J. 499 (1961). During the past sixty years, economic theory has been applied in ever-expanding areas of substantive and procedural law. Along the way, economics has not only dramatically changed legal scholarship, but it has also changed the practice of law. The collaboration of law and economics continues to benefit both professions. From economists, lawyers learn quantitative reasoning, how to perform empirical research, and how to apply economic theory to analyze substantive laws and regulations, legal procedures, and legal systems. From lawyers, economists learn how to speak and write persuasively and how to advocate for the policies and results that their research supports.

In this tutorial, we will investigate, discuss and write about how the economic theory that you are learning can be applied in several areas of substantive and procedural law. We will apply both traditional (neoclassical) economic theory and behavioral economic theory. We will perform both positive and normative analyses.

Among other law and economics topics, we will explore how thinking as economists enables us to analyze: how property rights are allocated, and how those rights are affected by positive and negative externalities; how criminal laws are enacted and enforced to maximize deterrence of socially undesirable behavior in efficient and fair ways; and how the tort (accident) law system operates, not only to fairly compensate accident victims, but also to give agents incentives to take socially optimal precautions.

Thinking as economists, we will also analyze how our judicial system works. For example, through an economist's lens, we will analyze: the hierarchy of federal law and the hierarchy of United States courts; how the common law evolves; the rules of evidence and the rules that govern the procedures during civil litigation; the key roles that experts, such as economists, play in lawsuits and trials; the efficiency and accuracy of jury trials; the different rules for allocating attorneys' fees and how those rules influence the commencement and ultimate resolutions of civil lawsuits; and how and why bargaining may or may not settle civil legal disputes.

We will also delve into patent law and explore how to apply economic theory: to perform a cost-benefit analysis of the patent system; to estimate compensatory damages for patent infringement; and to assess the impact of "patent trolls" on inventions and innovations and investment in research and development.

Throughout the semester, the emphasis will always be on how economic theory can be applied in the practice of law in real world situations.

The goals of the tutorial are to build upon the tools that you are acquiring in your economics theory courses and to develop the academic skills that you need to perform economics analysis, research and writing. Tutorial meetings will be structured around discussions of assigned readings, including occasional student-led discussions, rather than lectures. My principal role as leader of the tutorial will be to moderate discussions and to promote interactions and debates among everyone participating in the tutorial. To perform this role, I will often use the Socratic method: "a form of cooperative argumentative dialogue among individuals, based on asking and answering questions to stimulate critical thinking and to draw out ideas and underlying presumptions."

Before ending the tutorial with meetings devoted to presentations of Final Research Papers and closing discussions, we will, time permitting, have one or more meetings on "members' choice" topics.

You will be evaluated based on your meeting participation and your contributions to meeting discussions and on at least forty pages of (double-spaced) written assignments over the semester, including response papers (at least 500 words), referee reports (at least 500 words), short essays (1,000-1,500 words), and a Final Research Paper (15-18 pages).

We will meet twice a week on Tuesdays and Thursdays from 3:00 PM to 4:15 PM (ET) in Sever Hall 111. There will be twenty-six meetings during the semester. More information about the tutorial appears in the **Tutorial Calendar** and **Schedule and Assignments** below.

More specifically, EC 970 will enable you:

- To build upon the foundations of your Economics courses by applying economic analyses to specific subject areas.
- To read and understand high quality, peer-reviewed law and economics research papers.
- To develop an effective writing style for research papers in economics.
- To practice applying statistical methods to the analysis of data.

Tutorial Prerequisites:

EC10ab (Principles of Economics) and EC 1010a/1011a (Intermediate Microeconomics) and STAT 100 (Introduction to Quantitative Methods for Social Sciences) or 104 (Introduction to Quantitative Methods for Economics) or 110 (Introduction to Probability) or APMTH 101 (Statistical Inference for Scientists and Engineers) or MATH 154 (Probability Theory) or EC 20 (Introduction to Data Analysis).

Tutorial Requirements:

Meeting Participation (20%). Meeting discussions are the essence of a successful tutorial. By actively participating in meeting discussions, you will develop skills in “active learning”: listening, asking questions, forming and supporting arguments, and communicating ideas. Coming prepared to meetings and engaging in “active learning” are essential to developing these skills. Completion of all reading assignments *before* meetings and attendance at, and active participation during, all meetings are therefore required. Throughout the semester, you will periodically be requested to lead meeting discussions on designated topics or readings.

Also throughout the semester, you will periodically be requested to complete empirical exercises related to the law and economics topics that we are exploring and to be prepared to present your findings at meetings. For example, the empirical exercises might seek cost-benefit analyses, probability-weighted outcomes, summary statistics, data plots, correlations, regression analyses, or other data analyses.

Response Papers and Referee Reports (at least 500 words) (20%). Response papers and other short written assignments are intended to focus you on assigned readings and to stimulate meeting discussions. They are also intended to develop research and writing skills that you will need for longer papers. They also give you an opportunity to express and, importantly, support your opinions. Therefore, you should discuss, quote and/or cite assigned readings in your response papers. Response papers will be assigned during the first half of the tutorial.

Referee reports are intended to assist you to become active and critical readers of economics research and writing. They can also suggest ideas for your Final Research Paper. A referee report summarizes an assigned reading and the contributions that it makes to the economics literature. It should also identify the reading's shortcomings. Importantly, it differs from a response paper because it critiques one (or more) assigned readings. Referee reports will be assigned during the first half of the tutorial.

Short Essays (1,000-1,500 words) (20%). Short essays are intended to encourage you to engage in analysis of economic theory. They allow for sustained written encounters with economic ideas. These assignments can involve synthesizing two or more articles, explaining a model, criticizing an argument, presenting a case study, extending a theory, evaluating an intellectual debate, discussing a policy prescription, or comparable economic analysis. Short essays can also involve performing a review of economics literature or database research or preparing proposals for longer research papers. Short essays will be assigned during the second half of the tutorial.

Final Research Paper (15-18 pages) (30%). Your Final Research Paper should analyze one or more law and economics topics of your choice in depth and incorporate the research and writing skills that you develop throughout the tutorial. It should be the quality of a short journal article and, therefore, include, among other things, a review of relevant law and economics literature, an analysis of methodology, a discussion of results, and, if appropriate, a discussion of policy implications.

Importantly, your Final Research Paper requires research beyond the assigned readings. By November 12, 2021, you must submit a proposal for your Final Research Paper. A draft of your Final Research Paper must be submitted by November 24, 2021. I will be available to meet with you to discuss your proposal and draft. I will also offer written constructive criticism on your proposal and draft. Your Final Research Paper must be submitted by 5 p.m. (ET) on December 8, 2021.

Problem Sets (10%). Concurrent with EC 970, the Department runs a mandatory Stata/R Mini-Course, composed of self-paced modules, and four accompanying problem sets. Each student chooses whether to complete the Stata or R problem sets. One of the Department's Lecturers/Advisors oversees the Mini-Course and holds office hours (along with graduate student TFs). The Department provides support for both Stata and R, although with more emphasis on Stata. As an empirical researcher, you are responsible to accurately and honestly represent what the data are telling you. The skills that you develop through the problem sets will assist you in producing **reliable, responsible, and replicable research**. The completion of the four problem sets will help you to develop skills in handling and analyzing data and equip you with the know-how to carry out empirical research. You are encouraged to use these skills in your Final Research Paper.

Answers to problem sets must be submitted by COB on September 17, 2021 (#1), October 1, 2021 (#2), October 15, 2021 (#3), and October 29, 2021 (#4).

Comments on Written Assignments. One of the primary goals of the tutorial is to introduce you to the conventions and practices of economics research and writing. That is, to teach you how to think, research and write as an economist. This involves, among other things, identifying and interpreting economic models, understanding what other economists have said and written, and evaluating available data. Because a goal of the tutorial is to teach you to think, research and write as an economist, the tutorial will be more narrowly focused than other intermediate level economics courses.

The writing assignments are crucial to developing these skills. As sequenced, they are intended to assist you to become critical researchers and thinkers and to develop writing skills.

During the tutorial, you will be required to submit written assignments totaling at least 40 (double-spaced) pages. Writing assignments are intended to promote class discussions and to synthesize course topics. They also serve to evaluate your performance and to provide me with feedback about what you are learning. Most importantly, writing assignments assist you in developing the skills of an economist. Three of the most important skills are:

- **Explaining an Economic Model.** Some written assignments may ask you to explain an economic model. In completing these assignments, you should articulate economic concepts clearly and precisely to an audience that includes both economists and non-economists. You may be asked to discuss a specific application of an economic concept and/or to prepare a numerical or graphical illustration of a concept. These assignments encourage you to communicate economic concepts and to demonstrate your understanding of them.
- **Summarizing and Criticizing an Economics Argument.** One skill that an economist must master is the ability to summarize and criticize arguments and findings offered in the economics literature. Some written assignments are intended to develop this skill. For example, you may be asked to critically summarize a policy debate comparing two positions in the economics literature. This skill is essential for performing literature reviews and will assist you in framing potential topics for your Final Research Paper. These assignments will also highlight the distinction between merely *summarizing* and, more importantly, *synthesizing* previous research and writing.
- **Drawing Conclusions from Empirical Evidence.** Empirical evidence is the foundation of economics research. Some written assignments may ask you to use empirical evidence to illustrate and to test economic theory. They are intended to develop the ability to appreciate the limitations of available data and to recognize data needed to test economic theory.

Comments on Reading Assignments. You will be assigned readings for each meeting. The volume of the readings will depend on the complexity of the readings and the due dates of any outstanding written assignments and answers to problem sets. Most of the reading assignments will be published research papers supplemented with selections from articles, working papers, and treatises or textbooks. Reading assignments will be the main avenues for you to learn about the topics covered in the tutorial, and will also be the vehicles to promote meeting discussions and debates and to provide exemplars of quality economics research and writing.

The **Schedule and Assignments** below identify readings for each meeting and the due dates for written assignments and answers to problem sets. Note that the readings and written assignments may be revised during the semester. You will be timely notified in advance of any revisions in assigned readings or written assignments.

Each Thursday morning throughout the semester, the reading and writing and problem set assignments for the next week will be published and will be available on the course website at **Assignments**. All **Required Readings** are on the course website at **Files**. Please keep in mind that all assigned **Required Readings** must be completed *before* each tutorial meeting.

The course website contains copyrighted materials. Those materials may include text, images, graphics, audio and video clips, and other content (collectively, "Content"). In some cases, the copyright is owned by third parties and Harvard University is making the third-party Content available to you by permission or under the fair use doctrine.

The Content is made available to you only for your personal, non-commercial educational and scholarly use. You may not use the Content for any other purpose, or distribute or make the Content available to others, unless you obtain any required permission from the copyright owner. Some Content may be provided via streaming or other means that restrict copying; you may not circumvent those restrictions. You may not alter or remove any copyright or other proprietary notices included in the Content.

Tutorial Policies and Resources:

Collaboration. I encourage you to discuss readings, written assignments and problem sets with other tutorial participants. Collaboration is an important feature of academic work and is essential in the practice of law. Throughout the semester, there may be assignments that will ask you to collaborate with other tutorial participants. That said, your written assignments should reflect only your own work. All written work product must clearly cite to all sources that assisted you in completing the work product, including tutorial participants with whom you have collaborated.

Late Assignments. You may have a total of two "late days" during the semester. That is, either one assignment two days late or two assignments each one day late. After you have exhausted your two "late days", except for unanticipated emergencies, and only with my prior approval, late assignments will not be

accepted. Please note, however, that your Final Research Paper may not be late and must be submitted by 5 p.m. (ET) on December 8, 2021.

Grading. As indicated above in **Course Requirements**, your final grade will be based on the following:

Meeting Participation	20%
Response Papers and Referee Reports	20%
Short Essays	20%
Final Research Paper	30%
Problem Sets	10%

Laptop Use. You may use a laptop during meetings, but only to refer to readings assigned for that meeting or to take or to refer to notes directly related to meeting discussions.

Emails. My practice is to respond to emails within twenty-four hours. In case of an emergency, you may contact me on my cell phone.

Statement on Academic Honesty. Discussing ideas and work-in-progress with others is an important and desirable part of the learning process, but, in the end, your written work product must be your own effort, written by you, and based on your own thinking. All written assignments must use appropriate citation practices. For questions about Harvard's stance on academic honesty, consult the **Academic Information** section in the **Harvard College Handbook for Students**.

TUTORIAL CALENDAR:

Fall 2021

September 2, 2021	Thursday	First meeting of tutorial.
September 10, 2021	Friday	Response Paper #1 due.
September 17, 2021	Friday	Response Paper #2 due.

September 17, 2021	Friday	Problem Set #1 Answers due.
October 1, 2021	Friday	Referee Report #1 due.
October 1, 2021	Friday	Problem Set #2 Answers due.
October 8, 2021	Friday	Mid-Term evaluations through Q due.
October 15, 2021	Friday	Response Paper #3 or Referee Report #2 due.
October 15, 2021	Friday	Problem Set #3 Answers due.
October 29, 2021	Friday	Short Essay #1 due.
October 29, 2021	Friday	Problem Set #4 Answers due.
November 5, 2021	Friday	Initial Literature Review and Database Research due.
November 12, 2021	Wednesday	Proposal for Final Research Paper (Short Essay #2) due.
November 24, 2021	Wednesday	Draft Final Research Paper due.
November 25, 2021	Thursday	Thanksgiving Break. No Meeting.
December 2, 2021	Thursday	Last day of Fall term classes. Final evaluations through Q due.
December 3, 2021	Friday	Reading period begins.
December 8, 2021	Wednesday	Final Research Paper due by 5 PM (ET).

SCHEDULE AND ASSIGNMENTS

PART I: INTRODUCTION AND OVERVIEW

MEETING 1 (SEPTEMBER 2, 2021) AND MEETING 2 (SEPTEMBER 7, 2021): OVERVIEW: APPLYING TRADITIONAL (NEOCLASSICAL) ECONOMIC THEORY IN THE PRACTICE OF LAW

- Why Should Lawyers Study Economics? Why Should Economists Study Law?
- Positive (or Descriptive) and Normative Analyses of Law.
- Efficiency and Other Norms for Evaluating Legal Rules and Legal Systems.

Required Readings:

Robert Cooter, et al, *Law & Economics* (6th ed. 2012), Chap. 1, I.-IV. (pp. 1-10) (10 pages)

Ward Farnsworth, *The Legal Analyst --- A Toolkit for Thinking About the Law* (2007), Chap. 2 (pp. 13-23) (11 pages)

Thomas J. Miceli, *The Economic Approach to Law* (2d ed. 2009), Chap. 1, §§ 1-3 (pp. 1-10) (10 pages)

Richard A. Posner, *Economic Analysis of Law* (9th ed. 2014), Chap. 1, §§ 1.1-1.3, 1.5; Chap. 2, §§ 2.1-2.4 (pp. 3-18, 23-26, 29-35) (24 pages)

Robert Whaples, *What Should Lawyers Know About Economics*, 48 *Journal of Legal Education* 120-124 (March 1998) (5 pages)

Robert Neugeboren, et al, *Writing Economics---A Guide for Harvard Economics Concentrators*, Chap. 1 (Writing Economically) (pp. 4-6) (3 pages)

Written Assignment:

Response Paper #1 is due by COB on Friday, September 10, 2021.

MEETING 3 (SEPTEMBER 9, 2021) AND MEETING 4 (SEPTEMBER 14, 2021): OVERVIEW: BEHAVIORAL ECONOMICS AND THE LAW

- Expanding Traditional (Neoclassical) Economic Theory to Improve Predictive and Analytical Power of Law and Economics.

Required Readings:

Catherine Herfeld, *The Potentials and Limitations of Rational Choice Theory: An Interview with Gary Becker*, 5 *Erasmus Journal of Philosophy and Economics* (2012) (pp. 73-86) (14 pages)

Christine Jolls, et al, *A Behavioral Approach to Law and Economics*, 50 *Stanford Law Review* 1471, 1473-1489 (1998) (17 pages)

Richard H. Thaler, *Misbehaving--- The Making of Behavioral Economics* (2015) (pp. 20-34, 64-73, 127-155, 257-269) (62 pages)

Richard H. Thaler, *From Homo Economicus to Homo Sapiens*, 14 *Journal of Economic Perspectives* 133-141 (2000) (9 pages)

Robert Neugeboren, et al, *Writing Economics---A Guide for Harvard Economics Concentrators*, Chap. 4 (Citations and References) (pp. 14-20) (7 pages)

Video: Dan Ariely TED Talk (December 15, 2008)
(https://www.ted.com/talks/dan_ariely_asks_are_we_in_control_of_our_own_decisions)

Written Assignment:

Response Paper #2 is due by COB on Friday, September 17, 2021.

Answers to Problem Set:

Answers to Problem Set #1 are due by COB on Friday, September 17, 2021.

PART II: SELECTED APPLICATIONS OF ECONOMIC THEORY IN THE PRACTICE OF LAW

MEETING 5 (SEPTEMBER 16, 2021) AND MEETING 6 (SEPTEMBER 21, 2021): PROPERTY LAW AND EXTERNALITIES

- Coase Theorem.
- Property Rights and Externalities.
- Property Rules and Liability Rules.

Required Readings:

Ronald H. Coase, *The Problem of Social Cost*, 3 *Journal of Law and Economics* 1 (1960) (pp. 1-44) (44 pages)

Daniel Kahneman, et al, *Experimental Tests of the Endowment Effect and the Coase Theorem*, 98 *Journal of Political Economy* 1325 (1990), §§ I-II (pp. 1325-1336) (11 pages)

Russell Korobkin, *The Endowment Effect and Legal Analysis*, 97 *Northwestern University Law Review* 1227 (2003) (pp. 1227-1230, 1256-1269) (16 pages)

Steven Shavell, *Foundations of Economic Analysis of Law* (2004), Chap. 5. §§ 1-4, 6 (pp. 77-92, 101-109) (22 pages)

MEETING 7 (SEPTEMBER 23, 2021) AND MEETING 8 (SEPTEMBER 28, 2021): PUBLIC LAW ENFORCEMENT (CRIMINAL LAW)

- Rational Choice Theory Model: What Is Optimal Public Law Enforcement Policy?

- Deterrence and “Maximal” Fines.
- Optimal Use of Fines and/or Imprisonment.
- Misperceived Probability of Detection.
- Effectiveness of Certain Sanctions and Uncertain Enforcement Detection.

Required Readings:

Alon Harel, et al, *Criminal Law and Behavioral Economics: Observations on the Neglected Role of Uncertainty in Deterring Crime*, 1 American Law and Economics Review 276 (1999) (pp. 276-312) (37 pages)

Christine Jolls, *On Law Enforcement with Boundedly Rational Actors* (2005), pp 1-18 (18 pages)

Richard H. McAdams, et al., *Behavioral Criminal Law and Economics* (2008) (32 pages)

Thomas J. Miceli, *Contemporary Issues in Law and Economics* (2018), Chap. 8 (pp. 54-62) (8 pages)

Mitchell Polinsky, et al, *The Optimal Use of Fines and Imprisonment*, 24 Journal of Public Economics 89 (1983) (pp. 89-99) (11 pages)

Steven Shavell, *Foundations of Economic Analysis of Law* (2004), Chap. 20, §§ 2.1-2.5 (pp. 479-489) (11 pages)

Robert Neugeboren, et al, *Writing Economics---A Guide for Harvard Economics Concentrators*, Chap. 5 (Reviewing Relevant Literature) (pp. 23-24) (2 pages)

Written Assignment:

Referee Report #1 is due by COB on Friday, October 1, 2021.

Answers to Problem Set:

Answers to Problem Set #2 are due by COB on Friday, October 1, 2021.

MEETING 9 (SEPTEMBER 30, 2021) AND MEETING 10 (OCTOBER 5, 2021): TORT LAW

- Goals of Tort Law: Compensation, Deterrence and Fairness.
- Tort Liability Rules: No Liability, Negligence, Strict Liability and Comparative Negligence.
- Economic Rationales of Tort Law.

Required Readings:

Robert Cooter, et al, *Law & Economics* (6th ed. 2012), Chap. 6 (pp. 187-211) (24 pages)

Ward Farnsworth, *The Legal Analyst – A Toolkit for Thinking About the Law* (2007), Chap. 5 (The Least Cost Avoider) (pp. 47-56) (10 pages)

Jeffrey J. Rachlinski, *A Positive Psychological Theory of Judging in Hindsight*, 65 University of Chicago Law Review 571, 571-588, 607-613 (1998) (24 pages)

Steven Shavell, *Foundations of Economic Analysis of Law* (2004), Chap. 8, § 1 (pp. 177-193); Chap. 9, §§ 2.1-2.3 (pp. 212-217) (23 pages)

Robert Neugeboren, et al, *Writing Economics---A Guide for Harvard Economics Concentrators*, Chap. 3 (Finding and Researching a Topic) (pp. 10-13) (4 pages)

Cases:

Rodi Yachts, Inc. v. National Marine, Inc., 984 F. 2d 880 (7th Cir. 1993)

The T.J. Hooper v. Northern Barge Corp., 60 F. 2d 737 (2d Cir. 1932)

PART III: ECONOMIC THEORY AND THE UNITED STATES JUDICIAL SYSTEM

MEETING 11 (OCTOBER 7, 2021): INTRODUCTION TO THE UNITED STATES JUDICIAL SYSTEM

- Hierarchical Structure of Federal Courts.
- Hierarchical Structure of Law: United States Constitution, Legislation, Common Law and Regulations.
- Civil Jury Trials in the United States.
- Common Law and Legal Precedent.
- Adversarial and Inquisitorial Legal Systems.

Required Readings:

Paul D. Carrington, *The Civil Jury and American Democracy*, 13 Duke Journal of Comparative & International Law 79-99 (20 pages)

Robert Cooter, et al, *Law & Economics* (6th ed. 2012), Chap. 3, I.-IV. (pp. 55-69) (14 pages)

George L. Priest, *The Common Law Process and the Selection of Efficient Rules*, 6 The Journal of Legal Studies 65-82 (1977) (17 pages)

Paul H. Rubin, *Why Is The Common Law Efficient?*, 6 The Journal of Legal Studies 51-62 (1977) (11 pages)

MEETING 12 (OCTOBER 12, 2021): INTRODUCTION TO CIVIL LITIGATION

- Legal Rules and Minimizing Social Costs.
- Asymmetric Information and Voluntary and Involuntary Disclosure.
- Discovery Abuse.
- Supply and Demand and Court Delay.

Required Readings:

Robert Cooter, et al, *Law & Economics* (6th ed. 2012), Chap. 10, I.-II., IV. (pp. 382-398, 403-408) (22 pages)

Thomas J. Miceli, *The Economic Approach to Law* (2d ed. 2009), Chap. 8, §§ 1-2, 3, 5-6 (pp. 226-237, 248-249, 251-267) (30 pages)

Richard A. Posner, *Economic Analysis of Law* (9th ed. 2014), Chap. 20, § 20.1; Chap. 22, §§ 22.1, 22.11, 22.15; Chap. 23, § 23.2 (pp. 723-729, 797-800, 816-819, 839-842) (15 pages)

MEETING 13 (OCTOBER 14, 2021): EXPERT EVIDENCE

- How to Read and Understand Judicial Opinions.
- Admissibility of Expert Evidence: Relevance and Reliability.
- Relationship of Admissibility of Expert Evidence and Sufficiency of Scientific Evidence.
- Roles of Economists as Expert Witnesses and Consultants.

Required Readings:

Hillel J. Bavli, et al, *The Admissibility of Sampling Evidence to Prove Individual Damages in Class Actions*, 59 Boston College Law Review 655 (2018) (pp. 674-682) (8 pages)

David F. Herr (ed.), *Annotated Manual for Complex Litigation* (4th ed. 2015), Chap. 6, §§23.1-23.5 (pp. 609-619) (10 pages)

Andre A. Moenssens, et al, *Scientific Evidence in Civil and Criminal Cases* (6th ed. 2013), Chap. 1, §§ 1.03-1.04, 1.06-1.08 (pp. 9-16, 18-20, 23-27) (13 pages)

Cases:

Daubert v. Merrell Dow Pharmaceuticals, Inc., 727 F. Supp. 570 (S.D. Cal. 1989)

Daubert v. Merrell Dow Pharmaceuticals, Inc., 951 F.2d 1128 (9th Cir. 1991)

Daubert v. Merrell Dow Pharmaceuticals, 509 U.S. 579 (1993)

Daubert v. Merrell Dow Pharmaceuticals, 43 F.3d 1311 (9th Cir. 1995) (remand)

Nease v. Ford Motor Company, 848 F.3d 219 (4th Cir. 2017)

Written Assignment:

Response Paper #3 or Referee Report #2 is due by COB on Friday, October 15, 2021.

Answers to Problem Set:

Answers to Problem Set #3 are due by COB on Friday, October 15, 2021.

MEETING 14 (OCTOBER 19, 2021): USE OR MISUSE OF STATISTICS AND EXPERT EVIDENCE

- Use or Misuse of Statistics and Expert Evidence at Trial.
- Roles of Trial Judge and Jury in Evaluating Expert Evidence.
- Adequacy of Adversary Process---Cross-Examination and Rebuttal Expert Witnesses.

Cases:

Tyson Foods, Inc. v. Bouaphakeo, 577 U.S. ___, 136 S. Ct. 1036, 1041-1050 (2016)

Alaska Oil & Gas Assoc. v. Secretary of Commerce, 840 F. 3d 671 (9th Cir. 2016)

Smith v. Rapid Transit, Inc., 317 Mass. 469 (1945)

People v. Collins, 68 Cal. 2d 319, 438 P.2d 33 (1968)

Barefoot v. Estelle, 463 U.S. 880, 916-938 (1983) (Blackmun, J., dissenting)

McCleskey v. Kemp, 481 U.S. 279, 321-335 (1987) (Brennan, J., dissenting)

MEETING 15 (OCTOBER 21, 2021): EVIDENTIARY BURDENS AND DECISION-MAKING

- Burdens of Proof, Burdens of Production, Burdens of Persuasion and Standards of Proof.
- Bayesian Analysis of Decision-Making.
- Burdens of Persuasion and Type I Errors (False Positives) and Type II Errors (False Negatives).

Required Readings:

Robert Cooter, et al, *Law & Economics* (6th ed. 2012), Chap. 11, I.1. (pp 436-442) (6 pages)

Richard A. Posner, *Economic Analysis of Law* (9th ed. 2014), Chap. 23, § 23.4 (pp. 844-849) (5 pages)

Eric T. Talley, *Law, economics, and the burden(s) of proof*, Research Handbook on the Economics of Torts 305-329 (2013) (Jennifer Arlen (ed.)) (24 pages)

MEETING 16 (OCTOBER 26, 2021): FEDERAL RULES OF EVIDENCE

- Admissibility of Relevant Information Under Federal Rule of Evidence 403.
- Inadmissibility of Settlement Negotiations Under Federal Rule of Evidence 408.
- Cost-Benefit Analysis of Federal Rules of Evidence Hearsay Exceptions.
- Selected Common Law Evidentiary Rules.

Required Readings:

Richard A. Posner, *An Economic Approach to the Law of Evidence*, 51 Stanford Law Review 1477, 1516-1535, 1544-1545 (1999) (22 pages)

Richard A. Posner, *Economic Analysis of Law* (9th ed. 2014), Chap. 23, §23.1 (pp. 837-839) (3 pages)

Case:

United States v. Boyce, 742 F.3d 792 (7th Cir. 2014)

Written Assignment:

Short Essay #1 is due by COB on Friday, October 29, 2021.

Answers to Problem Set:

Answers to Problem Set #4 are due by COB on Friday, October 29, 2021.

MEETING 17 (OCTOBER 28, 2021) AND MEETING 18 (NOVEMBER 2, 2021): EFFICIENCY AND ACCURACY OF JURY TRIALS

- Peremptory Challenges in Jury Selection and the Coase Theorem and Relative Social Costs.
- Meaning of Jury "Predictability."

Required Readings:

Brian H. Bornstein, et al, *Jury Decision Making: Implications For and From Psychology*, 20(1) Current Decisions in Psychology 63-67 (2011) (4 pages)

Shari Seidman Diamond, et al, *Empirical analysis of juries in tort cases* (Nov. 6, 2012), Research Handbook on the Economics of Torts (J. Arlen, ed.), Northwestern Law and Economics Research Paper No. 12-19 (pages 414-435) (21 pages)

Valerie P. Hans, et al, *The Predictability of Juries*, Cornell Legal Studies Research Paper (September 20, 2010) (pp. 1-28) (28 pages)

Edward J. McCaffrey, et al, *Framing the Jury: Cognitive Perspectives on Pain and Suffering Awards*, 81 Va. L. Rev. 1341, 1341-1373 (1995) (32 pages)

William S. Neilson, et al, *Bias and the economics of jury selection*, 20 International Review of Law and Economics 223-250 (2000) (27 pages)

Dru Stevenson, *Jury Selection and the Coase Theorem*, 97 Iowa Law Review 1645 (2012) (32 pages)

MEETING 19 (NOVEMBER 4, 2021): BARGAINING AND SETTLEMENT OF CIVIL LITIGATION

- Game Theory and Settlement.
- Federal Rule of Civil Procedure 68 (Offer of Judgment).
- Asymmetric Information and Probability of Settlement.
- Behavioral Economics and Bargaining.

Required Readings:

Linda Babcock, et al, *Explaining Bargaining Impasse: The Role of Self-Serving Bias*, 11 (1) Journal of Economic Perspectives 109-126 (1997) (18 pages)

Robert Cooter, et al, *Law & Economics* (6th ed. 2012), Chap. 10, III. (pp. 399-403) (4 pages)

Christine Jolls, et al, *A Behavioral Approach to Law and Economics*, 50 Stanford Law Review 1471, 1489-1497, 1501-1504 (1998) (12 pages)

Richard A. Posner, *Economic Analysis of Law* (9th ed. 2014), Chap. 1, § 1.4; Chap. 22, §§22.5-22.6 (pp. 18-23, 779-788) (15 pages)

Steven Shavell, *Foundations of Economic Analysis of Law* (2004), Chap. 17, §§3-1-3-4 (pp. 401-415) (14 pages)

Written Assignment:

Initial literature review and database research due by COB on Friday, November 5, 2021.

MEETING 20 (NOVEMBER 9, 2021): ALLOCATING ATTORNEYS' FEES AND FEE SHIFTING IN CIVIL LITIGATION

- “American Rule” and “English Rule”.

Required Readings:

Robert Cooter, et al, *Law & Economics* (6th ed. 2012), Chap. 10, V.B. (pp. 408-410) (3 pages)

Thomas J. Miceli, *The Economic Approach to Law* (2d ed. 2009), Chap. 8, §3.2 (pp. 237-241) (5 pages)

Steven Shavell, *Foundations of Economic Analysis of Law* (2004), Chap. 18, §4 (pp. 428-432) (5 pages)

Cases:

Goodyear Tire & Rubber Co. v. Haeger, 581 U.S. ____ , 137 S. Ct 1178 (2017)

Octane Fitness LLC v. ICON Health & Fitness, Inc., 572 U.S. ____ , 134 S. Ct. 1749 (2014)

Highmark Inc. v. Allcare Health Management Systems, Inc., 572 U.S. ____ , 134 S. Ct. 1744 (2014)

Nantkwest v. Iancu, 888 F. 3d 1177, 1181-1183 (Fed. Cir. 2018)

PART IV: ECONOMIC THEORY AND PATENT LAW

MEETING 21 (NOVEMBER 11, 2021): OVERVIEW OF PATENT LAW

- Patent Law and Innovation.
- Property Rules and Liability Rules in Patent Law.
- Varying Permissible Scope of Patent Claims.
- What Is the Relationship Between Research and Development Spending and Inventions?

Required Readings:

Roger D. Blair, et al, *Intellectual Property: Economic and Legal Dimensions of Rights and Remedies*, Chap. 2 (pp. 7-22) (15 pages)

Robert P. Merges, *Of Property Rules, Coase, and Intellectual Property*, 94 Columbia Law Review 2655-2673 (December 1994) (19 pages)

Richard A. Posner, *Economic Analysis of Law* (9th ed. 2014), Chap. 11, §§11.1-11.2 (pp. 401-409) (9 pages)

Written Assignment:

Proposal for Final Research Paper (Short Essay #2) is due by COB on Wednesday, November 12, 2021.

MEETING 22 (NOVEMBER 16, 2021): ESTIMATING COMPENSATORY DAMAGES FOR PATENT INFRINGEMENT

- Estimating Reasonable Royalty Using a “Hypothetical Negotiation” Approach.
- Economic Allocation of Component Parts and “Entire Market Value Rule.”
- Economic Analysis of Lost Profits.
- Economic Analysis of Price Erosion.

Required Readings:

Roger D. Blair, et al, *Intellectual Property: Economic and Legal Dimensions of Rights and Remedies*, Chap. 8 (pp. 208-242) (34 pages)

Richard F. Cauley, *Winning the Patent Damages Case* (2011), Chap. 1, 13-14, 17-18 (pp. 3-13, 111-136, 153-165) (52 pages)

Edward Torous, *Unknotting Uniloc*, 27 Berkeley Technology Law Journal 381-408 (2012) (27 pages)

Cases:

Mentor Graphics Corp. v. Eve-USA, Inc., 851 F.3d 1275, 1283-1290 (Fed. Cir. 2017) (8 pages)

Power Integrations, Inc. v. Fairchild Semiconductor International, Inc., Case Nos. 2016-2691, 2017-1875 (Fed. Cir. July 3, 2018) (slip op.) (pp. 18-25) (7 pages)

MEETING 23 (NOVEMBER 18, 2021): ECONOMIC IMPACTS OF “PATENT TROLLS”

- Estimating Private and Social Costs of “Patent Troll” Litigation.
- Are “Patent Trolls” Market-Makers?
- Can Abrogating the “American Rule” Fix the “Patent Troll” Problem?
- What, If Any, Patent Reforms Are Needed to Address “Patent Troll” Litigation?

Required Readings:

Eric J. Abram, *Patent Trolls and the Path to Reform*, 30 Brigham Young University Prelaw Review 19-31 (2016) (12 pages)

Lauren Cohen, et al, *Empirical Evidence on the Behavior and Impact of Patent Trolls*, Patent Assertion Entities and Competition Policy 27-49 (2017) (23 pages)

Michael J. Mazzeo, et al, *Do NPEs Matter? Non-Practicing Entities and Patent Litigation Outcomes*, 9 Journal of Competition Law & Economics 879-904 (2013) (25 pages)

Cases:

Halo Electronics, Inc. v. Pulse Electronics, Inc., 579 U.S. ____, 136 S. Ct. 1923 (2016)

Electronic Communication Technologies, LLC v. Shopperschoice.com, LLC, 963 F. 3d 1371 (Fed. Cir. 2020)

Audio: Chicago Public Media, *This American Life*, When Patents Attack, Part 1 (Episode 441) (July 22, 2011) and Part 2 (Episode 496) (May 31, 2013)

MEETING 24 (NOVEMBER 23, 2021): MEMBERS’ CHOICE

Written Assignment:

Draft Final Research Paper is due by COB on Wednesday, November 24, 2021.

MEETING 25 (NOVEMBER 30, 2021) AND MEETING 26 (DECEMBER 2, 2021): PRESENTATIONS OF FINAL RESEARCH PAPERS

Written Assignment:

Final Research Paper is due by 5 PM (ET) on Wednesday, December 8, 2021.