

Lawyers' economics versus economic analysis of law: a critique of professor Posner's "economic" approach to law by reference to a case concerning damages for loss of earning capacity

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Abstract A methodological critique of the Chicago School of legal economic analysis, in particular Posner's approach, is illustrated by an example characterizing Chicago-type 'analysis of law'. Although the discussion of the example referred to may be interesting in its own right, its purpose here is to suggest a more general framework of criticism in order to allow for generalizable conclusions. The suggestion of an alternative interpretation and solution to a particular legal problem serves to point out some limits of the methodology Posner has adopted. This applies more generally to the delineation of the limits of the rôle economics can play in actual litigation in helping judges and juries to arrive at fair as well as socially efficient solutions.

Keywords Economic analysis of law · Law and economics · Posner · Chicago School · Methodology · Social efficiency

JEL Classification K00 · K13 · K41 · B41

This paper is a slightly modified version of a paper with the same title that was published in 1978 in the Munich Social Science Review.

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Economic Analysis For Lawyers

Richard A. Posner



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