

# 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

Juergen G. Backhaus<sup>1</sup>

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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

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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

**Yijin Wang**



## **Economic Analysis For Lawyers:**

**Economic Analysis for Lawyers** Henry N. Butler, Joanna Mehlop Shepherd, James C. Cooper, 2024      **Economic Analysis for Lawyers** Henry N. Butler, Christopher R. Drahozal, Joanna Mehlop Shepherd, 2014 To order a paperback version of this casebook please click [here](#) The purpose of this casebook is to teach the principles of microeconomics Economic Analysis for Lawyers presumes no prior training in economics and uses the same building block approach that is found in most microeconomics principles textbooks that are used in undergraduate economics classes This book includes excerpted cases and other materials that illustrate the applicability of the economic principles to legal disputes and public policy issues Fundamental principles are introduced in the first four chapters Subsequent chapters build on these fundamentals by adding a detailed and sophisticated analysis in the general areas of monopoly externalities information labor markets risk organizational economics and financial economics The Third Edition adds new chapters on labor markets and crime and punishment The result is a thorough introduction to the principles of microeconomics      [Economic Analysis for Lawyers \(Paperback\)](#) Henry Butler, Christopher Drahozal, Joanna Shepherd, 2014 This is the 2022 paperback printing of the casebook published in 2014 To see the hardcover version please click [here](#) The purpose of this casebook is to teach the principles of microeconomics Economic Analysis for Lawyers presumes no prior training in economics and uses the same building block approach that is found in most microeconomics principles textbooks that are used in undergraduate economics classes This book includes excerpted cases and other materials that illustrate the applicability of the economic principles to legal disputes and public policy issues Fundamental principles are introduced in the first four chapters Subsequent chapters build on these fundamentals by adding a detailed and sophisticated analysis in the general areas of monopoly externalities information labor markets risk organizational economics and financial economics The Third Edition adds new chapters on labor markets and crime and punishment The result is a thorough introduction to the principles of microeconomics      **An Economic Analysis on the Market for Lawyers** James M. Hammond, 1979      *Economic Analysis of Law* Richard A. Posner, 2003 This classic casebook earned its position as the preeminent work in the field by teaching generations of students the meaning and methods of economic analysis The Sixth Edition continues to cover every aspect of economic analysis of the law from common business and public International Law to public market regulation evidence and the economic theory of democracy These distinctive features make Economic Analysis of Law such a bestseller author Richard A Posner is a pioneer in law and economics analysis comprehensive coverage of all key areas from common law to the constitution lucid and user friendly writing and organization to makes the study of economics more accessible non quantitative approach does not assume or require any prior knowledge of mathematics or economics part and chapter organization is based on legal not economic concepts excellent topical coverage stimulates class discussion end of chapter sections extend learning through problems and suggested further readings Revised and updated for its Sixth Edition the casebook now offers new coverage in areas such

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employed in legal reasoning It is geared specifically towards those without a great deal of exposure to economic thinking and provides law students legal scholars and practitioners with a practical toolbox to shape their writing understanding and case preparation The book's clear focus on economic methods poses a refreshing change to conventional textbooks in this area which tend to focus on content related theories Recognising that it is often difficult to derive adequate conclusions for legal arguments without first understanding the methodological limitations of economic studies this book provides a comprehensive coverage of the most important economic concepts in order to bridge this gap These include game theory public choice and social choice theory behavioural economics empirical research design basic statistics Owing to its concise and accessible style *Economic Methods for Lawyers* will provide an invaluable companion for legal scholars or practitioners who wish to utilise economic methods for developing legal argument *Costs and Cautionary Tales* Anthony I

Ogus,2006-03-01 The aim of this book is to provide an overview of how economic analysis can enrich an understanding of law and can provide standards for its critical evaluation It eschews a dogmatic approach acknowledging that non economic goals play an important part in the law It is directed primarily at lawyers and law students particularly those who hitherto have been sceptical of the uses and value of law and economics It is not a conventional textbook in the sense that it does not deal systematically with different areas of law Rather each chapter is built on a particular theme or set of themes with examples drawn from across legal categories The approach is discursive anecdotal and analytical reflecting the ideas and convictions developed during the author's 30 years working in the field of law and economics Winner of the Hart SLSA Book Prize 2007 for an outstanding piece of socio legal scholarship *Difficult Issues for Business Lawyers* Idaho State Bar. Business & Corporate Law Section,2002

*Economic Foundations of Law second edition* Stephen J. Spurr,2010-06-24 *Economic Foundations of Law* 2nd ed provides an economic analysis of the major areas of the law property law torts contracts criminal law civil procedure corporation law and financial markets taxation and labor law In line with current trends in legal scholarship discussion is focused on economic principles such as risk aversion efficiency opportunity cost moral hazard rent seeking behaviour and economies of scale Accessible comprehensive and well written this book uses extensive practical examples and explanations to illustrate key points There are numerous applications to lawyers and the legal profession with detailed discussions of subjects as diverse as the proposed market for transplantable human organs the market for adoptions the market for bail bonds the unanticipated effects of Megan's law and issues of racial profiling Fully updated and revised a new chapter on labor law has also been included *Costs and Cautionary Tales* Anthony I Ogus,2006-04-05 The aim of this book is to provide an overview of how economic analysis can enrich an understanding of law and can provide standards for its critical evaluation It eschews a dogmatic approach acknowledging that non economic goals play an important part in the law It is directed primarily at lawyers and law students particularly those who hitherto have been sceptical of the uses and value of law and economics It is not a conventional textbook in the sense that it does not deal systematically with different

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Law's Order David D. Friedman, 2000 Publisher Fact Sheet Examines the relationship between economics the law

Confirmation Hearing on the Nomination of Janice R. Brown, of California, to be Circuit Judge for the District of Columbia Circuit United States. Congress. Senate. Committee on the Judiciary, 2004

*Law and Economics* Aristides Hatzis, Nicholas Mercurio, 2015-02-11 The Law and Economics approach to law dominates the intellectual discussion of nearly every doctrinal area of law in the United States and its influence is growing steadily throughout Europe Asia and South America Numerous academics and practitioners are working in the field with a flow of uninterrupted scholarship that is unprecedented as is its influence on the law Academically every major law school in the United States has a Law and Economics program and the emergence of similar programs on other continents continues to accelerate Despite its phenomenal growth the area is also the target of an ongoing critique by lawyers philosophers psychologists social scientists even economists since the late 1970s While the critique did not seem to impede the development of the field it certainly has helped it to become more sophisticated inclusive and mature In this volume some of the leading scholars working in the field as well as a number of those critical of Law and Economics discuss the foundational issues from various perspectives philosophical moral epistemological methodological psychological political legal and social The philosophical and methodological assumptions of the economic analysis of law are criticized and defended alternatives are proposed old and new applications are discussed The book is ideal for a main or supplementary textbook in courses and seminars on legal theory philosophy of law jurisprudence and of course Law and Economics

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resolution In this study economists lawyers and sociologists evaluate an institutional form that is new to American society and indeed to the world the public interest law PIL organization The book introduces the reader to the structure resources and activities of this nonprofit industry and also to the factors that affect PIL firms in their choices of cases and methods of handling them The authors examine PIL s vast range of contemporary public policy concerns These include such general topics as the environment consumerism housing employment discrimination medical care occupational health and safety education finance and taxation A number of base studies are presented and a method for economic analysis and evaluation is introduced and applied The study points to PIL s success in advocating under represented interests in winning courtroom decisions and in translating legal victories into reallocations of resources At the same time it notes the bias of PIL towards test case litigation a propensity to focus on judicial victories rather than on real social change and a tendency to use lawyers even when other types of professionals might be more effective Many of these problems stem from uncertainty of funding and legal restrictions on nonprofit organizations The result is a set of hurdles that distracts PIL firms from their principal goals The authors do not limit themselves to PIL but comment on the effectiveness of legal instruments as devices for social change and on the behavior of the voluntary nonprofit sector a little studied portion of the economy The book presents a fresh approach to the study of both collective type economic problems and institutional setting in which public interest law works This title is part of UC Press s Voices Revived program which commemorates University of California Press s mission to seek out and cultivate the brightest minds and give them voice reach and impact Drawing on a backlist dating to 1893 Voices Revived makes high quality peer reviewed scholarship accessible once again using print on demand technology This title was originally published in 1978

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