

**Bachelor Seminar “Topics in the
game-theoretic analysis of law”
Winter Semester 2020/21**

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Level

Bachelor (registration is done centrally)

Language

English or German

Prerequisites

Knowledge in Microeconomics and Game Theory (e.g. the lecture „Microeconomics II“)

Requirements

You have to attend all days of the block seminar. Your grade will be based on the following:

- 70% Presentation of the topic.
- 15% Participation in the discussion of all topics.
- 15% Exposé (2-3 pages) for the Bachelor thesis based on your assigned topic.

Preliminary list of dates

Topics are assigned via email. After you have received confirmation that you will participate in the seminar, please send me an email with a list of your preferred three topics from the list below. Instead of the usual preliminary meeting, I will upload more detailed information on ILIAS. Make sure that you enter the ILIAS group for this seminar!

14/09/20	Deadline for sending a ranking of your preferred topics
01/10/20	Assignment of topics by email
online	Preliminary meetings
19/12/20	Deadline exposé
Nov 20	14:00 - 18:00 Presentations
Nov 21	10:00 - 14:00 Presentations
Nov 27	14:00 - 18:00 Presentations

Topics: Game-theoretic analysis of law

Textbooks for Law and Economics are for example Cooter and Ulen, “Law and Economics”, or Schweizer, “Spieltheorie und Schuldrecht”, or the handbook article by Sullivan and Holt (2017).

1 The Coase Theorem and its implications

According to Eric Posner, the Coase theorem is an “economic idea you should forget” (Springer, 2017, p. 101-103). Present the Coase theorem and its interpretations. You can also discuss some transaction costs that are studied in the lab (endowment effect, incomplete information) or present a formal treatment of the Coase theorem (see e.g. the introduction of the textbook by Schweizer).

- Hoffman, Spitzer. "The Coase theorem: Some experimental tests." *The Journal of Law and Economics* (1982)
- Kahneman, Knetsch, Thaler, “Experimental Tests of the Endowment Effect and the Coase Theorem”, *JPE* (1990)

2 Coming to the nuisance

The reciprocal nature of externalities is very clear in the case that the polluter (e.g. a waste disposal site) is already there when the victim of pollution chooses its location close to the polluter (e.g. a residential area is developed around the disposal site). Should the victim in this case have the right to receive damage payments from the polluter?

- Pitchford, Snyder. "Coming to the nuisance: an economic analysis from an incomplete contracts perspective." *Journal of Law, Economics, and Organization* (2003)
- Innes, Robert. "Coming to the nuisance: revisiting Spur in a model of location choice." *The Journal of Law, Economics, & Organization* (2008)

3 A comparison of liability and property rules from an economic perspective

Explain how the compensation for harmful externalities is regulated and compare liability and property rules. You can give examples and argue which transactions costs are likely to matter the most.

- Kaplow, Shavell. "Property rules versus liability rules: An economic analysis." *Harvard Law Review* (1996)
- Bebchuk "Property rights and liability rules: The ex ante view of the cathedral." *Michigan Law Review* (2001).

4 Risk perceptions and NIMBY problems

Explain the opposition and public reaction to the siting of hazardous waste facilities. Discuss which behavioral effects are likely to play a role for the NIMBY problem and how these should be reflected in a host community compensation scheme.

- Frey, Oberholzer-Gee, Eichenberger. "The old lady visits your backyard: A tale of morals and markets." *Journal of political economy* (1996).
- Zaal et al. "Monetary compensation can increase public support for the siting of hazardous facilities." *Journal of Environmental Psychology* (2014)

5 The unilateral care model and activity levels

What effect do different liability rules have on incentives for precaution? Your focus should be so-called "activity levels". You can also discuss liability rules for accidents that are caused by autonomous cars.

- Kornhauser, Schotter. "An experimental study of single-actor accidents." *The Journal of Legal Studies* (1990)
- Shavell "Strict Liability versus Negligence." *The Journal of Legal Studies* (1980)

6 Liability and Covid 19

Many firms may face lawsuits for failing to protect employees and customers from Covid 19. Politicians fear that reopening the economy will be difficult if firms risk being sued for negligence. They are therefore thinking about shielding employers from liability over coronavirus-related claims. This concerns not only the safety of employees, but also products liability e.g for makers of protective masks. You can start from general treatments of safety regulation and liability, and then, with this background, discuss regulation related to Covid 19.

1. Kolstad, Ulen, Johnson: "Ex post liability for harm vs. ex ante safety regulation: substitutes or complements?." *The American Economic Review*, 1990
2. Schwartzstein, Shleifer. "An activity-generating theory of regulation." *The Journal of Law and Economics*, 2013

7 Extended producer responsibility

The OECD defines extended producer responsibility as any "policy approach in which a producer's responsibility for a product is extended to the post-consumer stage of a product's life." (e.g. "take-back" policies, recycling, advance disposal fees). For example, cigarette stumps that are carelessly thrown on the floor impose huge costs on the environment and on the communities that have to clean up after the smokers. Politicians have therefore suggested to make the cigarette industry pay part of the cost. Similarly,

water filter facilities have to spend large amounts of money to filter out residuals of pharmaceuticals. Politicians have therefore suggested to make the pharma industry pay part of these costs. Discuss the likely effects of the suggested measures.

- Calcott, Walls. "Can downstream waste disposal policies encourage upstream" design for environment"?.*" American Economic Review (2000)*
- Ino "Extended producer responsibility in oligopoly" *Economics Bulletin (2007)*

8 Managerial liability

Explain the fiduciary duties of managers and discuss pros and cons of a business judgment rule or of insurance for managers. Further, you can give an overview over the literature on manager liability, connecting the legal and the economic literature. You can also look for current examples in the newspapers, or extend the existing models for example by introducing a conflict of interest in decision-making (e.g. "empire-building preferences") and not only in effort choice.

- Gutiérrez-Urtiaga, "An Economic Analysis of Corporate Directors' Fiduciary Duties" *Rand Journal of Economics (2003)*
- Engert, Goldlücke, "Why agents need discretion: The business judgment rule as optimal standard of care." *Review of Law & Economics (2017)*.

9 Litigation tournaments

In your presentation, explain a model of litigation as a contest between the litigants. This model has been used to compare different fee-shifting rules, the adversarial and the inquisitorial system, rules for appeals, and many other procedural rules. You can start by reading the following papers:

- Hirshleifer, Osborne, (2001) "Truth, effort, and the legal battle." *Public Choice*
- Gürtler, Kräkel, "Double-Sided Moral Hazard, Efficiency Wages, and Litigation" (2008) *JLEO*

10 Biases in judicial decision making

In your presentation, showcase evidence of good and bad decision-making in experiments with judges. Highlight the differences between judicial decision-making and e.g. consumer decision making. You can also compare different cognitive biases with respect to their prevalence and importance for judicial decision making and make suggestions how they can be remedied. You can extend the analysis for example by discussing how algorithms can or cannot help with legal decisions. The following two papers may be helpful:

- Rachlinski, Wistrich, Guthrie: "Can Judges Make Reliable Numeric Judgments? Distorted Damages and Skewed Sentences", *Indiana Law Journal*, 2015

- Chen, Moskowitz, Shue: “Decision-Making under the Gambler’s Fallacy: Evidence from Asylum Judges, Loan Officers, and Baseball Umpires”, QJE, 2015

11 Breach remedies and incentives to honor and sign a contract

In your presentation, introduce different remedies for breach of contract and the effect on the decision to breach. Stay within a market context and do not analyse bilateral monopoly and reliance choices. In addition, you can for example extend the analysis in Friedman (1989) to convex and concave cost functions or discuss further the “behavioral efficiency” identified by Engel and Freund (2017):

- Friedman "An economic analysis of alternative damage rules for breach of contract." The Journal of Law and Economics (1989)
- Engel, Freund. "Behaviorally Efficient Remedies—An Experiment." Working paper (2017).

12 Breach remedies and reliance levels

What are the effects of different breach remedies on incentives to invest? Present the result that expectation damages can lead to one party overrelying on performance. Beyond that, you can extend the model, for example by using a different bargaining game for the ex post negotiations or by introducing risk aversion or inequity aversion into the model. Two very relevant articles are the following:

- Leuven, Oosterbeek, Sloof, Sonnemans: “An experimental comparison of reliance levels under alternative breach remedies.” RAND Journal of Economics (2003)
- Shavell "The design of contracts and remedies for breach." The Quarterly Journal of Economics (1984)

13 Unforeseen events and breach of contract

For contracting parties, the COVID 19 pandemic and its consequences could not have been foreseen. Contractual provisions for unforeseen events and impossibility of performance may become important, but also legal regulation. For example, Germany has made changes that allow consumers and small businesses to withhold performance in certain circumstances. Compare different rules with respect to their consequences and efficiency. You can build on classic models on the impossibility doctrine:

- Posner and Rosenfield. "Impossibility and related doctrines in contract law: An economic analysis." The Journal of Legal Studies 1977
- White "Contract breach and contract discharge due to impossibility: A unified theory." The Journal of Legal Studies 1988