
PREFACE

This book studies a limited number of topics in the economic analysis of law in order to focus on “how to think like an economist” about legal rules. As economists know, thinking about a problem like an economist means building a “model” of it—either verbally, graphically, or mathematically—to distill the essence of the relationships being studied. Unfortunately for most law students and many undergraduates, much of the writing by economists about the legal system uses models that are graphical and/or mathematical. The goal of this book is to convey the spirit of the economic approach, and the insights gained from employing it, without the technical apparatus. I will rely solely on simple numerical examples.

Because the book does not presume any knowledge of the legal system, it can be used both in law school and in undergraduate courses on law and economics. In either case, it can supplement a more comprehensive treatment of the subject or be used as the core text with additional material chosen by the instructor. Also, given the topics covered in the book, it can serve as a supplement to traditional casebooks in first-year law courses on property, contracts, torts, and criminal law, or casebooks in upper-level courses on environmental law.

To make the text flow as smoothly as possible, I have severely limited the number of footnotes. As a general rule, the only footnotes included are those that contain important qualifications or elaborations of points made in the text or that refer the reader to earlier or later discussions in the text. There are three minor exceptions to this rule. First, because I have tried to dispense with the technical terminology of

economics as much as possible in the text, I have included some footnotes that relate ideas in the text to this terminology. Second, a few footnotes have been included that cite legal cases or doctrines relevant to points made in the text. And third, whenever the work of a specific author has been referred to in the text, the appropriate citation is included in a footnote. (However, the footnotes do not include any other references to the relevant scholarly literature on the economic analysis of law. Instead, a guide to the literature on which this book is based is provided in a bibliographical appendix.)

In revising the book for the fifth edition, I have retained the organization and style of the earlier editions. My main effort in preparing the present edition has been devoted to undertaking a thorough review of the text, with the goal of clarifying discussions that I thought could be improved, simplifying the presentation where this could be done without sacrificing the lessons to be conveyed, and adding some refinements in footnotes and the text. Notably, I have streamlined the products liability discussion by, among other things, assuming that firms are risk neutral (rather than considering the possibilities that they could be risk neutral or risk averse), and I have revised the discussion of the redistributive effects of legal rules to reflect more recent scholarship on this topic.

I received many helpful comments from colleagues and friends on drafts of the book in its various editions. For their efforts, I wish to thank Lucian Bebchuk, Mark Cohen, Jules Coleman, Robert Cooter, Richard Craswell, John Donohue, Robert Ellickson, Dorsey Ellis, Jr., Nuno Garoupa, Ronald Gilson, Henry Hansmann, Jeffrey Hobart, Thomas Jackson, Louis Kaplow, Mark Kelman, Jeffrey Kessler, Alvin Klevorick, Lewis Kornhauser, Steven McBride, Joao de Mello, Peter Menell, Robert Mnookin, Richard Musgrave, Glen Nager, Jeffrey Perloff, Ivan P'ng, Robert Rabin, William Rogerson, Roberta Romano, Daniel Rubinfeld, Steven Shavell, Gregory Sidak, Michelle White, and Shinichi Yuhara. Their suggestions substantially improved the final product. I am also grateful to my wife, Joan Roberts Polinsky, for her valuable editorial suggestions; to Barbara Adams for her help in preparing the original manuscript for publication; and to Morris Ratner and Paul Riskind for their bibliographical assistance.

One final methodological note is in order before proceeding. Economic analysis has been used both to try to explain the legal system as it is and to recommend changes that might improve it. Economists refer to these two approaches respectively as *positive* (or descriptive) economics and *normative* (or prescriptive) economics. As the reader will see, this book is normatively oriented. For each legal application considered, we will determine what legal rule or policy would best promote certain goals—with the focus on the goal of efficiency. Because the present legal system undoubtedly has been influenced by efficiency considerations, existing legal rules and policies frequently correspond to those that are optimal in terms of efficiency. To this extent, the book also provides an economic explanation of certain features of the present legal system.