

---

## CONTENTS

<i>Preface</i>	<i>xvii</i>
<i>Acknowledgments</i>	<i>xxi</i>
<b>Chapter 1: Introduction</b>	<b>1</b>
A. Why Law and Economics Matters	1
B. The Rational Choice Model	3
C. Rationality and Behavioral Economics	6
<i>Rose v. Brown &amp; Williamson Tobacco Corp.</i>	10
D. Costs	21
E. Efficiency	22
<i>Ghen v. Rich</i>	25
<i>McFall v. Shimp</i>	29
<i>Strunk v. Strunk</i>	30
<b>Chapter 2: Theories of Justice</b>	<b>35</b>
A. Utilitarianism	35
B. Harsanyi and the Veil of Uncertainty	39
C. Rawls's Veil of Ignorance	40
D. Wealth Maximization	46
E. Corrective Justice	51
<b>Chapter 3: Decisions Under Uncertainty</b>	<b>53</b>
A. Expected (Monetary) Value	53
B. Expected Utility and Risk Preferences	54
<i>Alberts v. Schultz</i>	58
C. The Litigation Model	65
One-Player Sequential Games	65
Litigation and Settlements	67
<i>Rhodes v. McDonald</i>	71
D. Risk Aversion Revisited and the Demand for Insurance	78
	<b>xi</b>

<b>xii</b>	<b>Contents</b>
E. Prospect Theory and the Ellsberg Paradox	83
Prospect Theory	83
The Ellsberg Paradox	87
F. Insurance and the Duty to Settle	98
<i>Transport Insurance Co. v. Post Express Co.</i>	99
<i>A.M.I. Diamond Co. v. Hanover Insurance</i>	101
<b>Chapter 4: Games and Theory</b>	<b>105</b>
A. Introduction	105
B. Static Games	106
Dominant Strategies	106
Strictly Dominated Strategies and the Iterative Process	110
Nash Equilibrium	112
Cell-By-Cell Analysis	113
Best-Response Analysis	114
Multiple Equilibria	115
<i>Page v. United States</i>	120
<i>In Re Balderas</i>	124
Horizontal Agreements Between Competitors	127
<i>Bell Atlantic Corp. v. Twombly et al.</i>	128
C. Dynamic Games	137
<i>United States v. Aluminum Co. of America</i>	143
<b>Chapter 5: Markets, Demand, Supply, and Allocative Efficiency</b>	<b>149</b>
A. The Consumers and the Demand Curve	150
Scarcity and the Consumer's Trade-Offs	150
Constructing the Individual's Demand Curve	150
Constructing the Aggregate Demand Curve	153
B. The Supply Curve	168
Scarcity and the Firm's Trade-Offs	168
Constructing the Producer's Supply Curve	170
Constructing the Aggregate Supply Curve	172
C. Market Equilibrium	179
<i>Matsushita Electric Industrial Co., Ltd., Inc. v. Zenith Radio Corp.</i>	185
D. Price Control	199
<i>People by Abrams v. Two Wheel Corp.</i>	200
<i>Williams v. Walker-Thomas Furniture Co.</i>	208

<b>Contents</b>	<b>xiii</b>
E. Changes in Supply and Demand	215
Changes in the Quantity Demanded Versus Change in the Demand Curve	216
Changes in Quantity Supplied Versus Shifts in the Supply Curve	217
Deriving the New Equilibrium	219
<i>Wickard, Secretary of Agriculture v. Filburn</i>	223
F. Elasticities	236
<i>United States v. E. I. du Pont de Nemours &amp; Co.</i>	244
<b>Chapter 6: Property</b>	<b>261</b>
A. The Benefits	263
<i>The Right to Exclude and Efficient Resource Allocation</i>	263
Congestion (Traffic)	263
Congestion (Overgrazing)	269
<i>Forest Guardians v. Wells</i>	270
<i>Buford v. Houtz</i>	277
The Right to Use and Incentives to Invest and Work	290
<i>William Blackstone, Commentaries of the Law of England</i>	294
<i>G. S. Rasmussen &amp; Assocs. v. Kalitta Flying Service</i>	296
Voluntary Exchange, Specialization, and Comparative Advantage	305
<i>Hughes v. Oklahoma</i>	309
B. The Costs of Property Rights	323
<i>Treasure Salvors Inc. v. Unidentified Wrecked &amp; Abandoned Sailing Vessel</i>	324
<i>Hodel v. Irving</i>	332
C. Introduction to the Coase Theorem	341
<b>Chapter 7: Torts</b>	<b>343</b>
A. Introduction	343
B. The Basic Model	348
1. Assumptions and Optimal Care Levels	348
2. Joint and Alternative Care	352
C. No Liability	352
D. Strict Liability	353
1. The Theory and the Caselaw	353
<i>Bolton v. Stone</i>	355
<i>Tracey v. Solesky</i>	358
2. Pockets of Strict Liability	366

E. Negligence	371
1. The Negligence Regime	371
2. Strict Liability Versus Negligence	373
3. Will There Be Any Lawsuits Under the Formal Model?	374
<i>Indiana Harbor Belt Railroad Co. v. American Cyanamid Co.</i>	378
4. Breach and the Hand Formula	385
<i>Adams v. Bullock</i>	385
<i>United States v. Carroll Towing Co.</i>	386
a. Reevaluating the Hand Formula	388
b. Custom and Statutes	392
<i>Trimarco v. Klein</i>	392
<i>Martin v. Herzog</i>	395
<i>Tedla v. Ellman</i>	397
c. Res Ipsa Loquitur	402
<i>Byrne v. Boadle</i>	402
<i>Ybarra v. Spangard</i>	404
5. Duty	407
<i>H. R. Moch Co. v. Rensselaer Water Co.</i>	407
<i>Harper v. Herman</i>	410
F. Defenses: Contributory Versus Comparative Negligence	418
<i>Bradley v. Appalachian Power Co.</i>	420
<i>Gondrella v. Mainor</i>	424
<b>Chapter 8: Incompatible Uses</b>	<b>429</b>
A. Torts or Property and the Coase Theorem	429
Property Rules Versus Liability Rules	430
The Joint-Maximization or Single-Owner Solution	431
Entitlements to Resident Protected by a Property Rule	432
Entitlement to Resident Protected by a Liability Rule	432
Entitlement to Factory Protected by a Property Rule	432
Entitlement to Factory Protected by a Liability Rule	432
<i>Boomer v. Atlantic Cement Company</i>	434
<i>Spur Industries, Inc. v. Del E. Webb Development Co.</i>	445
Relaxing the Assumptions of the Basic Model	451
Relocation Is Possible	451
Anti-Pollution Devices Are Available	452
Negotiations Are Costless	453
Inalienability and Modified Rules	459

<b>Contents</b>	<b>xv</b>
B. More on the Coase Theorem	466
Wealth Effects	466
Loss Aversion or the Endowment Effect	468
Adaptive Preferences	477
The Surplus Explanation	478
Investments in Consumption Capital	479
Evolutionary Fitness	479
Transaction Costs	481
Bargaining Games	484
C. The Importance of the Coase Theorem to Economic Analysis of the Law	490
Zero Transaction Costs	490
Positive but Negligible Transaction Costs	491
Prohibitive Transaction Costs	494
D. Common Law Rules Governing Conflicting Uses of Property	494
Trespass	494
<i>Ploof v. Putnam</i>	496
Nuisance Doctrine	499
Privacy Rights	501
Inheritance and After Death Transfers	502
 <i>Table of Statutes</i>	 505
<i>Table of Articles</i>	507
<i>Table of Books</i>	517
<i>Table of Other Authorities</i>	521
<i>Table of Cases</i>	525
<i>Index</i>	533