

LAW AND ECONOMICS  
CASES, MATERIALS  
AND  
BEHAVIORAL PERSPECTIVES

Jeffrey L. Harrison

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*American Casebook Series*®



# LAW AND ECONOMICS

## CASES, MATERIALS AND BEHAVIORAL PERSPECTIVES

By

**Jeffrey L. Harrison**

*Stephen C. O'Connell Chair and Professor of Law  
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*For my fellow "Lucky Jims."*

\*

“ . . . along the knife-edge dividing the conceivably-just-about-relevant from the irreducibly, immitigably, irrelevant.”

*Lucky Jim*  
Kingsley Amis

\*

## Preface

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In the mid-1970s, when I was a law student, a professor of mine, Paul Verkuil, handed me a copy of Richard Posner's *The Economic Analysis of Law* and asked me what I thought. I read the book and reported back that it did not seem like "real economics." I had taught economics for eight years, and I did not recognize very much that seemed familiar. As I look back, I think what struck me at the time was that I had never seen economics applied so directly to issues that were ultimately normative without more obvious efforts to separate the positive from the normative. In addition, I wondered if individuals in a world in which normative matters are critical, if not dominant, would react to simple economic stimuli. In short, law and economics, at the early stage, seemed to have a fairly limited focus.

A great many people since the mid-1970s, not the least of whom is Judge Posner, have expanded the view of what fits under the umbrella of law and economics. To some extent this involves the expansion of the conventional analysis into new areas of law. More interesting, however, is the understanding that when economics is applied to law one must address both normative and behavioral matters. I believe that those who teach law and economics now have an obligation to address these complexities, and my sense is that most of those in the field, unlike many of their counterparts in other politically-tinged areas of study, do so, albeit at different levels of depth and enthusiasm.

This book is an attempt to assist in the endeavor to broaden the scope of law and economics. It includes most of the bedrock economic analysis one would expect to find as well as some less conventional economics. The intellectual context of this presentation is one in which an effort is made to separate normative and positive issues, to identify areas of difficult moral choices, and to explore in some depth the behavioral assumptions of economics and their implications.

I am indebted to a number of people who influenced this book both directly and indirectly. Those who have had a direct impact on the substance include Robert Ashford, Tom Cotter, Joe Little, Chris Slobogin, Jules Thueeves, and Sarah Wilson. Less directly, I have benefitted by those attending the Law and Socioeconomics and Law and Economics sessions at the American Association of Law Schools annual meetings and especially by the writings of Amartya Sen and John Rawls. Finally, Terry Childers and Marjorie Tyler have provided able assistance in preparing the manuscript.

I would also like to thank Michael Moore and William Stuntz for permitting me to reprint portions of their works in these pages. Thanks too to the Johns Hopkins Press, The Harvard Law Review Association, the

William and Mary Law Review, The Virginia Law Review, the U.C.L.A. Law Review and Blackwell Publishers for permission to reprint articles on which they hold the copyrights.

There is one aspect of these materials that it is probably useful to note in advance. Although the cases are edited in the usual fashion, I have made an effort to leave in citations to critical cases and especially to the relevant scholarship. Law and economics is a developing field and I encourage the reader to explore the many scholarly works cited in the materials that follow.

JEFFREY HARRISON

Gainesville, Florida  
April, 2002



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# **LAW AND ECONOMICS**

## **CASES, MATERIALS AND BEHAVIORAL PERSPECTIVES**

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