

ASPEN COURSEBOOK SERIES

# **An Introduction to Law and Economics**

**A. Mitchell Polinsky**

FOURTH EDITION



**Wolters Kluwer**  
Law & Business

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# AN INTRODUCTION TO LAW AND ECONOMICS

*Fourth Edition*

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*Josephine Scott Crocker Professor  
of Law and Economics  
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Wolters Kluwer  
Law & Business

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*For*

*Guido Calabresi and Richard A. Musgrave*

*who introduced me  
to law and economics*

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## 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 (see further discussion on this point below). 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 fourth edition, I have retained the organization and style of the earlier editions. The major substantive changes in the present edition are the inclusion of a new chapter and a new appendix. The added chapter discusses the economic effects of regulation, how regulation differs from liability, and whether regulation is preferable to liability. The new appendix provides a detailed course syllabus illustrating how this book can be used as a cornerstone for an introductory or more advanced course on the economic analysis of law. In addition, I have undertaken a light edit of the text, corrected a small number of typographical errors, and updated references in the bibliographical appendix.

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, and Michelle White. 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 manuscript of the first edition for publication; and to Morris Ratner for his assistance in updating the bibliography for the second edition.

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 primary 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.

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# **AN INTRODUCTION TO LAW AND ECONOMICS**

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