

Lawyers' economics versus economic analysis of law: a critique of professor Posner's "economic" approach to law by reference to a case concerning damages for loss of earning capacity

Juergen G. Backhaus¹

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Abstract A methodological critique of the Chicago School of legal economic analysis, in particular Posner's approach, is illustrated by an example characterizing Chicago-type 'analysis of law'. Although the discussion of the example referred to may be interesting in its own right, its purpose here is to suggest a more general framework of criticism in order to allow for generalizable conclusions. The suggestion of an alternative interpretation and solution to a particular legal problem serves to point out some limits of the methodology Posner has adopted. This applies more generally to the delineation of the limits of the rôle economics can play in actual litigation in helping judges and juries to arrive at fair as well as socially efficient solutions.

Keywords Economic analysis of law · Law and economics · Posner · Chicago School · Methodology · Social efficiency

JEL Classification K00 · K13 · K41 · B41



This paper is a slightly modified version of a paper with the same title that was published in 1978 in the Munich Social Science Review.

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Economic Analysis For Lawyers

Henry N. Butler, Joanna Mehlop Shepherd, James C. Cooper

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employed in legal reasoning It is geared specifically towards those without a great deal of exposure to economic thinking and provides law students legal scholars and practitioners with a practical toolbox to shape their writing understanding and case preparation The book's clear focus on economic methods poses a refreshing change to conventional textbooks in this area which tend to focus on content related theories Recognising that it is often difficult to derive adequate conclusions for legal arguments without first understanding the methodological limitations of economic studies this book provides a comprehensive coverage of the most important economic concepts in order to bridge this gap These include game theory public choice and social choice theory behavioural economics empirical research design basic statistics Owing to its concise and accessible style Economic Methods for Lawyers will provide an invaluable companion for legal scholars or practitioners who wish to utilise economic methods for developing legal argument Costs and Cautionary Tales Anthony I Ogus, 2006-03-01 The aim of this book is to provide an overview of how economic analysis can enrich an understanding of law and can provide standards for its critical evaluation It eschews a dogmatic approach acknowledging that non economic goals play an important part in the law It is directed primarily at lawyers and law students particularly those who hitherto have been sceptical of the uses and value of law and economics It is not a conventional textbook in the sense that it does not deal systematically with different areas of law Rather each chapter is built on a particular theme or set of themes with examples drawn from across legal categories The approach is discursive anecdotal and analytical reflecting the ideas and convictions developed during the author's 30 years working in the field of law and economics Winner of the Hart SLSA Book Prize 2007 for an outstanding piece of socio legal scholarship Difficult Issues for Business Lawyers Idaho State Bar. Business & Corporate Law Section, 2002 Economic Foundations of Law second edition Stephen J. Spurr, 2010-06-24 Economic Foundations of Law 2nd ed provides an economic analysis of the major areas of the law property law torts contracts criminal law civil procedure corporation law and financial markets taxation and labor law In line with current trends in legal scholarship discussion is focused on economic principles such as risk aversion efficiency opportunity cost moral hazard rent seeking behaviour and economies of scale Accessible comprehensive and well written this book uses extensive practical examples and explanations to illustrate key points There are numerous applications to lawyers and the legal profession with detailed discussions of subjects as diverse as the proposed market for transplantable human organs the market for adoptions the market for bail bonds the unanticipated effects of Megan's law and issues of racial profiling Fully updated and revised a new chapter on labor law has also been included Costs and Cautionary Tales Anthony I Ogus, 2006-04-05 The aim of this book is to provide an overview of how economic analysis can enrich an understanding of law and can provide standards for its critical evaluation It eschews a dogmatic approach acknowledging that non economic goals play an important part in the law It is directed primarily at lawyers and law students particularly those who hitherto have been sceptical of the uses and value of law and economics It is not a conventional textbook in the sense that it does not deal systematically with different

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Table of Contents Economic Analysis For Lawyers

- 1. Understanding the eBook Economic Analysis For Lawyers
 - The Rise of Digital Reading Economic Analysis For Lawyers
 - Advantages of eBooks Over Traditional Books
- 2. Identifying Economic Analysis For Lawyers
 - Exploring Different Genres
 - Considering Fiction vs. Non-Fiction
 - Determining Your Reading Goals
- 3. Choosing the Right eBook Platform
 - Popular eBook Platforms
 - Features to Look for in an Economic Analysis For Lawyers
 - User-Friendly Interface
- 4. Exploring eBook Recommendations from Economic Analysis For Lawyers
 - Personalized Recommendations
 - Economic Analysis For Lawyers User Reviews and Ratings

- Economic Analysis For Lawyers and Bestseller Lists
- 5. Accessing Economic Analysis For Lawyers Free and Paid eBooks
 - Economic Analysis For Lawyers Public Domain eBooks
 - Economic Analysis For Lawyers eBook Subscription Services
 - Economic Analysis For Lawyers Budget-Friendly Options
- 6. Navigating Economic Analysis For Lawyers eBook Formats
 - o ePub, PDF, MOBI, and More
 - Economic Analysis For Lawyers Compatibility with Devices
 - Economic Analysis For Lawyers Enhanced eBook Features
- 7. Enhancing Your Reading Experience
 - Adjustable Fonts and Text Sizes of Economic Analysis For Lawyers
 - Highlighting and Note-Taking Economic Analysis For Lawyers
 - Interactive Elements Economic Analysis For Lawyers
- 8. Staying Engaged with Economic Analysis For Lawyers
 - Joining Online Reading Communities
 - Participating in Virtual Book Clubs
 - Following Authors and Publishers Economic Analysis For Lawyers
- 9. Balancing eBooks and Physical Books Economic Analysis For Lawyers
 - Benefits of a Digital Library
 - Creating a Diverse Reading Collection Economic Analysis For Lawyers
- 10. Overcoming Reading Challenges
 - Dealing with Digital Eye Strain
 - Minimizing Distractions
 - Managing Screen Time
- 11. Cultivating a Reading Routine Economic Analysis For Lawyers
 - Setting Reading Goals Economic Analysis For Lawyers
 - Carving Out Dedicated Reading Time
- 12. Sourcing Reliable Information of Economic Analysis For Lawyers
 - Fact-Checking eBook Content of Economic Analysis For Lawyers
 - Distinguishing Credible Sources

- 13. Promoting Lifelong Learning
 - Utilizing eBooks for Skill Development
 - Exploring Educational eBooks
- 14. Embracing eBook Trends
 - Integration of Multimedia Elements
 - Interactive and Gamified eBooks

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