

Lecture plan

Functional analysis and normative frameworks in the study of law

Day 1: November 19, 2020

The morning sessions of the first day introduce basic concepts from the functional analysis of law, in particular game theory. Core references are *Analytical methods for lawyers* chapter 2, p. 34-117. (Chapter 1 should be read but will not be addressed in class), and Shavell's book on accident law.

The purpose is to acquaint the student with the concept of Nash-equilibrium, prisoner's dilemma, moral hazard, adverse selection, basic theory of bargaining, and elements of contract theory. The theory and the concepts will be applied to tort law.

Morning session: 9.00 am - 10.45:

-Course Introduction **HL**

-Short student presentations of positive and normative questions involved in their Ph.D. projects

-Introduction to the model of legal argumentation and the functional analysis of law **GN**

11 am – 12.00 pm:

On the basic-game theoretic building blocks of conditional normative legal analysis: The rules of the game, preferences, strategies and equilibrium concepts **HL**

12.15 pm – 1 pm:

Nash-equilibrium, the prisoner's dilemma (table 2-2 in *Analytical methods for lawyer*), and the litigation game (p. 34-50 in *Analytical methods for lawyers*). We discuss a set of problems in the litigation game, handed-out in class. **HL,GN**

2 – 2.45 pm:

Functional analysis of tort law **GN**

- interpreting and understanding tort rules, including the negligence rule and strict liability

- designing tort law

- assessing regulation through efficiency criteria and cost-benefit analysis

Reading: Shavell, Ch. 1-4.

3 – 4 pm:

Exercises in tort law. **HL,GN**

A problem set will be handed out and solutions discussed in class.

Links to property and contract law will be suggested, and the Coase theorem will be introduced.

Suggested reading: Calabresi & Melamed

Day 2, November 20, 2020

Morning session: 9 –9.45 am:

*Contract Law: Worked Example [Question 1–4] **GN, HL***

Reading: Lando & Nordén

10 – 10.45 am:

General discussion of efficiency concepts and their application to law **HL**

1. a) Pareto-efficiency
2. b) Kaldor–Hicks-efficiency

11 am – 12.45 pm:

*On social welfare functions, the utilitarian optimum and its application in the various fields of law **HL***

1. The definition of the social welfare function
2. The definition of the utilitarian optimum, and its revival due to Harsanyi and Hare
3. On Alf Ross' criticism of the social welfare function and of utilitarianism
4. The Arrow impossibility theorem and its relevance to the use of social welfare functions in the analysis of law

Reading: Alf Ross and the functional analysis of law

2 pm – 2.45 pm:

*Discussion of the application of functional analysis and/or normative frameworks in the Ph.D. projects **HL,GN***

3 pm – 4 pm:

Summary and plenum discussion