

Ph.D. Course in Law and Economics, November 2020

Functional analysis and normative frameworks in the study of law

Course Schedule:

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**

- a) Pareto-efficiency
- 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

- a) The definition of the social welfare function
- b) The definition of the utilitarian optimum, and its revival due to Harsanyi and Hare
- c) On Alf Ross' criticism of the social welfare function and of utilitarianism
- d) 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