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How Can an Economic Analysis Affect the Understanding of a Court's Decision?

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How Can an Economic Analysis Affect the Understanding of a Court's Decision?

Prepared by: Yanni Kakouris

Advised by: Professor Jim Wible

Spring 2021

PROFESSOR JIM WIBLE

HONORS PROJECT INSTRUCTIONS

Spring 2021

3-26-2021

1. Title Page: The Title of Your Paper
Also include your name, course title, course name, professor's name, and the semester --Spring 2021
2. Second Page: Honors Project Instructions: Place this page immediately after your title page in drafts of your project. This will make it easier to provide comments..
3. Third Page: Outline of your project
Project title, major headings, and sub-headings form the outline of the paper. This is usually about half a page long. Here I want to see the logical structure of your paper.
No explanations or annotations in the outline!
4. Fourth Page: First page of your honors paper-.

Repeat title from item 1 above at top of page.
Text begins two double line spaces after title, double line space your narrative.
5. Body of your paper: Suggested Organization

Brief introduction to your project.
Substantive section 1 (which could be the economic analysis section)
Substantive section 2
Economic analysis of the L&E issues relevant to your case.
Use any 3 economic tools and concepts you have had in class.
Presented in general w/o special reference to your case.
Equations are to be included in the narrative on a separate line.
Narrative summary of case independent on its own terms
Analytical application & interpretation: apply your chosen economic theories
Efficiency for this case & as a precedent for future cases
Substantive section 3??
Conclusions: Brief restatement of the main inferences which can be supported by the analysis:
Graphs/Tables (see 6 below), **no screen shots** here or in the paper anywhere
Bibliography (see 6 below)
Appendix: Attached copy of case, can be a separate document (see 7 below)
6. End Pages: Required theory applications except equations go here -- graphs and/or game theory or other tables followed by a **bibliography**. They are to be placed immediately after the end of the text of your analysis and before the appendix. An equation may be placed in the main body of the paper or as a figure with end pages.

Please type the caption provided with a graph or table. **Table headings go above** the table and **figure names and captions go below** the figure. Tables and figures are numbered.
Remember to provide source or citation information for any graph or table.
7. Last Pages: Appendix: Attach hard copy of the case. You may do this as a separate document.
8. Word Count of written analysis, part 5 above (your best estimate):

Please write word count here: _____
9. Project due April 15, 2021.

Highlights include:

Introduction

History of L&E

Case 1 Analysis

Case 2 Analysis

Why is Law and Economics Valued so Heavily

Conclusion

Bibliography

Appendix

How Can an Economic Analysis Affect the Understanding of a Court's Decision?

Introduction:

Throughout the years in every courtroom, decisions have been made to address the responsibility of solving civil disputes. Lawyers do their part on defending the side that they are representing, as well as taking in all the information for a case and deciding who is at fault. It is not until recently that economics has become an explicit part in understanding the decision making and the analysis of court decisions and even the decisions of those involved. I will be investigating the prominent question on how does an economic analysis affect the understanding of a court's decision? This is a very valuable topic because it can demonstrate how economic theory is involved in understanding law as well as show how important it is for lawyers to understand economics so that they can understand the legal process and its costs better. This is going to be done in a three-part process where the history of law and economics is explored, then the value of law and economics will then be explained, and then an example of an economic analysis will be done of two New Hampshire Supreme Court cases. The majority of the explanation will follow on the idea stated by Pedro Alemán Laín "in the determination of applicable law, the notion of economic efficiency appears in case law mostly as a perspective from which to *explain* existing rules at a theoretical level, rather than at the practical level of *justifying* the decision. (Lain, 2018, p.53)". In simpler terms, the point is that the value of economics is incredible, but it can only explain what happened, not justify or solve any decision.

History of Law and Economics:

Law and economics were two separate entities for a very long time during their incredible histories. There have been laws since the beginning of civilization to make sure that groups acted a certain way. From the establishment of law, there have been two differing types of legal traditions that countries tended to follow. Those two traditions are either civil law or common law. Civil law tradition was found in written code, for example the Justinian Code. Civil law within common law is different however as it deals with matters concerned with private parties as well as criminal law. The American legal system today is based around English common law. Common law uses past judicial decisions influencing the courts future decisions. Common law countries also author significant written codes of law as well. Judges play a neutral role in common law systems because their decision making can affect what future disputes and dispute relations will decide on court cases.

The history of common law, specifically English common law, took over a former medieval times system known as the system of writs and courts of either equity or law. A writ was a requirement to appear in front of the court. The two courts were distinguished by what the matter was, as the court of equity dealt with everything besides monetary damages, whereas the court of law dealt with the monetary damages (Lewis et al. 2020). It was not until the seventeenth century that common law began to overpower the other types of law that were already previously established in the region. The movement of codification helped inspire the drive to unify English common law "By seeking to eliminate variations in settlements arising from differences in local custom, 'the establishment of common law gave rise to a concept of

justice that emphasized the uniform application of standardized laws and procedures. (Lewis et al. 2020)". The development of common law continued as precedents were set by the actions of the people and the decisions in which the judges made.

As the colonists made their transition to the future United States of America, they brought English common law with them. The documents that came after the revolution which included state and federal constitutions were both intertwined within the already established courts and common law in the colonies. This being said, the combination of both demonstrated the idea of common law. The adopted rights that were established provided an insight to establish the precedent of law in the United States, including cases like *Marbury v Madison* that occurred in 1803 and was decided in the Supreme Court. This decision established judicial review. That is the track in which law took to establish itself here, but at what point did economics begin to get involved?

The combined field of law and economics has a more recent history, developing originally in the 18th century (Mackaay, 1999). The two originating disciplines which created fundamental concepts and rules eventually joined hand in hand during the 20th century. It can be seen "The current incarnation of law and economics originated in the United States in the late 1950s and found acceptance amongst the legal community from the 1970s onwards" (Mackaay, 1999, p.66). One of the original path setters for the field of law and economics was a Nobel prize winner Robert Coase. Coase was a British economist who taught economics at various universities in the United States including the University of Chicago School of Law. Being a teacher of economics as well as being around law and part of a law school made him a well-

suited candidate to lead the way into the combination of law and economics. Coase really showed how well law and economics were tied together when he opposed a common economic theory using an example involving a cattle rancher and a farmer.

What is known today as the Coase Theorem was derived from a paper Coase had written known as *The Problem of Social Cost*. The issue addressed by Coase in his infamous paper written in 1960 spoke upon “the traditional approach tending to obscure the nature of the choice that has to be made (Coase, 1960, p.2)” versus the correct approach of “dealing with a problem of reciprocal nature (Coase, 1960, p.2)”. The best way to describe the theories Coase provided would be through example of the paper.

Coase (1960) used a cattle rancher and a farmer to dispute the theory at hand involving property. Previous economic theory believed that if cattle ranchers cattle went onto a farmer’s land and ate their crop, the government should be the ones to stop the rancher either through law or taxes. This is because if the rancher did this and was not stopped, they would repetitively complete this action with no intent of stopping. Coase took this previously believed perspective and thought about it in terms of transaction costs being positive and significant. He believed that instead of the government intervention, that a negotiation should take place between the rancher and the farmer to optimize for both of them (Coase, 1960, p.3-13). This groundbreaking theory opened doors for economists that were not there at first, and one of those doors was the pathway to law and economics.

The law applications taken away from Coase and his theories began to be applied to property and liability rights. David Freidman, son of famous economist Milton Friedman, who

also studied at the University of Chicago School of Law, explained Coase's law application. He stated "The Coasian answer is that law should define property in a way that minimizes costs associated with sorts of incompatible uses (Freidman, 2000, p.44)". Freidman uses a real-world example in this case where a pollution site is blowing downwind and causing damage to a nearby neighborhood. Instead of either moving everyone out of the neighborhood or completely getting rid of the pollution site, they can settle upon an agreement where the neighborhood can collect damages from the polluters, and both can stay where they are. The economic theory of the Coase Theorem can be applied to varying law cases and was one of the foundations to what we know today as law and economics.

There have been other members of the intellectual community, some not even involved in either law or economics, that have pushed the two fields even closer together during its history. One prime example of that would be John Dewey who was philosopher. Richard Posner (2003), a famous jurist of the 7th US Circuit Ct of Appeals, discusses the ideas of John Dewey in his book *Law, Pragmatism, and Democracy*. Dewey had a famous theory relating to philosophy and law which he viewed through a pragmatic lens. He used the word democracy and separated it into two different types of democracy that he tried to tie together. The two types of democracy were epistemic and political. The main focus, and the main connection that can be found by law and economics with Dewey's theory was epistemic democracy.

Epistemic democracy, as told by Dewey in the words of Posner "challenges the tenacious, and when Dewey wrote, the orthodox conception of scientific and other inquiry as essentially an individual search for truth using logic ... in the case of the natural and some of the

social sciences, to derive, from precise and formal theories, hypotheses or experimental data. (Posner, 1992, p.100)". Dewey uses this epistemic democracy to describe how everything can be discovered and analyzed through methods of exact reasoning. When a hypothesis can be tested using logic, the success of the scientific method can be consistent, and this is an exact tie to law and economics. Using due process, situations in law can be analyzed and discussed more in depth, using economic terms and diagrams, similar to the way in which philosophical ideas and science can do the same to law, as described by Dewey. Dewey always thought law should "employ a logic of consequences not antecedents (Patterson, 1950, p.700)" and that is the exact direction law and economics were heading.

Posner himself was heavily involved in the expansion period of law and economics. His writings played a major role in establishing principles that would later be taught at prestigious law universities as told by Mackaay stating "Since Posner's initial impetus, the sources from which the law and economics movement may draw inspiration have broadened. They now also include the public choice school, bringing an economic approach to political processes, and game theory, which has become a rallying point for the social sciences in that it applies rational choice ideas to the interaction of two or more actors" (Mackaay, 1999, p. 67). It is within his writings that aspects such as game theory, which will be used as an example in a later case, have flourished in the curriculum that before was never even considered relevant. Many consider Posner to be one of, if not the leading inspiration for the recently formed field of law and economics, and his ability to spread his ideas through literature as well as begin to implement them in law situations is more than evidence that can help determine this analysis.

As time continued with law and economics becoming more closely attached, a vast number of legal scholars saw the fields converging. There are varying types of fields in which the different economic theories began to apply. Common law was the reasoning behind the establishment of the major law fields, such as the most prominent ones of property, contract, tort, and criminal. The fields of property, contract, and tort are all types of civil law that were emerged from common law whereas criminal law is in a category of its own because the state in this case can be the plaintiff, but it is still derived from common law.

With all of the history that has been addressed between the establishment of the law here in the United States under common law and the theorists like Ronald Coase who have been monumental in the law and economics movement, it is more than evident how the history has evolved into what is known as law and economics today. This history is extremely important in understanding why this growing field has become influential, which will be discussed in the later sections of this paper. The next step to begin further development on the understanding of law and economics in today's court system would be the analyzation why law and economics has become so important.

Why is Economics so Important in Law?

After a review of the history of law and economics, it can be seen how closely tied the two fields have become over the past few decades. The question today that must be answered is not how, but why has economics become so important in law? There are many aspects of the question of why economics is important to law that need to be addressed in order to grasp a full understanding on the true value of its importance. The best way to begin this analyzation would be to start with Posner himself and his theories on law and economic value

Addressing the vastly important question on why economic analysis is so important and influential in understanding a court's decision, there is no one better to cite on the importance of the two fields being tied together than the previously discussed Richard Posner. In Posner's incredible legal text *Economic Analysis of Law* where a variety of factors regarding the importance of economic analysis are addressed. Posner's book reacts to economic analysis on law as a whole as well as defining which aspects of analysis match better with certain types of law, while at the same time doing his best to speak on how the legal process is expensive and reducing it at all costs is economically more effective.

Posner leads off with his value a statement similar to that of our main theory derived from Lain which states "few judicial opinions contain explicit references to economic concepts (Posner, 1973, p.25)." This applies greatly to how important understanding economics truly is in understanding legal processes and their economic dimensions. Because there are no references directly as part of the final decision, it makes it that much more essential to be able to infer from the wording in the opinion how to properly draw the economic analysis. If one does not

understand both the legal terminology that an economist would lack as well as the economic theory that a lawyer would lack, then there is no way to complete the analysis. Being able to understand both will provide potential benefits to those during a trial in a court room. Whether that be lawyers, judges, or prosecutors. The legal and dispute resolution processes will continue to function regardless of whether the members previously listed intend to master the theories, even if they are not self-consciously recognized as economic terms.

Posner's second point to address on importance of economic analysis regarding the law as a whole relies on characterizing what he likes to call "the economic theory of the common law" he discusses in his book that "the theory of common law is best (not perfectly) explained as a system for maximizing the wealth of society. (Posner, 1973, p.25)" The wealth of society is always taken into account in legal processes as understood from an economic perspective. If one is trying to maximize this wealth, which the economic goal of law should be to minimize the costs of private disputes, the social costs of crime, and how the legal process can function more efficiently, then a full-on understanding of economic analysis is more than important, it may be one of the most important attributes attainable. Not every single case and decision is either applicable to law or even efficient, but the goal of maximizing this wealth will never be completed without a full understanding of decisions economically and how they are efficient enough to provide the wealth towards society.

One last point to be made on the general picture of why the understanding of general economic theory could help explain the law would be in a case with direct financial evidence. A lawyer can excel if they can maximize when and where to put their resources. There is a strong

concern to reduce the social cost of these expensive trials that may not be as necessary as plaintiffs and defendants had originally seemed. This can lead to a huge step in decreasing the social cost of legal processes. There are so many costs associated with the court system, that minimizing them to the best of one's ability in turn will maximize social wealth, which is what was previously discussed as a goal of society. Once one can analyze economics as a whole and apply it to law and a court's decision, they can do a better job at picking and choosing which cases to bring to court and minimize social costs of litigations and disputes.

After addressing the broader picture of why it is important to understand economic analysis to better understand the patterns of costs and benefits in legal processes, another aspect to grasp to answer the question of the importance of law and economics would be the realization that the two fields are so tied together has been seen by many. According to Robert Whaples, a professor of economics at Wake Forest, "teachers and students of torts, property, and contracts felt the impact of the first wave of law and economics scholarship, but every area of law from admiralty to procedure is increasingly subject to economic reasoning (Whaples, 1998, p.120)". The path of law getting introduced into the classroom has seen many lawyers who now are starting to get undergraduate degrees in economics in preparation for law school. There have been studies that have displayed a direct correlation between majoring in economics and then becoming a lawyer versus having any other degree and becoming a lawyer. According to with this direct correlation, students who study economics at the undergraduate level and then proceed to go to law school make about \$11,000 dollars more annually than those who study any other undergraduate degree and then go to law school. With that being said, that does not mean that studying economics or learning the field of law and economics

goes hand in hand with the word “success”, however it does demonstrate a small correlation in economic undergraduate and potential future salary, but that is all that can be said between the two.

With economics being in law, there can be situations that are both good and bad where a party can actually be advantaged in a case because of underlying economics involved. This is discussed extensively in an article written by economist Siying Cao who speaks on how judges tend to favor their rulings in the direction of businesses more often than not when they use economic reasoning. She finds “that judges who attended law schools with a strong law-and-economics intellectual environment use more economic reasoning ... I also find that a judge’s economic sophistication is positively correlated with a higher frequency of pro-business decisions even after controlling for political ideology and a rich set of other judge covariates (Cao, 2020, p.6).” Once again, a direct correlation is found by Cao who describes the pro-business decisions to be related to law and economics is why lawyers are in desperate need to understand economics, and at the same time understand if the judge tends to use economic reasoning in their rulings.

The reasoning behind judges favoring deeper economic reasoning is because once someone has the economic background, they rely much more sensitive to economic interpretations, incentives, and consequences. Tying this back to the main question of the cost and incentive structures for legal processes and rulings, it is not only largely influential on some judges and lawyers to help understand economics, but economic arguments may be more persuasive as well. This factor can play a huge roll in an economically efficient trial and even

post trial understandings on why decisions were made the way that they were. Even the smallest economic interpretation which can go such a long way.

Although it can drive for a more successful attempt at persuasion depending on the judge, it must be noted that economic analysis cannot justify a decision of the court. Once again, the central theme here being stated by Pedro Alemán Laín deals with explanation rather than justification. (Lain, 2018). It must be noted that the terms persuasion and explanation are far more different than justification. What economics can do is help explain the cost and incentive patterns behind a dispute.

Whether it be through the analysis with indifference curves, the Coase theorem, or a competitive market analysis, the opportunities presented through economic analysis may be subtle, but are largely influential and beneficial. These real-world interpretations of the economic features of legal disputes tie together law and economics make the rising industry of law and economics that much more important. Every law student, including college students who are planning to go to law school, should develop some background in economics for which the net benefits are quite large. An understanding of the economic dimensions of a case can be crucial, especially if the judge is sensitive to the economic implications of the case before the court. Putting oneself over the competition with the economic influence is more than impactful, and it is something that needs to be understood by all.

Case Number 1: Steven Zannini v. Phenix Mutual Fire Insurance Company

One of the cases that is going to be analyzed is a New Hampshire Supreme Court case involving a contract dispute between plaintiff Steven Zannini and defendant Phenix Mutual Fire Insurance Company. The contract dispute, which is the type of common law to which this case applies, involves dealing with damages over property insurance. It must be noted that this part of the case is over a contract dispute, not the tort law and the damages, however the damages do play a huge factor in the economic analysis aspect of the case. Because this is a contract law case, there are certain economic analysis sections that are more prevalent for the analysis. The three sections that will be analyzed are a game theory model on the damages and decision making, indifference curves portraying the health and wealth of the plaintiff in the situations that have arisen, and finally an expected social cost graph.

To understand the economic analysis of the case, it is helpful to understand the details of the case and why this case is at the stage of trial it is at. Steven Zannini is the plaintiff in the case, as it was his house that incurred the damages. The house was insured by the defendant, and the plaintiff filed a claim for water damage. The defendant sent an adjuster to investigate, who instructed the plaintiff to remove the floor of the house so that he could investigate the area underneath. After they did so, the house began to collapse, and the plaintiff repaired its framing to prevent it from collapsing completely. The plaintiff is now looking for damages in return for the instruction by the defendant to remove the flooring which caused the house to collapse. The issue is that the plaintiff did not file these claims till over a year after the collapse

occurred, which would breach the contract that was established between the two parties stating that the claim needed to happen within a year. This led into the plaintiff filing for a summary judgement meaning the case would not go to court.

The decision of the trial court was in favor of adopting a summary judgement, due to the fact that the defendant did not try and make the claim within the time that the contract allowed. The defendant is trying to reverse that decision on the basis of public policy limitations that had already been in place, and those public policy rights being violated. The defendant did this by appealing to the New Hampshire Supreme Court. The decision by the New Hampshire Supreme Court was to affirm the decision of a summary judgment by the trial court because there was no attention to time by the defendant.

The first economic theory that is best used to analyze the case at hand would be to use game theory and understand the decision-making process by both of the parties. The decision in this case comes at the hands of the plaintiff. His job was either to sue for the damages within a year, or do not. As seen in Figure 1, the decision-making process would indicate where the losses and gains are applied to each of the separate parties. The case does not give direct numbers to work with, so the estimation is that Zannini would receive \$100,000 of damages as a hypothetical number. The two options for the plaintiff here are self-explanatory, as he had the choice to sue or not sue. The insurance company's decision was to cover the damages or to contest the suit by the plaintiff after the one-year period had expired. The plaintiff's choice was to sue the insurance company after the deadline had expired. The decision not to sue in the time period provided by the contract, and therefore breaching the contract, was arguably the

worst-case scenario, in that circumstance the plaintiff must pay for the damages as well as the legal fees that went into the case for lawyers and other necessities. Economically the decision making of the plaintiff was incorrect and this can now be seen.

The next step of the economic analysis of the case between Zannini v. Phenix is demonstrating how the health and wealth of the plaintiff was affected after the damages were incurred. The best way to do this is by demonstrating the health and wealth on indifference curves found on an indifference map located on Figure 2. An indifference curve is a function in which anything on that curve gives the same utility as any other spot on that same curve. Regardless of where Zannini's utility was located on the indifference curve U_1 that is the location of his health and wealth before the damages caused to his house. The curve U_2 demonstrates a different variation of health and wealth to Zannini. The relevant point on the graph which was Zannini's health and wealth before and after the incident shifts from U_1 to U_2 however the curves themselves do not shift at all. Because his health and wealth were hurt so much, that would have given him plenty of intent to sue over the breach of contract, but did not manage to meet the time requirements, a fault of his own.

The final part of the economic analysis for this case would be an analysis of why the case went to a summary judgement, and why that is important in saving resources, time, and money while being economically efficient. A summary judgement is extremely helpful in the court system as it saves many cases from going to trial, which can be settled beforehand. Court cases, as many know, tend to be relatively expensive. Whether it is lawyer fees for an elongated trial, or having to fight at multiple levels of the court, there is no argument in the expensiveness of

the legal system. A summary judgement can be used as a path to avoid some of these significant expenses.

In regards to the case at hand, and why it went to a summary judgement, the judge had to decide whether there was not enough evidence to reverse the decision made by the trial court, and it was obvious that the delay in waiting to bring a suit to court is the most valuable aspect of the case. Once the time to sue had been bypassed, which was part of the contractual obligation made by both parties, it should have been clear that there could be no trial at hand, which is the basis for summary judgement. There is no public policy for Zannini to argue that would overtake the fact the contract was breached due to time elapsed. With that valuable piece of information at hand, a true trial in front of a jury can be saved and used on another matter.

This entire analysis can help contribute to the previously stated idea by Lain that the analysis can contribute an incredible understanding of the case, however it can not provide any proof or justification for why the case was decided in the way that it was. The rules were explained in a theoretical aspect as for example why the case went to a summary judgement or the health and wealth of Zannini, but this was simply an explanation. An extremely valuable explanation to help better understand on a theoretical level, but an explanation as a whole, and that is the origin of its value.

Case Number 2- BRANDON STACHULSKI v. APPLE NEW ENGLAND, LLC

The second case that will be addressed will focus more on the tort aspect of common law, as a damage was incurred by the plaintiff, who sued the defendant in response. This is tort law because one party was harmed and filed for damages that were caused by the defendant. The plaintiff in this case was Brandon Stachulski who filed the complaint against Apple New England LLC. The aspect of tort law has a primary focus on the damages when doing an economic analysis. The three aspects that will be addressed in regards to tort law for this case would be using health and wellness indifference curves to see how the defendant at fault would have to redeem the harm caused, expected social cost, and legal standard of care of continuous precaution to determine negligence. All three types of analysis are very influential in the understanding of the decision in the case at hand.

To provide background on the case, plaintiff Brandon Stachulski dined out at his local Applebee's Restaurant in February of 2014. Shortly after his trip to Applebee's in February, the plaintiff was diagnosed with salmonella illness which he claimed he received from a hamburger that he consumed from Applebee's Restaurant. The defendant responded and stated that the salmonella could have been from anything such as the plaintiff's pet lizard to any other food source consumed between that time period of consumption of the hamburger to the illness. In the Superior Court before this case reached the New Hampshire Supreme Court, the court ruled in favor of the plaintiff, and awarded the plaintiff \$750,000 in return for the damages. The defendant appealed this to the New Hampshire Supreme Court. The New Hampshire Supreme

Court decided to affirm the decision made by the superior court stating there was sufficient evidence for the previous jury to make the decision that they did.

The first aspect of the economic analysis in which to help best analyze the Stachulski v Applebee's case would be, similar to the previous case that was analyzed, a health and wealth indifference curve graph. The main reason why this graph is important to tort law and to this case was because it analytically portrays the harm to the plaintiff. After eating the hamburger at the local Applebee's, the plaintiff received salmonella and some sort of unspoken damage was suffered. Whether that led to hospitalization or inactivity from work, the harm done had caused the plaintiff enough damage to the point where it largely affected his daily routine, which is where the suit came to the forefront.

Referring to Figure 3, it can be seen that the original health and wealth of the plaintiff can be found anywhere on curve U_1 even more specifically at the two points H_1 and W_1 . The health and wealth were both affected after salmonella was contracted, which resulted in the curve U_2 with points H_2 and W_2 . The only way for the plaintiff to receive compensation and return to the original indifference curve, would be a gain of wealth. It is impossible for him to gain health in that regard for what he lost, so a return on damages in the form of wealth is the only way, and that is found at point W^* . After the wealth is given back for the damages, he is found back on the original indifference curve of U_1 . That is why the plaintiff is pushing so hard to receive a settlement for his damages, as that is the only way to get him back to the indifference curve that he was previously on, as demonstrated in the graph which represented his original level of well-being.

The second economic aspect to be analyzed from the case of *Stachulski v Applebee's* is going to be the expected social cost of accidents in terms of sum of precautions costs and the expected harm that could occur. The goal of one is to minimize the expected social costs of accidents. To do this, one must take into account the cost of harm, and also the cost of avoiding harm. In this example, the cost of harm would be the salmonella, whereas the cost of avoiding harm is associated with employees and other purchases such as meat thermometers to make sure nothing is undercooked.

In Figure 4, the expected social cost curve can be seen with $SC = wx + p(x)A$, where SC is the social cost, $p(x)A$ is the expected harm, and w donates precaution costs, which is constant. All of these lines are plotted on the axis of cost and precaution to find the minimized expected social cost necessary at these values. In Figure 4, this point is exemplified by point x^* which is the minimum cost for food consumption at the restaurant. (Cooter and Ulen 200). In the case of *Applebee's*, this is the point where they should have been at to minimize potential damages or harm that they would have caused. Sadly, the plaintiff was on the receiving end of those damages and that is why the case was filed. As much as the expected social cost could have been minimized by *Applebee's*, they did not take do the best job they could, and salmonella was the result.

The final piece of economic analysis for this case is the legal standard of care of continuous precaution. The reason why the legal standard of care for continuous precaution is more than relevant is due to the fact that the job of *Applebee's* is to always provide the care required for the customer for every single meal. Although the plaintiff came in for a one-time

meal, it is still the Applebee's job to take the care and provide every single meal in the safest possible manner in order for the customer to get the full experience. That was not done in this case as the plaintiff did receive salmonella from the burger that he consumed. The continuous precaution was therefore not taken into effect and that is at the fault of Applebee's. The term for this would be "breach of duty" which is a usual requirement for filing a tort case in the courts. That fault or breach of duty is known as negligence. The defendant must prove that the fault caused was not of their own, which they did not do.

Taking a look at Figure 5 is the best example for the legal standard of care of continuous precaution. For this chart, "x" is the precaution that can be taken. The line up the center is denoted by x^* which is the legal standard of precaution allowed for the business. In relation to the case, this would be the line in which they must cook their meat in order for it to not be considered dangerous or undercooked. Anything to the right of this line where $x > x^*$ is known as the permitted zone where the meat is acceptable to be eaten. Anything to left of the line where $x < x^*$ is known as the forbidden zone where the meat is undercooked and is illegal to serve to the customer. Point x^1 is the point in which the plaintiff received his hamburger, which would be found in the permitted zone and violating the legal standard of precaution. The fault would then be placed on the defendant who can be found using negligence previously mentioned as being at fault.

In conclusion of the analysis of Brandon Stachulski v Apple New England, LLC, it can be seen how a tort case can be analyzed in terms of economics. Using health and wellness curves, expected social cost, and legal standard of care of continuous precaution to take an economic

approach, the decision basis of the bench trial at hand can be better inferred which is much more helpful in the understanding of the case and the decision. Economics has become so important in this understanding concept, and must be treated in that way. Again, regarding Lain's quote, this analysis did an incredible job in the understanding, but cannot justify why decisions were made by the bench. It is so valuable to know this information and that is where the importance value is obtained from, but no justification can be proven, and that must be understood to have a better grasp on law and economics.

Conclusion:

To conclude, after viewing the history of law and economics, why it is important to understand the economics of legal processes in the court room , and two real life examples of law and economics on local cases, the value of economics as a factor is quite significant in law. The historical overview touched upon the common law, as well as the economists and scholars who brought this disciplinary perspective to the forefront. The two cases in regards to contract law and tort law provided situations for illustrating the prevalence of economic cost and incentive patterns in disputes. Most importantly, through Posner's generalized theories of law and economics and taking a look at the relevant data regarding lawyers' salaries as well as judges decisions based on economic considerations, the importance of law and economics for understanding the legal process was highlighted. The field has grown from the contributions of knowledgeable scholars who have gone to win the Nobel Prize in Economics for their tremendous work. The relevance of law and economics to understanding the legal process is no longer in doubt.

Bibliography: APA Format

- Bork, R (1985) Apply Economics: Courts Role, Antitrust Law Journal Vol. 54, No. 1, *American Bar Association*, 21-26 <https://www.jstor.org/stable/40840819>
- Cao, S (2020) Judges Who Use Economic Reasoning in Court Decisions Rule in Favor of Business More Often, *Chicago Booth*
<https://promarket.org/2020/12/03/judges-who-use-economic-reasoning-in-court-decisions-rule-in-favor-of-business-more-often/>
- Coase, R (1960) “*The Problem of Social Cost*” *The Journal of Law and Economics* 2-13
<https://www.journals.uchicago.edu/doi/10.1086/466560>
- Cooter, R & Ulen, T (2016). *Law and Economics*, 6th ed. Harlow, England; Pearson Education, 200-202
- Craft, R. K, & Baker, J. G (2003) “Do Economists Make Better Lawyers? Undergraduate Degree Field and Lawyer Earnings.” *The Journal of Economic Education*, JSTOR, 263–281 www.jstor.org/stable/30042549. Accessed 6 Apr. 2021.
- Friedman, D. (2000). *Defining and Enforcing Rights: Property, Liability, and Spaghetti*. In *Law's Order: What Economics Has to Do with Law and Why It Matters*, PRINCETON; OXFORD: Princeton University Press. 47-62 <http://www.jstor.org/stable/j.ctt24hr06.8>
- Lain, P (2018) On the Scope of Economic Efficiency in Judicial Reasoning, *Lincoln Law Review*, 44-63 <http://www.pedroaleman.com/descargas/on-the-scope-of-economic-efficiency-electronic-version.pdf>
- Lewis, A, D. Kiralfy E, . Albert Roland and Glendon, . Mary Ann (2020). *Common law*. Encyclopedia Britannica. <https://www.britannica.com/topic/common-law>
- Mackaay, E. (1999) *History of Law and Economics*. *University of Montreal*.
<https://reference.findlaw.com/lawandeconomics/0200-history-of-law-and-economics.pdf>

- Marshall, J. & Supreme Court Of The United States. (1803) U.S. Reports: Marbury v. Madison, 5 U.S. 1 Cranch 137. [Periodical] Retrieved from the Library of Congress, <https://www.loc.gov/item/usrep005137/>.
- Michalowski, R (2006). Order, Law, and Crime, Radford Publishing, 84-100
<https://www.radford.edu/~junnever/law/commonlaw.htm>
- Patterson, E. (1950). John Dewey and the Law: Theories of Legal Reasoning and Valuation. *American Bar Association Journal*, 36(8), 619-701.
<http://www.jstor.org/stable/25717331>
- Posner, R., Landes, W. (1992) The Influence of Economics on Law: A Quantitative Study. *Coase-Sandor Institute for Law & Economics*. <https://core.ac.uk/download/pdf/189577944.pdf>
- Posner, R (1973). *Economic Analysis of Law*, Aspen Publishers, 25-60
- Posner, Richard A. (ed.) (2003). *Law, Pragmatism, and Democracy*. Harvard University Press
- Whaples, R., Morriss, A., & Moorhouse, J. (1998). What Should Lawyers Know About Economics? *Journal of Legal Education*, 48(1), 120-124.
<http://www.jstor.org/stable/42893538>

Case Citations:

- Brandon Stachulski v. Apple New England, LLC (D. NH 2018) (9th Circ 2018)
- Steven Zannini v. Phenix Mutual Fire Insurance Company (D. NH 2019) (9th Circ. 2019)

Appendix:

		Steve Zannini	
		Sue	Don't Sue
Phenix Mutual Fire Insurance	Take blame for damages	-\$100,000*	-\$100,000
	Do not take blame for damages	-\$100,000*	\$0

* Indicates addition lawyer fees would be present but not applied

- Figure 1 - Created by Kakouris. Y

Steven Zannini v. Phenix Mutual Fire Insurance Company (D. NH 2019) (9th Circ. 2019)

Inspired by Cooter, R & Ulen, T (2016). Law and Economics, 6th ed. Harlow, England;

Pearson Education

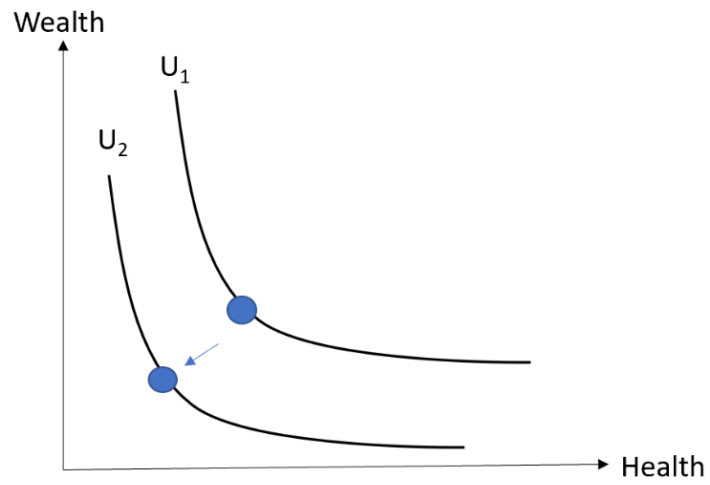


Figure 2 - Created by Kakouris. Y

Steven Zannini v. Phenix Mutual Fire Insurance Company (D. NH 2019) (9th Circ. 2019)

Inspired by Cooter, R & Ulen, T (2016). Law and Economics, 6th ed. Harlow, England;

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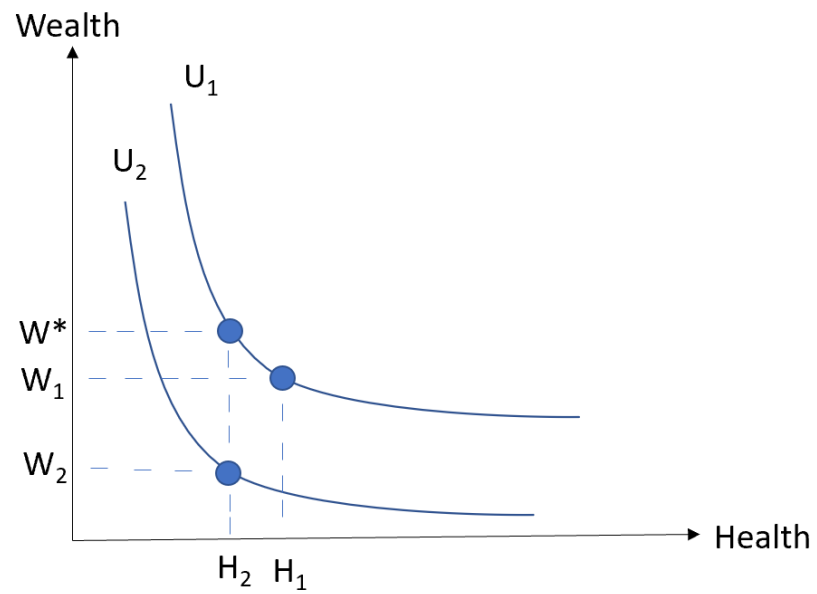


Figure 3 - Created by Kakouris. Y

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Inspired by Cooter, R & Ulen, T (2016). Law and Economics, 6th ed. Harlow, England;

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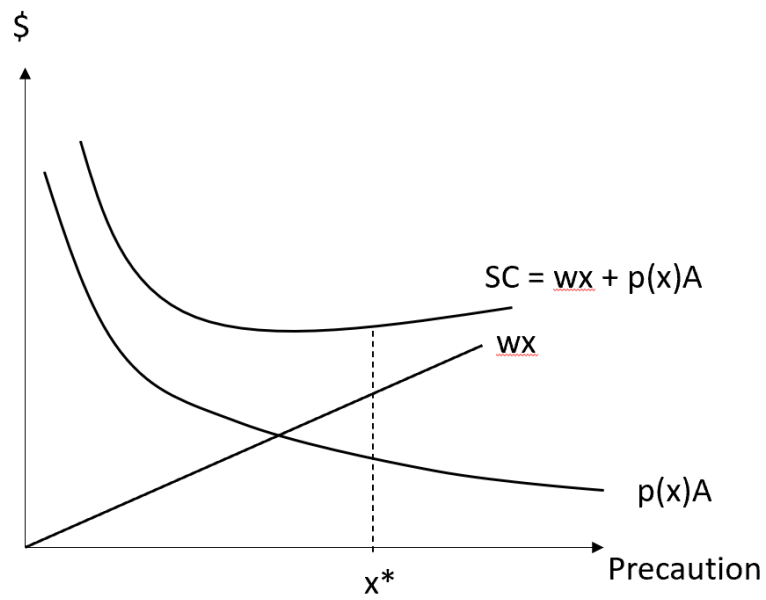


Figure 4 – Created by Kakouris. Y

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Inspired by Cooter, R & Ulen, T (2016). Law and Economics, 6th ed. Harlow, England;

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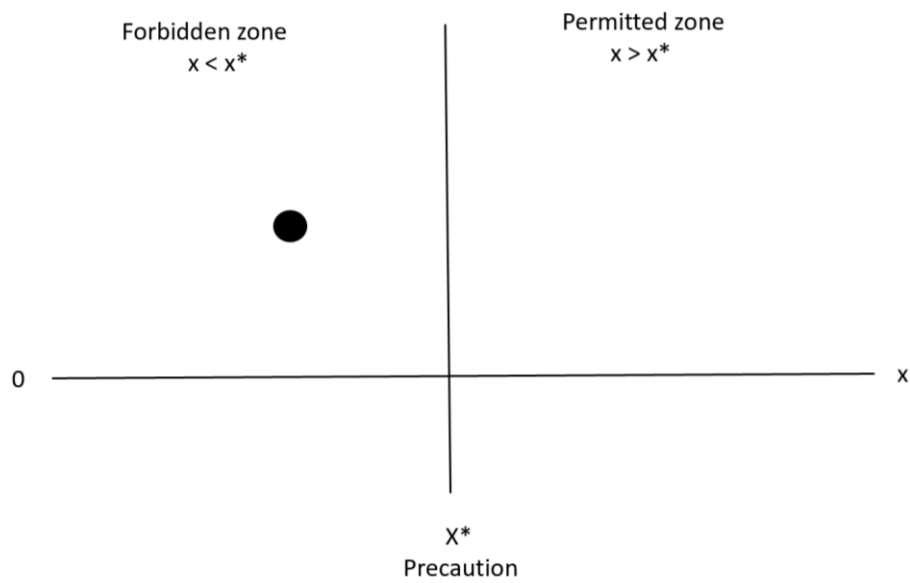


Figure 5 - Created by Kakouris. Y

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