

**Legal, Ethical, & Social Environment
BSAD 8010**

Spring 2002

**Wednesday night Roskens Hall 207
Thursday nights Roskens Hall 214**

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NOTICE

**Each student is expected
to obtain and to sustain actual knowledge
of the contents of all of these slides.**

Reasonable Expectations

1. A student's life outside of class is **independent** of the workload for the class.
2. One way college is different than high school is the amount of **independent study** a student must complete.
3. College students are expected to knowledgably **participate** in classroom discussions.
4. College level **concepts** can be very difficult to grasp.
5. Rote memorization, while extensive, is limited to the **tools of analysis**.
6. Students are encouraged and expected to ask **questions** based on the readings, especially contemporaneously with the lecture on those readings.

Critical Thinking is analysis that goes deeper than the surface. Usually surface analysis will see no more than the symptoms, and will not see the underlying causes of the symptoms.

All analysis is flawed. Some of the most likely culprits of flawed analysis are:

- post hoc ergo propter hoc*;
- correlation is causation;
- unintended consequences,
- complex causation;
- bounded rationality;
- acting as if an open system is a closed system;
- and
- believing the analysis is completed.

Memorization

Lead off comments: items you can not change, you merely can work around them.

- [1] Some items will be easy to learn and other items will be difficult.
- [2] Sometimes, but not always, this difference in ease and difficulty is genetic and/or reflects hardwiring in your brain due to prior experience.
- [3] Your ability to create a relevant context will aid your development of memory.
- [4] Ease of committing to memory is reflected by the frequency characteristics of required repetitions.

MEMORIZATION

Now let's examine some memorization techniques.

- [A] Use one sequence.
- [B] Use your fingers.
- [C] Repeat your repetitions.
- [D] Stop lying to yourself.
- [E] Avenues of input matter.
- [F] Mnemonics.
- [G] Increase the complexity.

This course is about the exercise of discretion.

Who gets to participate in the decision process?

What are the constraints upon the decision maker(s)?

ADHESION CONTRACTS

Both the law and economics are based on the assumption that transactions are both **knowing and voluntary**.

Responsibility and liability attaches to actions which are **both** knowing and voluntary.

The law attempts to satisfy your reasonable expectations.

The law favors the **objective** over the **subjective**.

The "**reasonable person**" is a legal fiction.

KNOWING

actual knowledge
receipt of notice
reason to know

subjective
objective
objective

Both contracts and evidence can be either express or implied. When referring to contracts,

EXPRESS

all terms known by the parties'

WORDS

oral
or
written

IMPLIED

all terms known by the parties'

acts
words, and/or
circumstance.

Process versus Substantive

DUE PROCESS

**notice
and
hearing**

**both notice and hearing must be proportional
to the interest(s) involved**

**Separation of Powers
is a central concept in the
allocation of discretion.**

**The Separation of Powers
divides power into a system of
checks and balances**

**Administrative agencies
are not in Constitution.**

**Separation of Powers,
in order of importance,
from top to bottom and from left to right**

Individual v. Government

Federal v. State

Within Government's Three Branches

legislature: makes law

executive: enforces law

judiciary: interprets law

JUDICIAL REVIEW

**power to declare act of
Legislative and Executive
unconstitutional.**

The law reacts to problems.

The **legislature** tends to act when:

1. **unequal bargaining power;**
2. **history of abuse; and/or**
3. **disparate impact.**

ADVERSARIAL SYSTEM OF JUSTICE

**in a court room
each side
presents its version of the truth
to
an impartial trier of fact**

**Jury is usually the trier of fact,
without a jury,
the judge acts as the trier of fact.**

Jury approximates a "reasonable person"

LAWYER'S ROLE
communication

**advocate
strategy
preventive
enforcive**

creative

**never ask
"What should I do?";**

**always ask
"How do I do this legally?"**

PLEADINGS

COMPLAINT

cause of action,
jurisdiction, AND
remedy

ANSWER

defenses,
counterclaim, and/or
cross claim

REPLY

STANDING TO SUE

injury in fact

easy to prove
constitutional requirement

and

within zone of protected interest

hard to prove
judicial efficiency

plaintiff will make arguments
consistent with public policy

BROAD DIVISIONS IN THE TYPES OF LAW

LAW

v.

EQUITY

ordinary legal action

*only if no adequate
remedy at law*

compensation

compel action

precedence

no precedence:
unique

solutions

rules

maxims

for groups

CIVIL v. CRIMINAL

BURDENS OF PROOF CRIMINAL: beyond a reasonable doubt
(roughly 99% sure)

CIVIL: preponderance of the evidence
(at least 50.01% sure)

these burdens are different because of standing to sue and complaint requirements, one act may yield several causes of action

BROAD DIVISIONS IN THE TYPES OF LAW

CIVIL v. CRIMINAL

individual v. individual **government v. Individual**

symmetric power **asymmetric power**

separation of powers

COMPLAINT

1. cause of action

2. Jurisdiction = authority
subject matter
geographic
substantial minimal contacts

3. remedy sought

trial court
finds fact
applies law

appellate court
finds error
interprets law

upon appeal,
the appellate court will **AFFIRM**
the trial court **UNLESS**

- 1. clear error of fact** by the trial court
 - 2. non-harmless error of procedure**
by the trial court
- or
- 3. any error of law** by the trial court

MOTION TO DISMISS
ASSUME AWAY ALL QUESTIONS OF FACT,
LEAVING ONLY QUESTIONS OF LAW
FOR THE TRIAL COURT

IF
assuming
everything non-moving party claims is true,
including reasonable inferences,
AND IF
moving party still wins,
THEN
grant the motion to dismiss.

SUMMARY JUDGMENT

**BY THE AGREEMENT OF THE PARTIES
THERE ARE
NO QUESTIONS OF FACT,
THUS
LEAVING ONLY QUESTIONS OF LAW
FOR THE TRIAL COURT**

**often used in a case of first impression
in order to establish precedence**

(PRELIMINARY)

INJUNCTION

(typically, an equitable action)

- 1) (very likely will) win on merits**
 - 2) irreparable harm to plaintiff**
 - 3) not unjustly harsh to defendant**
- AND**
- 4) serves public interest**

CONSTITUTIONAL LAW

recall separation of powers

States' constitutions
all powers minus

1. limits imposed by People's action
2. States' grants to federal in Constitution and
3. States' stripping of States in Constitution
assume States have the power to act

federal Constitution
no power to act unless
grant of power from States
assume feds do not have power to act

"BILL of RIGHTS" AMENDMENTS

- 1 religion, speech, assembly, petition
- 2 State regulation of Militia's arms
- 3 quartering soldiers
- 4 search and seizure
- 5 self incrimination; double jeopardy;
due process; taking with compensation
- 6 speedy, public trial; right to attorney
- 7 jury trial
- 8 bail; no cruel & unusual punishment
- 9 enumeration not disparaged rights
retained by People
- 10 residual powers of States and the People

MAJOR POWERS

STATES

POLICE POWER

TAX

FEDERAL

NO federal domestic police power
but general welfare: Art. I, Sec. 8, cl. 1

COMMERCE CLAUSE: Art. I, Sec. 8, cl. 3.

TAX

FEDERALISM PRESUME CONCURRENT POWERS

State's POLICE POWER

power of the State to regulate to protect the People's

**health
safety
morals**
and
general welfare

There is no federal Police Power.

**EXCLUSIVELY(?) FEDERAL POWERS:
Art. I, §8 + Art. I, § 10
coin money; bankruptcy; foreign affairs**

**Note the combined effects of
Art. I, sec. 8, sec. 9, and sec. 10
Art. VI, ¶2
Amd. IX
Amd. X**

**FEDERAL GOVERNMENT
COMMERCE CLAUSE:
commerce among the several States
pre - 1937 direct Effect (result)
transportation,
but not manufacturing nor retailing**

**post- 1937 close and substantial Affect (cause)
transportation AND manufacturing**

core powers	tree	transportation
penumbras	shadow	manufacturing
emanations	breeze	retail

SUPREMACY CLAUSE, Art. VI, ¶ 2:
preemption doctrine
Art. VI, ¶ 2 also is the source of
Judicial Review.

Preemption is NOT favored,
but MAY be allowed IF:
1) **clear intent (silence?) of Congress AND**
national interests outweigh State interests;
OR
2) **express intent of Congress AND**
need for uniformity.

CONCURRENT POWERS
UNLESS DIRECT CONFLICT

FREE SPEECH
POLITICAL free speech
right of speaker
time, place, manner
reasonable regulations
no content regulation of political speech

COMMERCIAL free speech
right of listener
time, place, manner
reasonable regulations
content regulation of commercial speech
IF substantial governmental interest
AND IF regulation is proportional,
directly furthers, AND least restrictive alternative

PRIVACY
reasonable expectation of privacy
"Privacy" never appears in the USA Constitution.
First use in USA legal literature in 1890.
Constitutional right of privacy is found
via Amendments IX and X
and is a part of "liberty".

NOTE: 4th Amendment
home and papers
WARRANT requires probable cause
criminal v. regulatory probate cause
NOTE: 5th Amendment
criminal testimony
BUT public records; and corporations
(versus custodian)

14th Amendment applies to the States

Due Process Clause

Incorporation Doctrine

a.k.a.

Absorption Doctrine

14th Amd. due process

equals

**Bill of Rights' fundamental rights,
not verbatim**

14th Amendment Equal Protection Clause

Rational Basis Test

presumed valid

social and economic regulation

rational relationship to a

legitimate State interest

Heightened Judicial Review Test (e.g., gender)

presume no sensible basis

for different treatment

substantial relationship to

important government interest

Strict Scrutiny Test (i.e., race, alienage, nat. origin)

seldom relevant to achievement of

least drastic means of achieving

compelling State interest

PERSON

**is a legal concept that has continually evolved
with respect to**

who is a person

LEGAL

NATURAL

what rights and obligations exist

means of enforcement

U.S. Constitution

person is not dependent upon citizenship

only within the U.S. for non-citizens

Customs Service is contact before the border

MICROECONOMICS

Major Forces of Change

Approximately
the year

1500

GUN POWDER
NEW WORLD
PRINTING PRESS
RURAL
LABOR SHORTAGE

Approximately
the year

2000

FISSION
ONE WORLD
COMPUTER
URBAN
LABOR SURPLUS

CAPITALISM

ELEMENTS (means) and **FUNCTIONS (ends)**

private property

prices

markets

competition

government

embody self interest

measure self interest

coordinate self interest

regulate self interest

facilitates
p.p., p., m., & c.

CAPITALISM

ELEMENTS and **FUNCTIONS**

private property	embody self interest subjective made objective
prices	measure self interest voluntary transactions
markets	coordinate self interest information

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CAPITALISM

ELEMENTS and **FUNCTIONS**

competition "large" # of buyers and sellers free entry and exit	regulate self interest alternatives
government public sector failure no profit motive special interests vote trading clear benefits and hidden costs	facilitates p.p., p., m. & c. define rights property contract torts criminal set transaction costs

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PUBLIC SECTOR FAILURE

lack of efficiency motive
every bureaucracy
do YOU get a paycheck or a dividend?

special interests
large benefit for small group (per member),
small cost for large group (per member)

vote trading (a.k.a. log rolling)
special interest vote trading

clear benefits and hidden costs
what of
"hidden benefits and clear costs"?

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$$\text{PROFIT} = \pi = \text{TR} - \text{TC}$$

$$\text{TR} = P * Q$$

$$\text{TC} = \text{FC} + \text{VC}$$

$$\text{TC}_E = \text{land} + \text{labor} + \text{capital} + \text{entrepreneurial ability}$$

$$= \text{rent} + \text{wages} + \text{interest} + \text{normal profit}$$

$$\text{TC}_A = \text{land} + \text{labor} + \text{capital}$$

$$= \text{rent} + \text{wages} + \text{interest}$$

$$\text{Normal Profit} = \pi_E$$

$$= \text{amount necessary to attract AND to keep entrepreneurial ability}$$

$$\text{subjective reaction to } \text{TR} - \text{TC}_A$$

$$\text{Accounting Profit} = \pi_A$$

$$= \text{TR} - \text{TC}_A$$

$$= \text{TR} - (\text{rent} + \text{wages} + \text{interest})$$

$$= \pi_A \geq \pi_N$$

$$\text{Economic Profit} = \text{TR} - \text{TC}_E = \pi_A > \pi_N$$

$$\text{Economic LOSS} = \text{TR} - \text{TC}_E = \pi_A < \pi_N$$

SHUT DOWN RULE

$TR < VC$

which is the same as
 $TR/Q < VC/Q$
which is the same as
 $P < AVC$

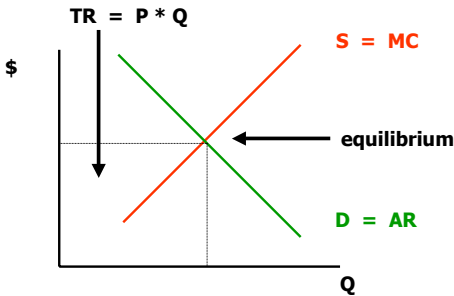
DESTRUCTIVE COMPETITION

TR
is persistently
less than TC,
but more than VC

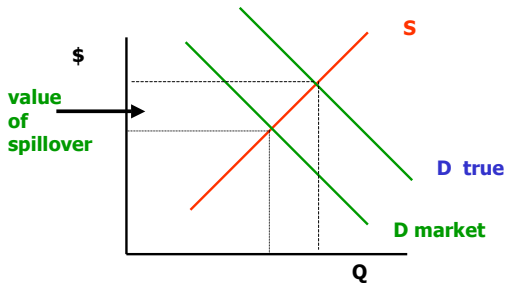
HISTORY OF CAPITALISM

- pre 1500 **PRE-CAPITALISM (FEUDALISM)**
 self sufficient manor
- 1500 - 1800 **MERCANTILISM**
 self sufficient nation
- 1750 - 1890 **FREE CAPITALISM**
 self sufficient individual
- 1860 - 1920 **INDUSTRIAL CAPITALISM**
 self sufficient firm
- 1890 - 1930 **FINANCIAL CAPITALISM**
 self sufficient industry
- 1915 - **RESPONSIVE CAPITALISM**
- 1930 - **REGULATED CAPITALISM**
- 2000 - **???**

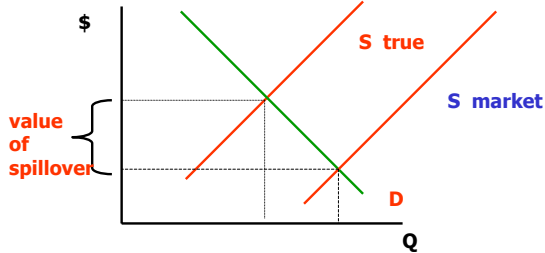
Supply and Demand curves



spillover benefits: get more than buy & pay less



spillover costs: buy more, pay less



Note: the boxes are not the same as spillover benefits

HISTORY OF CAPITALISM

**pre 1500
(FEUDALISM)**

PRE-CAPITALISM

**labor tied to land
no markets
self sufficient manor**

1500 - 1800

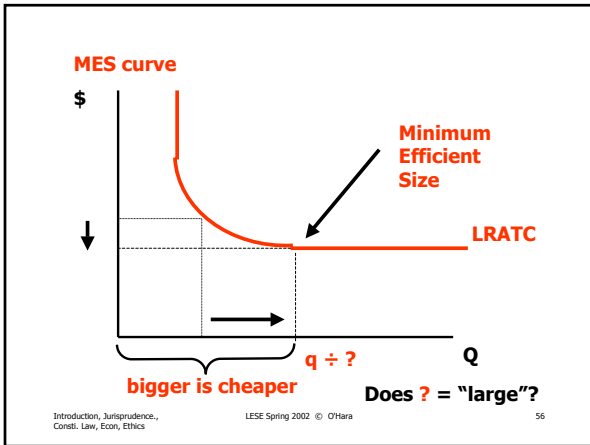
MERCANTILISM

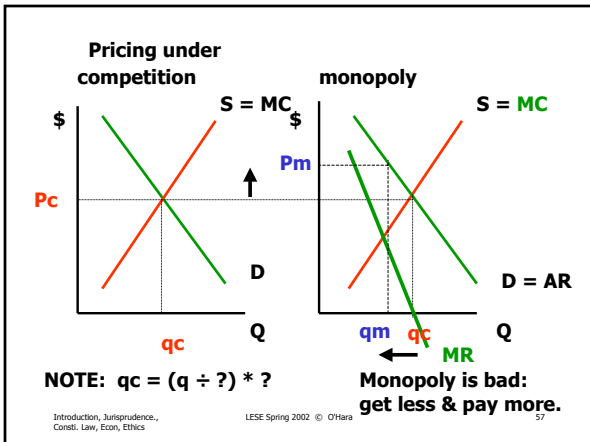
**self sufficient nation
king-granted monopolies
colonization
separation in place
and time**

1750 - 1890 FREE CAPITALISM

**self sufficient individual
(Family?)
mythical core of the U.S.**

**small MES
absolute
and
relative**





1860 - 1920 INDUSTRIAL CAPITALISM

self sufficient firm
mass production and
mass distribution
increasing MES
railroads
erosion of social relationships
victims

technology
is an intangible asset
idea plus physical embodiment

1890 - 1930 FINANCIAL CAPITALISM

self sufficient industry
concentration of "ownership"
leveraging

rapidly increasing MES
new technology is
adopted faster than
scheduled depreciation

ATC new < AVC old
versus
ATC new < ATC old

1915 - RESPONSIVE CAPITALISM

social responsibility
AND
profit maximization

person, as well as system,
responsible for cost minimization

private decision maker,
but public impact

incentive to be irresponsible

1930 - REGULATED CAPITALISM
substitution of government
for the individual decision maker

group impact = group decision ?

inefficient regulation

NON-PRICE DETERMINANTS OF SUPPLY

number and size of sellers

horizontally sum

costs for inputs

prices of related goods

substitutes (A or B)

compliments (A and B)

taxes

technology

expectations

NON-PRICE DETERMINANTS OF DEMAND

number and size of buyers

horizontally sum

income

prices of related goods

substitutes (A or B)

compliments (A and B)

tastes

expectations

NON-PRICE DETERMINANTS OF

SUPPLY

DEMAND

- | | |
|-------------------------|-------------------------|
| # & size of sellers | # & size of buyers |
| horizontally sum | horizontally sum |
| costs for inputs | income |
| prices of related goods | prices of related goods |
| substitutes (A or B) | substitutes (A or B) |
| compliments (A and B) | compliments (A and B) |
| taxes | tastes |
| technology | expectations |
| expectations | |

**Technology is dynamic.
Expectations are volatile.**

Unless the **buyer** is
WILLING AND ABLE
to pay the purchase price there is no demand (e.g.,
poor people have no demand for food).

Unless the **seller** is
WILLING AND ABLE
to sell at the purchase price there is no supply
(e.g., there is no supply of clean air).

ETHICS

EFFICIENCY AS ETHICS:

**Greatest good for the greatest number.
(Utilitarianism)**

Individualism via **profit maximization.**

Social good via **cost minimization.**

Efficiency

IF

profit maximization

AND IF

cost minimization

JARGON is WORDS with SPECIAL MEANING

CAN

power

MAY

authorized by law

SHOULD

ethics

POINTS of REFERENCE in ETHICS

deal with different levels of aggregation

INDIVIDUAL

SUBGROUP (s)

SOCIETY

**Each individual has multiple memberships,
that create questions of loyalty &
obligation.**

loyalty

freely given

obligation

reasonably expected reciprocation

**Individuals and subgroups can avoid spillover
costs.**

Society can not avoid spillover costs.

**Therefore, what appears profitable and ethical
necessarily varies at each level of aggregation.**

**PROFIT MAXIMIZATION
versus
SOCIAL RESPONSIBILITY**

(primary) goal of business is profit maximization

IF action is profit maximizing,
THEN any ethical impetus is **objectively** invisible

Must **objectively** pursue loss
(i.e., internalize spillover cost)
to be **objectively** acting ethically.

WHO IS ACTING?

individual v. a group
law designed for individuals

ENFORCEMENT OF ETHICAL STANDARDS
typically by exclusion

for business'
exclusion of competitors is a felony

group boycott
is a *per se* unreasonable
antitrust violation

CORPORATIONS
can be GOOD,
and
can be BAD

corporations are GOOD
facilitate capital accumulation

facilitate risk spreading

facilitates greatly increased output
via large absolute MES

corporations are **BAD**
separation of ownership and control

Who is acting?

- corporation
- shareholders
- directors
- officers
- employees
- customers

**FOR ETHICAL RESULTS, THE
MARKET REQUIRES
REPEAT SALES**

but, "Fly by night"

**AND
INFORMATION FLOWS**

but, "A sucker born every minute"

**either may be missing
market judges results:**

compensation versus prevention
