

Law and Economics
Fall 2002

Answer 5 questions

1. Outline the nature of the rational choice approach of Richard Posner in positive law and economics. What are its strengths and its weaknesses? Suppose that you are opposed to the application of Posnerian rational choice in positive legal analysis. Mount a critique of its application to the law of tort, using formal models and citing case law where appropriate. Now critique your critique.
2. ‘I hope I have persuaded you that what may loosely be called the economic theory of law has a significant potential to alter received notions, generate testable hypotheses about a variety of important social phenomena, and in short enlarge our knowledge of the world’ (Richard Posner American Economic Review 1987).

Evaluate this statement with respect to the US law of contract.

3. Carefully define the Coase theorem. Early criticisms of Coase’s 1960 contribution centered around two allegations – that the Coase theorem neglect long-run considerations that negate it and that the spirit of the work endorses the use of resources for the purpose of extortion. Are these criticisms valid? A later criticism has focused on the issue of transaction costs. Is this a valid criticism of Coase? Illustrate your answer throughout with respect to the economic analysis of the law of property.
4. ‘Information from promises induces reliance whenever the promise attaches a positive probability to performance. Reliance responses are beneficial when a promise is kept and detrimental when it is broken. The principal normative justification for permitting promises to be made freely is the belief that, on balance, promissory benefits exceed harms. Legally enforcing promises can sometimes increase this net social gain by encouraging cost-reducing behavior by both promisors and promisees’ (C.J. Goetz and R. E Scott Yale Law Journal 1980).

Evaluate this statement using formal models.

5. ‘It is important to appreciate that this paper has not shown that the rules of the common law are or ever will be efficient. It has suggested only that the common law process incorporates a strong tendency toward efficient outcomes’ (Paul Rubin 1977).

Using formal analysis show how the common law process might incorporate such a “strong tendency”. Carefully critique the assumptions of this model with respect to US accident law. In general, how valid in your view, is Rubin’s hypothesis?

6. How useful is the application of game theory to understanding the impact of different legal rules upon individual behavior? Illustrate with respect to the rules of no liability; strict liability; negligence; negligence with contributory negligence; and comparative negligence in the law of tort.