

Law-and-Economics Field Examination
January 2004

Answer All Questions. Each question carries equal marks

1. "in a world in which there are costs of rearranging the rights established by the legal system, the courts, in cases relating to nuisance, are, in effect, making a decision on the economic problem and determining how resources are to be employed ... The courts are conscious of this and they often make, although not always in a very explicit fashion, a compensation between what would be gained and what would be lost by preventing actions which have harmful effects" (R.H. Coase, *The Problem of Social Cost* 1960).

To what extent, and in what manner, in your view, has the law of nuisance in the United States been fashioned by the courts' concern for these issues? Illustrate your answer by reference to important common law cases.

2. "Since there are occasions when every vessel will break from her moorings, and since, if she does, she becomes a menace to those about her; the owner's duty, as in other similar situations, to provide against resulting injuries is a function of three variables: (1) The probability that she will break away; (2) the gravity of the resulting injury, if she does; (3) the burden of adequate precautions. Possibly it serves to bring this notion into relief to state it in algebraic terms: if the probability be called P; the injury L; and the burden B; liability depends upon whether B is less than L multiplied by P; i.e. whether $B < PL$. (Judge Learned Hand, *United States v. Carrott Towing, Co.* (1947).
 - (a) Are any adjustments necessary to make the Hand formula conform to the economic model of due care? Be as explicit as possible in your answer and illustrate as necessary with examples. Restrict your analysis to circumstances of alternative care.
 - (b) How relevant is the Hand formula, as he stated it, for cases of joint care? How might the formula be adopted to conform to the model of due care under joint care circumstances?
 - (c) To what extent do contemporary United States courts rely upon the Hand formula in dealing with accident cases? Illustrate your answer by reference to important common law cases.
3. Compare the legal standard of negligence and contributory negligence with the legal standard of strict liability with respect to accident cases, from the perspective of achieving economic efficiency. Which standard is the more appropriate, and under what circumstances, from this perspective? Is the modern common law shift away from negligence-based rules towards strict liability rules economically efficient? How do you explain this shift in approach?
4. "The central challenge facing those who want to know how legal rules affect behavior is understanding how to craft legal rules in a world in which information is incomplete" (Baird, Gertner and Picker: *Game Theory and the Law* 1994).

To what extent, and in what ways, is game theory helpful in such circumstances? Illustrate your answer with respect to the law of contract.

5. "Some readers may be dissatisfied with my recommendation that courts largely avert their eyes from the regulatory excesses of Congress and, for the most part, of state legislatures My disagreement is on the source of the reform. Courts of law lack both the legitimacy and the ability to undertake national reforms. Congress and the state legislators are legitimate sources of reform, since they were the original sources of the regulatory experiments." (W.A. Fischel: Regulatory Takings, 1995).
 - (a) Briefly outline the evolution of federal court decisions on takings cases since the late 1930's.
 - (b) To what extent has the U.S. Supreme Court instigated reforms in this law since the late 1980's. Are these reforms constitutional? Are they efficient?
 - (c) Evaluate Fischel's argument that the legislature is the more appropriate reform mechanism. Relate your arguments to constitutional issues, public choice insights and economic efficiency.