Syllabus

Behavioral Law and Economics

International Programme in Institutions Economics and Law

Collegio Carlo Alberto

Professor Rachlinski

May 2012

Course Description:

Even though the application of economic principles to legal issues has proven to be a productive enterprise, these efforts might rest upon an inaccurate model of human behavior. Psychologists and behavioral economists have identified systematic deviations from the predictions of economic theory in consumers, voters, and litigants. These deviations alter the application of economic principles to torts, contracts, corporate governance, health and safety regulation, and many other areas of law. This course will review the basic research from psychology and behavioral economics that identified these principles and assess its applications to law.

The grade for this class will be based on a final project. Most of the class will consist of papers and lectures which identify behavioral principles and apply these principles to an aspect of a legal system. For example, we will discuss the "hindsight bias" as a behavioral principle and I will argue that it teaches us something about how tort law functions. For your grade for the class, I would like you to write a short paper on the application of a particular behavioral principle to a legal principle. This paper can take two forms: First, you can identify an application of a behavioral principle that we covered, and critique it. That is to say, you can argue that the application was not correct, or is in need of modification or extension in some way. This can take the form of arguing that conventional economic theory can capture the phenomenon in some way, or can take the form of some other criticism. Second, you can identify a novel application of a behavioral principle to law. Here I mean some application that we did not cover in class. I do not care what legal system you apply the behavioral point to, although please be careful to describe the legal rule or institution carefully.

Obviously, there are many papers outside of the 7 assigned to this case that could give you ideas for this paper. I would not ask that you refrain from reading outside of the class, but only that your critique or application consist of one that you think up on your own. I will not assign a length per se, but it should be long enough to provide a sensible account of your thesis, but need not cover lengthy objections or caveats to your theses. I believe that 5 - 10 pages will suffice. If there are any questions about this assignment, please do not hesitate to e-mail me with them. As to the due date, we will discuss that during the class. (I am thinking roughly the end of July, but want to coordinate with your other obligations for your program.)

In addition to giving you a grade for the class, I will give you feedback on the paper and some citations for further reading if you are interested. If this subject appeals to you, please do not hesitate to contact me further in the future about it.

Readings:

Wednesday, 22 May (16:00 - 18:00): Introduction

1. Christine Jolls, Cass Sunstein & Richard Thaler, *A Behavioral Approach to Law and Economics*, 50 STAN. L. REV. 1471 (1998).

2. Cass R. Sunstein & Christine Jolls, *Debiasing Through Law*, 35 JOURNAL OF LEGAL STUDIES 199 (2006).

Thursday, 28 May (11:00 - 13:00): Application to Tort Law and Property Law

3. Jeffrey J. Rachlinski, *A Positive Psychological Theory of Judging in Hindsight*, 65 U. CHI. L. REV. 571-625 (1998).

4. Jeffrey J. Rachlinski & Forest Jourden, *Remedies and the Psychology of Ownership*, 51 VAND. L. REV. 1541 (1998).

Friday, 29 May (11:00 - 13:00): Judicial Decision Making

5. Chris Guthrie, Jeffrey J. Rachlinski & Andrew J. Wistrich, *Blinking on the Bench: How Judges Decide Cases*, 93 CORNELL L. REV. 1 (2007).

Friday, 29 May (14:30 - 16:30): Behavioral Finance and Securities Regulation

6. Donald C. Langevoort, *Taming the Animal Spirits of the Stock Markets: A Behavioral Approach to Securities Regulation*, 97 NW. U. L. REV. 135 (2002).

Saturday, 30 May (11:00 - 13:00): Law and Politics

7. Dan Kahan, *The Cognitively Illiberal State*, 60 STAN. L. REV. 115 (2007).