



# Establishing Truth & Economic Evidence

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## Topics

1. Context, what is truth & truth in court
2. Evidence
3. Economic evidence
4. Prospective economic evidence
5. Final remarks





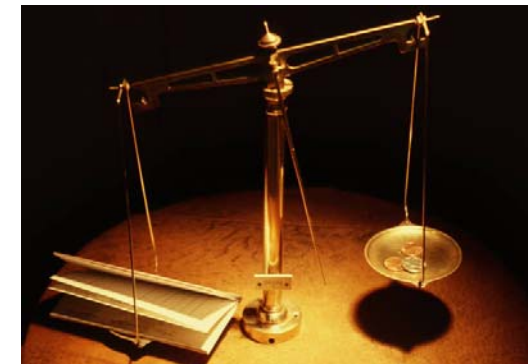
# 1. Context

## Administrative law

- State vs individual
- Administrative decision already taken

## Competition & regulatory law

- *de facto* more equal
- economic assessments as part of decision
- Sometimes: criminal law-context





# 1. Context: truth

Theories of truth :

- Correspondence (objective)
- Coherence (intersubjective)
- Narrative

Courts' starting point:

- Truth as a 'regulative idea'
- Correspondence primarily, coherence secondary

Establishing truth in court:

- Process of establishing/proving an historical occurrence in a procedural context



# 1. Context: truth in administrative law

Which

- Substantive truth

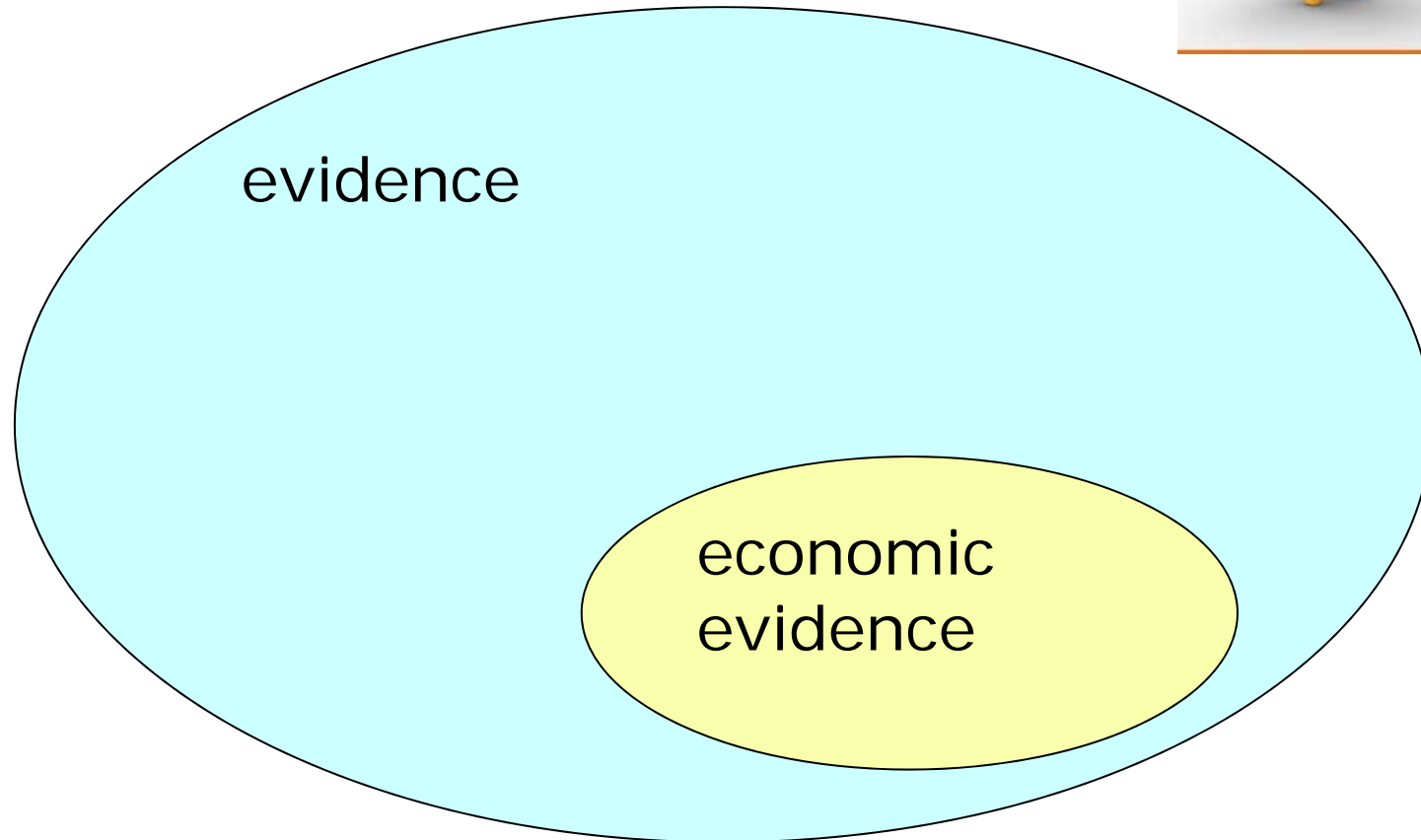
Why

- Upholding objective law
- Individual judicial protection
- (But not: dispute resolution)



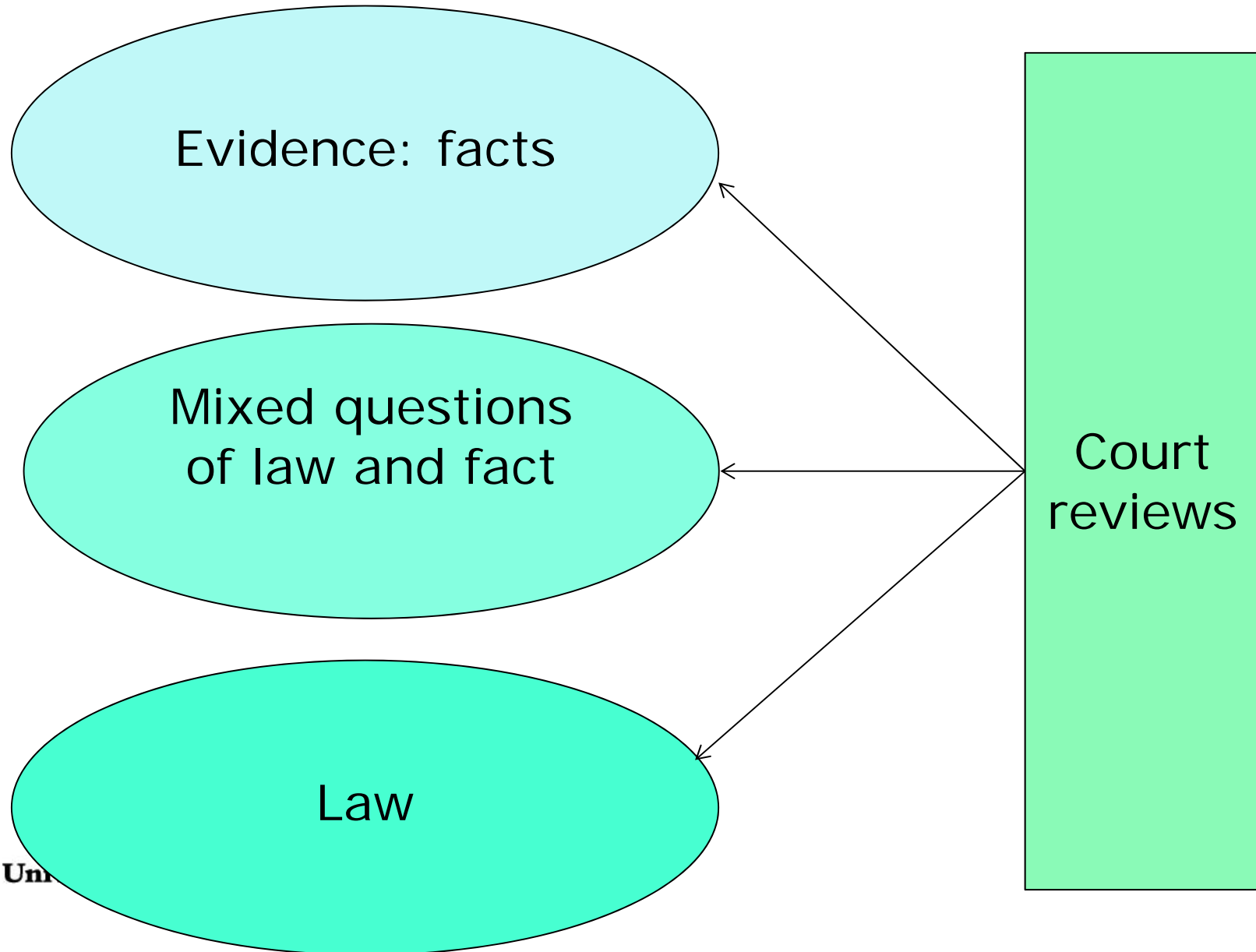
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## 2. Evidence





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### Evidence

- relates to facts
- historical facts

### Courts' yardstick rules

- standard of proof
- burden of proof
- standard of review

Truth





### 3. Economic Evidence

Economic evidence

- Relates to complex facts
- Models & theories as facts

Yardstick rules

- What standard of proof
- What standard of review?

Truth?



## 4. Prospective evidence: example

Substantive assessment merger control

1. Current market  
- Which product?  
- Competitors?  
- Relevant market  
- Ssnip-test

2. New market situation  
- Future fact  
- Not many variables  
- Market theory

3. Scenario's  
- future facts,  
- many variables  
- theory of harm

Consumer is rational

- Simple facts
- Complex facts
- Theory
- Model
- Assessments
- Data analysis
- Assumptions



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## 4. Prospective evidence

### Prospective evidence

- future, complex, facts
  - scenario's
  - consumer-surveys
  - remedies
- uncertainty, but depends on variables

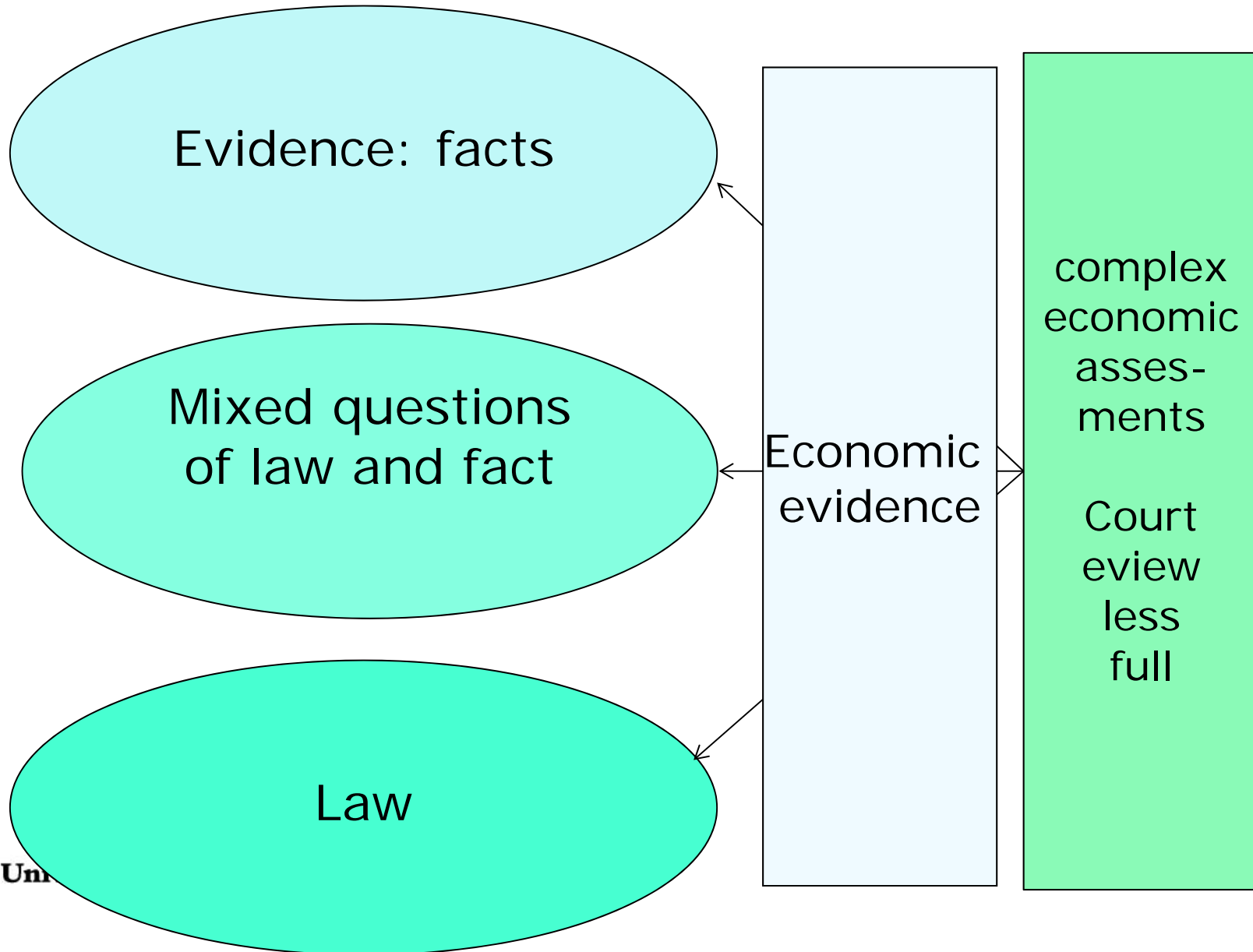


### Yardstick rules

- review of plausibility
- how to review choice of scenario?
- expert evidence
- standard of review

**Different truth**

## 5. Final remarks





## 5. Final remarks

- Truth & economic evidence: complex relationship
- More complex in 'criminal' procedures?
- Possible to reduce uncertainty
- Careful review of review by court and relationship administrative agency and court

