LL4308V/LL5308V/LL6308V Behavioural Economics, Law & Regulation

Course Objectives:

Law is a behavioural system. Most law seeks to regulate, incentivize and nudge people to behave in some ways and not in others – it seeks to shape human behaviour. Traditional economic analysis of law is committed to the assumption that people are fully rational, but empirical evidence suggests that people very often exhibit bounded rationality, bounded self-interest, and bounded willpower. This course about behavioural law and economics, with an emphasis on regulation, looks at the implications of actual, not hypothesized, human behaviour for the law. It considers, in particular, how using the mildest forms of interventions, law can steer people’s choices in welfare-promoting directions.

Students are expected to acquire:

- Knowledge of the central literature on behavioural economics, law & regulation.
- A critical understanding of the workings of behavioural law & economics and how they relate to central assumptions in law and regulation.
- A capacity to evaluate the relationship between law, regulation and understanding of human behaviour.
- An ability to apply the insights of behavioural law & economics to specific legal situations.
- Developments of skills in legal and social science research.

This module complements existing courses on law & economics by focusing on more accurate assumptions about human behaviour. Courses on behavioural law & economics are taught at a number of US Law Schools. It also complements existing courses on regulation by encouraging students to focus on law as a behavioural system. Finally, it encourages students to think about concepts that lie at the heart of the legal system such as autonomy, risk and well-being. This would be particularly valuable for students interested in tort, financial services and environmental law.

Teaching Style:

Seminar-style class. Teaching involves a mixture of lecturing and discussion, with a high level of participation from the students. Students are expected to have done the assigned readings before coming to class. The class will begin with an overview of the topic covered, followed by a discussion of the particular issues raised by the readings.

Assessment:

(a) Class Participation 20%
(b) Research Paper – 6,000 words (excluding footnotes) 80%
**Reading Guide:**

**Seminar 1 - The Rationality Assumption in Law**

Rationality; *Homo Economicus* & Real People; The Architecture of Cognition: Two Systems; Bounded Rationality; Bounded Willpower; Bounded Self-Interest.

**Compulsory Reading:**


**Supplementary Reading**


**Seminar 2 - Behavioural Law & Economics – Foundations**

Heuristics & Biases; Behavioural Analysis of Law; Loss Aversion; Endowment & Framing Effects; Extremeness Aversion; Self-Serving Bias; Optimism Bias; Overconfidence; Hindsight Bias; Status Quo Bias; Availability, Anchoring & Adjustment, Representativeness, Case-Based Decisions; Prospect Theory.

**Compulsory Reading:**


Supplementary Reading


Seminar 3 - Well-Being & Public Policy

Accounts of Well-Being: Mental-State or Subjective Well-Being (SWB), Objective-List, Desire-Fulfilment; SWB as a Policy Tool; Measuring Well-Being: Preference-Based Measures (Income) vs Experience-Based Measures (Subjective Evaluations of life); Happiness as Evaluation; Happiness as Feeling; The Pleasure-Purpose Principle; Experienced Utility vs Decision Utility.

Compulsory Reading:


Supplementary Reading


Seminar 4 - Behaviourally Informed Regulation

Choice Architecture; Behaviour Change; Inertia and Procrastination; Framing and Presentation; Probability Assessment and Attitude to Risk; Markets, Government and Paternalism; Nudges—low-cost, choice-preserving behaviourally informed regulatory tools; Disclosure as a Nudge; Default Rules as Nudges; Salience as Nudge; Social Norms as Nudges.
Compulsory Reading:


Supplementary Reading


Seminar 5 - Libertarian and Asymmetric Paternalism

Paternalism; Choices & Welfare; Means Paternalism; Ends Paternalism; Hard Paternalism; Soft Paternalism; Asymmetric Paternalism; How to Choose: The Toolbox of the Libertarian Paternalist.

Compulsory Reading:

Supplementary Reading


Seminar 6 - A Critical Assessment of Soft Paternalism

The Evitability of Choice-Framing Paternalism; Using Paternalism to Maximize Liberty, Not Welfare; The Redistributive Consequences of Libertarian Paternalism; Welfarist Objections; Rule-Consequential Antipaternalism; The Slippery Slope Objection; The Value of Autonomy; Problems with Soft Paternalism.

Compulsory Reading:


Supplementary Reading


Seminar 7 - Autonomy and its Limits

Why Value Autonomy; Autonomy: The Thin Version & The Thick version; Against Autonomy: Justifying Coercive Paternalism; Applications; Limits; Respect; Inequality; Paternalistic Virtues; Autonomy Revisited.
Compulsory Reading:

Conly, S (2013), Against Autonomy: Justifying Coercive Paternalism, Cambridge University Press. (Read Only Ch. 1 pp. 16–46, Ch. 6 pp. 149–81 & Ch. 7 pp. 182–94).

Supplementary Reading

Conly, S (2013), Against Autonomy: Justifying Coercive Paternalism, Cambridge University Press.

Seminar 8 – Default Rules and Choice

The Power of Defaults; Selecting Default Rules - A Puzzle for Choice Architects; Impersonal Default Rules; Personalized Default Rules; Bad Defaults; Varieties of Choice; Active Choosing as Choice Architecture; Choosing Not to Choose; Choice-Requiring Paternalism.

Compulsory Reading:

Supplementary Reading


Seminar 9 – Risk Regulation I: Risk Perception

Risk as an Object of Regulation; Risk as a Justification for Regulation; The Selection and Perception of Risk; Responding to Risk; Judgmental Biases in Risk Perception; Three Theories of Risk Perception: The Rational Weigher Theory, The Irrational Weigher Theory and The Cultural Evaluator Theory; Cultural Cognition; Risk as Analysis; Risk as Feelings.

Compulsory Reading:


Supplementary Reading

Seminar 10 – Risk Regulation II: The Precautionary Principle

Definition and Appeal; Problems with Precautions; Precautions and Rationality; A Behavioural Account of the Operation of the Precautionary Principle; Two Critiques of the Precautionary Principle: The Indeterminacy Critique and The Bad Choices Critique; The Precautionary Principle as an Anti-Bias Mechanism.

Compulsory Reading:


Supplementary Reading


Seminar 11 - The Endowment Effect

The Endowment Effect; Loss Aversion; Status Quo Bias; Underweighting of Opportunity Costs; Failure to Ignore Sunk Costs; Search Behavior; Choosing not to Choose & Regret; Precommitment & Self-Control; Offer-Asking Gap; Willingness to Pay (WTP)-Willingness to Accept (WTA) Gap; The Coase Theorem.

Compulsory Reading:

Supplementary Reading


