



CAMBRIDGE
UNIVERSITY PRESS

20% Discount on this title

Expires 31 August 2024

The Analytical Failures of Law and Economics

Shawn Bayern

Florida State University

The law-and-economics movement remains a dominant force in American private law, even though courts and commentators recognize that many of its assumptions are implausible and that efficiency is not the law's only goal. This book adds to the debate by showing that many leading law-and-economics arguments fail on their own terms, even for those who accept their most important assumptions and goals. Adopting an analytical approach and using some law-and-economics methods against the leading arguments in that field, Shawn Bayern shows that economic thinking fails to explain or justify most rules in the common law. Bayern masterfully surveys leading law-and-economics arguments in tort, contract, and property law and shows them to be fragile, self-contradictory, or otherwise problematic. Those who accept that efficiency is important should not be persuaded by the kind of law-and-economics arguments that have remained in vogue among legal scholars for decades.

Preface; 1. Introduction and Background; 2. Tort Law; 3. Contract Law; 4. Property Law; 5. Afterword: Ways Forward; Index.

'The Analytical Failures of Law and Economics is a brilliant, path-breaking book. Informal economic reasoning has long figured in the common law, but beginning just past the mid-twentieth century, there arose, and soon became prominent in academic scholarship a formal, hyper-rational, efficiency-based school of thought known as law and economics. Bayern completely undercuts this school through the employment of the very analytical techniques the school employs. He shows that a fundamental principle of law and economics is to exclude considerations of morality and non-efficiency policies and that this exclusion is untenable, because it fails to explain what the law is, why the law is what it is, and what the law should be. He shows too that even small shortfalls in the law and economics model of the world, such as its erroneous assumptions of perfect rationality and perfect markets, bring the model crashing down.'

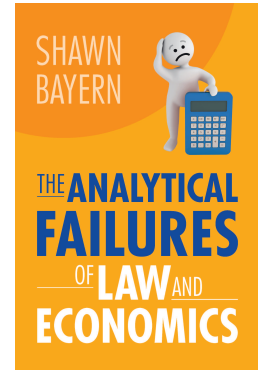
Melvin Eisenberg - Jesse H. Choper Professor of Law Emeritus, University of California, Berkeley Law School

'Bayern exposes the analytical features of economic analysis that prevent it from providing definitive or satisfying answers to normative questions about what legal rules we should adopt for torts, contracts, or property. He demonstrates why economics must be supplemented with moral and practical considerations that go beyond oversimplified economic models.'

Joseph William Singer - Bussey Professor of Law, Harvard Law School

'The Analytical Failures of Law and Economics is that rarest of scholarly monographs, driven by a powerful and focused argument, and gracefully informed by erudition well beyond its primary subject matter. A rigorous synthesis of many years of research, Bayern's work should discredit fragile, empirically unsupported, and logically inconsistent models that still distort legal opinions, textbooks, and scholarship. The book also points the way toward a better methodology more responsive to the lived realities of contracts, torts, and property law.'

Frank Pasquale - Jeffrey D. Forchelli Professor of Law, Brooklyn Law School, and author of *The Black Box Society*



October 2023

229 x 152 mm c.240pp

Hardback 978-1-00-915921-0

<i>Original price</i>	<i>Discount price</i>
£80.00	£64.00
\$105.00	\$84.00

Paperback 978-1-00-915922-7

<i>Original price</i>	<i>Discount price</i>
£25.99	£20.79
\$34.99	\$27.99



www.cambridge.org/alerts

For the latest in your field

For more information, and to order, visit:

www.cambridge.org/9781009159227

and enter the code BAYERN23 at the checkout

If you encounter any issues placing your order, please email our Customer Services team: directcs@cambridge.org