

Subject Index

- Abortion, crime and, 499–501
Accession, 145
Accidental harm, risk of, 237
Accidents
 law of, 189
 minimizing social costs of,
 199–201
Action on the case, 64*n*
Activity levels, tort liability and,
 211–13
Acts
 of God, 350
 unverifiable, 334–36
Actual judgment, 385
 difference between perfect-
 information judgment
 and, 385
Addictive drugs, economics of,
 518–22
Add-on clauses, 369–70
Adhesion contracts, 364–66,
 371
Administrative costs, 385
 comparison of error costs
 and, 385
 reducing, 397
 of settlement, 385
 tort liability and, 223–25
Administrative law judges, 59
Admiralty law, 155–56, 250
Adversarial process, 57, 397,
 403
 judges in, 403
Adverse possession, 153–55
 economic advantage of, 154
Adverse selection, 48–49, 238*n*,
 240
Advertising, restrictions on, for
 lawyers, 428–29
African Americans, crime and,
 488, 490
Agency game, 283–87, 427–29
 efficiency and, 427
 randomness and, 428
Agreement on Trade Related
 Aspects of Intellectual
 Property (TRIPS),
 118*n*
AIDS, 491
Alienation, 161
Alignment, independence ver-
 sus, 405
Allocative efficiency, 14, 363
Alternative dispute resolution
 (ADR), 404
 rise in, 450
Amazon’s patent on “one-click”
 Internet orders, 125
American Arbitration
 Association, 321, 405
American Federation of State,
 County, and Municipal
 Employees
 (AFSCME), 507
American Ice Trust, 113
American Law Institute, 57
American rule “each pays his
 own” legal costs
 allocating costs of trials, 384
 for attorney fees in malprac-
 tice actions, 265*n*
 British rule causing fewer
 trials than, 408
 computing value of legal
 claim and, 388
 decision not to appeal under,
 389
 defined, 388
 differences between
 European rule and,
 384
 exchange of information in,
 383
 judges in, 406–7
 number of trials and, 408
 other countries identifying
 more efficient rule,
 152, 153
 payment of litigation costs in,
 389*n*
 pretrial discovery in, 383
 relative optimism and, 409
 simplifying, 388
Amici curiae (friends of the
 court), 64
Answer, 62–63
Anticipated rescue, 348
Anticipatory breach, 338
Anticommons, tragedy of the,
 140
Anti-insurance, 335
Antitrust laws
 economics in, 1, 2
 joint ventures and, 121
 research and development
 and, 121
Appeals, 64, 410–17, 451–52
 correcting mistakes, 411–12
 efficiency as judicial motive,
 416–17
 efficiency of litigation mar-
 ket, 412–14
 enacting social norms,
 414–16
 errors as cause of, 451
 filing fees for docketing, 451
 lawyers fees for, 451
Appellate courts, 60–61
Arbitration, 404
 compulsory, 405
 increase in, 450–51
Archiving, 130
Article III judges, 59*n*
Asbestos, 252, 268
 litigation concerning, 269–70
Assault, 188

- Asset pricing, theory of, 37
- Association of Home Appliance Manufacturers, 415
- Assumption of the risk, 273*n*
- Asymmetric information, 297–98
 - agency problem and, 428
- Asymmetric valuation, 304
- Backward induction, 389*n*
- Bad news
 - as free, 393–95
 - as good for settlements, 391–93
- Bad Samaritan contracts, 347
- Bankruptcy, 236, 240–42
- Bargaining, 159, 174
 - civil disputes and, 89
 - costs of, 88
 - differences between coerced contracts and, 344–45
 - expected value of, 389
 - game theory in explaining, 77, 89, 384
 - hostility in, 90
 - lubricating, 103
 - private, 100
 - relationship between remedies and, 96
 - in the shadow of the law, 96*n*
 - with the state, 181–84
 - steps in, 76
 - successful, 84–85
 - supply and demand and, 423–24
 - transaction costs in obstructing, 101
- Bargaining theory
 - of contracts, 277–82
 - criticism of, 281–82
- Barotse (African tribe), 70
- Battery, 188
- Bayer Company, 133
- Bayesian inference, 438*n*
- Behavior
 - criminal, 469–70
 - effect of legal sanctions on, 3
 - price-taking, 27
- Behavioral economics, 50–52
- Behavioral law, 50
- Bench trial, 63
- Benefits
 - external, 39
 - marginal, 22
- Bequests, 156–59
- Best efforts, 362
- Best practices, enforcement of, 216
- Beyond a reasonable doubt, 63
- Bhopal disaster, 268–69
- Bias, hindsight, 51, 217, 435
- Bifurcated equilibrium is separating, 434*n*
- Big Law, 429
- Bilateral activity levels, 213
- Bilateral precaution, 204–6
- Bill of exchange, 414*n*
- Bonds
 - Bowie, David, 241*n*
 - securitization, 241*n*
- Boundary maintenance, congestion versus, 146–48
- Bounty hunters, 480
- Bowie, David, bonds, 241*n*
- Brady Handgun Violence Prevention Act, 524, 529
- Brand names in legal services, 428
- Breach of contract
 - anticipatory, 338
 - buyer's, 310
 - court-designed remedies for, 308
 - precaution against, 289–90
 - seller's, 309–10
- Breach of duty, 196–98
- Breach of enforceable promises, remedy for, 280–81
- Breadth, 119, 120–22
 - question of, in trademarks, 133
- Bridge tolls, 117
- Bright-line rules, 220
- British rule, 408. *See also* English rule
- Broad copyright, 130
- Broken windows hypothesis, 528*n*
- Burden of proof, 436–41
- Burglary, hot, 525
- Business-judgment rule, 319*n*
- But-for test, 193–94
- Buyer's breach, 310
 - with unique good, 310
- Buyer's ignorance, advantage of, 366
- Calabresi and Melamed
 - argument on protecting legal entitlement, 67*n*
- California
 - background-check law of, 524
 - death penalty in, 510
 - “three strikes and you're out” law in, 479, 504
- California Coastal Commission, 181–84
- Capital punishment. *See* Death penalty
- Cartels, 364
 - outlawing, 363
- Carter, Mary, agreements, 247
- Case of the hairy hand, 313
- Cause
 - of action, 62, 383
 - tort liability and, 192–96
- Cause-in-fact, 193
- Caveat emptor*, 360*n*
- Central Kentucky Natural Gas Company, 143
- Central strand of economic analysis, 455
- Chain of title, breaks in, 153–55
- Champerty, 428*n*
- Charitable contributions, 115
- Circumvention costs, 156–59
- Citizenship, diversity of, 62
- Civic duty in crime deterrence, 481–83
- Civil Aeronautics Board, 104
- Civil disputes
 - agreement to settle out of court, 400
 - as bargaining game, 77
 - damages in, 408
 - liability in, 408
 - procedural aspects of, 382
 - settlement bargaining in, 400
- Civil Justice Reform Act (Illinois, 1995), 267
- Civil law traditions, 56–58
 - codification of criminal law in, 456
 - compensation in, 460
 - judges in, 57, 406
 - lawyers in, 437*n*
 - positive damages in, 309

- Civil Litigation Research Project, 445
- Civil responsibility, law of, 188
- Civil rights trials, 450
- Civil tradition, judges in, 397
- Civil trials
 decline in number of, 448
 number of, as jury trials, 448–49
- Class Action Fairness Act (2003), 426
- Class actions, 268*n*, 418–19, 425–26, 431
- Clear and convincing evidence standard, 63, 263
- Closely held corporation, 139
- Coase Theorem, 81–88
 application of, 121, 410
 bargaining games and, 89
 defined, 292
 encouraging bargaining by lowering transaction costs, 91
 fortunate contingency and, 330
 as normative principle of property law, 93–94
 renegotiation and, 326, 328
 tort law and, 189–90
- The Coase Theorem* (Cooter), 87*n*
- Coca-Cola Company, 134, 135
- Code Napoléon*, 56
- Code of Hammurabi, 256*n*
- Coerced contracts, differences between bargains and, 344–45
- Cohort quality effect, 500
- Cohort size effect, 500
- Coinsurance, 48
- Collateral source rule, 266
- Collective Clemency Bill (Italy, 2006), 494
- Columbine High School, 523
- Co-mingling, 138
- Commercial impracticability, 352–53
- Commitment, 283–87
- Common employment, 273*n*
- Common information, 355
- Common law traditions, 56–58
 codification of criminal law in, 456
 duty to disclose and, 360*n*
 enforcement of monopoly contracts and, 363
 expectation damages in, 309
 judges in, 57, 397, 403
 negligence in, 417
 precedent in, 56
- Commons, tragedy of the, 140
- Communism
 collapse of, in Eastern Europe, 141–42
 crime and, 457
 theory of, 70
- Community policing, 528
- Community service, 459
- Comparative advantage, opportunity cost and, 30
- Comparative negligence, 208–11, 248–50, 384*n*
 modified, 248*n*
 pure, 248*n*
 slight-gross, 248*n*
- Compensation, 175–76
 in civil law, 460
 paradox of, 331–34
 perfect, 254, 319, 460, 461
- Compensatory damages, 169, 253
 distinguishing between punitive damages and, 95*n*
 money as, 94–95
 payment of, 456
 for physical injuries, 313
- Competition, imperfect, 32
- Competitive market, 412
- Complaints, 62
 filing, 419–20
 filing fees and number of legal, 420–22
 legal, 442*n*
- Complements, 184
- Compromise
 offers to, 409
- Compulsory arbitration, 405
 health maintenance organizations (HMOs) and, 405
- Compulsory licensing, 125
- Compulsory mediation, 384
- Compulsory pooling of information, 397
 effects of, 397
- Concealed weapons, laws allowing carrying of, 526, 529
- Concession limit, 400
- Conflict of Laws, 61*n*
- Congestion, boundary maintenance versus, 146–48
- Conservatism, origins of property and, 111
- Consideration, 278, 279, 280
- Constitutions, 58
- Constrained maximization in microeconomic theory, 22
- Consumer choice and demand, theory of, 18–26
- Consumer preference orderings, 18–20
- Consumer product injuries, 225–26
 liabilities for, 238–39
- Consumer Product Safety Commission, 267
- Consumer's optimum, 21
- Consumption, nonrivalrous, 40
- Contiguity, 177
- Contingency
 fortunate, 328–31
 unfortunate, 326–28
- Contingency fees, 8, 408*n*, 423, 427–28, 429
- Contract(s). *See also* Breach of contract
 of adhesion, 364–66, 372
 Bad-Samaritan, 347
 coerced, 344–45
 economic interpretation of, 291–99
 economic theory of enforcement, 283–87
 economic theory of remedies, 287–91
 enforcement of monopoly, 363
 fee-for-service, 427
 formal and informal methods for compliance, 341
 futures, 338
 high-price-strong-warranty, 365*n*
 imperfections in, 292
 indefinite, 362*n*
 low-price-weak-warranty, 365*n*
 perfect, 292, 298
 relational, 299–304
 social, 78

- Contract(s) (*continued*)
 spot, 338
 standard-form, 364–66, 367, 372
 take-it-or-leave-it, 365
 Contract disputes, 443
 civil trials for, 449–50
 Contract law, 189, 307–81
 economic theory of, 276–306
 formation defenses and performance excuses, 341–72
 dire constraints and remote risks, 343–54
 duress, 343–47
 frustration of purpose, 353
 impossibility, 349–53
 mutual mistake about facts, 353–54
 mutual mistake about identity, 354
 necessity, 347–49
 incompetence, 342–43
 information, 354–62
 duty to disclose, 360–61
 fraud, 361
 indefinite or vague promises, 361–62
 misrepresentation, 361
 unilateral mistake, 356–59
 monopoly, 363–71
 contracts of adhesion, 364–66
 unconscionability, 368–70
 remedies as incentives, 307–41
 alternative, 309–24
 disgorgement, 319–20
 expectation damages, 309–10
 liquidated damages, 321–24
 opportunity cost, 311–13
 party-designed remedies, 321–24
 problem of subjective value, 313–18
 reliance damages, 311
 restitution, 318–19
 specific performance, 320–21
 investment in performance and reliance, 331–41
 contract solutions to paradox of compensation, 335–37
 paradox of compensation, 331–34
 time, 338–41
 unverifiable acts, 334–35
 models of, 325–31
 fortunate contingency, 328–31
 investment in performance and reliance, 331–37
 time, 338–41
 unfortunate contingency, 326–28
 Contract price, 330
 Contract rights, 73
 Contributions
 charitable, 115
 joint and several liability with and without, 245–47
 Contributory negligence, 65, 68, 208–11, 273*n*, 417
Convention for the Protection of Human Rights and Fundamental Freedoms, Article 6 (2), 459*n*
 Cooperation, 283–87
 in creating surplus, 75, 76, 99, 400
 Cooperative enterprises, 142
 Cooperative surplus, 75, 99, 400
 distribution of, 76*n*
 Copyright, 113, 117, 130–31
 broad, 130
 duration of, 130, 134
 future of, in digital age, 131
 historical agency of, 131
 Coronation Cases, 297
 Corporations, 139, 165
 criminal, 464
Corpus Juris Civilis, 56
 Corrections Corporation of America, Inc., 507
 Cost-benefit analysis, 4, 169
 Cost internalization, 416
The Cost of Accidents (Calabresi), 200
 Costs
 administrative, 385
 circumvention, 156–59
 depletion, 156–59
 error, 385, 397
 external, 39
 filing, 390
 fixed, 27
 marginal, 22
 private marginal, 39–40
 social marginal, 39–40
 transaction, 85, 339
 variable, 27
 Counterfactual values, 281
 Court-designed remedies for breach of contract, 308
 Court-imposed damages, 307
 Court of Common Pleas, 66*n*
 Court of Exchequer of Pleas, 66*n*
 Court of King's Bench, 66*n*
 Crack epidemic, receding, 530–31
 Creative Commons, 131
 Creative destruction, 113
 Creativity, copyright and patent law and, 130
 Credibility, characteristics of, 114
 Crime
 abortion and, 499–501
 African Americans and, 490
 causes of, 487–89
 defined, 457
 diminished rationality and, 470–74
 explaining decline in, in United States, 526–31
 guilty of future, 493
 inchoate, 458
 making career of, 498–99
 punishment in deterring, 491–501
 and punishment in United States
 causes of, 487–89
 crime rates in, 485–86
 economic theory of, 454–84
 imprisonment rates in, 486–87
 social cost of, 489–91
 ranking of, by seriousness, 463

- rational, 463–67
- social costs of, 489–91
- street, 487
- strict liability, 464
- victimless, 458
- violent, 486*n*
- Crime deterrence
 - civic duty in, 481–83
 - optimal amount of, 475–77
- Crime rates
 - economic conditions and, 497–98
 - in United States, 454, 485–86
- Crime reports, international
 - comparisons of, 454
- Criminal behavior, criminal intent and, 469–70
- Criminal corporations, 464
- Criminal intent, 456–57
 - criminal behavior and, 469–70
- Criminal law
 - economic goal of, 474–75
 - intent, 456–57
 - necessity of, 460–63
 - public prosecution, 457–58
 - punishment in, 459–60
 - social costs and, 474
 - standard of proof, 458–59
 - traditional theory of, 455–60
- Criminals, insurance for, 478
- Criminal trials, increase in, 450
- Culpa in contrahendo*, 297
- Customs in trade, 302
- Cy pres*, doctrine of, 159

- Dalkon Shield Claimants Trust, 431
- Damages, 94–95
 - cap on, 336
 - choosing between injunctions and, 168–69
 - compensatory, 94–95, 169, 253, 456
 - decoupling, 224–25
 - disgorgement, 319
 - expectation, 281, 286, 309–10, 378–79
 - expected, 420
 - Hand rule, 253–57
 - imperfect, 381
 - imperfect expectation, 380
 - liquidated, 321–25
 - measurement of, 375–76
 - mitigating, 337
 - opportunity-cost, 311–13, 315–16
 - perfect, 380
 - perfect expectation, 380
 - permanent, 169
 - punitive, 257–61, 456
 - reliance, 311, 314–15, 376
 - temporary, 169
- Day fine system, 509
- Death penalty, 510–17
 - deterrence and, 511–17
 - increased use of, 529
 - racial discrimination and, 517
 - social costs of, 516
- Death spiral, 49
- Decision making under uncertainty, 43–49
- Decision trees
 - in deciding lawsuits, 386–87
 - in determining reasons for lawsuits, 386–87
 - preponderance of evidence and, 440–41
- Decoupling damages, 224–25
- Deductibles, 48
- De facto* currency, 414*n*
- Default judgment, 443*n*
- Default rules, 166, 293–94, 341
- Defect
 - in design, 251, 266
 - in manufacturing, 251, 266
 - in warning, 251
- Defendants, 62–63
- Defensive medicine, evidence about, 264–65
- Deferred exchanges, 283
- Demand
 - individual, 24–26
 - for insurance, 47
 - law of, 25
 - price elasticity of, 25
- Demand curve, 24–26
- Democratic equality, 110
- Demographics, changing, 528
- Dependent variables, 16–17
 - value of, in graph, 1 + 6
- Depletion costs, 156–59
- Depository agreement, 299
- Deregulation, impetus for, 104
- Deregulation movement, 2
- Derivative works, 117
- Design defect, 251, 266
- Deterrence, 492–93
 - capital punishment and, 516–17
 - general, 503
 - hypothesis of, 491
 - marginal, 476
 - mathematics of optimal means of, 477–83
 - private, 479–80
 - socially optimal, 476
 - specific, 503
 - of youth crime, 472–73
- Development, regulation of, 184–85
- Diethylstilbestrol (DES), litigation involving, 270
- Digital libertarianism, 131
- Digital rights management, 114
- Diminished rationality, crime and, 470–74
- Diminished-value formula, 310*n*
- Dire constraints, 343–54
- Disclosure
 - duty to, 360–61
 - involuntary, 394–95
- Discounting, 169*n*
- Discovery, 390*n*, 393
 - abuse, 398
 - cost of, compared to litigation, 397*n*
 - differences between United States and Europe, 396–97
 - error costs and, 397
 - judges and, 390*n*
 - pretrial, 383
 - timing of, 390
- Discretionary
 - review, 60, 410
- Disgorgement, 319–20
 - damages, 319
 - perfect, 460
- Disparate resolution, 5
- Disproportionate punishment, 455
- Disputes
 - contract, 443
 - property, 443
 - tort, 443
- Dissemination, 117
- Distribution in analyzing private law, 7–8
- Distributive justice, 110–11

- Diversity cases, 62
 DNA techniques, 511
 Doctrine
 of *cy pres*, 159
 of duress, 346
 of equivalents, 120–21, 122*n*, 124*n*
 of foreseeability, 336
 Hadley, 337
 of impossibility, 349, 351–52, 353, 372
 last chance, 68
 necessity, 160*n*, 371
 respondeat superior, 244
 of unconscionability, 298, 368–70
 Dominant patent, 122
 Dominant strategy, 35, 284*n*
 Downzoning, 180
 DPT vaccine, 271
 Dram shop laws, 245
 Drug Price Competition and Patent Term Restoration Act (1984), 123
 Drugs
 addictive, 518–22
 legalization of, 520–22
 orphan, 124–25
 punishing sales of, 518–20
 sale of illegal, 458
 war on, 522
 Duration, 119, 123
 Duration neglect, 496
 Duress, 295, 343–47, 371
 doctrine of, 346, 371
 Duty
 breach of, 196–98
 to disclose, 360–61, 371
 of loyalty, 319*n*
 Dynamic efficiency, 116
 Dynamic inefficiency, 363
 Dynasty trusts, 158
 Each-pays-his-own legal costs (the “American rule”).
 See American rule
 “each pays his own” legal costs
 Eastern Europe
 Communism’s collapse in, 141–42
 endgame problem of, 302
 Economic analysis
 central strand of, 455
 of law, 3–6, 11
 Economic efficiency, 149, 165–66, 283, 356
 Economic goal of criminal law, 474–75
 Economic model, extending, 230–44
 Economics
 of addictive drugs and crime, 518–22
 in antitrust law, 1, 2
 behavioral, 50–52
 in contract interpretation, 291–99
 crime rates and, 497–98
 of handgun control, 522–26
 information, 113–16
 in law, 1–2
 reasons for lawyers to study, 9–10
 retribution and, 502
 of scale, 29
 tort law and, 189–90
 welfare, 37–43
 Economic theory
 of contract enforcement, 283–87
 of contract remedies, 287–91
 of crime and punishment, 454–84
 of legal process, 382–418, 382–420
 appeals, 410–17
 correcting mistakes, 411–12
 efficiency as judicial motive, 416–17
 efficiency of litigation market, 412–14
 enacting social norms, 414–16
 exchange of information, 391–95
 bad news as good for settlements, 391–93
 bad news as is free, 393–95
 minimizing social costs, 397–99
 United States versus Europe, 396–97
 goal of legal process, 384–86
 minimizing social costs, 384–86
 reasons for lawsuits, 386–91
 computing value of legal claim, 388–91
 decision trees, 386–87
 settlement bargaining, 399–403
 lack of settlement, 402–3
 settlements replicating trials, 399–401
 trial, 403–10
 independence versus alignment, 405–8
 loser pay all, 408–10
 of torts, 455
 Economies of scale, 78*n*
 Economies of scope, 433
 Economists, reasons for studying law, 9–10
 Economy, crime and, 528
 Efficiency, 4, 82–83, 374–75
 allocative, 14
 defined, 13
 as judicial motive, 416–17
 Kaldor-Hicks, 14*n*, 42–43
 in microeconomic theory, 13
 Pareto, 14, 36
 primacy of, over distribution in analyzing private law, 7–8
 Efficiency loss, due to enforcement error, 260
 Efficient breach and performance, 325–31
 Efficient precaution, incentives for, 376–78
 Efficient punishment, optimal amount of, 475–77
 Efficient reliance, incentives for, 378–81
 Efficient remedies, 99–102
 Eighth Amendment, 510*n*
 Elastic demand, 25*n*
 Embezzlement, 467*n*, 474
 punishment for, 476–77
 Empirical assessment of United States tort liability system, 261–74
En banc, 61
 Encroachment, 72

- Encrypting, 131
 Endgame problem, 301–4
 Endowment, 87
 Enforcement
 costs of, 88–90
 privatizing, 480
 remedy for breach of promises, 280–81
 Enforcement error, 260
 efficiency loss due to, 260
 England. *See also* Great Britain
 court system in, 66*n*
 criminal law in, 456
 English rule, 384, 388. *See also*
 British rule and
 Loser-pays-all
 for attorney fees in malpractice actions, 265*n*
 Entitlement, relative values of, 101*n*
 Environmental Protection Agency (EPA), 267
 Equilibrium
 analysis of, 32–33
 market, 28–33
 in microeconomic theory, 13
 in monopolistic market, 29–32
 Nash, 35–36
 in perfectly competitive industry, 28–29
 stable, 13
 unstable, 13
 Equitable decree, violating, 95*n*
 Equitable relief, 95
 Equivalence result, 210*n*
 Equivalents, doctrine of, 120–21, 122*n*, 124*n*
 Errors
 as cause of, appeals, 451
 costs of
 comparison of administrative costs and, 385
 reducing, 397
 enforcement, 260
 extent of, 385–86
 medication, 264
 purely random, 220–21
 reducing legal, 419
 social costs of, 385–86
 tort liability and, 217–20
 Type I, 459, 502
 Type II, 459, 502
 Estray statutes, 155–56
 European rule “loser pays all”
 legal fees
 computing value of legal claim and, 388
 differences between
 American rule and, 384
 giving of proofs in, 383
 good faith requirement and, 152
 judges in, 397
 lack of discovery in, 396
 liability and, 409
 number of trials and, 408
 payment of legal expenses, 408–10
 payment of litigation costs in, 389*n*
 relative optimism and, 409
 Spain’s application of, 153
 trial length in, 396–97
 Evidence
 instructions in court for combining, 439
 preponderance of, 63, 439–41
 rules of, 442
 Evidentiary uncertainty, 248–50
Ex ante fines, 235
Ex ante Pareto efficiency, 287
Ex ante Pareto standard, 417
Ex ante regulation, 238
Ex ante risks, 293
 Excessive harm, 251
 Exchange of information, 391
 bad news as free, 393–95
 bad news as good for settlements, 391
 minimizing social costs, 397–99
 United States versus Europe, 396–97
 Exchanges, deferred, 283
 Exclusivity, 124*n*
 Exogeneity of preferences, 19*n*
 Expectation damages, 281, 286, 309–10, 315, 378–79
 distinction between reliance damages and, 309*n*
 hypothetical, 335
 Expected damages, 420
 Expected judgment, 401
 relationship between
 reasonable settlement and, 401
 Expected monetary value, 43–44
 Expected punishment, 488
 Expected utility, maximization of, 44–46
 Expected value, 43
 of legal claim, 388
 Expenditure, progressive taxation and, 106–7
 Experience rating, 49, 238
Ex post liability, 235, 238
Ex post losses, 293
Ex post observable precaution, 480
Ex post Pareto efficiency, 287
 Extensive form, 34
 Extent of the error, 385–86
 External benefit, 39
 External costs, 39, 105
 Externalities, 39–40, 166–68, 189
 graphing, 172–74
 remedies for, 168–69
 theory of, 105
 Externalizing risk, 238
 Eyewitness testimony, reliability of, 439
 Factories with fences, 505
 Facts, 64
 mutual mistake about, 353–54, 371
 The Fairness in Asbestos Injury Resolution Act, 270
 Fair use exception, 130, 135, 159
 Fallback position, 76
 False imprisonment, 188
 False pessimism, correcting, 394
 Fault, negligence and, 228–29
 Feasibility constraint, 13
 Federal Aviation Administration, 267
 Federal Communications Commissions, 59
 Federal courts
 institutions of, 59–62
 jurisdiction of, 61–62
 Federal questions, 61
 Federal Trademark Act (1946), 132
 Fee-for-service contracts, 427

- Fees. *See also* European rule
 “loser pays all” legal fees
 contingency, 8, 408*n*, 423, 427–28, 429
 filing, for docketing appeals, 451
 filing, for lawsuits, 420–22
 Fellow servant rule, 273*n*
 Feudalism, 111
 Fifth Amendment, 175
 takings clause of, 175
 50-percent rule, 446–48
 Filing costs, 390
 Filing fees
 for docketing an appeal, 451
 number of legal complaints and, 420–22
 Filing of complaints, social efficiency and, 421, 422
 Filters, offers as, 431–33
 Fines, 508–9
 First Law of Demand, 468
 First Law of Deterrence, 468
 First possession, 143
 Fitness, warranty of, 297*n*
 Fixed costs, 27
 Florida, death penalty in, 510
 Food, Drug, and Cosmetic Act, 123
 Food and Drug Administration (FDA), 124, 267
Force majeure, 350
 Foreseeability, doctrine of, 336
 Foreseeable events, difference between foreseen events and, 337
 Foreseen events, difference between foreseeable events and, 337
 Formal welfare economics, 108*n*
 Formation defenses, performance excuses and, 341–72
 Fortuitous rescue, 348
 Fortunate contingency, 328–31
 Forum shopping, 420, 449
 France, crime rate in, 486
 Franchise relationship, 299
 Fraud, 361, 371
 Free entry in the market, 348*n*
 Free market, supply and demand in, 422–23
 Free riders, 41, 103–4, 114, 414
 Free use, 148
 Frustration of purpose, 297, 353, 371
 Fugitive property, establishing property rights over, 143–46
 Full-term patents, 123
 Functions
 as mathematical tool, 14–16
 utility, 13, 20–21
 Futures contract, 338
 Futures market, 309
 Gambling, 458
 Game, repeated, 299–301
 Game theory, 3, 33–37, 74–76, 383
 backward induction in, 389*n*
 in explaining bargaining, 384
 on failure to settle, 391
 rational bargaining in, 391
 Gate crasher’s paradox, 438
 General deterrence, 503
 General equilibrium, welfare economics and, 37–43
 Generation-skipping rule, 157–58
 Generation-skipping trusts, 159
 Geosynchronous orbit, 71*n*
 German Code of Civil Law, 152*n*
 Germany, incarceration in, 487
 Gift-promises, 282
 Giving of proofs, 383, 390, 390*n*
 information exchange in, 383
 in trial, 390
 Go-it-alone value, 76, 400
 Golden parachute, 138
 Good faith, bargaining in, 362
 Good-faith requirement, 152
 Goods
 private, 102–5
 public, 40–41, 102–5, 355
 Good Samaritan, 347
 Google, 131
 Governance, system of, 136
 Graphs, 16–18
 Great Britain. *See also* England
 crime rate in, 486
 incarceration in, 487
 Great Recession of 2008–2010, 488, 498
 Growth, profits and, 49–50
 Growth theory, 118
 Guillain-Barré syndrome, 271*n*
 Gun control
 economics of, 522–26
 laws on, 524, 529
 Habitual offender, 504
Hadley doctrine, 337
 Hand rule, 206*n*, 213–17
 damages under, 253–57
 for determining negligence, 417, 433
 Harm
 excessive, 251
 pollution as cause of, 96–97
 public, for criminal law, 457–58
 risk of accidental, 237
 tort liability and, 190–92
 Hatch-Waxman Act (Drug Price Competition and Patent Restoration Act) (1984), 123, 124
 Health maintenance organizations (HMOs), compulsory arbitration and, 405
 High-low agreements, 247
 High-price-strong-warranty contract, 365*n*
 Hindsight bias, 51, 217, 435
 Hobbes Theorem, 93–94
 Holdouts, 177–78
 Holdup problem, 344
 Homestead Act (1862), 144–45
 Hostages, exchange of, 304
 Hostility in bargaining, 90
 Hot burglary, 525
 Howard, John, Association, 507
 Hudson’s Bay Company, 137
 Humpty-Dumpty Jurisprudence, 279, 280
 Hyperbolic discounting, 473*n*
 Hypothetical expectation damages, 335
 Identity, mutual mistake about, 354, 371
 Illinois Firearm Owner’s Identification card, 524*n*

- Immortal soul clause, 367
- Imperfect competition, 32
- Imperfect damages, 381
 - shape of curve, 381*n*
- Imperfect expectation damages, 380
- Impossibility, 349–53, 371
 - doctrine of, 349, 353, 372
 - interpreting, 351–52
- Imprisonment, 501–4
 - rates in United States, 486–87
 - social benefits of, 501–4
 - social costs of, 504–5
- Inalienability, 100*n*, 161–63
- Incapacitation, 502–4
 - selective, 493
- Incapacity, transactional, 342
- Incentives
 - for efficient precaution, 376–78
 - for efficient reliance, 378–81
 - for invisible actors, 251
 - for precaution under negligence rule, 206–8
 - remedies as, 307–41
- Inchoate crime, 458
- Income taxes, 8
- Incompatible uses, 72
- Incompetence, 342–43, 371
- Indefinite contracts, 362*n*
- Indefinite promises, 361–62
- Independence, alignment versus, 405–7
- Independent variables, 16–17
 - value of, in graph, 1+6
- Indeterminate sentencing, 505
- Indifference curves, 20
- Indifference map, 20
- Indifferences, standard
 - economic concept of, 253
- Individual demand, 24–26
- Individual rationality, 295
- Inducement, 278
 - reciprocal, 278
- Inefficiency
 - allocative, 363
 - dynamic, 363
- Inelastic demand, 25*n*
- Information
 - asymmetric, 297–98, 355, 383
 - characteristics of, 114
 - common, 355
 - compulsory pooling of, 397
 - contract doctrines allocating, 354–62
 - exchange of, 391–99
 - involuntary pooling of, 393, 397
 - mixed, 358–59
 - nonappropriability of, 114
 - perfect, 385
 - pooling of, 394
 - private, 355, 383, 393
 - productive, 357
 - public, 355
 - redistributive, 357
 - safety, 360
 - voluntary exchange of, 393
 - voluntary pooling of, 393, 394, 397
- Informational asymmetries, 41–42
- Information costs, trade-off between transaction costs and, 93–94
- Information economics, 113–16, 358–59
- Information theory, applied to judging, 407
- Inheritances, 156–59
- Injunctions, 94–96, 99–100
 - choosing between damages and, 168–69
- Injunctive relief, 98–99
- Innovation-diffusion tradeoff, 117–18
- In personam*, 165*n*
- Inquisitorial process, 57–58, 397
 - judges in, 403
- Insanity defense, 473
- Insider trading, prohibition against, 126–27
- Insurance, 178, 236–40
 - demand for, 47
 - liability, 264
 - risk and, 43–49
 - supply of, 47
- Intellectual property, 116–18
 - law on, 113, 116
- Intended negligence, 233
- Intent, criminal, 456–57
- Intentional infliction of emotional duress, 188
- Intentional tort, 188
- Interdependent utility, 195
- Interest, protecting, 461–62
- Internalization, 462–63
- Internalizing the externality, 167
- International Chamber of Commerce, 307, 321, 404
- International Seabed Authority (ISA), 149
- Interstate Commerce Commission (ICC), 104
- Invariance, 86–87
- Inverse relationship, 17
- Invisible actors, incentives for, 251
- Invisible hand, 406, 413–14
- Involuntary disclosure, 394–95
- Involuntary pooling of information, 393, 397
- IP cases, 450
- Islamic law, 57
- Japan, incarceration in, 487
- Joint and several liability
 - for multiple injures, 435–36
 - with and without contribution, 245–47
- Joint liability, 435
- Joint products, 121
- Joint profits, 96
- Judge-made law, 412, 414
 - as beneficial to public, 412
- Judges
 - Article III, 59*n*
 - civil law, 57
 - common law, 57
 - independence of, 406–7
 - lay, 407–8
 - magistrate, 59*n*
 - in making law, 56
 - optimal activism of, 405, 407
 - relationship between state prosecutor and, 459
 - role of, in United States versus Europe, 397
 - selection and tenure of, 62
 - selection of, in United States, 406–7
 - state rules for selecting high court, 406*n*

- Judging, information theory
applied to, 407
- Judgment, 63
actual, 385
affirmation of, 64
expected, 401
perfect-information, 385
reversal of, 64
- Judgment non obstante verdicto*,
63
- Judicial motive, efficiency as,
416–17
- Juricature Act of 1873, 67*n*
- Juries, 58
compensation for, 407–8
psychology of, 434
serving on, 396
- Jurisdiction
of federal courts, 61–62
of state courts, 61
- Jury trials
constitutional right of
Americans to, 422
number of civil trials as,
448–49
right to request, 396
- Justice
as expensive, 382
natural, 146
- Kaldor-Hicks efficiency, 14*n*,
42–43
- King's Council, 66*n*
- King's courts, 56
- Knockoffs, 133
- Labor cases, 450
- Laches, 269*n*
- Lanham Act, 132
- Lapses, 232
- Last chance doctrine, 68
- Law. *See also* Private law
correcting mistakes in mak-
ing, 412–14
economic analysis of, 3–6, 11
economics in, 1–2
judge-made, 412, 414
of large numbers, 47
reasons for economists to
study, 9–10
- “Law” courts, 66*n*
- Law merchant, traditional
account of, 414–16
- Lawsuits
cause of action for, 383
computing value of legal
claim, 388–91
decision trees in deciding for,
386–87
filing fees for, 420–22
filing of complaints in,
419–20
nuisance, 429–31, 432*n*
number of complaints and,
420–22
reasons for, 386–91
- Lawyers
choosing, 428
in civil law systems, 437*n*
contingency fees for, 427–28
contracts with, 427
fees for appeals, 451
incentive structure for, 406,
427–28
number of, 444
pursuit of self-interest, 405–6
reasons to studying econom-
ics, 9–10
restrictions on advertising by,
428–29
self-interest of, 407
- Lay judges, 407–8
- Least-cost risk-bearer, principle
of, 6
- Legal claims
computing value of, 388–91
number of lawyers and filing
of, 422–23
- Legal complaint, 442*n*
- Legal concept of property,
73–74
- Legal dispute
nature of, 62–64
resolving, 382
stages in, 383–84
- Legal errors, reducing, 419
- Legalization of drugs, 520–22
- Legal process
economic theory of, 382–418
empirical assessment of,
442–52
goal of, 384–85
minimizing social costs,
384–86
as incentive system, 419
reasons for law suits, 386–91
similarities in, 382
topics in economics of,
419–52
- Legal rules, evolution of, 64–68
- Legal sanctions, effect of, on
behavior, 3
- Legal scholarship, effect of eco-
nomics on, 2
- Legal services, supply of,
422–25
- Legal standards, setting, 213–17
- Liability
incentives for precaution un-
der no, 201–4
joint and several, with and
without contribution,
245–47
market share, 270
premise, 263
product, 251–53, 266,
267–68
strict, 197–98, 237–38
vicarious, 244–45
- Liability disparity, 192, 257
- Liability insurance, 264
- Liability rule, 95
- Liberty, 111
- Librium, 122, 122*n*
- License, 119
- Licensing, compulsory, 125
- Life imprisonment, 476
- Limited access, 142
- Limited liability, 137–38
bankruptcy and, 240
- Linear relationship, 17–18
- Linux operating
system, 130–31
- Liquidated damages, 321–24
efficient breach and,
324–25
- Litigation
costs of, 242–43, 403–4
discovery versus, 397*n*
as form of transaction
costs, 429
efficiency of market,
412–14
selective, 413
- Livery of seisin, 150
- Lock-ups, 138
- Long run, 27–28
- Looking forward and reasoning
backward, 389*n*

- Loser-pays-all legal costs (the English rule). *See* European rule “loser pays all” legal fees
- Loss aversion, 46, 395
- Lowest-cost risk-bearer, concept of, 351
- Low-price-weak-warranty contract, 365*n*
- Low-probability events, estimating, 231
- Loyalty, duty of, 319*n*
- Lubricating bargaining, 103
- Magistrate judges, 59*n*
- Mandatory rules, 294–99
- Manufacturing defect, 251, 266
- Mare Liberum* (Grotius), 148–49
- Marginal benefit, 22
- Marginal costs, 22
- internalization of, 335
- of lawyer’s time, 427
- private, 39–40
- social, 39–40
- Marginal deterrence, 476
- Marginalist reasoning, 123
- Marginal private-cost curve, 172
- Marginal reliance, cap on, 336
- Marginal social-cost curve, 172
- Marginal values, 180
- Market
- competitive, 412
- equilibrium of, 28–33
- litigation, 412–14
- monopoly and power of, 38–39
- share liability of, 270
- sources of failure of, 38–42
- value of, 316
- Market-clearing price and quantity, 29
- Mary Carter agreements, 247
- Massachusetts Bartley-Fox law (1974), 524
- Mass torts, 268–70
- Mathematical tools, 14–18
- functions as, 14–16
- graphs in, 16–18
- Maximization
- constrained, 22
- of expected utility, 44–46
- in microeconomic theory, 12–13
- Maximum liberty, 105, 166
- Maximum sustainable yield, 147
- McDonald’s, 132
- Measuring life, 157*n*
- Mediation, compulsory, 384
- Medical malpractice, 264–66
- Medication errors, 264
- Mens rea*, 457, 464
- Mercantilist tradition, 363
- Metes and bounds, 162*n*
- Microeconomics, 230, 294
- Microeconomic theory
- asset pricing in, 37
- behavioral economics in, 50–52
- connection between maximization and equilibrium in, 13
- constrained maximization in, 22
- consumer choice and demand in, 18–26
- consumer preference orderings in, 18–20
- decision making under uncertainty in, 43–49
- defined, 11–12
- efficiency in, 13
- equilibrium analysis in, 32–33
- equilibrium in, 13
- externalities in, 39–40
- game theory in, 33–347
- general equilibrium and welfare economics in, 37–43
- individual demand in, 24–26
- informational asymmetries in, 41–42
- insurance in, 47–49
- market equilibrium in, 28–33
- market failure in, 38–42
- mathematical tools in, 14–18
- maximization in, 12–13
- operation of firm in short run and long run in, 27–28
- opportunity cost and comparative advantage in, 30
- Pareto improvements of Kaldor-Hicks efficiency in, 42–43
- profit in, 26
- profit-maximizing firm in, 26–27
- profits and growth in, 49–50
- public goods in, 40–41
- structure of, 11–12
- supply theory in, 26–28
- utility functions and indifference curves in, 20–21
- Microsoft Word, 131
- Misdirection, ground of, 67
- Misrepresentation, 361
- Mistakes
- appeal court in correcting, 411–12
- unilateral, 356–59, 371
- Mitigating, 182
- Mitigating damages, 337
- Mixed information, 358–59
- M’Naughten rule, 473
- Moleculon, 119
- Monetary fines, 459
- Monetary punishment, 460
- Monetary value, expected, 43–44
- Money damages, increase of, 420
- Monopolistic market, equilibrium in, 29–32
- Monopoly, 298–99, 363–71, 372
- market power and, 38–39
- natural, 29–30, 78*n*, 127–28
- perfect competition and, 363
- Monopoly power, 117
- Monopoly theory, 116
- Mood, crime and, 471–72
- Moral hazard, 48, 238
- Moral luck, 233
- Multiple injurers, joint and several liability for, 435–36
- Mutual mistake, 298
- about facts, 353–54, 371
- about identity, 354, 371
- Naked statistical evidence, 439
- Nash Bargaining solution, 392, 430
- Nash equilibrium, 35–36, 208*n*

- National Crime Victimization Surveys*, 527
- National defense, 40–41
- National Highway
Transportation Safety Administration, 267
- National Sheriffs Association, 507
- Natural justice, 146
- Natural monopoly, 29–30, 78*n*, 127–28
- Necessity, 295, 347–49, 371
- Necessity doctrine, 160*n*, 371
- Negative damages, 312
- Negligence, 197–98
comparative, 208–11, 248–50, 248*n*, 384*n*
contributory, 65, 68, 208–11, 273*n*, 417
fault and, 228–29
Hand rule for determining, 417, 433
intended, 233
in supervision of employee, 244
unintended, 232–33
- Negligence rule, 196, 228
forms of, 209
incentives for precaution under, 206–8
- Netherlands, crime rate in, 486
- Network effects, 127–28
- No-contribution rule, 247
- No liability, rule of, 223
- Nonappropriability, 114
characteristics of, 114
connection between public goods and, 114
of information, 114
- Noncooperative games, 75
- Noncooperative payoffs, 99
- Nondisclosure agreement (NDA), 115
- Non-excludability, 40
for public goods, 114
- Nonlinear relationship, 17–18
- Nonperformance, efficiency of, 339
- Nonrivalrous consumption, 40
- Non-voting shares of stock, 138
- Normative Coase Theorem, 91–93, 92, 93, 121, 151*n*, 444
- Normative Hobbes Theorem, 91–93, 92–93, 98, 121
- North Carolina, death penalty in, 510
- Notaries, 151
- Novel disputes, 66
- Nuisance, 168
public, 168
- Nuisance suits, 429–31, 432*n*
- Numerus* clauses, 165*n*
- Occupational Health and Safety Administration, 267
- Offers
to compromise, 409, 409*n*
as filters, 431–33
- Offset, 182
- Oklahoma, death penalty in, 510
- Oligopolistic market, 32
- Oligopoly, 32
- 100 percent contingency, 428
- One-shot game, 299
- Open access, 140, 142, 147
- Open-access fishing, 348*n*
- Open-access resources, 146
privatization of, 146–48
- Opportunity cost, 310–11, 427
comparative advantage and, 30
- Opportunity-cost damages, 311–13, 375
measuring, 315–16
perfect, 312
- Orbitcom, Inc., 71
- Ordering, sequential, 433
- Organizations
as property, 135–38
as victims, 259
- Original expression, 130
- Orphan Drug Act (1983), 124–25
- Orphan drugs, 124–25
- Out-of-pocket-cost formula, 311*n*
- Overbooking, 318
- Overreaching, 90
- Pain and suffering, 257
- Paradox of compensation, 181, 331–34, 352*n*
contract solutions to, 335–36
- Pareto efficiency, 14, 36, 279, 340, 417
of enforceability, 286–87
ex ante, 287
ex post, 287
- Pareto-efficient allocation, 86
- Pareto improvement, 14*n*, 42–43
- Partitioning, 138
- Party-designed remedies, 307, 321–24
- Patent law, overextended, 123, 125
- Patents, 113, 117, 118–29
Amazon's, on "one-click" Internet orders, 125
breadth of, 119
contrast between broad and narrow, 120
dominant, 122
duration of, 119, 123
economic argument for, 128–29
full-term, 123
petty, 123
subservient, 122
- Payoff matrix, 34
- Pays his own, 389
- Penalty clauses
in enforcing contracts, 321–22
reasons for enforcing, 322–24
- Penalty-default rule, 337, 362
- Perfect compensation
defined, 192, 315
difference between perfect disgorgement and, 460
as economic account of incentives, 254
impossible for different kinds of injuries, 319
internalization of harm caused by injurers, 461
- Perfect competition, monopoly and, 363
- Perfect contracts, 292, 298
- Perfect damages, 380
- Perfect disgorgement, 460
difference between perfect compensation and, 460
- Perfect expectation damages, 309, 380

- Perfect information, 385
- Perfect-information judgment, 385, 406
 difference between actual judgment and, 385
- Perfectly competitive industry, equilibrium in a, 28–29
- Perfect opportunity-cost damages, 312
- Perfect reliance damages, 311
- Performance
 efficiency of, 339
 formation defenses and excuses, 341–72
 investment in, 331–41
 specific, 320–21
- Permanent damages, 169
- Perpetual trusts, 158
- Petty patents, 123
- Physical injuries, compensatory damages for, 313
- Plaintiff, 62
- Planned rescue, 348
- Poison pill, 138
- Police officers
 counting, 488*n*
 increases in number of, 530
- Policing strategies, better, 528–29
- Polio vaccines, 271
- Political control, 142
- Pollution, harm caused by, 96–97
- Pooling of information, 394
 relationship between voluntary and involuntary, 393
- Portfolio diversification, 351
- Positive damages, 309
- Positive slope, 17
- Posterior distribution, 437–38
- Precaution
 bilateral, 204–6
 unilateral, 205
- Precedent, 56, 66
- Preclusive disposition, 433
- Predictions, 4
- Preemptive investment, 144
- Preference revelation, problem of, 330*n*
- Preferences, exogeneity of, 19*n*
- Premise liability, 263
- Preponderance of evidence, 63, 439–41
- Prestige, trademarks as signal of, 133
- Pretrial discovery, 383
 costs of, 445
- Price
 contract, 330
 entry-limiting, 127
 market-clearing, 29
 relative, 21*n*
 reservation, 253*n*
- Price elasticity of demand, 25
- Price-taking behavior, 27
- Price theory, 3
- Pricing, asset, 37
- Prime (‘), 201*n*
- Primogeniture, 156*n*
- Principal-agent problem, 138
- Prior probability estimate, 437
- Prisoners’ dilemma, 34, 36, 75
- Prisons, 459
 for profit and factories with fences, 507
 rising population, 530
 social programs versus, 507–8
- Private agreement, obstacle to, 101–2
- Private bads, 106
- Private bargaining, 100
- Private company, 139
- Private deterrence, 479–80
- Private goods, 102–5
 distinction between public goods and, 112–13
- Private (or asymmetric) information, 355, 383, 393
 compulsory disclosure of, 384
 disclosure of, 383
- Private law, 187
 paradox of compensation and, 333–34
 primacy of efficiency over distribution in analyzing, 7–8
 redistributive approach to, 7–8
- Private necessity, bargaining theory and, 160
- Private ownership, 104–5, 112–42
- Private property, 111, 139–42
- Privatization, 147
 of open-access resources, 146–48
 predictions about, 148
- Probabilistic punishments, 512
- Problem of preference revelation, 330*n*
- Procedural aspects of civil dispute, 382
- Procedural unconscionability, 371
- Production functions, 195
- Productive information, 357
- Product liability, 251–53, 266
 reforming, 267–68
 vaccines and, 271
- Profit-maximizing firm, 3, 26–27, 40, 47
- Profits
 growth and, 49–50
 in microeconomic theory, 26
- Progressive taxation, 8
 expenditure and, 106–7
- Promisee, 278
- Promises
 enforcement of, at law, 277–80
 indefinite, 361–62
 remedy for breach of enforceable, 280–81
 vague, 361–62
- Promisor, 278
- Property
 actions of owners of, 105–6
 disputes over, 443
 economic theory of, 81
 Coase Theorem, 81–88
 elements of transaction costs, 88–91
 lubricating or allocating Coase versus Hobbes, 93–94
 normative Coase and Hobbes Theorems, 91–93
 legal concept of, 73–74
 organizations as, 135–38
 origins of, and conservatism, 111
 origins of institution of, 76–81
 private, 111, 139–42
 public, 139–42

- Property (*continued*)
 rights of owners regarding, 156–66
 rights to use someone else's, 159–61
 Property law, 112
 fundamental questions of, 72
 normative principles of, 93
 Property rights, 94–95
 convergence of, 152
 establishment of, 80
 over fugitive property, 143–46
 methods of protecting, 94–102
 remedies for the violation of, 166–85
 unbundling, 162, 164–66
 Property rules, 95
 examples of problems addressed by, 71
 Proposition 8, 503
 Proprietary rights, 132
Pro se, 62*n*
 Prostitution, 458
 Proximity, 194–96
 Public bads, 166–68
 Public choice theory, 105*n*
 Public goods, 40–41, 102–5, 355
 connection between nonappropriability and, 114
 distinction between private goods and, 112–13
 non-excludability for, 114
 theory of, 105
 Public harm for criminal law, 457–58
 Public information, 355
 Public interest, alignment of self-interest and, 406
 Public nuisance, 168
 Public ownership, 104–5, 142
 Public policy, applying model of rational crime to, 467–69
 Public property, 139–42
 Public prosecution for criminal law, 457–58
 Public sector, 139
 Public use, 176–77
 Public utilities, 29
 Punishments
 in criminal law, 459–60
 in deterring crime, 491–501
 disproportionate, 455
 efficient, 475–77, 501–9
 expected, 488
 monetary, 460
 probabilistic, 512
 ranking of, 463
 Punitive damages, 257–61
 distinguishing between compensatory damages and, 95*n*
 payment of, 456
 Punitive multiple, 260
 Purely random error, 220–21
 Purpose, frustration of, 371
 Putative cooperative surplus, 402
 Racial discrimination, death penalty and, 517
 Ranchers' rights, 107
 Random error, purely, 220–21
 Randomness, agency problem and, 428
 Rational choice
 theory, 50–52
 Rational crime, 463–67
 applying model of, to public policy, 467–69
 Rationality, 230–35
 individual, 295
 Rational solution, 76*n*
 Reasonable care, 197
 Reasonable doubt, proving case beyond, 458
 Reasonable man, 198–99
 Reasonableness, damages and, 254
 Reasonable party, 392*n*
 Reasonable person standard, 197, 198–99
 Reasonable reliance, 282*n*
 Reasonable royalty, 125
 Reasonable settlement, relationship between expected judgment and, 401
 Reasonable solution, 76*n*
 Reasonable use, 148
 theory of, 149–50
 Reciprocal inducement, 278
 Recklessness, 456
 Rectangular survey, 162*n*
 Redistributing crime, 479–80
 Redistribution
 by property law, 107–8
 pursuing, 7
 transaction costs of, 8
 Redistributive approach to private law, 7–8
 Redistributive information, 357
 Redistributive means, 106
 Redundant precaution, 210
 Reflexivity, 19
 Registration costs, verification costs versus, 150–51
 Regression analysis, 194*n*
 Regret aversion, 395–96
 Regret jurisdiction, 396
 Regulations, 178–81, 235–36, 331
 Rehabilitation, 501
 Relational contracts, 299–304
 Relative optimism
 as cause of trials, 446
 as cause of wasteful trials, 431
 Relative price, 21*n*
 Reliance, 290–91
 investment in, 331–41
 Reliance damages, 310–11, 314–15, 376
 distinction between expectation damages and, 309*n*
 Remedies
 as incentives, 307–41
 models of, 325–31
 party-designed, 321–24
 relationship between bargains and, 96
 types of, 307
 Remote risks, 343–54
 Renegotiation, theory of, 340
 Rent-a-judge, 419, 441–42
 Repeated games, 36, 299–301
 Repudiation of the repudiation, 340*n*
 Reputation, importance of, in choosing lawyer, 428
 Rescue
 anticipated, 348
 fortuitous, 348
 planned, 348
 Research and development, antitrust law and, 121
 Reservation price, 253*n*
 Respondeat superior, doctrine of, 244

- Restatement of contracts, 282*n*
Restatement (Second) of Contracts, 57
Restatement (Second) of Torts, 57
- Restatements of Contracts, 308
- Restatements of the law, 308
- Restitution, 318–19
- Retribution, economics and, 502
- Retributivism, 455–56, 501
- Rhone-Poulenc Rorer, Inc., 426
- Richmond, 349
- Right, protecting, 461–62
- Riparian owner, 149–50
- Risk
 attitudes toward, 44–46
 aversion, 44–45
 externalizing, 238
 insurance and, 43–49
 neutrality, 45–46
 seeking, 46
- Risk-preferring, 46
- Royalty, 119
 reasonable, 125
- Rubik's Cube, 119
- Rule 68, 409*n*
- Rules
 creation of, 5
 of evidence, 442
 of first possession, 72, 143–44, 146
 of law, 56
 against perpetuities, 157–58
 standards versus, 222
- Runs with the land, 171*n*
- Sabin vaccines (OPV), 271
- Safety information, 360
- Safety regulations, 236
- Salk vaccine (IPV), 271
- “Saturday Night Fever,” 470–74
- Scotch tape, 133
- Search costs, 88
- Second-best efforts, 362
- Second Chance Act (2007), 491
- Securitization, 241
 bonds for, 241*n*
- Segmented trials, 433–34
 comparison of unitary trial and, 434
 unitary trials versus, 433–34
- Selection effect, 446–48
- Selective incapacitation, 493
- Selective litigation, 413
- Self-expression, 111
- Self-interest
 alignment of public interest and, 406
 of lawyers causes, 407
- Self-interested rationality, 76*n*
- Self-risk, omitting, 216–17
- Seller's breach, 309–10
- Sentencing
 indeterminate, 505
 reform, 505–6
- Sequential ordering, 433
- Servicemark, 132*n*
- Servitude on the land, 171*n*
- Settlement bargaining, 399–403
 lack of, 402–3
 no settlement, 402–3
 replicating trials, 399–401
- Settlements
 administrative costs of, 385
 bad news as good for, 391–93
 compulsory disclosure of private information in promoting, 384
 cost savings of, 393–94
 lack of, 402–3
 out of court, 392, 400
 as cooperative solution, 400
 replicating trials, 399–401
- Short run, 27–28
- Short-weighting, 303
- Side payments, 33
- Slope, positive, 17
- Social benefits of imprisonment, 501–4
- Social contract, 78
- Social costs
 of an error, 385–86
 of crime, 489–91
 criminal law and, 474
 of imprisonment, 504–5
 minimizing, 384–86, 397–99
 for accidents, 199–201
 as goal of legal process, 384–86
- Social customs, enforcement of, 216
- Social efficiency, 144
 filing of complaints and, 421, 422
- Socially optimal deterrence, 476
- Social norms, 87
 efficiency and, 415–16
 enacting, 414–16
- Social programs, prisons versus, 507–8
- Social welfare programs, 8
- Socioeconomic theory, 483
- Spain, application of European rule “loser pays all”
 legal fees in, 153
- Specific deterrence, 503
- Specific performance, 307, 320–21
- Spendthrift trust, 157
- Spillovers, 296–97
- Split bar, 428
- Spot contract, 338
- Spot market, 309
- Stable equilibrium, 13
- Standard economic concept of indifference, 253
- Standard-form contracts, 364–66, 372
 buying souls by using, 367
- Standardization, 136
- Standard of proof, 436–41, 441*n*
 for criminal law, 458–59
- Standards, rules versus, 222
- State courts
 institutions of, 59–62
 jurisdiction of, 61
- State of nature, 79
- State prosecutor, relationship between judges and, 459
- State subsidies, 115
- Static efficiency, 116
- Static equilibrium analysis, 118
- Statute of Frauds, 308
- Statute of repose, 269*n*
- Statutes, 58
- Sterling Drug Company, 133
- Street crime, 487
- Strict liability, 197–98, 229, 237–38
 advantage of, 223–24
 with defense of contributory negligence, 210
 incentives for precaution under, 201–4
 insurance and, 238–39
 rule of, 203
- Strict liability crimes, 464

- Subjective expected utility (SEU), 436
- Subjective value, problem of, 313–18
- Subrogation, 237
- Subrogation clauses, 240
- Subservient patent, 122
- Substantive law, application of economics to, 382
- Substitute performance, 309
- Substitute-price formula, 309*n*
- Substitutes, 184
- Successful bargaining, 84–85
- Summary judgment, 63
- Super-rationality, 470
- Supervisory release, 459
- Supply
 - of insurance, 47
 - theory of, 26–28
- Suppressing and interdicting, 520
- Supreme Court of Judicature (Consolidation) Act of 1925, 67*n*
- Supreme Court of the United States, 61
- Tailored rules, tort liability and, 223–25
- Take-it-or-leave-it contracts, 365
- Takings, 174–81, 331
 - contrasting as means of financing government, 175
 - narrow base of, 175–76
- Takings clause of the Fifth Amendment, 175
- Tautology, 280
- Tax-and-transfer system, 8
- Taxes
 - contrasting as means of financing government, 175
 - income, 8
 - progressive, 8
- Temporary damages, 169
- Texas, death penalty in, 510
- Threat value, 76
- “Three strikes and you’re,” in California, 479, 504
- Tied ownership, 143, 147
- Time, breach of contract and, 338–41
- Time-inconsistent preferences, 473*n*
- Tit-for-tat strategy, 36, 300
- Title
 - getting from thief, 151–53
 - recording and transferring, 150–51
- Torrens system, 150*n*
- Tort cases, civil trials for, 449
- Tort disputes, 443
- Tort law, 187–229, 188
 - Coase Theorem and, 189–90
 - defining, 189–98
 - economic essence of, 189–90
 - inadequacy of, 460–63
- Tort liability, 190
 - contractual solutions to crisis over, 272–73
 - economics of, 199, 230
 - activity levels, 211–13
 - administrative costs and tailored rules, 223–25
 - bilateral precaution, 204–6
 - computing damages, 253–61
 - hand rule damages, 253–57
 - punitive, 257–61
 - consumer product injuries, 225–26
 - contributory negligence and comparative negligence, 208–11
 - empirical assessment of U.S. tort liability system, 261–74
 - mass torts, 268–70
 - medical malpractice, 264–66
 - reforming products liability, 267–68
 - errors, 217–20
 - extending basic model, 244
 - comparative negligence, 248–50
 - evidentiary uncertainty, 248–50
 - joint and several liability with and without contribution, 245–47
 - products liability, 251–53
 - vicarious liability, 244–45
 - extending model, 230–44
 - bankruptcy, 240–42
 - insurance, 236–40
 - litigation costs, 242–44
 - rationality, 230–35
 - regulations, 235–36
 - incentives for precaution under negligence rule, 206–8
 - under no liability and strict liability, 201–4
 - minimizing social costs of accidents, 199–201
 - setting legal standards, Hand rule, 213–17
 - vague standards and uncertainty, 220–22
 - traditional theory of, 190–99
 - breach of duty, 196–98
 - cause, 192–96
 - harm, 190–92
 - vague standards and uncertainty and, 220–22
- Torts, 56
 - economic theory of, 455
 - intentional, 188
- Total liability, 251
- Tracing costs, 130
- Trademarks, 113, 132–35
 - economic justification for, 132–33
 - as signal of prestige, 133
- Trade secrets, 113, 115–16
- Traditional theory of tort liability, 190–99
 - breach of duty, 196–98
 - cause, 192–96
 - harm, 190–92
- Tragedy of the anticommons, 140
- Tragedy of the commons, 140
- Transactional
 - incapacity, 342
- Transaction costs, 84–85, 99, 298–99, 339
 - elements of, 88–91
 - factors affecting, 91
 - in obstructing bargaining, 101
 - of redistribution, 8
 - trade-off between information costs and, 93–94
- Transitivity, 19

- Trial courts of general jurisdiction, 59
 Trial de novo, 410
 Trials, 403–5, 403–10
 costs of, 444–46, 450
 expected value of, 389
 50-percent rule and, 446–48
 formality of, and cost of resolving disputes, 384
 giving of proofs in, 390
 independence versus alignment, 405–8
 loser pay all, 408–10
 relative optimism and, 402
 relative optimism as cause of wasteful, 431
 segmented, 433–34
 selection effect and, 446–48
 settlements replicating, 399–401
 unitary, 433–34
 unitary versus segmented, 433–34
 vanishing, 448–51
 Trusts, 158
 dynasty, 158
 generation-skipping, 159
 perpetual, 158
 spendthrift, 157
 Type I errors, 459, 502
 Type II errors, 459, 502

 Ultimatum bargaining game, 51
 Unanimous consent, 142
 Uncertainty, decision making under, 43–49
 Unconscionability, 279, 372
 doctrine of, 298, 368–70
 procedural, 371
 Unfortunate contingency, 326–28
 Uniform Anatomical Gift Act (1968), 163
 Uniform Commercial Code (UCC), 57, 152*n*, 282*n*, 308, 415
Uniform Crime Reports, 486*n*, 527
 Unilateral mistake, 356–59, 371

 Unilateral precaution, 205
 Unintended negligence, 232–33
 Unitary elastic demand, 25*n*
 Unitary equilibrium, 434*n*
 Unitary trials, 433–34
 comparison of segmented trials and, 434
 segmented trials versus, 433–34
 United Nations Convention on the Law of the Sea (UNCLOS), 149
 United States
 crime rates in, 454
 discovery in, 396
 incarceration in, 487
 tort liability system, empirical assessment of, 261–74
 trial length in, 396–97
 U.S. Court of Appeals for the Federal Circuit, 61
 U.S. Court of Claims, 61
 U.S. Court of Customs and Patent Appeals, 61
 United States tort liability system, empirical assessment of, 261–74
 United States trials, judges in, 397
 Unmatured tort claim (UTC), 272
 Unreasonable discounting
 of future, 479*n*
 of uncertainty, 479*n*
 Utilitarianism, 109–10, 456
 Utility
 function, 13, 20–21
 interdependent, 195
 maximization of expected, 44–46

 Vaccines, products liability and, 271
 Vague promises, 361–62
 Vague standards and uncertainty, tort liability and, 220–22
 Valium, 122, 122*n*

 Valuation, asymmetrical, 304
 Values
 counterfactual, 281
 expected monetary, 43–44
 market, 316
 of statistical life, 255
 Variable costs, 27
 Variables
 dependent, 16–17
 independent, 16–17
 Verdict, 63
 Verification costs, registration costs versus, 150–51
 Vicarious liability, 244–45
 Victimization rate, 490
 Victimless crimes, 458
 Victims, organizations as, 259
 Violent crimes, 486*n*
 Visa credit card corporation, 404–5
 Visa's Arbitration Committee, 404–5
 Voluntary associations, 415
 Voluntary exchange of information, 393
 Voluntary pooling of information, 393, 394, 397

 Warning, defect in, 251
 War on drugs, 522
 Warranty of fitness, 297*n*
 Welfare economics, general equilibrium and, 37–43
 Williams Act, 138
 Willingness-to-pay curve, 482–83
 Windsong Corporation, 71
 Workers' compensation, 273–74
 World Trade Organization, 119*n*

 Xeroxing, 133

 Youth crime, deterrence of, 472–73

 Zero transaction costs, 107
 Zoning, 164, 184–85