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, 64n
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, 238n, 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), 118n
AIDS, 491
Alienation, 161
Alignment, independence versus, 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 malpractice actions, 265n
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, 389n
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 market, 412–14
enacting social norms, 414–16
errors as cause of, 451
filing fees for docketing, 451
lawyers fees for, 451
Appeal courts, 60–61
Arbitration, 404
compulsory, 405
increase in, 450–51
Archiving, 130
Article III judges, 59n
Asbestos, 252, 268
litigation concerning, 269–70
Assault, 188
Asset pricing, theory of, 37
Association of Home Appliance Manufacturers, 415
Assumption of the risk, 273n
Asymmetric information, 297–98
agency problem and, 428
Asymmetric valuation, 304
Backward induction, 389n
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, 96n
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, 438n
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, 434n
Big Law, 429
Bilateral activity levels, 213
Bilateral precaution, 204–6
Bill of exchange, 414n
Bonds
Bowie, David, 241n
securitization, 241n
Boundary maintenance, congestion versus, 146–48
Bounty hunters, 480
Bowie, David, bonds, 241n
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, 528n
Burden of proof, 436–41
Burglary, hot, 525
Business-judgment rule, 319n
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, 67n
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, 360n
Central Kentucky Natural Gas Company, 143
Central strand of economic analysis, 455
Chain of title, breaks in, 153–55
Champery, 428n
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, 437n
positive damages in, 309
Civil Litigation Research 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, 268n, 418–19, 425–26, 431
Clear and convincing evidence standard, 63, 263
Closely held corporation, 139
Coase Theorem, 81–88
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, 273n
Common information, 355
Common law traditions, 56–58
codification of criminal law in, 456
duty to disclose and, 360n
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
tort law and, 189–90
The Coase Theorem (Cooter), 87n
Coca-Cola Company, 134, 135
Code Napoléon, 56
Code of Hammurabi, 256n
Coerced contracts, differences between bargains and, 344–45
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, 95n
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, 442n
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, 61n
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, 408n, 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, 365n
imperfections in, 292
indefinite, 362n
low-price-weak-warranty, 365n
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
insufficient 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, 273n, 417
Convention for the Protection of Human Rights and Fundamental Freedoms, Article 6 (2), 459n
Cooperation, 283–87
in creating surplus, 75, 76, 99, 400
Cooperative enterprises, 142
Cooperative surplus, 75, 99, 400
distribution of, 76n
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, 66n
Court of Exchequer of Pleas, 66n
Court of King’s Bench, 66n
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
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
De facto currency, 414
De facto currency, 414
De facto currency, 414
Default judgment, 443n
Default judgment, 443n
Default judgment, 443n
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, 310n
Dire constraints, 343–54
Disclosure
duty to, 360–61
involuntary, 394–95
Discounting, 169n
Discovery, 390n, 393
abuse, 398
cost of, compared to litigation, 397n
differences between United States and Europe, 396–97
error costs and, 397
judges and, 390n
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
Subject Index

Diversity cases, 62
DNA techniques, 511
Doctrine
  of cy pres, 159
  of duress, 346
  of equivalents, 120–21, 122n, 124n
  of foreseeability, 336
Hadley, 337
  of impossibility, 349, 351–52, 353, 372
  last chance, 68
  necessity, 160n, 371
  respondeat superior, 244
  of unconscionability, 298, 368–70
  Dominant patent, 122
  Dominant strategy, 35, 284n
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
document of, 346, 371
Duty
  breach of, 196–98
  to disclose, 360–61, 371
  of loyalty, 319n
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, 78n
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, 14n, 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, 510n
Elastic demand, 25n
Embezzlement, 467n, 474
punishment for, 476–77
Empirical assessment of United States tort liability system, 261–74
En banc, 61
Encroachment, 72
Fees. See also European rule
“loser pays all” legal fees
contingency, 8, 408n, 423,
427–28, 429
filing, for docketing appeals,
451
filing, for lawsuits, 420–22
Fellow servant rule, 273n
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 effi-
ciency 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, 297n
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 be-
tween foreseeable
events and, 337
Formal welfare economics, 108n
Formation defenses, perform-
ance 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, 348n
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, 389n
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, 71n
German Code of Civil Law,
152n
Germany, incarceration in, 487
Gift-promises, 282
Giving of proofs, 383, 390,
390n
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,
271n
Gun control
economics of, 522–26
laws on, 524, 529
Habitual offender, 504
Hadley doctrine, 337
Hand rule, 206n, 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
Hatch-Waxman Act (Drug Price
Competition and
Patent Restoration
Act) (1984), 123, 124
Health maintenance organiza-
tions (HMOs), compul-
sory arbitration
and, 405
High-low agreements, 247
High-price-strong-warranty
contract, 365n
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, 473n
Hypothetical expectation
damages, 335
Identity, mutual mistake about,
354, 371
Illinois Firearm Owner’s
Identification card, 131
524n
Immortal soul clause, 367
Imperfect competition, 32
Imperfect damages, 381
shape of curve, 381
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, 146
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, 25n
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, 165n
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 injuries, 435–36
with and without contribution, 245–47
Joint liability, 435
Joint products, 121
Joint profits, 96
Judges
Article III, 59n
civil law, 57
common law, 57
independence of, 406–7
lay, 407–8
magistrate, 59n
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, 406n
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, 67n
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, 14n, 42–43
King’s Council, 66n
King’s courts, 56
Knockoffs, 133
Labor cases, 450
Laches, 269n
Lanham Act, 132
Lapses, 232
Last chance doctrine, 68
Law. See also Private law
correcting mistakes in making, 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, 66n
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, 432n
number of complaints and, 420–22
reasons for, 386–91
Lawyers
choosing, 428
in civil law systems, 437n
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 economics, 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, 442n
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 economics on, 2
Legal services, supply of, 422–25
Legal standards, setting, 213–17
Liability
incentives for precaution under 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, 122n
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, 397n
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, 389n
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
Low-probability events, estimating, 231
Loyalty, duty of, 319
Lubricating bargaining, 103
Magistrate judges, 59
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
Mediation, compulsory, 384
Medical malpractice, 264–66
Medication errors, 264
Mens rea, 457, 464
Mercantilist tradition, 363
Metes and bounds, 162
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
Molecular, 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, 78n, 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, 208n
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, 78n, 127–28
Necessity, 295, 347–49, 371
Necessity doctrine, 160n, 371
Negative damages, 312
Negligence, 197–98
comparative, 208–11, 248–50, 248n, 384n
contributory, 65, 68, 208–11, 273n, 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, 3–18
Nonperformance, efficiency of, 339
Nonrivalrous consumption, 40
Non-voting shares of stock, 138
Normative Coase Theorem, 91–93, 92, 93, 121, 151n, 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, 432n
Numerus clauses, 165n
Occupational Health and Safety Administration, 267
Offers
to compromise, 409, 409n
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, 348n
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, 311n
Overbooking, 318
Overreaching, 90
Pain and suffering, 257
Paradox of compensation, 181, 331–34, 352n
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, 14n, 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
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, 432n
Numerus clauses, 165n
Occupational Health and Safety Administration, 267
Offers
to compromise, 409, 409n
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, 348n
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, 311n
Overbooking, 318
Overreaching, 90
Pain and suffering, 257
Paradox of compensation, 181, 331–34, 352n
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, 14n, 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, 488n
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, 330n
Preferences, exogeneity of, 19n
Premise liability, 263
Preponderance of evidence, 63, 439–41
Prestige, trademarks as signal of, 133
Pretrial discovery, 383
costs of, 445
Price
contract, 330
total-cost pricing, 29
relative, 21n
reservation, 253n
Price elasticity of demand, 25
Price-taking behavior, 27
Price theory, 3
Pricing, asset, 37
Prime (‘), 201n
Primogeniture, 156n
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, 330n
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
Promise, 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 nonap-
  propriability 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 compen-
  satory damages
  and, 95n
  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, 76n
  reasonable care, 197
  reasonable doubt, proving case
  beyond, 458
  reasonable man, 198–99
  reasonableness, damages and,
  254
  reasonable party, 392n
  reasonable person standard,
  197, 198–99
  reasonable reliance, 282n
  reasonable royalty, 125
  reasonable settlement, relationship
  between expected judgment
  and, 401
  reasonable solution, 76n
  reasonable use, 148
  theory of, 149–50
  reciprocal inducement, 278
  recklessness, 456
  rectangular survey, 162n
  redistributing crime, 479–80
Redistribution
  by property law, 107–8
  pursuing, 7
  transaction costs of, 8
Redistributive approach to pri-
  vate law, 7–8
Redistributive information, 357
Redistributive means, 106
Redundant precaution, 210
Reflexivity, 19
Registration costs, verification
  costs versus, 150–51
Regression analysis, 194n
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, 21n
Relevance, 290–91
  investment in, 331–41
Reliance damages, 310–11,
  314–15, 376
  distinction between expecta-
  tion damages and,
  309n
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,
  340n
Repudiation, 340
  reputation, importance of, in
  choosing lawyer, 428
Rescue
  anticipated, 348
  fortuitous, 348
  planned, 348
Research and development, ant-
 itrust law and, 121
Reservation price, 253n
Respondent superior, doctrine
  of, 244
Restatement of contracts, 282n
*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-prefering, 46
Royalty, 119
reasonable, 125
Rubik’s Cube, 119
Rule 68, 409n
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, 171n
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, 241n
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, 76n
Self-risk, omitting, 216–17
Seller’s breach, 309–10
Sentencing
indeterminate, 505
reform, 505–6
Sequential ordering, 433
Servicemark, 132n
Servitude on the land, 171n
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
Spirulina, 296–97
Split bar, 428
Spot contract, 338
Spot market, 309
Stable equilibrium, 13
Standard economic concept of indifferences, 253
Standard-form contracts, 364–66, 372
buying souls by using, 367
Standardization, 136
Standard of proof, 436–41, 441n
for criminal law, 458–59
Standards, rules versus, 222
State courts
institutions of, 59–62
judisdiction 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, 269n
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
<table>
<thead>
<tr>
<th>Subject Index</th>
</tr>
</thead>
<tbody>
<tr>
<td>Subjective expected utility (SEU), 436</td>
</tr>
<tr>
<td>Subjective value, problem of, 313–18</td>
</tr>
<tr>
<td>Subrogation, 237</td>
</tr>
<tr>
<td>Subrogation clauses, 240</td>
</tr>
<tr>
<td>Subservient patent, 122</td>
</tr>
<tr>
<td>Substantive law, application of economics to, 382</td>
</tr>
<tr>
<td>Substitute performance, 309</td>
</tr>
<tr>
<td>Substitute-price formula, 309n</td>
</tr>
<tr>
<td>Substitutes, 184</td>
</tr>
<tr>
<td>Successful bargaining, 84–85</td>
</tr>
<tr>
<td>Summary judgment, 63</td>
</tr>
<tr>
<td>Super-rationality, 470</td>
</tr>
<tr>
<td>Supervisory release, 459</td>
</tr>
<tr>
<td>Supply of insurance, 47 theory of, 26–28</td>
</tr>
<tr>
<td>Suppressing and interdicting, 520</td>
</tr>
<tr>
<td>Supreme Court of Judicature (Consolidation) Act of 1925, 67n</td>
</tr>
<tr>
<td>Supreme Court of the United States, 61</td>
</tr>
<tr>
<td>Tailored rules, tort liability and, 223–25</td>
</tr>
<tr>
<td>Take-it-or-leave-it contracts, 365</td>
</tr>
<tr>
<td>Takings, 174–81, 331 contrasting as means of financing government, 175 narrow base of, 175–76 Takings clause of the Fifth Amendment, 175</td>
</tr>
<tr>
<td>Tautology, 280</td>
</tr>
<tr>
<td>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</td>
</tr>
<tr>
<td>Time, breach of contract and, 338–41</td>
</tr>
<tr>
<td>Time-inconsistent preferences, 473n</td>
</tr>
<tr>
<td>Tit-for-tat strategy, 36, 300</td>
</tr>
<tr>
<td>Title getting from thief, 151–53 recording and transferring, 150–51 Torrens system, 150n</td>
</tr>
</tbody>
</table>
Subject Index

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 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
  Unconsciousness, 279, 372
  doctrine of, 298, 368–70
  procedural, 371
Unfortunate contingency, 326–28
Uniform Anatomical Gift Act (1968), 163
Uniform Commercial Code (UCC), 57, 152n, 282n, 308, 415
Uniform Crime Reports, 486n, 527
Unilateral mistake, 356–59, 371
  Unilateral precaution, 205
  Unintended negligence, 232–33
  Unitary elastic demand, 25n
  Unitary equilibrium, 434n
  Unitary trials, 433–34
    comparison of segmented trials and, 434
    segmented trials versus, 433–34
  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, 479n
    of uncertainty, 479n
  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, 122n
  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, 486n
  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, 297n
  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, 119n
  Xeroxing, 133
  Youth crime, deterrence of, 472–73
  Zero transaction costs, 107
  Zoning, 164, 184–85