

Chapter 17 #1: How is the optimal price of a crime established if the punishment is in the form of a fine? Explain.

The probability of being caught (P) times the fine (F) must be equal to the harm caused (H). In other words, $P \cdot F = H$. Hence, to determine the optimal fine, we divide the harm by the probability of arrest.

Chapter 17 #2: Show how the answer to question 1 changes when it is costly to punish criminals.

We need to punish the criminal not only for the harm made but also for converting property rights to liability rules (which we know are inferior compared to property rights) and for the cost of detection and punishment.

Chapter 17 #3: Why does society have to worry about marginal deterrence?

This is because we need to deter criminals from committing even more outrageous crimes. If robbery was punished by death (as is murder), then the robber doesn't have any disincentive to kill the victim when he robs him.

From this, we can extrapolate that there must be a difference in penalty between less serious and more serious crimes so that there is a disincentive from committing the latter ones.

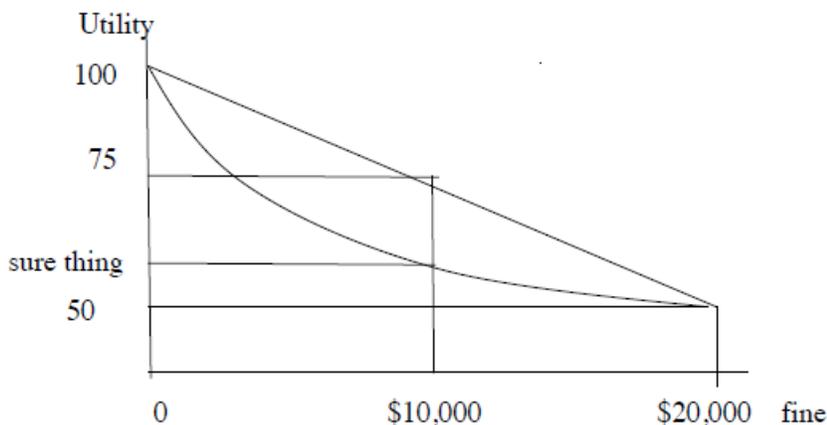
Chapter 17 #4: Why do we have criminal law in addition to tort law?

Having defendants that are judgement proof is the main reason. If the defendant is too poor, then he is not sufficiently deterred by civil liability. Criminal liability (death, imprisonment, fines, etc.) needs to be added as a disincentive.

On other occasions the harm of the crime does not fall on a particular individual but affects society at large. In that case no one would invoke civil liability. In those cases criminal liability is needed.

Chapter 17 #5: Using a well-labeled graph, show that risk-preferring criminals prefer a doubling of the punishment over a doubling of the probability of being punished.

If criminals prefer risk, this is equivalent to saying that their utility for money is convex.



Chapter 17 #6: In 1985 Joe Simpson and Simon Yates were descending a mountain in Peru when Simpson broke his leg. Yates lowered Simpson down on a rope, but Simpson was hanging over a crevasse and Yates was about to be pulled down, himself. So Yates cut the rope. The story is told in the 2003 movie *Touching the Void*. Simpson survived. If he did not, should Yates have been tried for manslaughter?

The top climber is allowed to cut the rope if

$$\begin{aligned} \text{Prob(both live)} * (2 \text{ lives}) &< \text{Prob(top person lives)} * (1 \text{ life}) \\ \rightarrow \text{Prob(both live)} * 2 &< \text{Prob(top person lives)} \end{aligned}$$

Therefore, the top climber is allowed to cut the rope if the probability of surviving alone is greater than two times the probability of both of them surviving. This approach relies on the questionable assumption that two lives are worth twice as much as one life.

Chapter 17 #7: Using economic analysis, what do you think is the correct decision in *Katko v. Briney*?

We can think of this in terms of incentives, especially in the case of marginal deterrence. We want a criminal to pay for his crimes, the cost of monitoring for prevention and some punitive punishments but not much more such that the criminal will have an incentive to commit a more serious crime. Hence, having a gun protecting your property may be too much.

Moreover, we also want to avoid cost of prevention beyond the optimal amount. Therefore, we have to evaluate how much precaution is optimal (perhaps installing a security camera, having dogs around, and/or installing more locks would instead prevent future thefts at much lower costs).

Chapter 18 #1: Why do we have marginal cost liability in addition to ordinary negligence rules?

None of the standard liability rules can provide the right incentives for both equilibrium and out-of-equilibrium behavior. For this reason, we have marginal cost liability rule. The first party in the sequence is liable to the second party for any additional prevention cost that the second party should undertake in response to the first party's suboptimal behavior plus any damage (to either party) that would still occur if the second party responds optimally to the situation created by the first party. The second party is then liable for any damage and own prevention cost. Because the second party is being compensated by the first, if the second party's response to the first party is optimal, then the net liability of the second party for damage and additional prevention will be zero.

Chapter 18 #2: What is the doctrine of last clear chance in accidental law? Provide an example and a justification for its use.

The doctrine of last clear chance makes the last person who could have reasonably avoided an accident liable. If person (Y) is the first party that acted and X is the second, the appropriate rule is to make Y liable for the marginal costs that she imposes on X whether there is an accident or not. This payment would internalize the cost that Y is imposing on others. The next step is to make X liable for the marginal costs that he imposes on Y if he fails to respond properly to the dangerous situation. If Y does not act efficiently, we can charge Y a fine equal to the total marginal cost imposed on others (a Pigovian tax on the input). This will create the same incentives for Y as marginal cost civil liability.

Chapter 18 #3: What is the doctrine of mitigation of damages in contract law? Provide an example and a justification for its use.

In contract law, marginal cost civil liability is the rule. An example would be with the leaky pickle barrels. The reasons for this is first, in contract cases, the second party in the sequence (who can mitigate damages) always knows who created the initial wrong – the breacher of the contract. Secondly, when a breach of contract occurs, cost-effective preventive action by the person who has the last clear chance may be very costly. Therefore, it pays for the plaintiffs in breach – of – contract cases to sue even when there is “no damage” because sufficient marginal costs are involved in preventive action to make it worthwhile for the plaintiff to collect for these costs (which are also known as damages in the legal literature). The final reason is that it is much easier to determine sequence (who was first and who was last) in breach-of-contract than in accident cases. For all these reasons, we would expect the sequence of events to be much more important for breach of contract – where mitigation of damages is the rule.

Chapter 18 #4 What is the doctrine of avoidable consequences in nuisance law? Provide an example and a justification for its use.

*This doctrine states that a party cannot recover damages flowing from consequences which the party could reasonably have avoided . . . The doctrine has a necessary corollary – the person who reasonably attempts to minimize his damages can recover expenses incurred.” An example would be the *United Verde Extension Mining v. Ralston*, 296 p. 262 (1931), the court held that the plaintiff need not plant a hopeless crop that would be swept by sulfur flames and should not recover for the damage to the crop if he did. In this case, the plaintiff had the last clear chance and could have mitigated damages and prevented wasted seed and crop damage by not planting. However, the plaintiff recovered for profits forgone in not planting the crop.*