

BOOK REVIEW

The Economic Analysis of Civil Law. 2nd ed. Hans-Bernd Schäfer and Claus Ott. Cheltenham, UK; Northampton, MA: Edward Elgar Publishing, 2022. Pp. 648. ISBN 978-0-85793-506-9. US\$220.00.

The Schäfer and Ott treatise, *The Economic Analysis of Civil Law* (2nd edition), provides an easily readable discussion of a topic rich with nuance, civil law. While primarily relying on continental Europe's legal structures, the text incorporates broader concepts and does an admirable job of examining the "why" through an economic viewpoint and relying on a range of resources from classic economic theory books to law journals and modern case law for analysis.

The introductory chapter of *The Economic Analysis of Civil Law* provides insight into the authors' goals of examining the impact that civil law structures have on allocative efficiency and how legal structures should be designed to be more efficient. They then introduce concepts that appear in the background of discussions throughout the book, such as normative and methodological individualism. The authors note that modern civil law jurisdictions are well assisted by judge-made law that can clarify or direct the pertinent code.

In the "Fundamentals" section, the discussion delves into the legal and social theory that helps form the basis of civil law. These theories form the foundation for understanding the later portions of legal analysis. These concepts may be intimidating for a civil law novice; however, the conversational tone of this book assists the reader on this journey. The "Fundamentals" section then extends to discuss basic economic concepts to allow an uninformed reader enough understanding to access the economic concepts in the book. It should be noted that this text highly favors "welfare-theoretical" economics as the lens it uses to provide analysis. Lawyers afraid of the mathematics included in this economics introduction can rest easy because math is used but does not dominate the economic discussions.

Part II of *The Economic Analysis of Civil Law* is devoted to analyzing tort law. This discussion begins with an examination of costs, divided into primary, secondary, and tertiary cost distinctions. These distinctions inform the economic concepts that follow, such as risk diversification and the law of diminishing marginal utility of income. There is also a discussion of liability in the tort context and how distinctions in liability can have an economic impact. All analysis leans heavily on concepts based on efficiencies and balancing benefits and costs that are central to economics. Part II continues by discussing the multiple types of damages and their attribution to parties. *The Economic Analysis of Civil Law* includes several original images illustrating liability scaled in economic contexts. To further the discussion and illustrations, the authors use example scenarios to clarify the practicality of the discussion.

Part III focuses on contract law in the civil law context. Over seven chapters, the authors provide an easily digestible discussion of contract topics, such as breach, impossibility, delay, and defect. The text does well by going beyond the basics, addressing trust, opportunism, and monopolies to further develop the topic. This discussion of contract law also includes examples to provide perspective on each point. These examples assist in understanding some of the differences between civil law and traditional US common law. One portion of Part Three that is unusual in this text is the presentation of three BGH (*Bundesgerichtshof*) cases from Germany to help coalesce the text. *The Economic Analysis of Civil Law* is far from a classic "casebook," but the inclusion of cases in this instance feels appropriate and helpful.

The authors continue the discussion in Part IV by examining property rights. This section begins with a chapter on the background of property in the civil law context. This background sets the stage for the following discussions of property rights regarding regulatory taking, insolvency, ineffective or inefficient use, and intellectual property rights. Care is taken to distinguish continental European property law from Anglo-Saxon concepts of property law with economic tests applied to highlight distinctions. Importantly, Schäfer and Ott devote some of their discussion to evolving property issues around innovation and data.

The final part of the book is a short, surface-level discussion of corporate law with civilian influences. This includes a discussion of relational, symbiotic, and exchange contracts and their effects on corporate partners. The authors keep discussions on corporate formation and reasons for those choices short, but they may still prove helpful for those new to the area. Discussions also focus on economic issues such as internal costs, liability, insider trading, and creditors. Perhaps because of these short discussions, footnotes and references to other readings seem more plentiful in this section.

The Economic Analysis of Civil Law is a conversational treatise that provides a solid introduction to several legal fields within the civil law tradition. The premise of this book is ambitious since each of the five parts can easily stand alone as its own legal treatise. This is especially true of Part II, the torts discussion, which encompasses approximately one-third of the book. What this title lacks in depth, it compensates for with its wide range of information. The authors have done a wonderful job of adapting the original German text to this English title, which in no way feels like a translation. *The Economic Analysis of Civil Law* would be a good resource for academic law libraries that support comparative law classes and for other academic libraries that support economic, international, or comparative programs.

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