

Questions to Think about for First Class

Law & Economics
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In class, we will discuss two applications of the concepts you read about for this class: pollution and suits against police officers. Before class, please think about the applications and questions below.

Pollution. Consider the chart below:

Behavior of Factory Owners	Yearly Cost to Factory Owners of Pollution Control Equipment	Yearly Cost to Neighbors of Pollution	Total Cost
Install No Pollution Control Equipment	\$0	\$100,000	\$100,000
Install Moderately Effective Pollution Control Equipment	\$50,000	\$40,000	\$90,000
Install Highly Effective Pollution Control Equipment	\$100,000	\$0	\$100,000

For the purposes of this question you can assume that the factory is profitable, earning \$1,000,000 per year if no pollution control equipment is installed, and that, if pollution control equipment is installed, yearly profits go down by the numbers in the “Yearly Cost to Factory...” column. For the purpose of this question, assume the factory owners live far from the factory and bear none of the costs of the pollution. For the purposes of this question, assume that all of the costs of the pollution are born by the neighbors and none are born by those living farther away.

- 1) What is the efficient behavior of the factory owner? That is, from a societal perspective, what pollution control equipment, if any, should the factory owners install?
- 2) If there are no laws regulating pollution or allowing those affected to sue, what pollution control equipment, if any, will the factory owner install? For the purposes of this question, assume, at least initially, that the factory owners act solely to maximize their profits without regard to public opinion or concern for others or the environment.
- 2) If the legal rule is strict liability, what pollution control equipment, if any, will the factory owner install. Again, for the purposes of this question, assume, at least initially, that the factory owners act solely to maximize their profits without regard to public opinion or concern for others or the environment.

3) If the legal rule is negligence, what pollution control equipment, if any, will the factory owner install. Again, for the purposes of this question, assume, at least initially, that the factory owners act solely to maximize their profits without regard to public opinion or concern for others or the environment.

4) Would your answers to questions 2 and/or 3 change if the factory owners anticipated that the judge or jury would miscalculate damages and set them 50% higher than the actual cost to the neighbors?

5) Would your answer to question 3 change if the factory owners anticipated that the judge or jury would set the standard or threshold for negligence (the behavior of the factory that results in no liability) too high or too low?

6) In the U.S. and most other countries, neighbors cannot sue factory owners for the harm caused by pollution. Instead, the government regulates pollution. If the factory owner fails to comply with the regulations, it pays a fine to the government. If the factory owner complies with the regulations, it pays nothing. Is such a system of regulation more like strict liability or negligence? If the government regulates pollution, what pollution control equipment should it require and what fines should it impose if the factory violates the regulations?

7) An alternative to regulation is a pollution tax. Factories (and others) that pollute pay a tax proportional to the amount of pollution they produce and the harmfulness of the pollution. So, for example, a factory might pay \$10 per ton of sulfur dioxide it emits. If a factory installs efficient pollution control equipment, or even if it installs pollution equipment that prevents even more pollution than efficient, it pays the tax, although, of course, the amount of the tax is lower if the factory produces less pollution. Is a pollution tax more like strict liability or negligence? If the government imposes a pollution tax, how should it determine the level of the tax?

8) What do you think is the best way of controlling pollution – strict liability, negligence, regulation, or a pollution tax? Are your reasons economic or non-economic? Note that, for the purposes of this question, “economic” reasons include (a) that one way of controlling pollution will result in more or less pollution than another, and (b) the cost of pollution control (including the cost of pollution control equipment and the cost of enforcing the law).

9) The analysis above of pollution is very simple. What important complexities does it leave out? How would the analysis change if one took into account those complexities?

Suits for police misconduct. Under current law, police officers have “qualified immunity” from suit. That is, a police officer is not liable to pay damages (money) to someone harmed (or killed) by her conduct, unless the police officer’s actions violate clearly established law. Qualified immunity has been criticized as too protective of police officers because it is too easy for them to show that their actions, although unlawful, were not *clearly* unlawful according to *established* case law and precedents.

1) If qualified immunity were abolished, what should the standard for officer liability be? Strict liability? Negligence? Something else? Are your reasons economic or non-economic?

Note that, for the purposes of this question, “economic” reasons include (a) that one legal standard will result in more or less police violence than another, (b) that one legal standard will result in more or less crime by the general public, and (c) the cost of enforcing the law, including litigation costs.

Note also that in this context, the idea that victims should be compensated for harm is *not* an economic reason (or at least not a good one). If the goal is to compensate victims, lawsuits by victims against police officers are a very bad way to accomplish that goal, because lawsuits are very expensive. On average, in order for the legal system to award money to the victim, the victim will have to pay her lawyer a third of the winnings, and the wrongdoer will have paid her lawyer a third of the money awarded. Thus, if the victim is awarded \$90,000 by the court, she will likely keep only \$60,000 (\$90,000 awarded by the court minus \$30,000 paid to her lawyer), and the wrongdoer will pay \$120,000 in total, \$90,000 to the victim and \$30,000 to her lawyer. So, only half of the total money paid by the wrongdoer (\$60,000 out of \$120,000) goes to the victim. It would be much cheaper for the victim to just buy insurance against police violence or for the government to require police departments to buy insurance for its victims, because insurance administrative costs are much lower than 50%. Would insurance be a better solution than lawsuits?

2) Note that when police officers are sued, the police department that employs them almost always pays a lawyer to represent them and almost always pays the damages (money) a court awards. This is either a matter of police department policy or something negotiated by police unions. Does it matter that damages are paid by the police department rather than the individual police officer?

