

Chapter 1

Introduction

STUDENT: I don't think Jurisprudence would be quite my line.

MEPHISTOPHELES: Well, well, I can't entirely disagree. I know a bit about that discipline.

Statutes and laws, inherited

Like an old sickness, passed on by the dead

Through endless generations, creeping down

*From land to land, from town to town!*¹

In the USA, numerous research approaches have developed over the last few decades which apply economics to the field of law: property rights theory, transaction cost economics, public choice theory, constitutional economics and, not least, economic analysis of law.² These approaches rely on the economic model for their explanation of human behaviour. Today these economic theories of law are collectively known as 'Law and Economics'. Economic analysis of law is a branch of research pioneered by the Chicago School, and principally by Richard A. Posner, dealing mainly with civil law, and to some extent also with criminal law. It is based on the insights of property rights theory and transaction cost economics. Economic analysis of law is an interesting and challenging attempt to employ the concepts and reasoning methods of modern economic theory in order to gain a deeper understanding of legal problems, and to bring greater rationality to legal argumentation.³ In the words of Ronald Coase:

Much, and perhaps most, legal scholarship has been stamp collecting. Law and economics, however, is likely to challenge all that and, in fact, has begun to do so.⁴

Whereas economists are used to thinking in abstract models and tackling problems *deductively*, lawyers generally reason *inductively*: they solve a case by studying the legal records and the relevant judicial casuistics. Of course they also consult the law, which is codified in general abstract terms. Nowadays, however, it is no longer practical to solve legal problems using the law and juridical methods of reasoning

¹ Goethe, *Faust I*, 1969 ff.

² Cf. Richter and Furubotn, pp. 35 ff.

³ Cf. Behrens, p. 1.

⁴ Coase, 'Law and Economics', p. 254.