

INDEX¹

A

Abuse of dominance, 48, 90
Academia, 71, 73, 74, 85, 129
Adjudication, 46
 public *vs.* private, 37
 See also Interpretation, legal;
 Procedural economy
Anti-reductionism, 126–131
Antitrust law, 47–50, 85, 88, 93, 105,
 108, 113, 144, 145
Application of legal norms, *see under*
 Adjudication
Argument
 consequence-based, 26, 28, 30,
 31, 131n4
 economic, 2, 11, 18, 28, 28n3,
 47–49, 52, 58, 65, 105, 114
 evidentiary, 12, 13, 21
 integrative, 12, 16, 21
 interpretive, 12, 21, 22
 policy, 29

 prudential, 26, 29, 34
 psychological, 16
 See also Interpretation, legal;
 Justification of Judicial
 Decisions; Legal reasoning
Argumentative structures, 17
Austrian economics, *see under*
 Economics

B

Backward looking *vs.* forward looking,
 see Ex ante vs. ex post perspective
Balancing, 32, 37,
 52–56, 58
 See also Proportionality test
Beccaria, Cesare, 20
Behavioral economics, *see under*
 Economics
Bentham, Jeremy, 3, 123
Bundle theory of rights, 123–126, 128

¹Note: Page numbers followed by ‘n’ refer to notes.

C

- Calabresi and Melamed on property rules and liability rules, 128, 147
- Case management, 46
- Civil procedure, 56, 57
- CJEU, *see* Court of Justice of the European Union
- Coase, Ronald, 65, 65n4, 124
- Competence, 4, 36, 50, 87, 124
- Competition law, *see* Antitrust law
- Consequence-based arguments, 26, 28, 30–31, 131n4
- Consequences, juridical and behavioural, 29
- Consequentialism as moral theory, 30
- Constitutional political economy, *see under* Economics
- Consumer law, 66, 76, 144, 147
- Consumers, 49, 64–70, 76, 77n18, 140, 141, 144, 145, 147, 148
- Cost-benefit analysis, 28, 57, 58
- Court of Justice of the European Union (CJEU), 48, 49, 52–54, 65–70
- Craswell, Richard, 2, 29

D

- Damages, 26, 49–51, 50n6, 50n7, 57, 57n26, 58, 84, 87–89, 89n6, 94, 147–150
- See also* Tort law
- Daubert*
 - criteria, 102–105, 108–110, 114–116 (*see also* Evidence)
 - Tracker*, 107, 107n8, 108
- Discretion, 4, 18, 18n7, 37, 50, 57

E

- Economic analysis of law, *see under* Law and Economics
- Economic arguments, *see under* Argument
- Economics
 - antitrust (*see* Industrial organization)
 - Austrian, 34
 - behavioral, 3, 65, 66, 69, 77, 77n19, 86n3
 - constitutional political economy, 34
 - neoclassical, 52–54, 128
 - Post-Keynesian economics, 52, 54
 - See also* Forensic economics; Imperialism of economics; Pluralism in economics
- Economics of legal reasoning, 4, 34–37, 141
- See also* Law and Economics
- Education of judges, 59
- Efficiency, 2, 27, 27n2, 27n3, 28, 30, 31, 53–58, 125, 140–142
- efficiency hypothesis of the common law, 140 (*see also* Wealth maximization)
- Empirical methods, 65, 75
- Endogenous theory of growth, 52, 55
- Enforcement, 49, 84–91, 93, 94, 94n13, 95, 95n14, 96, 105, 108, 113n15, 114
- Epistemic authority, 5, 122, 123, 129, 130, 145
- Epistemic difficulties, 46
- Essentialism, legal, 73
- European Commission, 51, 94
- European legal academia, 65, 77
- Evidence, 5, 10, 12–14, 19, 21, 22, 27, 32, 33, 36, 50, 56, 67, 68, 74, 76, 91, 94, 96, 102, 102n1, 103, 106, 109–111, 114–116, 140, 148–150, 152

evidence, law of, 76
See also Daubert, criteria

Evidentiary arguments, *see under*
 Argument

Ex ante vs. ex post perspective, 4

Expertise, 2, 4, 5, 32, 33, 46, 94, 105,
 108–110, 112, 113, 124, 125

Expert testimony, *see* Expert
 witness

Expert witness, 85, 94–96, 102–105,
 107, 108, 110–112, 145
See also Daubert, criteria; Expertise;
 Forensic economics

Externality, 125

External perspective/point of
 view, 3, 4, 11, 22, 37, 48, 55,
 126, 127

F

Fact, 3, 5, 10, 12, 13, 15, 17, 19–22,
 29, 30, 32–34, 47, 49–53,
 52n13, 55–58, 65–68, 72, 75,
 85, 87–91, 91n11, 93–96, 102,
 102n1, 103, 106, 109, 110, 112,
 113, 115, 116, 128, 131, 133,
 140, 150
See also Evidence; Argument,
 evidentiary

Fact-finding, 13, 56, 84

Falsification, 104

Federal Rules of Evidence
 (FRE), US, 102

Forensic economics, 5, 84–96

Formalism, *see* Legal reasoning

Freedom, economic, 52–55

G

Gaps in the law, 12, 16

Gordon, Wendy, 132, 133

H

Heuristics in judicial decision-making, 33

I

Idealism, legal, 72

Identification problem, 114, 115

Imperialism of economics, 129

Industrial organization (IO), 93, 105,
 106, 108, 112, 113, 113n15

In rem character of rights, 128

Institutional design, 2, 35, 37

Instrumentalism, legal, 76

Integrative arguments, *see under*
 Argument

Internal market, 53–55

Internal perspective/point of view on
 law, 34, 126

Interpretation, legal, 10, 15, 16,
 28, 55, 72

Interpretive arguments, *see under*
 Argument

Interpretive directive, 18

J

Judicial behavior, 3, 27

Judicial decision-making, *see under*
 Adjudication

Judicial mind(set), 4

Judicial syllogism, 12, 19–22

Justification of judicial decisions, 21
 double justification, 21

L

Law and Economics, 2, 3, 17, 26, 27,
 28n3, 30, 34, 36, 64, 64n1, 65,
 70–73, 75, 75n17, 122–131, 140

Law application, *see under*
 Adjudication

Law enforcement, *see* Enforcement
 Law-making, 86, 87, 90
 Legal argumentation, *see* Argument
 Legal procedure, economic
 model of, 35
 Legal realism, 5, 71, 122–134
 Legal reasoning, 1–6, 10–22, 26–37,
 47–49, 52, 75,
 122–134, 140–152
 See also Adjudication; Argument;
 Interpretation, legal;
 Justification of judicial decisions
 Legitimacy, 2, 4, 34
 Litigation, incentives in, *see under*
 Economics of legal reasoning

M

Markets, 2, 4, 5, 31, 48, 50, 51,
 53–55, 58, 64–77, 85, 88–91, 95,
 96, 106, 109, 111, 114–116,
 124, 133, 148

N

National Association of Forensic
 Economics (NAFE), 85, 87,
 92, 93, 95
 Neoclassical economics, *see under*
 Economics
 Neurath, Otto, 131–133
 Normative (analysis in economics),
 see Positive *vs.* normative analysis,
 in economics

P

Passing-on defense, 51
 Policy arguments, 29
 Positive *vs.* normative economic
 analysis, 11, 141
 See also Social engineering

Posner, Richard A., 18, 27, 27–28n3,
 30, 35, 36, 53, 71, 88, 129,
 140–142
 Post-Keynesian economics, *see under*
 Economics
 Practical rationality, 5
 Pragmatic adjudication, 27n3, 28n3
 Procedural economy, 56–58
 See also Case management
 Procedural rules, 5, 35, 89, 91,
 94, 96, 111
 Proportionality test, 53, 55, 58
 See also Balancing
 Prudential arguments, *see under*
 Argument
 Psychological arguments, *see under*
 Argument
 Public *vs.* private adjudication, *see*
 under Adjudication
 Purposive reasoning, *see under*
 Argument

R

Reasonable doubts, *see under*
 Standards of proof
 Reductionism, 126–131
 Reliability, *see Daubert*, criteria
 Remedy, 12, 20, 49,
 87–89, 146, 147, 150
 Reverse engineering legal reasoning
 advantages of, 143–146
 competing economic
 hypotheses, 146–148
 fitness check, 148–151
 roots of, 141–143
 Rhetoric, 5, 26

S

Sherman Act, US, 113, 114
 Social engineering, 141–143

Standards of proof, 22
Syllogism, 12, 19–22

T

Teleological reasoning, *see* Legal reasoning
Tort law, 76, 92, 127
Transaction costs, 3, 125, 132, 133, 146, 147, 149–151

U

Unified Science, Encyclopedia of, 132

W

Wealth maximization, 18, 27–34
See also Efficiency
Westerman, Pauline, 16, 28
Wróblewski Jerzy, 17, 22