ESSENTIAL ROLE OF EMPIRICAL ANALYSIS IN DEVELOPING LAW AND ECONOMICS THEORY

Jennifer Arlen\*

This article explores the essential prerequisites for useful law and economics theory and

provides examples of how empirical analysis has prompted improvement in theoretical analysis.

In order to be useful for positive or normative theory, theoretical economic analyses of legal rules need to accurately represent how people do or will respond to various legal rules. In order to do this, economic models must capture the material features of the actual decision-making

environment, including the information and options available to decision-makers. Empirical

analysis of law has played a vital role in helping theoretical analysis achieve this goal. Empirical

analyses has done this by testing the predictions of models; results contrary to predictions often

lead theorists to revise models following a reexamination of the decision-making environment.

Empirical analysis also has prompted useful theoretical revisions by providing evidence bearing

directly on the decision-making environment. This interaction of empirical analysis and theory has tended to produce theoretical models predicated on incomplete information, incomplete

contracting, and decision-making that deviates from rational choice theory.