“Instead of assuming which legal rules create incentives for people to invent, what evidence can we find about how people actually behave under different conditions with different sets of rules?” asks Professor Mark McKenna.
A new research program at NDLS takes a cross-disciplinary look at how law and legal institutions shape, and are shaped by, the market behaviors of individuals and firms. The Notre Dame Research Program on Law and Market Behavior (ND LAMB) studies issues across a number of legal fields, including corporate governance, antitrust and intellectual property, and property and contract law. The program emphasizes the need to inform legal research with empirical, behavioral, and experimental evidence, both within the law and related disciplines.
Since its debut in the summer of 2012, ND LAMB has promoted its mission by bringing prominent legal scholars together with researchers in psychology, economics, and business to share and discuss their research and its policy implications. Conference and workshop subjects have ranged from the empirical evidence on the role of financial institutions that serve as intermediaries in corporate governance and the policy challenges they raise, through the lessons of recent empirical findings in marketing research for intellectual property, to behavioral and experimental studies across the law, and more.

According to the director of the program, NDLS Professor Avishalom Tor, a large gap between assumptions of rational behavior and people’s real-life behavior has highlighted the need for a careful study of market behavior and its implications for legal policies. “A law that would have worked perfectly in a world populated with strictly rational persons might backfire or generate a completely different result when implemented in the real world,” says Tor.

The interdisciplinary study of law and economics has become increasingly popular in the past half-century and is now in the mainstream of elite law schools. Five faculty fellows are joining Tor in this effort at NDLS: K. J. Martijn Cremer, Professor of Finance, Mendoza College of Business; Nicole Stelle Garnett, Professor of Law; Daniel B. Kelly, Associate Professor of Law; Mark McKenna, Professor of Law; and O. Carter Snead, Professor of Law and William P. and Hazel B. White Endowed Director, University of Notre Dame Center for Ethics and Culture.

“In some respects,” says Professor McKenna, “ND LAMB is a response to the classical, ‘rational actor’ models of law and economics. It’s saying that people don’t always, or even often, behave in the way these models predict, and that if we’re going to make legal regulations, we should be more concerned with how people actually behave, rather than regulate according to some stylized model of how we think they should.”

An example can be found in the realm of intellectual property law. Tor points out that the constitutional purpose of IP rights is to provide creators with an incentive to create by granting them exclusive rights in their invention for a limited time. Until recently, however, there hasn’t been any effort to study how these incentives to invent and create really work. How can the business and legal worlds best incentivize inventors and creators and what makes them willing to license or sell their inventions? Studying those questions can help identify the real value—and proper boundaries—of intellectual property rights.

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Tor hopes that a regular schedule of speakers, conferences, and roundtable events—at least a dozen in the current year already on campus and abroad—will expose faculty and students to the research program’s ideas and spur them to study related topics on their own. “In the fields of law and market behavior, the law school did not have much activity for students,” says Tor. “Having conferences that bring leading scholars from law and other fields to Notre Dame is a great opportunity for students to hear what’s really happening in the law and learn about the cutting-edge research and thinking about policy questions that are most relevant today.”

Ultimately, the research done by ND LAMB could play a role in introducing empirical, behavioral, and experimental evidence that can help shape the law across different fields. “What’s particularly valuable about an empirically grounded understanding of human behavior for the law is that we’re going to make more effective laws and institutions,” Tor says.
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— Professor Avishalom Tor