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**IS THERE REALLY AN ECONOMIC ANALYSIS OF LAW IN LEGAL ARGUMENTATION?
THE ITALIAN CASE LAW BETWEEN ECLECTICISM AND CLASSICISM**

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The paper analyses whether and to what extent judges in civil law systems are accustomed to the Law and Economics approach and rely on it during adjudication. The topic is discussed through the example of arguments used by Italian courts, mainly in contract and tort cases. The analysis starts from two premises. First, knowing which economic ideas and concepts enter into judicial discourse is of practical and theoretical importance. Second, scrutiny into the contested relevance of Law and Economics in courts is essential for an in-depth understanding of judicial practice. Accordingly, the investigation focuses on whether and in what sense Law and Economics is relevant in the judicial process. It also reflects on whether the impact of Law and Economics is only apparent. This chapter argues that generally, in law in action, references to efficiency, costs, utility, etc. are not taken from refined Law and Economics models and theories. Rather, they are consequentialist arguments well known in traditional jurisprudence. Furthermore, references to Law and Economics are often superficial and serve to dress up an idiosyncratic ruling made on a purely equitable basis rather than on genuine, economic criteria, models or calculi. As a result, far from being a vehicle of (economic) rationality or of utilitarianism based on universalisability, judicial uses of Law and Economics open the door to equity in the traditional sense of *aequitas* or *epieikeia*.