On November 14-15, Berkeley Law hosted the Fourth Annual Law and Economics Theory conference. Economic theory can help shed light on important legal and policy questions that involve strategic actions by parties with interrelated and sometimes competing objectives. For example, firms often require employees to sign covenants not to compete (CNCs), which limit a worker’s ability to move to a rival firm or start her own. These covenants are common in high tech industries, but they are increasingly found in more surprising places, like the employee contracts of the sandwich chain Jimmy John’s. Should the law place restrictions on the enforceability of these covenants? On one hand, firms may ask for these covenants for a reason: they may protect investments by firms in their workers and can thus enhance productivity. But the costs to workers in lost opportunities to move may exceed the firm’s gains. Abe Wickelgren (University of Texas) modeled this strategic interplay between firms and workers regarding CNCs. He finds that worker liquidity constraints are an important determinant of the decisions of workers and firms to agree to CNCs. But he also finds that law may add value by limiting the enforceability of CNCs when these liquidity constraints loom particularly large.

A recurring theme in this year’s conference was the interaction between formal sanctions that arise within the legal system and informal sanctions that can occur outside the legal system. As an example, Andrew Daughety and Jennifer Reinganum (Vanderbilt University) modeled the strategic interactions between prosecutors and defendants when both players face informal sanctions imposed by rational (external) third parties. A prosecutor’s reputation may depend on her ability to secure convictions for guilty defendants and avoid punishing innocent ones; a defendant’s ability to gain future employment or housing can depend on his criminal record. Daughety and Reinganum find that these informal sanctions can have a deleterious effect on plea bargaining. Truly innocent defendants are the ones most likely to reject a given plea offer and go to trial; plea bargains can thus reveal the guilt of a defendant to the marketplace and lead to severe informal sanctions. Anticipating these informal sanctions on defendants as well as on themselves, prosecutors must discount plea offers to secure acceptance; discounting that is too severe may result in a prosecutor choosing to force trial rather than make a deal. Prosecutors’ own informal sanctions also play a role: a fear of being perceived as “soft on crime” increases a prosecutor’s incentive to secure acceptance of plea bargains, while a negative reputation for sanctioning innocents increases the incentive of prosecutors to make tougher plea offers.

A full list of the authors and papers presented at the conference can be found [here](#).