



ECONOMICS 402
Spring 2019
HAL 215
TR: 1:00-2:15PM

ECON 402: Law and Economics

“It is not because men have enacted law that personality, freedom, and property exist. On the contrary, it is because personality, freedom, and property are already in existence that men enact law.”

~ Frederic Bastiat

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OFFICE HOURS: MWF: 8:50-10:50am

TR: 2:30-4:30pm

Or by appointment

This syllabus is a contract between me and you. I will work hard to uphold the guidelines outlined here and expect you to do the same. That said, I reserve the right to make changes if necessary.

REQUIRED TEXTS

Cooter, Robert and Thomas Ulen. 2011. *Law and Economics*. 6th edition. Pearson. Note: The University of California Berkeley Law School makes this text available for free online here: <https://scholarship.law.berkeley.edu/books/2/>

Selected readings.

Note: The online [Encyclopedia of Law and Economics](#) is a comprehensive, free resource in law and economics. It is a treasure trove of information related to the subject material of this course.

PREREQUISITES

ECON 101 or ECON 120. Knowledge of “Principles” level economics will be assumed.

COURSE DESCRIPTION

What is now referred to as “law and economics” has its roots in Ronald Coase’s seminal 1960 paper “The Problem of Social Cost.” The 1970’s and 1980’s saw the development of a full-orbed law and economics: economic analysis of law’s traditional categories (property, tort, contract, criminal), all inspired by Coase’s paper. This theory of law and economics is now taught in virtually all law schools. Accordingly, we will devote significant time to the two central questions of “law and economics.” First, what is the effect of the law on human behavior? Second, what does economics tell us about the

structure of the law? This course will follow the outline of traditional courses in law and economics but will also devote time to the critiques that have been leveled against L&E by scholars, particularly by those in the Austrian tradition.

The field of law and economics investigates questions that many tend to take for granted. Here are a few examples. Why is my entitlement to my car protected with a property rule in certain contexts (car theft), while it's protected with a liability rule in other contexts (car accidents)? Do you own the space above your house or should Amazon be able to fly their drones over it? Do you own the earth underneath your house or should I be able to mine/frack/drill it? Should there be a different rule for property that can move (i.e. fish and bison)? Can it ever be "good" to break a contract? Who should be liable for an exploding can of Coke? Does liability law always create "perverse" incentives for someone? Why not collapse criminal law into tort law?

"Law and economics" also tackles the "big" questions. Here are a few examples: What is "law"? Is there a difference between "law" and "legislation"? If state-backed law is relatively recent, how did humans settle disputes prior to this development? Do "common law" or "civil law" countries experience greater economic growth? Why has violent crime been falling for decades in the US?

Lastly, "Law and economics" offers analysis of highly controversial, hot-button issues. Here are a few examples: Does the death penalty deter violent crime? Why is imprisonment so prevalent when less costly means of punishment are available? Does gun ownership increase or decrease crime? Should all property be "alienable"? (i.e. should you be able to sell your kidney or your vote in a national election?)

LEARNING OUTCOMES:

This course is intended to equip students to:

1. Understand the major branches of the Common Law (property, tort, contract, criminal) from an economic perspective. This will be assessed by the midterm exam, pop quizzes, final exam, a final paper and accompanying presentation. [2, 3, 6, 9]
2. Explain the strengths and weaknesses of the traditional approach to law and economics. This will be assessed by the midterm exam and final exam. This will be assessed by the midterm exam, pop quizzes, final exam, a final paper and accompanying presentation. [1, 2, 3, 7]
3. Describe the incentives provided by law. This will be assessed by the midterm exam, pop quizzes, final exam, a final paper and accompanying presentation. [2, 3, 4, 6]
4. Provide an economic rationale for or critique of the law. [2, 3, 4, 5, 8, 9]
5. Understand disparate legal systems different from our own and their economic rationales. This will be assessed by the midterm exam, pop quizzes, final exam, a final paper and accompanying presentation. [1, 2, 3, 4, 6]

TENTATIVE SCHEDULE OF TOPICS, ASSIGNMENTS, AND EXAMS

<u>DATE</u>	<u>TOPIC</u>	<u>READING</u>
Jan 22	Introduction to Law and Economics	L&E: Ch. 1 Rubin: "Law and Economics" Rizzo: "Law and Economics" in "Austrian Economics: Recent Work" (pp. 10-11) (optional)
Jan 24	The Economic Approach	Shapiro: "Scarcity: The Basic Economic Problem" in <i>Foundations of the Market Price System</i> (pp. 9-16) Anderson and Tollison: "Life in the Gulag: A Property Rights Perspective"
Jan 29	Legal Institutions	L&E: Ch. 2 (pp. 12-14; 42-43) L&E: Ch. 3 (pp. 55-58; 62-69) Lawson: "Efficiency and Individualism" (pp. 75-83; 88-96)
Jan 31	Legal Institutions	Leoni: <i>Freedom and the Law</i> (pp. 7-12) Stringham and Zwyicki: "Austrian Law and Economics and Efficiency in the Common Law" (on mygcc)
Feb 5	Property Law	L&E: Ch. 4 (pp. 70-81; 135-142) Demsetz: "Toward a Theory of Property Rights" (optional)
Feb 7	Property Law	L&E: Ch. 4 (pp. 81-94) Coase: <i>The Problem of Social Cost</i> (optional) Looking for Results: An Interview with Ronald Coase (optional)
Feb 12	Property Law	L&E: Ch. 5 (pp. 94-102)
Feb 14	Property Law	L&E: Ch. 5 (pp. 143-166)
Feb 19	Property Law	Lewin: "Pollution Externalities: Social Cost and Strict Liability"
Feb 21	Tort Law	L&E: Ch. 6 (pp. 187-199)

Feb 26	Tort Law	L&E: Ch. 6 (pp. 199-211)
Feb 28	Tort Law	L&E: Ch. 7 (pp. 211-227; 253-257)
Mar 5	SPRING BREAK	
Mar 7	SPRING BREAK	
Mar 12	Tort Law	L&E: Ch. 7 (pp. 230-253; 257-274)
Mar 14	MIDTERM	Study
Mar 19	Contract Law	L&E: Ch. 8 (pp. 276-291)
Mar 21	Contract Law	L&E: Ch. 8 (pp. 291-305)
Mar 26	Contract Law	L&E: Ch. 9 (pp. 307-341)
Mar 28	Contract Law	L&E: Ch. 9 (pp. 341-370)
April 2	Criminal Law	L&E: Ch. 12 (pp. 454-477)
April 4	Criminal Law	Levitt: "Understanding Why Crime Fell in the 1990s: Four Factors that Explain the Decline and Six that Do Not"
April 9	Criminal Law	L&E: Ch. 13 (pp. 501-517; 522-526)
April 11	Criminal Law	L&E: Ch. 13 (pp. 491-497; 501-517) Friedman: "The Crime/Tort Puzzle" from <i>Law's Order</i> (pp. 281-296) Rothbard: "Collapsing Crime into Tort" from "Law, Property Rights, and Air Pollution"
April 16	Criminal Law	L&E: Ch. 13 (pp. 518-522) Leeson and Rodgers: "Organizing Crime"
April 18	EASTER BREAK	
April 23	Family Law	Brinig: "Rings and Promises" Landsburg: "The Marriage Contract"
April 25	Private Law	Leeson: "Gypsy Law" Friedman: "Private Creation and Enforcement of Law: A Historical Case" Leeson and Coyne: "Sassywood" (optional)
April 30	Order without Law	Ellickson: "The Aim of Order without Law" Coyne and Leeson: "Conflict-Inhibiting Norms"

May 2	PRESENTATIONS	
May 7	PRESENTATIONS	
May 9	STUDY DAY	
May 11	FINAL EXAM—7-9 PM	Study

This is a tentative schedule. If it proves too ambitious, I will attempt to say less about each topic, rather than cutting topics entirely.

COURSE REQUIREMENTS, EVALUATION, GRADING

Final grades are based on one (1) midterm exam, one (1) paper, one (1) presentation, five (5) pop quizzes, and one (1) comprehensive final exam.

Economists emphasize that the “rules of the game” shape outcomes. One of the rules in this class is that there will be 5 pop quizzes administered at the beginning of class on that day’s assigned reading. If you have an excused absence on a quiz day, the weight of that quiz will be added to the next quiz. **Unexcused absences on quiz days will earn a zero on the quiz.**

Whether you enter the workforce or continue your education after graduation, collaboration with others is likely to play an increasingly significant role in your success. As a result, students will be co-authoring papers in groups of two in this class. These groups will then present their paper in class at the end of the semester. I will provide guidelines about both the paper and the presentation in class (additionally, general paper-writing tips are provided below and grading rubrics are available on the course myGCC page).

A representative from each group is required to meet with me by the date listed in the syllabus to discuss the group’s paper and presentation topic. When we meet, you should be prepared to offer me a thesis statement. Simply stop by during my office hours. A hard-copy, stapled version of the final paper is due on the date you make your presentation (There will be a sign-up sheet in class).

The ability to meet deadlines is a skill that is required in virtually every potential opportunity after you graduate. **As a result, (unexcused) late papers will receive a grade of zero.**

The final grade is calculated as follows:

- (1) Midterm exam: 30%
- (1) Paper + Presentation: 25% (Paper: 15%; Presentation: 10%)
- (1) Comprehensive final: 35%
- (5) Pop quizzes: 10% (2% each)

Grading Scale:

A: 93-100	A-: 90-92.9	B+: 87-89.9	B: 83-86.9	B-: 80-82.9	C+: 77-79.9
C: 73-76.9	C-: 70-72.9	D+: 67-69.9	D: 63-66.9	D-: 60-62.9	F: <60

There will be no make-up exams. If a you must miss an exam, please discuss it with me prior to the exam. In the event of an emergency, you should email me as soon as possible. If you miss an exam and I have not accepted your excuse, a grade of “0” will be given. If the absence is excused, the weight of that exam will be added to the final exam.

The final exam must be taken at the scheduled time. One exception: students who have three or more finals scheduled for the same day may discuss with me an alternative time to take the final.

There will be no make-up assignments. All assignments must be hard-copy and stapled; they are due at the beginning of class.

IN-CLASS EXPECTATIONS

The use of phones and laptops is prohibited in class. I did not make this decision lightly. Many elite institutions, including law schools, have chosen to ban electronics from the classroom on the same grounds that I do so: studies have repeatedly demonstrated that laptop usage exerts a statistically significant, negative effect on classroom outcomes. For example, a recent study of Principles of Economics classes at West Point found that when laptops were banned, students scored, on average, .18 standard deviations higher than their peers in laptop-using classrooms.¹ Several studies also demonstrate that taking notes by hand is, on average, superior for learning and retention than is taking notes by electronic device.² However, the strongest argument for a laptop ban comes from recent studies indicating that laptop usage harms the performance of non-laptop-using students in a laptop-using classroom.³ When someone’s activity imposes costs on someone else, economists call it a “negative externality.” My policy of banning electronics is an attempt to mitigate negative externalities in the classroom.

Consistent with the College’s goal of fostering both a collegial academic environment and a community founded on the Christian ethic, all members of this class will treat each other respectfully, even when disagreeing with a viewpoint expressed by a classmate or the professor. *Ad hominem*, derogatory, or demeaning comments directed at individuals in or outside of our classroom do nothing to facilitate our pursuit of truth, undermine the nature of our Christian community, and will not be tolerated.

LAW AND ECONOMICS PAPER GUIDELINES

Students will complete an 8-10 page, co-authored paper analyzing a topic in Law and Economics. The best papers will contain cogent analysis free of grammatical problems and conveyed in a style appropriate to scholarly (rather than casual) discourse. Papers should be double-spaced, with one-inch margins and 12-point Times New Roman font. You may include a title page, but do not include it in your page count. **Your citations should adhere to the Chicago Style Author-Date format.** You may find examples here: <https://owl.english.purdue.edu/owl/>

¹ See here: <http://educationnext.org/should-professors-ban-laptops-classroom-computer-use-affects-student-learning-study/>.

² See here: <https://www.scientificamerican.com/article/a-learning-secret-don-t-take-notes-with-a-laptop/> or here: <https://sites.udel.edu/victorp/files/2010/11/Psychological-Science-2014-Mueller-0956797614524581-1u0h0yu.pdf>.

³ See here: <http://www.sciencedirect.com/science/article/pii/S0360131512002254?via%3Dihub>.

Below I list a wide-range of broad, possible paper topics with associated links to spark your creativity, but you are also free to select a relevant topic of your own. You are not limited to topics which we discuss in class and in fact are encouraged to explore other topics that pique your interest.

1. Is there a distinctly Austrian approach to [law and economics](#)?
2. Is there an Austrian theory of [property rights emergence](#)?
3. Is Tullock correct that civil law is economically superior to [common law](#)?
4. How should Austrians think about the [Coase Theorem](#)?
5. How does something come to be [owned](#)?
6. How is [“law” superior to “legislation”](#)?
7. What is the rationale for legal systems very [different from our own](#)?
8. Can the state improve welfare by converting common property to [private property](#)?
9. Are there other examples of destroying the gross value of property to protect its [net value](#)?
10. When do parties opt for alternative means of [contract enforcement](#)?
11. What is the function of [“noncompete agreements”](#)?
12. Do “contracts of adhesion” facilitate monopoly or [exchange](#)?
13. Is efficiency enhanced when the state contracts with [private parties](#)?
14. What are the advantages of the shareholder model over [stakeholder approaches](#)?
15. What principles should govern [tort reform](#)?
16. What are the benefits of a [competitive court system](#)?
17. What is the function of [resale price maintenance](#)?
18. Do patents facilitate or hinder [innovation](#)?
19. What explains why the US continues to enjoy [falling crime rates](#)?
20. Does gun control [cause crime](#)?
21. Does the death penalty [deter](#)?
22. Did a change to no-fault divorce lead to more [divorces](#)?
23. Are there unintended consequences of [digital privacy law](#)?
24. When does private law outperform norms and when is the [reverse true](#)?
25. Does judicial independence [safeguard freedom](#)?

All papers should possess the following structure: 1) Introduction concluding with a precise thesis; 2) Points of argumentation supporting the thesis; 3) Conclusion stating the implications of your argument. The opening pages of your paper should contain a strong, unambiguous thesis that clearly states the argument you are trying to advance. **The rest of your paper should be written as if you were trying to convince an opponent who currently believes contrary to your thesis.**

A thesis is a proposition that you defend by way of argumentation. Thus, statements like “This paper is about the Coase Theorem” are not thesis statements. A thesis is something like “Judges should not adopt a normative version of the Coase Theorem due to the knowledge problem and value subjectivity.” Excise every thought that does not contribute to your thesis. Unfocused thoughts do not simply fail to help you make your case; they positively detract from it.

Good writing is almost always difficult to achieve. It takes a lot of practice. As economist D. McCloskey states: “Amateur writers suppose that writing is a character trait instead of a skill.”⁴ Because good writing is a skill, you should re-read (and re-write) your paper. Read it aloud. Ask a roommate to critique your prose and argumentation. Though the process is painful, good writing is paramount to thinking well. Writing down our thoughts enables us to spot errors of reasoning, sloppy prose, gaps in the argument, *non-sequiturs*, and other intellectual sins. As a former professor of mine likes to say: “Thinking without writing is daydreaming.”

In my opinion, the best economics papers *begin* with a question. They *end* with an answer to that question *and* with implications that stem from the analysis. Regardless of which approach you choose, your paper should include a brief literature review. What have others said on this topic or related topics? How does your paper fit in this broader conversation and advance scholarly discourse?

COLLEGE REGULATIONS

This course complies with the Attendance Expectations and Academic Integrity policies of the College as described in the Grove City College Bulletin. Attendance at all classes for which a student is registered is essential to the satisfactory completion of the course. If an absence is incurred for any reason, it is the obligation of the student to ascertain from the instructor what is to be done to maintain his/her standing in the course.

A student may have unexcused absences which total less than or equal to the number of times the class meets per week. In other words, classes meeting four times per week allow four unexcused absences; three times per week allow three unexcused absences, etc. Absences are excused for authorized GCC activities, loss of immediate family member, and Zerbe-certified illness or injury. Please consult the College Bulletin (pgs. 53-54) for more details on college attendance policy.

Academic Integrity: The GCC community maintains strict standards for academic integrity and honesty. By signing their application form, all GCC students have pledged themselves to academic integrity. Please consult the College Bulletin (pgs. 55-57) for what constitutes academic dishonesty and plagiarism.

In doing papers or assignments outside of the classroom, taking exams and quizzes, and preparing for exams and quizzes, students should do their own work and not cooperate with, aid, or encourage other students to violate this policy. Consult the College Bulletin for more details on what constitutes a violation of college policy.

In addition, by vote of the GCC faculty, a student who violates, or who assists another to violate, the Honesty in Learning Policy shall be penalized with a minimum of a failing grade for the specific work for which the dishonesty was committed. More severe penalties may be imposed by faculty including failure in the course. For the processes through which incidents are handled consult the College Bulletin.

⁴ From Deirdre N. McCloskey’s (2000) “Economic Writing,” (Second edition).

Accessibility & Accommodations: If you anticipate physical or academic barriers based on a disability, please let me know immediately so that we may discuss options. You may also contact the disability services office to establish accommodations. The Disability Services Coordinator may be reached at (724)-264-4673 or disabilityservices@gcc.edu.