

**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:** M/W/F: 8-10am, T/TR: 11:30am-12:30pm. NOTE: Due to Covid-19, all office hours will be held remotely. Please send me an email to schedule a virtual visit.

This syllabus is a contract between us. Both parties should work hard to uphold the guidelines outlined here. I reserve the right to make changes if necessary.

**REQUIRED TEXTS**

Cooter, Robert and Thomas Ulen. 2011. *Law and Economics*. 6<sup>th</sup> edition. Pearson. Available online for free [here](#).

Selected readings.

**RESOURCES**

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.

The best (and most entertaining!) Neoclassical approach to “law and economics” is David Friedman’s *Law’s Order: What Economics has to with Law and Why it Matters*. Available for free [online](#).

Friedman’s *Legal Systems Very Different from Ours* may get your creative, paper-writing juices flowing. Draft available for free [online](#).

**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. The perceptive observer will note that these categories of law have to do with the definition of property, the transfer of property, and the protection of property.

This theory of law and economics is now taught in many 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 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 the 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) as opposed to property that cannot (i.e. land)? Are some contracts “self-enforcing”? Who should be liable for an exploding can of Coke? Why not collapse criminal law into tort law?

The discipline of “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 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**

<b><u>DATE</u></b>	<b><u>TOPIC</u></b>	<b><u>READING</u></b>
Jan 27	Introduction to Law and Economics	<p>C&amp;U: Ch. 1</p> <p><a href="#">Rubin: "Law and Economics"</a></p> <p><a href="#">Friedman: "Law and Economics"</a></p> <p><a href="#">Shapiro: "Scarcity: The Basic Economic Problem" in <i>Foundations of the Market Price System</i> (pp. 9-16)</a></p> <p><a href="#">Anderson and Tollison: "Life in the Gulag: A Property Rights Perspective"</a></p> <p><a href="#">Padilla: "Review of <i>Research Handbook on Austrian Law and Economics</i>" (optional)</a></p>
Feb 3	Legal Institutions	<p>C&amp;U: Ch. 2 (pp. 12-14; 42-43)</p> <p>C&amp;U: Ch. 3 (pp. 55-58; 62-69)</p> <p><a href="#">Lawson: "Efficiency and Individualism" (pp. 75-83; 88-96)</a></p> <p>Stringham and Zwyicki: "Austrian Law and Economics and Efficiency in the Common Law" (on mygcc)</p> <p><a href="#">Leoni: <i>Freedom and the Law</i> (pp. 7-12, optional)</a></p> <p><a href="#">LaPorta et al.: "Law and Finance" (optional—now, a classic)</a></p> <p><a href="#">Rizzo: "The Mirage of Efficiency" (optional)</a></p>

		<a href="#">Benson: “The Spontaneous Evolution of Commercial Law” (optional)</a>
Feb 10	Property Law	C&U: Ch. 4 (pp. 70-81; 135-142)  C&U: Ch. 4 (pp. 81-94)  <a href="#">Demsetz: “Toward a Theory of Property Rights” (optional)</a>  <a href="#">Coase: The Problem of Social Cost (optional)</a>  <a href="#">Looking for Results: An Interview with Ronald Coase (optional)</a>  <a href="#">Medema: “The Coase Theorem at Sixty” (optional—highly informative)</a>
Feb 17	Property Law  <b>PAPER + PRESENTATION TOPIC APPROVAL</b>	C&U: Ch. 4 (pp. 94-102)  C&U: Ch. 5 (pp. 143-166)  <a href="#">Lewin: “Pollution Externalities: Social Cost and Strict Liability”</a>
Feb 24	Tort Law	C&U: Ch. 6 (pp. 187-211)
Mar 3	Tort Law	C&U: Ch. 7 (pp. 211-227; 253-257; 230-253; 257-274 )  <a href="#">Rizzo: Law Amid Flux: “The Economics of Negligence and Strict Liability in Tort” (optional)</a>
Mar 10	<b>MIDTERM</b>  Researching, Writing, and Presenting Economic Research	<a href="#">Cochrane: “Writing Tips”</a>  <a href="#">Savage and Yeh: “Novelist Cormac McCarthy’s Tips on How to Write a Great Science Paper”</a>  <a href="#">Herrendorf: “How to Make Academic Presentations”</a>
Mar 17	Contract Law  <b>Presentations</b>	C&U: Ch. 8 (pp. 276-305)
Mar 24	Contract Law  <b>Presentations</b>	C&U: Ch. 8 (pp. 291-305)  C&U: Ch. 9 (pp. 307-341)

		<a href="#">Klein: “Transaction Cost Determinants of ‘Unfair’ Contractual Agreements”</a>
Mar 31	<b>EASTER BREAK</b>	
Apr 7	Criminal Law  <b>Presentations</b>	C&U: Ch. 12 (pp. 454-477)  <a href="#">Levitt: “Understanding Why Crime Fell in the 1990s: Four Factors that Explain the Decline and Six that Do Not”</a>
Apr 14	Criminal Law  <b>Presentations</b>	C&U: Ch. 13 (pp. 501-517; 522-526)  C&U: Ch. 13 (pp. 491-497) <a href="#">Friedman: “The Crime/Tort Puzzle” (pp. 281-296)</a>  <a href="#">Rothbard: “Collapsing Crime into Tort” from “Law, Property Rights, and Air Pollution”</a>
Apr 21	Criminal Law  Family Law  <b>Presentations</b>	C&U: Ch. 13 (pp. 518-522)  <a href="#">Leeson and Rodgers: “Organizing Crime”</a>  <a href="#">Brinig: “Rings and Promises”</a>  <a href="#">Landsburg: “The Marriage Contract”</a>
Apr 28	Private Law    Order without Law  <b>Presentations</b>	<a href="#">Leeson: “Gypsy Law”</a>  <a href="#">Friedman: “Making Sense of English Law Enforcement in the 18<sup>th</sup> Century” (exclude appendices, optional)</a>  <a href="#">Leeson and Coyne: “Sassywood” (optional)</a>  <a href="#">Ellickson: “The Aim of Order without Law”</a>  <a href="#">Coyne and Leeson: “Conflict-Inhibiting Norms”</a>
May 5	<b>FINAL EXAM— 6:30-8:30 PM</b>	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:

<b>A:</b> 93-100	<b>A-:</b> 90-92.9	<b>B+:</b> 87-89.9	<b>B:</b> 83-86.9	<b>B-:</b> 80-82.9	<b>C+:</b> 77-79.9
<b>C:</b> 73-76.9	<b>C-:</b> 70-72.9	<b>D+:</b> 67-69.9	<b>D:</b> 63-66.9	<b>D-:</b> 60-62.9	<b>F:</b> <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.<sup>1</sup> Several studies also demonstrate that taking notes by hand is, on average, superior for learning and retention than is taking notes by electronic device.<sup>2</sup> 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.<sup>3</sup> 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/>

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. What is the economic rationale for Amish, gypsy, Somali or Islamic [legal systems](#)?

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

<sup>2</sup> 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>.

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

3. Is there a coherent theory of [property rights emergence](#)?
4. Is Tullock correct that civil law is economically superior to [common law](#)?
5. What assumptions are required for the [Coase Theorem](#) to hold?
6. Can false beliefs substitute for a formal [legal system](#)?
7. Can you homestead the ocean with a can of [tomato soup](#)?
8. Is [“law” superior to “legislation”](#)?
9. Should you be able to sell your vote in a [national election](#)?
10. Can the state always improve welfare by converting common property to [private property](#)?
11. How do the Amish enforce [their laws](#)?
12. Is government necessary for [contractual enforcement](#)?
13. What makes contracts [self-enforcing](#)?
14. What is the function of [“noncompete agreements”](#)?
15. Is “risk-sharing” or “transaction costs” a better explanation for [contractual form](#)?
16. What are the advantages of the shareholder model over [stakeholder approaches](#)?
17. What principles should govern [tort reform](#)?
18. Why “strict liability” for property damages, but not [product damages](#)?
19. What are the benefits of a [competitive court system](#)?
20. What is the function of [resale price maintenance](#)?
21. Do patents facilitate or hinder [innovation](#)?
22. Why does [organizational law](#) matter?
23. What explains why the United States continues to enjoy [falling crime rates](#)?
24. Why did Caribbean pirates organize like [Zappos](#), while the Mafia [did not](#)?
25. Does gun control [cause crime](#)?
26. Does the death penalty [deter crime](#)?
27. Did implementing no-fault divorce legislation lead to more [divorces](#)?
28. Are there unintended consequences of [digital privacy law](#)?
29. When does private law outperform norms and when is the [reverse true](#)?
30. 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.”<sup>4</sup>

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

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:**

#### **Preamble**

Grove City College is deeply invested in upholding academic integrity and honesty. Three of the college’s five core values, faithfulness, excellence, and community, directly relate to academic integrity because any violation of academic integrity is a form of theft and deceit that affects the one stolen from, as well as the community of students and faculty at the college. In addition, cheating is a violation of three of the Ten Commandments: the prohibitions against stealing, lying, and coveting. However, as the Ten Commandments and the totality of Scripture demonstrate to us, we are fallen creatures who at times do what we ought not do.

Accordingly, the college has created a policy both to define what cheating is and to describe our process for dealing with allegations of cheating in order to discourage cheating and provide an opportunity for meaningful repentance and restoration when students do cheat.

#### **Pledge**

As a student of Grove City College, I pledge to do my work faithfully with honesty in accordance with my calling as a student working for Christ’s glory.

Cheating and Plagiarism may be present in many areas, including (but not limited to) the following:

1. Doing Papers, Outside Work. Work done out of class, which a student submits as his/her own work to a professor, should be his/her own and should not contain that which has

been obtained from another, other than properly credited references, sources, and citations.

2. Taking Exams, Tests, Quizzes. Work done on a test, exam, or quiz, which a student submits to a professor, should be his/her own and should not contain that which has been knowingly obtained from another. By default, no resources are permitted unless explicitly allowed by the instructor.

3. Preparing for Exams. A student should not seek to gain an advantage on an exam he/she is about to take by obtaining advanced access to particular questions or advance copies of a professor's exam, or by giving access to other students. This includes access to exams from prior semesters.

4. Group Work. In courses where group work or teamwork is allowed, the members of the group may collaborate and share resources among themselves, but not with other groups or prior and subsequent classes.

5. A student should not cooperate with, aid, or encourage another student's violation of the above rules, even though he or she receives no direct benefit. Any student who does so is also guilty of cheating, and can have their grade from current or past semesters (if relevant) reduced.

6. Instructor-Imposed Limitations. Faculty may add (via syllabus, assignment instructions, or verbal instructions) additional rules and limitations pertaining to cheating in their particular discipline, class, and assignment.

Special Note: Plagiarism includes

1. Any direct quotation of another's words, from simple phrasing to longer passages, without using quotation marks and properly citing the source of those words.

2. Any summary or paraphrase of another's ideas without properly citing the source of those ideas.

3. Any information that is not common knowledge—including facts, statistics, graphics, drawings—without proper citation of sources.

4. Any cutting and pasting of verbal or graphic materials from another source and representing as one's own work—including books, databases, web sites, journals, newspapers, etc.—without the proper citation for each of the sources of those materials; this includes any copyrighted artwork, graphics, or photography downloaded from the Internet without proper citation.

5. Any wholesale "borrowing," theft, or purchasing of another's work and presenting it as one's own, whether from the Internet or from another source.

6. Any presentation of “ghost-written” work including—whether paid for or not—as one’s own original work, including papers, computer code, visual artwork, and other forms of written and non-written work.

7. Making one’s work available for copying by others, as well as copying work posted on the Internet or otherwise made available by another.

8. Self-citation: you cannot submit the same work for two different classes. If you use part of an earlier work, or ideas from an earlier work, you should reference it, as with any other source.

**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](mailto:disabilityservices@gcc.edu).

**COVID Policies:** Grove City College is continuing to monitor the COVID-19 outbreak, and we are committed to maintaining a safe and healthy campus community. In order to care for each other, you are required to wear a face mask in all academic buildings including in all classrooms, labs, studios, hallways, and restrooms. Additionally:

- a. Students and faculty should maintain social distancing (minimum 6’ distance) to the extent possible during class.
- b. Students should arrive no earlier than 5 minutes before class to reduce contact between students during class change periods.
- c. Students showing any symptoms related to COVID-19 (outlined in the Campus Health and Safety Plan) must not attend class. Instead, they should report their condition through the College’s COVID-19 portal, work closely with the College’s medical staff, and not return to class in person until approved by the Zerbe Health Center. During this time, every effort will be made to provide remote learning opportunities.
- d. Office hours may be held virtually, and if faculty voluntarily elect to hold face-to-face office hours, both students and faculty should wear a face mask.
- e. If you feel ill, please report your health status in the portal so that the lectures can be provided to you via Teams.