

## ECON 4447 and 8047 Law and Economics

Law and Economics applies the concepts and techniques of microeconomics to the law itself, focusing on the doctrines, rules and remedies of the common law: the dominant source of legal rules in Australia. The course does not assume any prior legal knowledge, nor does it provide any legal training.

This is a graduate course. Graduate and Honours students do the undergraduate course and additional graduate level material: extensions of the undergraduate course topics and additional topics.

<b>Mode of Delivery</b>	<b>On campus</b>
<b>Prerequisites</b>	To enrol in this course you must have completed the equivalent of, or have concurrent enrolment in ECON8025 (Diploma Microeconomics).
<b>Course Convener:</b>	Mark Harrison
Phone:	TBA
Email:	<a href="mailto:Mark.harrison@anu.edu.au">Mark.harrison@anu.edu.au</a>
Office:	Rm 2033, Level 2 Arndt Bldg.
Office hours for student consultation:	Wednesday 5-6, Thursday 5-6.
Research Interests	Law and Economics, Cost benefit analysis
RSE Student Office contact	Nicole Millar
Phone:	(02) 6125 0384
Email:	<a href="mailto:enquiries.rse@anu.edu.au">enquiries.rse@anu.edu.au</a>
RSE Students' Webpage	<a href="https://www.rse.anu.edu.au/students/">https://www.rse.anu.edu.au/students/</a>

SEMESTER 2  
2018

<http://programsandcourses.anu.edu.au/course/ECON2120>

<http://programsandcourses.anu.edu.au/course/ECON2139>

## **COURSE OVERVIEW**

### **Course Description**

The Course employs basic price theory – rational maximization, the law of demand, opportunity costs, and the idea that voluntary exchange allows resources to gravitate toward their highest-valued uses – to predict the consequences of legal rules: how they affect the behaviour of individuals and groups; and uses welfare economics to evaluate legal rules, especially their efficiency effects. Legal issues examined in the course include property rights, tort law, contract law, criminal law, law enforcement and punishment, litigation and settlement, product liability, pollution control, the interaction of tort law and insurance, principal-agent liability, and regulation v tort law as ways to control externalities.

The approach is non-technical, using the tools of Micro 1 to introduce one of the most exciting and vibrant fields of legal scholarship and applied economics. The emphasis in this course is on “thinking like an economist” to understand legal issues from an economic perspective, with a focus on a clear understanding of the logic and underlying economic intuition rather than just the results.

Law and Economics is designed for both economics and law students. For economics students, it is an interesting application of the economic way of thinking to real world problems and policy issues. Examining actual legal cases gives students experience in relating abstract economic models to practical problems and demonstrates their direct relevance.

Although economics can help explain law, the influence of the law on the economy is far more important. Legal and political foundations underlie economic performance. The law is an important social institution and incentive structure that provides a foundation for the economic order and plays a central role in determining social outcomes, yet economists often take it for granted.

Understanding law helps us better understand the workings of the economic system. Economic analysis rests on a bedrock of legal relations that law and economics explicitly analyses. Free markets do not exist within a vacuum, but need a legal framework that protects property, enforces contracts and allows free exchange to flourish. Law provides the framework in which firms and individuals decide on their actions in the economic sphere.

For law students, Judge Richard Posner (one of the founders of law and economics) explains the benefits of law and economics well: “The law is divided into numerous fields, each of which has a complex structure of rules. The fields are traditionally studied in isolation from one another, and within each field the rules tend also to be studied as a separate, often self-enclosed bodies of thought. Yet it turns out that a relative handful of economic doctrines – such as decision under uncertainty, transactions costs, cost benefit analysis, risk aversion, and positive and negative externalities – can, by repeated application across fields of law and legal rules, describe a great deal of the legal system and enable the student to develop a more coherent sense of the system – to grasp the relation of its parts and understand its essential unity.”

The ‘economic approach’ to law provides a unified vision of the law, tying together diverse areas of law into a common theoretical structure. The logic of the problems the law exists to solve is the same across all the standard fields, making it possible to understand a wide variety of legal issues in terms of one central set of interrelated concepts. Understanding the economics of property helps you understand torts and contracts, rather than treating them as isolated fields.

The important interdependencies between law and economics mean understanding law improves economic analysis and economic analysis is a useful tool for understanding law and for devising laws that improve society and economic performance.

### **Learning Outcomes**

On satisfying the requirements for this course, students should have the knowledge and skills to:

- Recognise the economic issues in a legal problem and apply the economic way of thinking to analyse it.
- Assess the efficiency effects of legal rules and policies

### **Assessment Summary**

Assessment for this course will consist of two in-class tests and a final exam.

The in-class tests will be fifty minutes each and will take place in Weeks 5 and 10 during the graduate lecture time (Wednesday 4-5). The in-class tests will cover material done in the undergraduate course in the weeks prior to the test and since the last one (e.g. Test 1 covers Weeks 1-4, Test 2 Weeks 5-9). Students will be advised at a later date, in class and on Wattle, of the time of, and material covered in, the in-class tests.

The final exam will cover all material in the course and will be three hours long, plus thirty minutes reading time. It will examine all material in the course, undergraduate and graduate, with one-third of the exam on the graduate material.

One in-class test is worth 10 per cent of the final mark, the other 30 per cent (with the test that counts more being chosen to maximize your mark). The final exam is worth 60 per cent of the total mark. There will be no special examinations for the in-class tests. Instead for students who would normally meet the requirements for a special exam (eg medical certificate), the weighting will be moved to the final exam. Students who do not sit an in-class test and do not meet the necessary requirements for a special exam will receive a zero.

<b>Assessment Task</b>	<b>Value</b>	<b>Due Date</b>	<b>Date for Return of Assessment</b>	<b>Linked Learning Outcomes (optional)</b>
1. In-class test	10 or 30 per cent	Week 5	<i>During semester break.</i>	<i>All</i>
2. In-class test	10 or 30 per cent	Week 10	<i>Week 12</i>	<i>All</i>
3. Final exam	60 per cent	T.B.A.	<i>Date for Return of Assessment</i>	<i>All</i>

### **Research-Led Teaching**

The course focuses on basic law and economics but draws on the lecturer's research on accidents and no-fault insurance.

### **Feedback**

#### **Staff Feedback**

Students can collect their in-class tests after they are marked. Answers to the in-class tests will be presented in tutorials and posted on wattle and class performance discussed.

## **Student Feedback**

ANU is committed to the demonstration of educational excellence and regularly seeks feedback from students. One of the key formal ways students have to provide feedback is through Student Experience of Learning Support (SELS) surveys. The feedback given in these surveys is anonymous and provides the Colleges, University Education Committee and Academic Board with opportunities to recognise excellent teaching, and opportunities for improvement.

For more information on student surveys at ANU and reports on the feedback provided on ANU courses, go to

<http://unistats.anu.edu.au/surveys/selt/students/> and  
<http://unistats.anu.edu.au/surveys/selt/results/learning/>

## **Policies**

ANU has educational policies, procedures and guidelines, which are designed to ensure that staff and students are aware of the University's academic standards, and implement them. You can find the University's education policies and an explanatory glossary at: <http://policies.anu.edu.au/>

Students are expected to have read the [Academic Misconduct Rules 2014](#) before the commencement of their course.

Other key policies include:

- Student Assessment (Coursework)
- Student Surveys and Evaluations

## **Required Resources**

The textbook for the course is *An Introduction to Law and Economics* by A. Mitchell Polinsky, (2011) 4<sup>th</sup> edition, Wolters Kluwer. It is available in the co-op bookstore.

Although the textbook forms the core of the course, and all but one chapter will be included in the course, I will go into deeper in topics, and into more topics, than the textbook does, especially in the first half of the undergraduate course and in the honours part of the course. Extra readings will be set from other textbooks and journal articles and copies will be placed on the course Wattle web site. Copies of the textbook are on the 2-hour reserve desk at the Law Library.

A detailed outline, reading list and the associated readings for each topic will be placed on the course wattle web site before the start of each topic.

The course handouts and tutorial assignments for the undergraduate course can be found at the Wattle site for ECON2120. The course handouts for the graduate course can be found at the dedicated Wattle site for ECON 2139, 4447 and 8047. All students formally enrolled in these courses should have access to both sites and should check them at least once a week.

## **Recommended Resources**

There is a voluminous law and economics literature, including a number of specialised field journals and (expensive) collections of classic readings.

Alternative textbooks include:

Friedman, David 2000. *Law's Order: What Economics Has to Do with Law and Why it Matters*, New York: Princeton University Press. Full version available for free viewing at: [http://www.daviddfriedman.com/Laws\\_Order\\_draft/laws\\_order\\_ToC.htm](http://www.daviddfriedman.com/Laws_Order_draft/laws_order_ToC.htm). Could be considered an alternative textbook, and the course will draw on it a lot. Full of economic insight and a good read.

Posner, Richard *An economic analysis of law* Boston Little Brown Now in its 8<sup>th</sup> edition 2010. One of the first textbooks in the field, a treatise that applies economics to almost all areas of the law. Contains a cornucopia of applications. The author recently retired after 36 years on the United States Court of Appeals for the Seventh Circuit, including time as Chief Justice.

Shavell, S. 2003. *Foundations of Economic Analysis of Law*. Gives a careful, clear, methodical, non-mathematical treatment – the author was responsible for inventing much of the analysis.

Miceli, Thomas 2004. *The Economic Approach to Law*, Stanford: Stanford University Press. (A new 2008 edition is out, but the library doesn't have it).

Cooter, R. and T. Ulen 2008. *Law and Economics*, Addison-Wesley, 5th edition. A 6<sup>th</sup> edition came out in 2010.

Miceli, Thomas. 1997. *Economics of the law: torts, contracts, property, litigation*. New York: Oxford University Press. A more mathematical treatment, suitable for graduate students.

Robson, A. 2012. *Law and Markets*.

DeSerpa, A. 2005. *Economics and the Common Law: Cases and Analysis*

Dnes, A. 2005. *The Economics of Law: Property, contracts and obligations*

Stephen, Frank. 1988. *The Economics of the law*

Veljanovski, C. 2007. *Economic Principles of Law*

Veljanovski, C. 2006. *The Economics of Law* 2<sup>nd</sup> ed.

Veljanovski and Stephen use English case law, which Australian courts tend to follow (rather than US case law).

Spurr, Stephen (2006) *Economic Foundations of Law*, Thomson South-Western.

Harrison, Jeffrey. 2011. *Law and Economics In A Nutshell*, Fifth Edition, West.

Butler, Henry and Christopher Drahozal. 2006. *Economic Analysis for Lawyers*. Second edition.

Wittman, Donald *Economic Foundations of Law and Organization*. A pdf of the first 4 chapters is available at <http://people.ucsc.edu/~wittman/econ169.chap1to4.pdf>. It is not in the Law Library, but some of it can be read on google books.

Ippolito, Richard. 2005. *Economics for lawyers*. Princeton University Press.

Jim Leitzel 2015 *Concepts in Law and Economics: A guide for the curious*, Oxford University Press

Harold Winter 2017 *Issues in Law and Economics*, University of Chicago Press.

There are a number of very useful encyclopaedic collections of articles:

Bouckaert, B. and G. De Geest. 2000. *The Encyclopedia of Law and Economics*, Edward Elgar. Published on the web at: <http://encyclo.findlaw.com/>

Polinsky, A. Mitchell and Steven Shavell (Editors). 2007. *Handbook of Law and Economics*, Volumes 1 and 2. North Holland.

Newman, Peter (ed) 1998. *The New Palgrave Dictionary of Economics and the Law* New York : Stockton Press. Is in the reference section of the law library.

A freely available collection of readings is:

Wittman, D. (ed) 2003. *Economic Analysis of the Law: Selected Readings*, New York: Blackwell. This contains edited versions of major articles in the field. A pdf of the book is available at: <http://people.ucsc.edu/~wittman/book.pdf>

Some classic books on tort law and property rights are

Shavell, S. 1987. *Economic Analysis of Accident Law*

Landes, W. and R. Posner. 1987. *The Economic Structure of Tort Law*

Bethell, Tom. 1998. *The Noblest Triumph: Property and Prosperity Through the Ages*, New York: St.Martin's Press. A nice examination of the role of private property throughout history.

### **Additional course costs**

No additional course costs

### **Examination material or equipment**

Non-programmable calculators and foreign language dictionaries permitted. The binding details for the final exam will be given in the University's final exam timetable

<http://timetable.anu.edu.au/exams/>

**Note there are three undergraduate lectures in Weeks 1 and 2 (Wednesday, Thursday, Friday). From Week 3 the Wednesday lecture will be the graduate/honours lecture and used for in-class tests. Tutorials start in Week 2.**

## COURSE SCHEDULE UNDERGRADUATE SECTION

Week	Topic	Polinsky chapter
1	<b>Topic 1: INTRODUCTION: ECONOMICS AND THE LAW</b> <b>Topic 2: TOOLS OF ECONOMIC ANALYSIS</b> The economic approach to understanding behaviour Price theory	1
2	Efficiency. Impediments to economic efficiency. Externalities	2, 12, 18
3	The Coase theorem. Game theory	3
4	<b>Topic 3: PROPERTY</b> Property rights Insecure property rights: theft	
5	<b>IN-CLASS TEST 1</b> Rent-seeking and the law. Types of property and their incentive effects: private and common property.	
6	The anti-commons. Property v liability rules. Nuisance and trespass.	4
	<b>Lecture break</b>	
7	Eminent domain <b>Topic 4: TORTS</b> Accidents between strangers	6
8	Accidents between strangers	
9	Pollution control: firms as injurers of strangers Risk and insurance	13 7, 9
10	<b>IN-CLASS TEST 2</b> <b>Topic 5 CONTRACTS</b> Reasons for contracts The role of contract law	
11	Breach remedies <b>Topic 6: CRIMINAL LAW, PUBLIC LAW ENFORCEMENT AND PUNISHMENT</b> The economic approach to crime	5, 8
12	Law enforcement using fines Law enforcement using imprisonment Optimal punishment <b>Topic 8: REGULATION V TORT LIABILITY</b> <b>SUMMING UP</b>	10 11 17 19
	<b>Examination period</b>	Final exam

## COURSE SCHEDULE GRADUATE SECTION

Starting in Week 3, one lecture each week will be on the graduate material. The extra lectures cover extensions to the undergraduate course topics and additional topics, such as Polinsky chapters 14 and 16, taught at a graduate level. The table below gives a rough outline of the course. A detailed outline, reading list and the associated readings for each topic will be placed on the course wattle web site before the start of each topic.

Week	Topic
1	
2	
3	Consumer choice under uncertainty: expected utility, insurance
4	Insurance of non-pecuniary losses Valuing life and damage awards
5	<b>In-class test 1</b>
6	The hold-out problem. Common property and the anti-commons.
	Lecture Break
7	Common property and the anti-commons. Intellectual property.
8	Intellectual property.
9	Suit, settlement and trial – litigation costs
10	In-class test 2
11	Suit, settlement and trial – litigation costs Product liability
12	Product liability
	Examination period



## **ASSESSMENT REQUIREMENTS**

The ANU is using Turnitin to enhance student citation and referencing techniques, and to assess assignment submissions as a component of the University's approach to managing Academic Integrity. For additional information regarding Turnitin please visit the [ANU Online](#) website.

Students may choose not to submit assessment items through Turnitin. In this instance you will be required to submit, alongside the assessment item itself, copies of all references included in the assessment item.

### **Assessment Tasks**

#### **Participation**

To learn the material, it is necessary, but not sufficient, to attend lectures regularly and do the assigned readings.

Students do best if they attend lectures and tutorials, take careful notes and learn to draw the diagrams, not by flipping over copies of the lecture slides.

A tutorial problem set will be posted each week for the following week. It is expected that students prepare in advance and come ready to answer questions. A crucial component of the course is the ability to analyze a situation using microeconomic tools. Learning-by-doing is the best way to achieve this ability which is fostered by doing the tutorial problems before attending the tutorial. Doing the tutorial problems each week is a key part of the learning process. You can only learn the economic way of thinking by applying your economics to analyse problems. The final exam questions will be tutorial style problems. You will only learn problem solving skills (necessary to pass the exams) through practice, NOT by simply copying down the answers given in tutorials.

The lectures and tutorials will be recorded and the powerpoint slides placed on Wattle.

Asking questions in tutorial is encouraged. Of course I will be available to answer questions about course content immediately after lectures and during my office hours.

#### **Workload**

Students taking this course are expected to commit at least 10 hours a week to completing the work, including:

- 2-3 hours a week: lectures
- 1 hour a week: tutorial
- 7 hours a week: reading, research, writing and tutorial preparation

#### **Assessment Task 1: In-class test**

##### **Details of task:**

A fifty-minute test, with three short answer questions, which will be worth 10% or 30% of your mark. It will be held in week 5 in the graduate/honours lecture time (Wednesday 4-5).

#### **Assessment Task 2: In-class examination**

##### **Details of task:**

A fifty-minute test, with three short answer questions, which will be worth 10% or 30% of your mark. It will be held in week 10 in the graduate lecture time (Wednesday 4-5).

The topics examined in each of the in-class tests will be announced in class and on wattle before the examination. They will examine topics from the undergraduate course.

### **Assessment Task 3: Final examination**

#### **Details of task:**

The final exam will be 3 hours plus 30 minutes reading time and will examine the whole course. It will be a mixture of short answer questions and longer problems, with some choice between the longer problems. The honours students sit a separate exam which also examines the honours material.

#### **Returning assignments**

Students can collect their in-class tests from the Departmental Office after the answers are posted on wattle and discussed in lectures.

#### **Scaling**

Your final mark for the course will be based on the **raw** marks allocated for each of your assessment items. However, your final mark may not be the same number as produced by that formula, as marks may be **scaled**. Any scaling applied will preserve the rank order of raw marks (i.e. if your raw mark exceeds that of another student, then your scaled mark will exceed the scaled mark of that student), and may be either up or down.

#### **Privacy Notice**

The ANU has made a number of third party, online, databases available for students to use. Use of each online database is conditional on student end users first agreeing to the database licensor's terms of service and/or privacy policy. Students should read these carefully.

In some cases student end users will be required to register an account with the database licensor and submit personal information, including their: first name; last name; ANU email address; and other information.

In cases where student end users are asked to submit 'content' to a database, such as an assignment or short answers, the database licensor may only use the student's 'content' in accordance with the terms of service – including any (copyright) licence the student grants to the database licensor.

Any personal information or content a student submits may be stored by the licensor, potentially offshore, and will be used to process the database service in accordance with the licensors terms of service and/or privacy policy.

If any student chooses not to agree to the database licensor's terms of service or privacy policy, the student will not be able to access and use the database. In these circumstances students should contact their lecturer to enquire about alternative arrangements that are available.

#### **SUPPORT FOR STUDENTS**

The University offers a number of support services for students. Information on these is available online from <http://students.anu.edu.au/studentlife/>

#### **Other Information**

Building Access Hours for both CBE and HW ARNDT are:

TEACHING PERIOD = Mon – Fri 07.45 to 21.15 and SAT, SUN and Public Holidays is not accessible by students.

NON TEACHING PERIOD = Mon – Fri 08.00 to 18.00 and SAT, SUN and Public Holidays is not accessible by students.

RSE has a Frequently Asked Questions page where you can find relevant policies and information on a broad range of topics, the onus is on the student to familiarise themselves with this page and the information available.

<https://www.rse.anu.edu.au/students/students/frequently-asked-questions/>