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.

<table>
<thead>
<tr>
<th>Mode of Delivery</th>
<th>On campus</th>
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<tbody>
<tr>
<td>Prerequisites</td>
<td>To enrol in this course you must have completed the equivalent of, or have concurrent enrolment in ECON8025 (Diploma Microeconomics).</td>
</tr>
</tbody>
</table>

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Research Interests: Law and Economics, Cost benefit analysis
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SEMESTER 2
2017

http://programsandcourses.anu.edu.au/course/ECON4447
http://programsandcourses.anu.edu.au/course/ECON8047

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 (1 hour each) and a final exam. The in-class tests will be one hour each and will take place in Weeks 5 and 10 during the graduate lecture time (probably Friday 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 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). No deferred exams will be offered for the in-class exams. The final exam is worth 60 per cent of the total mark.

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

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.


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**

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 graduate 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:


Posner, Richard *An economic analysis of law* Boston Little Brown  Now in its 8th 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 is now a US Federal Court of Appeals judge.


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

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


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](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.


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


A freely available collection of readings is:


Some classic books on tort law and property rights are


## COURSE SCHEDULE UNDERGRADUATE SECTION

<table>
<thead>
<tr>
<th>Week/Session</th>
<th>Topic</th>
<th>Polinsky chapter</th>
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</thead>
<tbody>
<tr>
<td>1</td>
<td><strong>Topic 1: INTRODUCTION: ECONOMICS AND THE LAW</strong>&lt;br&gt;<strong>Topic 2: TOOLS OF ECONOMIC ANALYSIS</strong>&lt;br&gt;The economic approach to understanding behaviour&lt;br&gt;Price theory</td>
<td>1</td>
</tr>
<tr>
<td>2</td>
<td>Efficiency. Impediments to economic efficiency. Externatilities&lt;br&gt;The Coase theorem</td>
<td>2, 12, 18, 19</td>
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<tr>
<td>3</td>
<td>Game theory</td>
<td></td>
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<tr>
<td>4</td>
<td><strong>Topic 3: PROPERTY</strong>&lt;br&gt;Property rights&lt;br&gt;Insecure property rights: theft</td>
<td></td>
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<tr>
<td>5</td>
<td>Rent-seeking and the law. Types of property and their incentive effects: private and common property. The anti-commons. Property v liability rules.&lt;br&gt;In-class test 1</td>
<td></td>
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<tr>
<td>6</td>
<td>Property v liability rules. Nuisance and trespass. Eminent domain</td>
<td>4</td>
</tr>
<tr>
<td></td>
<td><strong>Lecture break</strong></td>
<td></td>
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<tr>
<td>7</td>
<td><strong>Topic 4: TORTS</strong>&lt;br&gt;Accidents between strangers</td>
<td>6</td>
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<tr>
<td>8</td>
<td>Accidents between strangers&lt;br&gt;Pollution control: firms as injurers of strangers&lt;br&gt;Risk and insurance</td>
<td>13, 17</td>
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<tr>
<td>9</td>
<td>Risk and insurance&lt;br&gt;<strong>Topic 5 CONTRACTS</strong>&lt;br&gt;Reasons for contracts&lt;br&gt;The role of contract law</td>
<td>9</td>
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<tr>
<td>10</td>
<td>Breach remedies&lt;br&gt;<strong>Topic 6: CRIMINAL LAW, PUBLIC LAW ENFORCEMENT AND PUNISHMENT</strong>&lt;br&gt;The economic approach to crime&lt;br&gt;In-class test 2</td>
<td>5, 8</td>
</tr>
<tr>
<td>11</td>
<td>Law enforcement using fines&lt;br&gt;Law enforcement using imprisonment&lt;br&gt;Optimal punishment&lt;br&gt;<strong>Topic 7: PRODUCT LIABILITY</strong>&lt;br&gt;Unilateral care case. Misperception of risks. Risk aversion</td>
<td>10, 11, 14</td>
</tr>
<tr>
<td>12</td>
<td>Bilateral care model: consumers can take care&lt;br&gt;Victim a third party&lt;br&gt;Warranties&lt;br&gt;<strong>Topic 8: REGULATION V TORT LIABILITY SUMMING UP</strong></td>
<td>17, 19</td>
</tr>
<tr>
<td></td>
<td><strong>Examination period</strong></td>
<td>Final exam</td>
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</tbody>
</table>
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 chapter 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.

<table>
<thead>
<tr>
<th>Week/Session</th>
<th>Topic</th>
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<tbody>
<tr>
<td>1</td>
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<td>2</td>
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<tr>
<td>3</td>
<td>Exchange and the Edgeworth box</td>
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<td>4</td>
<td>Exchange and the two fundamental theorems of welfare economics</td>
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<td></td>
<td>Game theory: mixed strategy equilibrium</td>
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<tr>
<td>5</td>
<td><strong>In-class test 1</strong></td>
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<tr>
<td>6</td>
<td>Intellectual property</td>
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<tr>
<td></td>
<td>Lecture Break</td>
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<tr>
<td>7</td>
<td>Intellectual property. The hold-out problem.</td>
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<tr>
<td>8</td>
<td>Common property and the anti-commons.</td>
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<tr>
<td></td>
<td>Suit, settlement and trial – litigation costs</td>
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<tr>
<td>9</td>
<td>Suit, settlement and trial – litigation costs</td>
</tr>
<tr>
<td>10</td>
<td><strong>In-class test 2</strong></td>
</tr>
<tr>
<td>11</td>
<td>Consumer choice under uncertainty: expected utility, insurance</td>
</tr>
<tr>
<td>12</td>
<td>Consumer choice under uncertainty: insurance of non-pecuniary losses</td>
</tr>
<tr>
<td></td>
<td>Valuing life and damage awards</td>
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<tr>
<td></td>
<td>Examination period</td>
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</tbody>
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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 one hour test, with four short answer questions, which will be worth 10% or 30% of your mark. It will be held in week 5 in the graduate lecture time (probably Friday 4-5).

**Assessment Task 2: In-class examination**
**Details of task:**
A one hour test, with four 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 (probably Friday 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. One-third of the exam will be on the graduate material.
Returning assignments
Students can collect their in-class tests from the Departmental Office after we go over the answers in a tutorial.

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/