

## ECO 410-002: Law and Economics

Fall 2014

**Instructor:** Frank Scott  
**Office:** 302-D Mathews Bldg.  
**Phone:** 257-7643  
**e-mail:** fscott@uky.edu

### Goals of the Course

This course will survey the field of law and economics. We will study the core areas of common law—property, contract, and tort. We will consider the sometimes-competing goals of equity and efficiency and their roles in the formulation of legal decisions. We will study the Coase theorem, and will see how the presence of transactions costs, incomplete information, and risk aversion can influence the outcome of any particular legal decision. Finally, we will study criminal law, optimal punishment, and optimal enforcement.

### Class Format

The class will be conducted in a semi-Socratic format. You will be given a reading assignment prior to each class meeting. Sometimes I will present material in a lecture format, but more often I will lead a class discussion by asking you pointed questions. I expect you to read each assignment before class and to be prepared to participate in class discussions. A portion of your grade will be determined by the quality of your contribution to our discussions.

### Text

We will use Law and Economics 6<sup>th</sup> edition, by Robert Cooter and Thomas Ulen. It is available in hardback (new and used), paperback (new and used), and for rent. 5<sup>th</sup> editions are also available at a significantly cheaper price, and will be perfectly serviceable for this course.

### Grading

You will be graded in a number of different ways. You will have two written essay exams and a short research paper. Your contribution to class discussions will also be counted in your grade. The percentage breakdown is:

6-8 page research paper	30%
midterm exam	25%
final exam	35%
class participation	10%

### Office Hours

My office is 302-D in the Mathews Building. Since we are a fairly small group, instead of holding formal office hours, I will make myself generally available for drop-in visits during regular business hours Monday through Friday. Feel free to stop by unannounced, or make an appointment with me. If I am not able to meet with you immediately, we will set up a time that is convenient.

### Abbreviated Course Outline and Reading Assignments

I.	Introduction:	Ch. 1
II.	Some Law:	Ch. 3
III.	Some Economics:	Ch. 2 and class notes
IV.	Property Law:	Chs. 4 and 5

Midterm Exam: Monday, October 20

V.	Contract Law:	Chs. 8 and 9
VI.	Tort Law:	Chs. 6 and 7
VII.	The Legal Process:	Ch. 10

Final Exam: Monday, December 15, 3:30 p.m.

## **Other Course Details:**

### **Grading Scale:**

Final letter grades in the course will be assigned according to performance on exams, the research paper, and participation in class. In determining your grade, I will follow the guidelines established by the UK publication *Student Rights and Responsibilities*:

- A: Represents an exceptionally high achievement as a result of aptitude, effort and intellectual initiative
- B: Represents a high achievement as a result of ability and effort
- C: Represents satisfactory achievement for undergraduates
- D: Represents unsatisfactory achievement for undergraduates and is the minimum grade for which credit is conferred
- E: Represents unsatisfactory performance and indicates failure in the course

### **Attendance:**

Attendance is both highly encouraged and expected. Ten percent of your grade is determined by class participation, so I will monitor attendance and participation.

### **Make-up Exams:**

There are explicit University-approved excuses for missing an exam, which entitles a student to take a make-up exam. You should notify me as soon as you know that you will have to miss an exam.

### **Academic Integrity:**

Per university policy, students shall not plagiarize, cheat, or falsify or misuse academic records. Students are expected to adhere to University policy on cheating and plagiarism. Complete information can be found on page 173 of the University Senate Rules about what constitutes cheating and plagiarism.

### **Accommodations Due to Disability:**

If you have a documented disability that requires academic accommodations, please see me as soon as possible during scheduled office hours. In order to receive accommodations in this course, you must provide me with a Letter of Accommodation from the Disability Resource Center (Room 2, Alumni Gym, 257-2754, email address [jkarnes@email.uky.edu](mailto:jkarnes@email.uky.edu)) for coordination of campus disability services available to students with disabilities.

## Detailed Course Outline with additional (optional) readings

**Wednesday, September 3:** “Introduction,” Cooter and Ulen, Ch. 1

Additional outside readings:

- Example of intellectual property rights: can a color be owned?

<http://search.proquest.com/docview/398428787/5CF8552168004990PQ/75?accountid=11836>

- Example of torts: a famous case in the evolution of product liability rules.

[http://scholar.google.com/scholar\\_case?case=1547126968260564389&hl=en&as\\_sdt=6&as\\_vis=1&oi=scholar](http://scholar.google.com/scholar_case?case=1547126968260564389&hl=en&as_sdt=6&as_vis=1&oi=scholar)

**Monday, September 8:** “Some law,” Cooter and Ulen, Ch. 3

Additional outside readings:

- Concise summaries of the Napoleonic Code:

[http://en.wikipedia.org/wiki/Napoleonic\\_Code#](http://en.wikipedia.org/wiki/Napoleonic_Code#)

<http://www.britannica.com/EBchecked/topic/403196/Napoleonic-Code>

- and the full set of laws translated into English:

[http://www.napoleon-series.org/research/government/c\\_code.html](http://www.napoleon-series.org/research/government/c_code.html)

- Concise summary of common law:

[http://en.wikipedia.org/wiki/Common\\_law#Basic\\_principles\\_of\\_common\\_law](http://en.wikipedia.org/wiki/Common_law#Basic_principles_of_common_law)

“Section 2: Basic principles of common law” provides a good supplement to the discussion of the common law contained in Ch. 3 of Cooter and Ulen.

- Expanded discussion of *Butterfield v. Forrester*:

<http://www.lawnix.com/cases/butterfield-forrester.html>

- If you’re thinking about going to law school, read this discussion of *Davies v. Mann* in the *Harvard Law Review* (1890): <http://www.jstor.org/stable/1321906?seq=1>

**Wednesday, September 10:** “Some economics” Cooter and Ulen, Ch. 2

Additional outside readings on human rights, goals for society, and equity vs. efficiency:

- Declaration of Independence:

[http://www.archives.gov/exhibits/charters/declaration\\_transcript.html](http://www.archives.gov/exhibits/charters/declaration_transcript.html)

- U.S. Constitution:

[http://www.archives.gov/exhibits/charters/constitution\\_transcript.html](http://www.archives.gov/exhibits/charters/constitution_transcript.html)

- Bentham and Marx meet in the tropics:

<http://www.jstor.org/stable/10.1086/596752>

- United Nations Declaration of Human Rights:

<http://www.un.org/en/documents/udhr/>

- Wikipedia essay on the Communist Manifesto:

[http://en.wikipedia.org/wiki/The\\_Communist\\_Manifesto](http://en.wikipedia.org/wiki/The_Communist_Manifesto)

- Equity vs. efficiency, the great trade-off (see especially the leaky bucket experiment):

[http://www.aspeninstitute.org/sites/default/files/content/docs/OKUN\\_EQUALITY\\_AND\\_EFFICIENCY\\_\(AS\\_08\).PDF](http://www.aspeninstitute.org/sites/default/files/content/docs/OKUN_EQUALITY_AND_EFFICIENCY_(AS_08).PDF)

- John Rawls’ theory of justice explained in three minutes by a cartoon character:

<https://www.youtube.com/watch?v=hCJqNrQWykU>

or in 17 minutes by a U of Texas philosophy professor:  
<https://www.youtube.com/watch?v=tPfbCJ9m3j8>

**Monday, September 15:** comparative economic systems

Additional resources on market economies, command economies, and economic development:

- Centralized vs. de-centralized decision-making: “China’s Winter of Discontent,” *WSJ*, 3/14/06.

<http://ezproxy.uky.edu/login?url=http://search.proquest.com/docview/398959819?accountid=11836>

- Milton Friedman: Story of the Pencil—how markets work to allocate resources,

<http://www.youtube.com/watch?v=4ERbC7JyCfU>

- Youtube: economic development in four minutes,

<http://www.youtube.com/watch?v=jbkSRLYSojo>

- CIA World Factbook, comparative economic systems

<https://www.cia.gov/library/publications/the-world-factbook/>

**Wednesday, September 17:** economic efficiency/Pareto optimality  
Additional resources: None as good as attending class this day.

**Monday, September 22:** Pareto optimality and market economies  
Additional resources: None as good as attending class this day.

**Wednesday, September 24:** Role of government in a market economy  
Additional resources: None as good as attending class this day, but you might take a look at <https://www.youtube.com/watch?v=D23YY11cvzY> .  
Too little government? <https://www.youtube.com/watch?v=ASWGIb6NoLA> .  
Too much government? [https://www.youtube.com/watch?v=d\\_Ku5UGhkyM](https://www.youtube.com/watch?v=d_Ku5UGhkyM)

**Monday, September 29:** introduction to property law (C&U 70-81)  
Additional resources: A world with no property rights: <https://www.youtube.com/watch?v=Gdv5EtZQ6jg>  
Property rights and prosperity: <https://www.youtube.com/watch?v=gw-da3CFh5g>  
A sample case: <http://www.law.berkeley.edu/faculty/rubinfeldd/LS145/Spur.html>

**Wednesday, October 1:** public vs. private goods, externalities, the Coase Theorem (C&U 81-94, 102-106)  
Additional resources: Private vs. public goods: <https://www.youtube.com/watch?v=rdCD1gJTQHg>  
Coase theorem: explained: <http://www.youtube.com/watch?v=RlJugTo0ivWI> ,  
an application: <https://www.youtube.com/watch?v=0d5c0uRUbp8>  
an early case: [http://en.wikipedia.org/wiki/Sturges\\_v\\_Bridgman](http://en.wikipedia.org/wiki/Sturges_v_Bridgman)  
a more recent, slightly different case: <http://www.apnewsarchive.com/1990/Lawsuits-Against-Ashland-Cause-Bitter-Split-in-Small-Town/id-81d19292c1e416a93bd56f1c1777a7f8>

**Monday, October 6:** what can be privately owned, public vs. private ownership, tragedy of the commons? (C&U 112-142)  
Additional resources: Information goods: <http://www.weather.gov/> ,  
<http://www.weatherwise.org/Archives/Back%20Issues/2013/January-February%202013/beyond-nws-full.html> , <http://www.skyviewweather.com/about-us/>  
Trademarks, spotting fake Burberry: <http://www.youtube.com/watch?v=pDuc74A9uC8>  
Tragedy of the commons: <https://www.youtube.com/watch?v=4RE9PMwwaFc> ,  
<https://www.youtube.com/watch?v=3IdzaEiYx5o>  
A scholarly discussion of a solution: <http://www.jstor.org/stable/725304>

**Wednesday, October 8:** how are property rights established and verified? (C&U 143-156)  
Additional resources: Fox hunting: [http://en.wikipedia.org/wiki/Pierson\\_v\\_Post](http://en.wikipedia.org/wiki/Pierson_v_Post)  
Wandering gas: [http://www.faculty.oxy.edu/whitney/classes/ec319/readings/cases/property/hammonds\\_v\\_cenkynatlgas\\_brief.htm](http://www.faculty.oxy.edu/whitney/classes/ec319/readings/cases/property/hammonds_v_cenkynatlgas_brief.htm)  
When to privatize open-access resources: <http://www.sagebrushsteppe.micahlauer.com/?p=389>  
Land, barbed wire, cattle, and branding in the American West: <http://www.jstor.org/stable/725249>  
Adverse possession: <https://www.youtube.com/watch?v=xoWbRdcKLIE>

**Monday, October 13:** what may owners do with their property? (C&U 156-166)  
Illegal trespass? [http://www.faculty.oxy.edu/whitney/classes/ec319/readings/cases/property/ploof\\_v\\_putnam\\_brief.htm](http://www.faculty.oxy.edu/whitney/classes/ec319/readings/cases/property/ploof_v_putnam_brief.htm)  
Inalienability? Wombs: [http://www.thesurrogacysource.com/ip\\_fees.htm?type=Intended%20Parent](http://www.thesurrogacysource.com/ip_fees.htm?type=Intended%20Parent)  
Votes: <http://www.nytimes.com/2004/08/29/us/where-prosecutors-say-votes-are-sold.html>  
Unbundling property rights: [http://studentorgs.law.unc.edu/documents/elp/2012/whilden\\_final.pdf](http://studentorgs.law.unc.edu/documents/elp/2012/whilden_final.pdf)  
Deed restrictions (see p. 15-21): [http://www.andoverforest.org/andoverforest/document\\_view.asp?id=5](http://www.andoverforest.org/andoverforest/document_view.asp?id=5)  
And their enforcement: <http://bluegrasspolitics.bloginky.com/2012/02/01/house-panel-votes-down-lexington-playhouse-bill/>

**Wednesday, October 15:** what are remedies for violation of property rights? (C&U 166-185)  
Smelly cattle again: <http://www.law.berkeley.edu/faculty/rubinfeldd/LS145/Spur.html>

Dirt, smoke, and vibration: [http://en.wikipedia.org/wiki/Boomer\\_v.\\_Atlantic\\_Cement\\_Co](http://en.wikipedia.org/wiki/Boomer_v._Atlantic_Cement_Co).  
Young Library and eminent domain: <http://www.aceweekly.com/1998/08/uk-is-the-800-pound-gorilla-where-will-it-sit-next/>  
Public taking for private use? [http://en.wikipedia.org/wiki/Kelo\\_v.\\_City\\_of\\_New\\_London](http://en.wikipedia.org/wiki/Kelo_v._City_of_New_London)

**Monday, October 20:** midterm exam

**Wednesday, October 22:** introduction to contract law, bargain theory, contract remedies (C&U 276-291)  
Additional resources: "Ebola Rattles Commodities: Trading or Shipping Disruptions May Not Be Covered by Insurance, Contracts," *WSJ* 10/18/14,  
<http://ezproxy.uky.edu/login?url=http://search.proquest.com/docview/1613379915/F70AF55747D14C07PQ/85?accountid=11836>  
Strict enforcement? [http://en.wikipedia.org/wiki/Batsakis\\_v.\\_Demotsis](http://en.wikipedia.org/wiki/Batsakis_v._Demotsis) ; Background for the contract between Batsakis and Demotsis: <http://www.youtube.com/watch?v=c841W29ARoQ>  
Is there consideration? [http://www.gklaw.com/news.cfm?action=pub\\_detail&publication\\_id=359](http://www.gklaw.com/news.cfm?action=pub_detail&publication_id=359)  
Toy Yoda and other amusing stories: <http://www.law.unlv.edu/faculty/rowley/3NevLJ526.pdf>

**Monday, October 27:** economic interpretation of contracts (C&U 291-305)  
Exchanging hostages: <http://en.wikipedia.org/wiki/Hostage> (read the first section on historical practices.)  
Modern hostage exchanges: <http://corporate.exxonmobil.com/en/company/worldwide-operations/locations/russia/about/overview>  
Do you think that Exxon-Mobil learned anything from BP's earlier experience doing business in Russia?  
<http://www.theguardian.com/business/2008/jul/27/bp.oil>

**Wednesday, October 29:** formation defenses and performance excuses (C&U 341-342)

**Monday, November 3:** incompetence, duress, necessity (C&U 342-349)  
Incompetence? "The Gambler Who Blew \$127 million," *WSJ* 12/5/09, p. A1, <http://ezproxy.uky.edu/login?url=http://search.proquest.com/docview/399079843/8CF747C4A6864AFEPQ/2?accountid=11836>  
Necessity? <https://supreme.justia.com/cases/federal/us/60/150/case.html>  
Duress? <https://www.youtube.com/watch?v=tXpx21Uf7hs>

**Wednesday, November 5:** impossibility, commercial impracticability, and frustration of purpose (C&U 349-353)  
For a general summary: <http://www.west.net/~smith/imposbl.htm>  
Impossibility: [http://en.wikipedia.org/wiki/Taylor\\_v.\\_Caldwell](http://en.wikipedia.org/wiki/Taylor_v._Caldwell) ; for another Taylor v. Caldwell, also see <http://www.flowrestling.org/coverage/251121-Southern-Scuffle/video/728343-165-Final-David-Taylor-Penn-State-vs-Tyler-Caldwell-Oklahoma-State#.VEW00Nh0zIU> (this one won't be on the exam).  
Commercial impracticability:  
<http://scholarship.law.wm.edu/cgi/viewcontent.cgi?article=3077&context=wmlr>  
Frustration of purpose: [http://en.wikipedia.org/wiki/Krell\\_v.\\_Henry](http://en.wikipedia.org/wiki/Krell_v._Henry)

**Monday, November 10:** mistake, duty to disclose, fraud, unconscionability (C&U 353-372)  
Mutual mistake: <http://www.youtube.com/watch?v=mqUusAfC7oc>  
pregnant cows: <http://www.law.berkeley.edu/faculty/rubinfeld/LS145/sherwood.html> ; and set to song <http://www.youtube.com/watch?v=pjjRBAQ7ET8>  
ships: [http://www.youtube.com/watch?v=Uj\\_skg-3yPw](http://www.youtube.com/watch?v=Uj_skg-3yPw)  
Unilateral mistake: <http://islandia.law.yale.edu/ayers/mutual.htm>  
Duty to disclose: [http://www.leagle.com/decision/196050556Wn2d449\\_1437](http://www.leagle.com/decision/196050556Wn2d449_1437)  
Fraud: <http://education-portal.com/academy/lesson/contract-enforcement-mistake-misrepresentation-fraud.html>  
Unconscionability: <http://law.justia.com/cases/federal/appellate-courts/F2/350/445/74380/>

**Wednesday, November 12:** remedies for contract failure (C&U 307-322)

Expectation damages: [http://en.wikipedia.org/wiki/Expectation\\_damages](http://en.wikipedia.org/wiki/Expectation_damages) and two relevant cases, [http://en.wikipedia.org/wiki/Hadley\\_v\\_Baxendale](http://en.wikipedia.org/wiki/Hadley_v_Baxendale) and

[http://en.wikipedia.org/wiki/Peevyhouse\\_v\\_Garland\\_Coal\\_&\\_Mining\\_Co](http://en.wikipedia.org/wiki/Peevyhouse_v_Garland_Coal_&_Mining_Co).

Restitution damages: <http://education-portal.com/academy/lesson/contract-breach-remedies-reliance-damages-restitution-injunctions.html#lesson> (watch the first five minutes or so)

The hairy hand case: <http://danfingerman.com/law/cases/Hawkins.html>

**Monday, November 17:** introduction to torts (C&U 187-199)

Common torts: <http://jec.unm.edu/education/online-training/torts-tutorial> , skim the examples.

Res ipsa loquitur: [http://en.wikipedia.org/wiki/Escola\\_v\\_Coca-Cola\\_Bottling\\_Co](http://en.wikipedia.org/wiki/Escola_v_Coca-Cola_Bottling_Co).

Proximity? [http://en.wikipedia.org/wiki/Palsgraf\\_v\\_Long\\_Island\\_Railroad\\_Co](http://en.wikipedia.org/wiki/Palsgraf_v_Long_Island_Railroad_Co) , or the Lego version <https://www.youtube.com/watch?v=mDEbTudkjhc>

Standard of care: [http://en.wikipedia.org/wiki/Breach\\_of\\_duty\\_in\\_English\\_law](http://en.wikipedia.org/wiki/Breach_of_duty_in_English_law)

**Wednesday, November 19:** economic theory of tort liability (C&U 199-227)

The Hand Rule: <http://nw18.american.edu/~dfagel/Cases/usVcarroltowing.pdf>

Inducing socially efficient behavior: <http://cyber.law.harvard.edu/bridge/LawEconomics/neg-liab.htm>

**Monday, November 24:** economic theory continued: precaution under no liability and strict liability

An application of the Hand Rule: <https://law.resource.org/pub/us/case/reporter/F2/683/683.F2d.1022.81-2197.html> (skim the first 16 paragraphs, start reading at paragraph 17)

Further discussion of efficient precaution:

[http://www.leagle.com/decision/19872380826F2d1554\\_12152.xml/McCARTY%20v.%20PHEASANT%20RUN,%20INC](http://www.leagle.com/decision/19872380826F2d1554_12152.xml/McCARTY%20v.%20PHEASANT%20RUN,%20INC).

**Monday, December 1:** product liability (C&U 251-253)

An early precedent: [http://www.courts.state.ny.us/reporter/archives/macpherson\\_buick.htm](http://www.courts.state.ny.us/reporter/archives/macpherson_buick.htm)

Strict liability: <http://scocal.stanford.edu/opinion/greenman-v-yuba-power-products-inc-27186>

Benefit-cost analysis? <http://www.youtube.com/watch?v=PAI5T8UecEY>

You'll shoot your eye out: <http://caselaw.findlaw.com/us-6th-circuit/1296628.html>

Wile Coyote v. Acme, Inc.: <https://www.youtube.com/watch?v=kM-91sthsaE> ;

<https://www.youtube.com/watch?v=dFdIx9tqO0>

opening arguments: <https://la.utexas.edu/users/jmciver/357L/WileECoyoteVACME.htm> and

<http://www.lectlaw.com/files/fun19.htm>

**Wednesday, December 3:** computing damages (C&U 253-261)

Some general principles: <http://en.wikipedia.org/wiki/Damages>

Need a personal injury lawyer? <http://www.alllaw.com/articles/nolo/personal-injury/types-of-compensation.html> (click on some of the specific topics listed at the bottom of the page.)

Punitive damages: [http://en.wikipedia.org/wiki/BMW\\_of\\_North\\_America,\\_Inc.\\_v.\\_Gore](http://en.wikipedia.org/wiki/BMW_of_North_America,_Inc._v._Gore)

Hot coffee: [http://en.wikipedia.org/wiki/Liebeck\\_v.\\_McDonald%27s\\_Restaurants](http://en.wikipedia.org/wiki/Liebeck_v._McDonald%27s_Restaurants)

**Monday, December 8:** medical malpractice (C&U 264-266)

Tort reform as a solution to what ails us? <http://www.pbs.org/newshour/rundown/could-malpractice-reform-save-the-us-health-care-system/>

A lengthier discussion: <http://medicaleconomics.modernmedicine.com/medical-economics/content/tags/alice-g-gosfield/who-benefits-tort-reform?page=full>

**Wednesday, December 10:** Research papers due.

## **ECO 410-002**

**Fall 2014**

### **Research Paper Guidelines:**

A significant part (30%) of your grade in ECO 410 this semester will come from your term research paper. I will not impose a specific format for this project to follow, because I want to allow room for you to exercise your own creativity. The choice of a topic is up to you. The only constraint is that you should pick something directly related to the material on the course outline. I will suggest possible topics as we move through the course, but you should start searching for something yourself right away.

You should aim for a report that has 6-8 pages of text (typed, double-spaced, 12 pt. font, normal margins) plus footnotes, a list of references, and any supporting figures, tables, or illustrations. The report should be prepared as a professional business report, following all of the normal rules of professional writing that you have learned in college and before. That also means that you should write efficiently and be careful not to waste your reader's time with verbosity and fluff. You should also carefully cite every resource you use in performing your analysis and composing your report.

The quality of your project will be determined largely by the amount of effort you spend researching your topic. I expect that many of you will rely heavily on internet sources. Because the quality and veracity of information obtained from the internet are sometimes hard to ascertain, I have the following request. **Make a copy of every resource that you use in your report. If you use something from a book or a lengthy journal article, copy the cover page and the relevant section that you relied upon. When you turn in your report, attach these copies of your references to your report. I will not grade any papers that do not contain an appendix with copies of all resources that you have relied upon.** I will return the entire package to you after I have graded your project.

As was stressed above, your choice of a topic is important. I strongly encourage you to try your ideas out on me before going too far. In the week before Thanksgiving, I will ask you to turn in a one-page memorandum to me describing what you have come up with. Your paper is due on Wednesday, December 10, the last class day of the semester.