

Law and Economics: Eco 5936, Section 1, FALL 2008

Class Period: MWF, 10:10 AM to 11:00 AM

Classroom: 202 Bellamy Building

Professor: Bruce Benson

Office: 288 Bellamy Building

Contact: bbenson@fsu.edu; 644-7094

Office hours: MWF, 1:15 PM to 2:15 PM, or by appointment (e-mail, call, or schedule after class)

Technology and Communications: A Blackboard site has been established for this course. This site will provide an outline and links to some of the readings. Grade information will also be available, and announcements may be posted, although announcements will also be sent by e-mail. Note: this means that students **MUST** use their fsu accounts to access Blackboard, and any e-mail messages sent to individuals in the class or the class as a whole will only be sent to fsu accounts; in addition, only e-mail messages to Professor Benson from fsu accounts will be opened with any degree of certainty since other messages are often assumed to be SPAM and deleted.

Readings: Note that all readings are “suggested,” as the reading list is clearly too long to expect students to read everything in one semester, or to cover in one semester. In fact, since much of the course will be prepared as we go, we will inevitably discover that we do not have time to cover some topics and associated readings (Professor Benson will try to indicate which readings are actually discussed in lectures, as the course proceeds).

A textbook was ordered for the course: Antony W. Dnes, **The Economics of Law: Property Contract and Obligations** (Mason, OH: South-Western, 2005).

A second textbook is available on line: David Friedman, **Laws Order: What Economics Has to do With Law and Why it Matters.** (Princeton NJ: Princeton University Press, 2000) at

http://www.daviddfriedman.com/laws_order/

These are not demanding books; they are available for general background discussion on neoclassical law and economics. Other readings will be drawn from **The Encyclopedia of Law and Economics**, Boudewijn Bouckaert and Gerrit De Geest, editors (Cheltenham, UK: Edward Elgar, 2000) also available on line at

<http://encyclo.findlaw.com/tablebib.html>

Still more readings are available through **JStor** using the FSU library web site. Finally, some readings are available through direct links provided on the blackboard site in the assignments section. Links to all cases are also provided (cases were obtained through the FSU library web site using **LexisNexis**). All suggested readings are listed in the following outline.

Requirements and Grading: There will be two essay exams, an in-class (50-minute) midterm and a 2-hour final during final exam week. In addition, a paper is required, and students will present drafts of the papers in class on the dates specified below. The paper and its presentation will determine 40 % of overall course grade, performance as a “discussant” for someone else’s paper together with participation in class discussions, etc. will determine 5 %, the final exam will count as 35 % of the grade, and the midterm will make up the remaining 20 %.

Paper, Presentations, and Discussants: Each student is responsible for choosing a paper topic (a number of suggestions are listed in the assignment section of the Blackboard site, but students are free to choose something

that is not listed; empirical projects are welcome, but not required, given the time constraints). Paper topics must be chosen and approved by Professor Benson by **September 10**. Drafts of the papers are due by **November 12**. These drafts can be submitted electronically as an e-mail attachment to bbenson@fsu.edu and they are also to be electronically distributed to all class members. The drafts will be presented to the class during the week of **November 17-21**. Note that extra meetings will be held that week to accommodate the presentations (these are “make-up” meetings as class will not meet of various dates earlier in the semester, for reasons indicated in the outline). The presentations will be similar to most professional meetings. The presenter will have 20 minutes to summarize and highlight the key points. Another student, assigned as a “discussant”, will have 10 minutes, and the remaining 20 minutes will be devoted to general discussion and Q&A involving the rest of the class, including the instructor. The paper authors will then have until the end of the day on **December 12** to make any reasonable revisions that are stimulated by the remarks of the discussant and other class members. Papers are to be written using the reference and bibliography style of the American Economic Review. The text is to be double spaced with a readable, but not huge, font size (e.g., Times New Roman 11 or 12), footnotes are to be used rather than endnotes, and they can be single spaced. Final papers can be submitted electronically as well, again as an e-mail attachment.

Honor Code: Academic dishonesty as it relates to tests will not be tolerated in this course. The Academic Honor System of the Florida State University is based on the premise that each student is responsible for: (1) upholding the highest standards of academic integrity in the student's own work, (2) refusing to tolerate violations of academic integrity, and (3) fostering a high sense of integrity and social responsibility. If cheating occurs, all students involved will receive a zero on the exam, and the grade will not be dropped.

Disabilities: Students with disabilities needing academic accommodations should: (1) register with and provide documentation to the Student Disability Resource Center [SDRC] and (2) bring a letter to the instructor from SDRC indicating the need for academic accommodations.

Outline: Note that changes in the time allocated to some topics may occur. Announcements of such changes will be made in class and on Blackboard. Exam dates and various “deadlines” regarding the required paper are also listed. They are not expected to change, but unforeseen circumstances may arise. Note that readings from Antony Dnes’ book are designated by **AD** below, **DF** refers to readings from David Friedman’s text, chapters from the Encyclopedia of Law and Economics are indicated by **ELE** (note that a direct link to ELO chapters is provide on the blackboard site; simply click on the four digit number preceding the chapter title, **LN** implies a paper is available through **LexisNexis**, and papers available through **Jstor** are simply indicated with **JSTOR**.

I. Introduction: August 25 & 27.

Readings:

Introduction and Chapters 1 and 2 **DF**;

Introduction and Chapter 1 **AD**;

Ejan Mackaay “0200 History of Law & Economics” **ELE**;

Thomas S. Ulen “0710 Rational Choice Theory in Law & Economics” **ELE**;

Peter Klein “0530 New Institutional Economics” **ELE**;

Ludwig Van den Hauwe “0610 Public Choice, Constitutional Political Economy, and Law & Economics” **ELE**

II. Coase: Externalities, Transactions Costs, and Property Rights: August 29 and September 3, 5, 8, 10 & 12 [No Class on September 1 – Labor Day]

Readings:

Chapter 2 and pages 47-57 of Chapter 3 **AD**

Chapters 3, 4, 6, 7 and 8 **DF**

Ronald Coase, "The Problem of Social Cost," Journal of Law and Economics (1960): 1-44. **JSTOR**

Steven G. Medema and Richard O. Zerbe Jr., “0730 The Coase Theorem” **ELE**

Harold Demsetz, “When Does the Rule of Liability Matter?” Journal of Legal Studies (1972): 13-28. **JSTR**

Armen Alchian, "Property Rights," in The Concise Encyclopedia of Economics, The Library of Economics and Liberty **LINK**

Tyler Cowen, “Public Goods and Externalities,” in The Concise Encyclopedia of Economics, The Library of Economics and Liberty **LINK**

Elinor Ostrom, “2000 Private and Common Property Rights” **ELE**

Ronald N. Johnson and Gary D. Libecap, "Contracting Problems and Regulation: the Case of the Fishery," American Economic Review 72 (1982): 332-347. **JSTOR**

Bruce Benson, "Are Public Goods Really Common Pools: Considerations of the Evolution of Policing and Highways in England," Economic Inquiry 32 (April 1994): 249-271. **LINK**

Anderson, Terry and Lueck, Dean, “Land Tenure and Agricultural Productivity on Indian Reservations,” Journal of Law and Economics 35 (October 1992): 427-454. **JSTOR**

Harold Demsetz, "Toward a Theory of Property Rights," American Economic Review (May 1967): 347-359. **JSTOR**

Robert C. Ellickson, "Property in Land." Yale Law Journal, 102 (1993): 1315-1400. **JSTOR**

Terry Anderson, and P. J. Hill, "The Evolution of Property Rights: A Study of the American West," Journal of Law and Economics (April 1975): 163-179. **JSTOR**

Pashigian, B. Peter and Gould, Eric, “Internalizing Externalities: The Pricing of Space in Shopping Malls,” Journal of Law and Economics, 41 (April 1998): 115-142. **JSTOR**

Gary Libecap, "Economic Variables and the Development of the Law: The Case of Western Mineral Rights," Journal of Economic History (June 1978): 399-458. **JSTOR**

Robert Cooter, “The Cost of Coase,” Journal of Legal Studies 11 (1982): 1-29. **JSTOR**

Terry Anderson and Fred McChesney, "Raid or Trade: An Economic Model of Indian-White Relations," Journal of Law and Economics (April 1994): 39-74. **JSTOR**

III. Law and Legal Institutions: September 17, 22, 24 & 26 [Note: No Class on September 15 (Professor Benson presenting a paper on drug policy at the Northwestern University Law School) and on September 19 (Professor Benson is participating in a Symposium on tort theory in Washington)].

Readings:

Intermezzo, Chapters 17 and 19, and Epilogue **DF**

Francesco Parisi, “9500 Spontaneous Emergence of Law: Customary Law” **ELE**

Anthony Ogus, “9400 Self-Regulation” **ELE**

Rapaczynski, Andrzej, “The Roles of the State and the Market in Establishing Property Rights,” Journal of Economic Perspectives, 10 (Spring 1996): 87-103. **JSTOR**

Peter T. Leeson, “An-arrgh-chy: The Law and Economics of Pirate Organization,” Journal of Political Economy 115(6) 2007: 1049-1094. **LINK**

Rubin, Paul, “Why Is the Common Law Efficient?” Journal of Legal Studies 6 (January 1977): 51-63. **JSTOR**

Hughes, James and Snyder, Edward, “Litigation and Settlement under the English and American Rules: Theory and Evidence,” Journal of Law and Economics 38 (April 1995): 225-250. **JSTOR**

Kaplow, Louis and Shavell, Steven, “Why the Legal System Is Less Efficient Than the Income Tax in Redistributing Income,” Journal of Legal Studies 23 (June 1994): 667 -681. **JSTOR**

Todd Zywicki, “The Rise and Fall of Efficiency in the Common Law: A Supply-Side Analysis,” Northwestern Law Review 97 (2003): 1551-1634. **LINK**

Bruce L. Benson, "An Economic Theory of the Evolution of Governance and the Emergence of the State," Review of Austrian Economics, Vol. 12, No. 2, November 1999, pages 131-160. **LINK**

Frédéric Bastiat, The Law, Dean Russell, Trans, (Irvington-on-Hudson, NY: The Foundation for Economic Education, Inc. 1998 [1850]) **LINK**

Bruce L. Benson, "Law and Economics," in The Elgar Companion to Public Choice, William F. Shughart II and Laura

Razzolini, editors (London: Edward Elgar, 2001), 547-589. **LINK**

Cases: *Ghen v. Rich* (1981), *Bryant v. Lefever* (1879), *Fontainebleau Hotel Corp. v. Forty-Five Twenty Five, Inc.* (1959), *Prah v. Maretti* (1982)

IV. Issues in Property Law: September 29, and October 1, 3, 6, 8 & 10 [Note: No Class on October 13 (Professor Benson will be attending a “retreat” for Department Chairs)].

Readings:

Pages 57-76 of Chapter 3 **AD**

Chapters 5 and 10 **DF**

Guido Calabresi and A. Douglas Melamed “Property Rules, Liability Rules, and Inalienability: One View of the Cathedral,” *Harvard Law Review* 85 (1972): 1089-1128. **JSTOR**

Timothy Swanson and Andreas Kontoleon, “2100 Nuisance”

Michael I. Krauss, “3800 Property Rules vs. Liability Rules”

William A. Fischel 2200 Zoning and Land Use Regulation” **ELE**

Bruce L. Benson, “Disequilibrium and Inefficiency are the Inevitable Result of Government Development Planning,” in *Property Wrongs: The Law and Economics of Takings*, Bruce L. Benson, editor, Forthcoming.

LINK

Richard A. Epstein, “An Outline of Takings,” *University of Miami Law Review* 41 (November 1986): 3-19.

LINK

Brief of Jane Jacobs as Amica Curiae in Support of Petitioners, Susette Kelo et al. v. City of New London **LINK**

Brief of Law Professors in Support of Respondents, Susette Kelo et al. v. City of New London **LINK**

Bruce L. Benson and Mathew Brown, “Eminent Domain for Private Use: Is it Justified by Market Failure or an Example of Government Failure?” in *Property Wrongs: The Law and Economics of Takings*, Bruce L. Benson, editor, Forthcoming. **LINK**

Cases: *Ploof v. Putnam* (1908), *Vincent v. Lake Erie Transport Co.* (1910), *Hadacheck v. Sebastian* (1915), *Boomer v. Atlantic Cement Co.* (1970), *Spur Industries v. Del E. Webb Development* (1972), *Dolan v. Tigard* (1995), *Lucas v. South Carolina Coastal Commission* (1992), *Pennsylvania Coal Co. v. Mahon* (1922), *Mahon v. Pennsylvania* (1922), *Village of Euclid v. Ambler Realty* (1926), *Agins v. City of Tiburn* (1980), *Penn Central v. New York City* (1978), *Kelo et al. v. City of New London* (2005)

MIDTERM EXAM: October 15, during the regular class period

V. Issues in Contract Law: October 17, 20, 22, 24, 27 and 29

Readings:

Chapters 4 and 5 **AD**

Chapter 12 **DF**

Bruce Benson, “The Spontaneous Evolution of Commercial Law,” *Southern Economic Journal* 55 (January 1989): 644-661. **JSTOR**

Bruce L. Benson, “To Arbitrate or to Litigate: That is the Question,” *European Journal of Law and Economics* 8 (September 1999): 91-151.

<http://www.springerlink.com.proxy.lib.fsu.edu/content/v14713w4383h61h3/fulltext.pdf>

Richard Craswell, “4000 Contract Law: General Theories,” **ELE**

Paul G. Mahoney “4600 Contract Remedies: General” **ELE**

Eric A. Posner “4620 Contact Remedies: Foreseeability, Precaution, Causation and Mitigation” **ELE**

Antony T. Kronman, “Mistakes, Disclosure, Information, and the Law of Contract,” *Journal of Legal Studies* 7 (1978): 35-64. **JSTO**

Thomas Ulen, “Efficiency of Specific Performance” Toward a Unified Theory of Contract Remedies,” *Michigan Law Review* 83 (October 1984): 341-403. **JSTOR**

Daniel Friedmann, "The Efficient Breach Fallacy," Journal of Legal Studies 18 (January 1989): 1-24. **JSTOR**
Richard A. Epstein, "Unconscionability: A Critical Reappraisal," Journal of Law and Economics, 18 (Oct., 1975): 293-315. **JSTOR**

Cases: Wilkins v. First Source Bank (1990), Sherwood v. Walker (1887), Harris v. Tyson (1855), Peter Matthews, Ltd. v. Robert Maybe, Inc. (1986), Williams v. Walker Thomas Furniture Co. (1964) Number 1, Williams v. Walker Thomas Furniture Co. (1965) Number 2, Miltenberg & Samton, Inc. v. Mallor (1956), Eastern S.S. Lines, Inc. v. United States (1953), Campbell Soup Co. v. Wentz (1983), Dietsch v. Music Co. (1983), Florida East Coast Railway Co. v. Beaver Street Fisheries, Inc. (1989), Allied Canners & Packers v. Victor Packing Co. (1984), Tongish v. Thomas and Decatur Coop Assoc. (1992), Peevyhouse v. Garland Coal & Mining (1960)

VI. Issues in Tort Law: October 31 and November 3, 5, 7, 10, 12 & 14.

Readings:

Chapters 6 and 8 **AD**

Chapters 9 and 14 **DF**

Hans-Bernd Schäfer, "3000 Tort Law: General," **ELE**

Hans-Bernd Schäfer and Andreas Schönerberger, "3100 Strict Liability v. Negligence" **ELE**

Steven Shavell, "An Analysis of Causation and the Scope of Liability in the Law of Torts," Journal of Legal Studies 9 (March 1980): 463-516. **JSTOR**

Schwartz, Gary T. 1994. "Reality in the Economic Analysis of Tort Law: Does Tort Law Really Deter?" UCLA Law Review, 42 (December 1994) 377-444. **LINK**

Bruce L. Benson, "Uncertainty, the Race for Property Rights, and Rent Dissipation due to Judicial Changes in Product Liability Tort Law," Cultural Dynamics 8 (November 1996): 333-351. **LINK**

Michelle J. White, "Asbestos and the Future of Mass Torts," Journal of Economic Perspectives 18(Spring 2004): 183-204. **JSTOR**

Manning, Richard, "Changing Rules in Tort Law and the Market for Childhood Vaccines," Journal of Law and Economics, 37(April 1994): 247-275. **JSTOR**

Paul Rubin, "Public Choice and Tort Reform," Public Choice, 124 (July 2005), pp.223-236. **LINK**

Cases: Winn Dixie Stores, Inc. v. Benton (1991), United States v. Carroll Towing Co. (1947), McCarty v. Pheasant Run, Inc. (1987), Davis v. Consolidated Rail Corp. (1987), Trimarco v. Klein, et al. (1982), Macpherson v. Buick Motor Corporation (1916), Greenman v. Yuba Power Products, Inc. (1962), Escola v. Coca Cola Bottling Co. (1944), Yukon Equipment v. Fireman's Fund (1978), Shepard v. Superior Court (1977), Daniell v. Ford Motor Co. (1984), Cryts v. Ford Motor Co. (1978), Williams v. Brown Manufacturing Co. (1970), Murray v. Fairbanks Morse (1979)

VIII. Paper Presentations: Week of November 17 to 21 [Note: there will be enough extra sessions during this week so that a 50 minute period can be devoted to each paper; these sessions will make up for the classes that did not meet earlier in the semester]

VII. Issues in Criminal Law: September 24 & 26, and December 1, 3 & 5

Readings:

Chapter 7 **AD**

Chapters 15 and 18 **DF**

Gary Becker (1968), "Crime and Punishment: An Economic Approach," Journal of Political Economy 76 (March/April 1968): 169-217. **JSTOR**

Isaac Ehrlich (1996), "Crime, Punishment, and the Market for Offenses," Journal of Economic Perspectives 10 (Winter 1996): 43-68. **JSTOR**

A. Mitchell Polinsky and Steven Shavell, "8000 Public Enforcement of Law" **ELE**

Erling Eide, "8100 Economics of Criminal Behavior" **ELE**

Roger Bowles, “8500 Corruption” **ELE**

Bruce L. Benson and Fred McChesney, “Corruption” in Companion to the Economics of Property Rights, Enrico Colombatto, ed. (London: Edward Elgar, 2004), pages 328-352. **LINK**

John R. Lott, John R. and David B. Mustard, “Crime, Deterrence, and Right-to-Carry Concealed Handguns,” Journal of Legal Studies 26 (January 1997): 1-68. **JSTOR**

Bruce L. Benson, Iljoong Kim and David W. Rasmussen, “Estimating Deterrence Effects: A Public Choice Prospective on the Economics of Crime Literature” Southern Economic Journal, Vol. 61, No. 1, July 1994, pages 161-168. **JSTOR**

Bruce L. Benson, Iljoong Kim, and David W. Rasmussen, “Deterrence and Public Policy: Tradeoffs in the Allocation of Police Resources,” International Review of Law and Economics, Vol. 18, No. 1, March 1998, pages 77-100. **LINK**

Bruce L. Benson, “Escalating the War on Drugs: Causes and Unintended Consequences,” Stanford Law and Policy Review, forthcoming [undergoing editorial revisions; A **LINK** to the final version will be available before this section of the course]

Posner, Richard A. 1985. An Economic Theory of the Criminal Law,” Columbia Law Review 85 (October 1985): 1193-1231. **JSTOR**

Robert Ekelund and Cheryl Dorton, “Criminal Justice Institutions as a Common Pool: The Nineteenth Century Analysis of Edwin Chadwick,” Journal of Economic Behavior and Organization 50 (2003): 271-294. **LINK**

Bruce L. Benson, “The Development of Criminal Law and Its Enforcement: Public Interest or Political Transfers,” Journal des Economistes et des Etudes Humaines, 3 (March 1992): 79-108. **LINK**

FINAL EXAM: Wednesday, December 10, 12:30 PM to 2:30 PM

FINAL PAPER DUE: Friday, December 12, 5:00 PM