Mercuro and Medema define Law and Economics as “the application of economic theory (primarily microeconomics and the basic concepts of welfare economics) to examine the formation, structures, processes and economic impact of law and legal institutions.”¹ We will adopt this definition and I hope to consider both a positive and normative analysis of law using the tools of economics. Positive analysis is concerned with understanding how law is formed or with predicting the effect of law, while normative analysis entails a consideration of how the law should be. We will devote most of our attention here to the positive version of the so-called “efficiency hypothesis” by examining the effects and efficiency implications of legal rules and doctrines in the common law areas of property, contracts and torts. If time allows, we will also explore criminal law and the normative version of the efficiency hypothesis.

The course is organized as a seminar, and a good deal of the responsibility for its success rests upon the participation of students. I hope to accomplish most of our in-class work through class discussions drawn from the reading and from discussion questions/outlines that I will provide in advance. Another means of student participation is to bring to class relevant examples of legal issues from regular reading of The Wall Street Journal or another news publication. (You will note that participation is an important factor in the course grade.)


Course Web Page: found on CLEo at https://cleo.whitman.edu/portal.

Course Outline: [A “(c)" indicates a reading available through CLEo. We will discuss some of the “*” readings, and if I may replace a reading if I find something more appealing.]

1) Introduction and Overview of the Economic Approach

A) What Law and Economics is About

Cooter and Ulen, Chaps. 1 and 3

Skim the articles in this little compare-and-contrast pairing:


B) Introduction to the Legal System and to the Common Law of Property, Contracts, Torts

Cooter and Ulen, Chap. 3.


C) Web and Library Resources for Case Notes

Handout.


Note: Skim pp. 1-13 of this to gain some initial familiarity with a few aspects of the common law of property, contracts and torts to prepare for selecting a case for your case note.

D) The (Neoclassical) Economic Approach to Law

Cooter and Ulen, Ch. 2 (skim--you should know most of this stuff).


A Pairing:


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Case Note Dibs Due:
Wednesday, February 6, 2019 via e-mail (the rule of first dibs applies)
2) Property Law

A) An Economic Analysis of Property Law

Cooter and Ulen, Chaps. 4 and 5.


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**Case Note Prospectus Due:**
**Wednesday, February 20, 2019**

*Provide an MS Word email attachment before class AND a hardcopy in class.*

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B) Discussion of Recent Topics/Cases in Property Law

Handouts of news articles and other material.

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**Exam One:**
**Wednesday, March 6, 2019 in class**

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3) Tort Law

A) An Economic Analysis of Tort Law

Cooter and Ulen, Chaps. 6 and 7.


(Tort law readings are cont’d next page.)


B) Discussion of Recent Topics/Cases in Tort Law

Handouts of news articles and other material.

**Case Note Partial Draft + Outline Due:**
**Wednesday, April 10, 2019.**
* Remove identifying marks and other (digital) information, and provide an MS Word email attachment before class AND a hardcopy in class.

4) Contract Law

A) An Economic Analysis of Contract Law

*Cooter and Ulen, Chaps. 8 and 9.


(Contract law readings are cont’d next page.)


Peer Feedback Due:  
Wednesday, April 17, 2019 in class.  
Provide the completed peer feedback form in hardcopy AND the marked paper in hardcopy or as an email attachment.

B) Discussion of Recent Topics/Cases in Contract Law

Handouts of news articles and other material.

* 5) Crime

A) An Economic Analysis of Crime and Criminal Law

Cooter and Ulen, Chaps. 12 and 13.


B) Recent Topics/Cases in Criminal Law

Handouts of news articles and other material.

6) The Positive Version of the Efficiency Hypothesis

Cooter and Ulen, pp. 410-417.


Case Notes Due:  
Wednesday, May 1, 2019 in class (hardcopy only)

Case Note Presentations:  
Wednesday, May 1 and Monday, May 6, 2019 in class
* 7) The Normative Version of the Efficiency Hypothesis


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**Exam Two (with Take-Home Option):**
The regularly scheduled exam is 9:00-11:00 AM on Monday, May 13, 2019.
(Individual arrangements can be made for those who chose the take-home option, but for these students, exams are due before the regularly scheduled exam.)

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**Course Requirements and Schedule:**

<table>
<thead>
<tr>
<th>Case Note</th>
<th>Date</th>
<th>Percentage Weight in Final Course Grade</th>
</tr>
</thead>
<tbody>
<tr>
<td>Class Participation</td>
<td>throughout the semester</td>
<td>10</td>
</tr>
<tr>
<td>Exam One</td>
<td>W 3/6/19, in class</td>
<td>25</td>
</tr>
<tr>
<td>Exam Two (Take-home option)</td>
<td>9-11, M 5/13/19 (or as arranged)</td>
<td>25</td>
</tr>
<tr>
<td>a) Dibs (specifically, “first dibs”)</td>
<td>W 2/6/19, via email</td>
<td>10</td>
</tr>
<tr>
<td>b) Prospectus</td>
<td>W 2/20/19, in class and via email</td>
<td></td>
</tr>
<tr>
<td>c) Partial Draft + Outline</td>
<td>W 4/10/19, in class and via email</td>
<td>5</td>
</tr>
<tr>
<td>d) Peer Feedback due</td>
<td>W 4/17/19, in class (and/or via email)</td>
<td></td>
</tr>
<tr>
<td>e) Paper Due</td>
<td>W 5/1/19</td>
<td>25</td>
</tr>
<tr>
<td>f) Presentation</td>
<td>W 5/1/11 and M 5/6/19</td>
<td>(part of class participation)</td>
</tr>
</tbody>
</table>

Class participation is an important part of the course and receives a non-trivial weight in the calculation of the course grade. I will provide a mid-term assessment for each student’s participation to provide you some indication of how I view your performance in this regard so that you can respond appropriately during the remainder of the course.

There will be two closed book/closed note exams in the course. My usual practice is to write exams inspired by a news article, and then pose a series of questions related to that article for which the answers which require the use of concepts covered in class. I urge you to refer to the previous exams (for Spring 2017 and 2018) as part of your exam preparation. These (and the exam keys) are available on CLEo. Please note the exam dates and schedule any travel around those dates. Conflict exams are generally not available. Note that the Registrar’s Office’s date for Exam Two is the default, and we will discuss another option.
The case note requirement of the course is a set of six assignments. First, you must place dibs on a case and notify me by email of your choice, keeping in mind that “first dibs” applies to students who may select the same case. The case must be a recent property, contract or tort case, one for which an opinion was issued in 2018 by a U.S. state or federal court. Second, you must submit a prospectus of about two type-written double-spaced pages (in both hard copy form and as an MSWord e-mail attachment). For the prospectus, you are to present the case about which you plan to write your note. Include the facts of your case, the legal issues involved, the decision in the case, and a hint about how you might apply economic concepts to analyze the case. (You will need to skim sections of the textbook’s chapters relevant for your case to get a sense of the possibilities for an economic analysis of the issue or issues presented by your case.) You must also attach a bibliography and a hard copy of the opinion to the prospectus. (We will devote some class time to a discussion of web and library resources to help you in finding a case and research materials.) The third assignment is a partial draft of at least seven pages AND an outline of the remainder of case note. The partial draft should provide an introduction to your paper, describe the facts of the case, highlight the relevant legal and economic issues posed by the case, and at least some of your analysis of those issues. The outline should offer a sketch of the remainder of the paper. The partial-draft+outline will be assigned to a classmate for their feedback, and this peer feedback is the fourth assignment. The fifth assignment is the final draft of the case note, which should be about 10-15 double-spaced typed pages in length (excluding references and notes), and here you will present the case (as you did in the prospectus and more fully in the partial draft) and offer the economic analysis of the case that you proposed in the prospectus. Finally, each student will provide a six or seven minute in-class presentation of his or her case note. The order in which case notes are presented will be determined by drawing a number from a hat. Be aware that late assignments are penalized one-third grade per day late. All assignments are due in class on the dates indicated.

Assessment of the Academic Program-Social Science Learning Goals

Faculty of all departments are required to begin assessing our courses with respect to the learning goals of the relevant distribution categories of Whitman's General Studies program. This course contributes to your fulfillment of the Social Science distribution requirement, and the learning goals (taken from pages 86-87 of the 2018-2019 Whitman College Catalog) are:

Students will be able to do one or more of the following:
• Compare and contrast social institutions, structures, and processes across a range of historical periods, cultures, and societies around the globe.
• Analyze complex behavior and relationships within and across individuals and social contexts.
• Demonstrate familiarity with social science methods in the context of explaining or predicting individual and collective behavior and decision-making.
• Apply social science principles to personal, social, and/or organizational issues

Hopefully, this class will help you make progress for each of these goals in varying degrees, but I’ll focus on the last for purposes of meeting the assessment requirements imposed on faculty. I’ll use portions of the one or both exams for assessment of the second goal (“analyze complex behavior and relationships within and across individuals and social contexts”).