EC 338: LAW AND ECONOMICS
Fall 2012
Professor James A. Dalton

Office Hours: Mondays and Wednesdays
7:15-8:15am; 10:00am-12:30pm;
or by appointment
Office: Maloney Hall, 480B
Email: (1) jdalton7@comcast.net (for brief communication); (2) daltonjc@bc.edu
(for papers only).

Prerequisites: Students are expected to be well grounded in microeconomic theory. And your performance is at risk if you have not fulfilled all five requirements specified for this course. I will be using the tools developed in those courses but will not be devoting class time to teach them again.

Textbook and Handouts: The assigned text is Robert Cooter and Thomas Ulen, Law and Economics (6th edition), Reading, MA, Addison Wesley, 2012. The Course Pack contains additional reading assignments and I will provide more material for study. (And a used course pack from Fall 2011 is acceptable but it omits some content added since that date.)

Method: This course requires active participation on a class-by-class basis. Although I frequently will use the traditional lecture method, I also will call on students in each class to discuss assignments and paper topics. Other experts will be introduced to the class. This course also relies on two short “critical thinking” papers and numerous reading assignments in lieu of a substantial research paper.

Grading: The final grade will be based on performance in the following categories:

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<th>Component</th>
<th>Percentage</th>
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<tr>
<td>First Exam</td>
<td>30%</td>
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<tr>
<td>Second Exam</td>
<td>40%</td>
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<tr>
<td>Research Papers</td>
<td>30%</td>
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There will be no makeup exams. Only under extremely extenuating circumstances will an excused absence be considered for another substitute assignment. Late submissions of papers will be penalized.

Course Calendar, Syllabus, Assigned Readings and Forbidden Items: The syllabus lists the assigned material for each class. I reserve the option to change some assignments and dates for exams during the semester. “C & U” designates assignments in the text book. You will be given the course pack contains a table of contents. Laptops and recording devices are forbidden and media devices must be kept in your bags.

Discussion Papers: You must submit discussion papers of three pages on the dates specified in the syllabus. Each paper carries a weight of 15% toward calculation of your final grade. Your topic must be linked to the economic issues that we are studying; legal analyses and synopses of legal matters are not acceptable. Team projects also are not acceptable. Class discussion, handouts and the text will provide numerous examples of the type of topics for the papers, but these examples of topics cannot be used in your discussion papers. YOU must develop the topics. Then you should meet with me to discuss a proposal to determine whether the topic fits the course, but such a meeting is not required. In the paper you must present a careful specification of the topic (the what) that you will discuss, explain why it is relevant to the course, and then analyze the economic efficiency aspects of the issue. The papers must be submitted to me at the BC email address listed above. Late submissions will be penalized; no excuses will be accepted.
A session is scheduled with an information services expert. There you can further develop skills to assist your search for a topic if you need input for the papers. Every source must be documented and you must attach a bibliography. **ALWAYS cite to a source if you use its contents.** The analytical portion of your paper will be more than two- but no more than three- pages in length. Footnotes with substance, graphs, tables and the bibliography are to be on an additional page(s). And these additional pages must be incorporated into a single document. When citing to sources within the text, place in parentheses the author’s name, and page number where I can find the information to which you referred in the text (e.g., (Smith, p.32 when the full cite for Smith’s work is listed in the bibliography).

When submitting the paper, save it as EC338 [space] the number 1 (or 2 space [your last name] - 1 if it is your first paper and 2 if it is your second paper (e.g., EC338 1 Dalton). At the very top of p.1, insert the topic’s title and your name. Number the pages. And have a reliable proof reader examine your writing before submission. I can open a document if it is compatible with Word format.

Academic integrity will be respected in my courses. The Dean of A&S has asked faculty to include the following statement to students in course syllabi.

“Boston College values the academic integrity of its students and faculty. It is your responsibility to familiarize yourself with the university’s policy on academic integrity: [http://www.bc.edu/integrity](http://www.bc.edu/integrity).

If you have any questions, always consult your professor.

“Violations of academic integrity will be reported to your class dean and judged by the academic integrity committee in your school. If you are found responsible for violating the policy, penalties may include a failing grade as well as possible probation, suspension, or expulsion, depending on the seriousness and circumstances of the violation.”
# SYLLABUS and READING ASSIGNMENTS

## I. Introduction and Overview

<table>
<thead>
<tr>
<th>Date</th>
<th>Assignment</th>
<th>Reading Assignments</th>
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<tbody>
<tr>
<td>September 5</td>
<td>A. Thinking as lawyers &amp; economists</td>
<td>“Excerpts: American Courts Disorder; C &amp; U, Ch. 1; Kitch; Elliot, “Little Thanks Given in Bronx for Smelly Turkey Plant;” Johnson &amp; Kuppig, “The Smell of Success,” <em>Newsweek</em>, 7/12/04.</td>
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<td>September 12</td>
<td>C. “Rationality”, “efficiency”, “fairness” &amp; principles of economics</td>
<td>C &amp; U, Ch. 2.</td>
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<td>D. Capitalism, markets and market failure</td>
<td>H. Petersen, “Markets Are Good”; Pope John Paul II on “The Economics of Human Freedom.”</td>
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## II. Economic Theory of Property

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<th>Assignment</th>
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September 19  B.1. Externalties and the Coase Theorem  
C & U, Ch. 4, pp. 81-91; 
Farinkinbleau matter.

September 24 & 26  B.2. Externalities, remedies & more  
C&U, pp. 166-174, 139-142;  
Goodstein II,  
“Pollution as an Externality”; and J.  
Leape, “The London Congestion  
Charge,” Jr. of Economic Perspectives,  
Fall 2006, pp. 157-176.

October 1  Optional: Submission of potential topics for first critical thinking paper

October 1  No class. Work on choice of topic.

October 3  C.1. Intellectual Property  
C & U, Ch. 5, pp. 112-135;  
Zeller, “Entertainment Industry Asks  
Justices to Rule on File Sharing,”  
10/21/04, c.4; Landes and Lichtman,  
“Indirect Liability for Copyright  
Infringement: Napster and Beyond”;  
B. Stamler, “Battles of the Patents,  
Like David v. Goliath,” NYT, February  
21, 2006, Business p.2; Feist  
Publications v. Rural Telephone  
Service (1991)

October 8  Holiday, Columbus Day

October 10  Session with Expert from Information Services on Research Tools.  
Meet Barbara Mento in O’Neill 307 in the library during regular class time.  
There may not be a sufficient number of PCs available so it would be  
appreciated if some students brought their laptops with them; the room has a  
wireless connection.

October 15  D.1. Other Current Issues  
C & U, 163-171,156-162; Roth,  
“Repugnance as a Constraint on  
Markets”, Jr. Of Econ. Perspectives,  
Summer 2007. Optional related  
readings: Levine, “Law, Endowments  
and Property Rights”, Jr. of Economic  
Perspectives, Summer 2005; Howard,  
“Producing Organ Donors”, Jr. of  
Econ. Perspectives, Summer 2007;  
Becker and Elias, “Introducing
October 17     First Examination

III. Economic Theory of Tort Law

October 22 & 24     A. Economic theory of tort law
        C & U, Ch. 6 and appendix.

October 29 & 31     B. Topics in the economics of tort liability
        C & U, Ch. 7, except pp. 253-261;
        Matter of Adams v. Bullock (1919);
        Roberts, “Restrictions on Cellphone
        Use While Driving…,” WSJ, 4/17/06;
        Irvine v. Feline Breeding Center
        (1997).

        C. Antitrust Law (torts cont.)
        Florida et al v. BMG et al.

November 5     1. Economic theory: competition,
        market power, market failure
        C & U, Ch. 2, pp. 30-38; and
        Dalton, “Antitrust Laws”.

        2. Enforcement of antitrust policy over
        time

November 5     First Discussion Paper Due

November 7     3. Injury and “standing” revisited

        4. Per se vs. Rule of Reason: The
        Overlap Case (price
        fixing of financial aid to students)
        Ayres,
        “Colleges in Collusion: A Lesson
        in Price Fixing”, The New Republic,
        Oct. 16, 1989, pp. 19-20; “Are
        Colleges Fixing Prices”, The Nation,
        University, et al; 772, F. Supp. 241,
        Aug. 7, 1991; Sept. 19, 1991; Jan. 3,

IV. Economic Theory of Contract Law

November 12 & 14     A. Economic theory of contract law
        C & U, Ch. 8; Matter of
        Frugalment v. Intervale Sales.

November 19 & 26     B. Topics in the economics of contracts
        C & U, Ch. 9;
November 21  Thanksgiving Holiday

V. Economics of Damages (efficiency, remedies)

November 26
A. Concepts of damages
   C & U, 253-261; John R. Commons, Ch. II, “Property, Liberty & Value”, Legal Foundations Of Capitalism, pp. 11-25 (remainder of chapter is interesting; reading remainder is optional).

December 3  Second discussion paper Due

November 28
B. Liability and causation
   C. Measurement
      1. Types (e.g., personal injury, fraud, antitrust)

December 3
B. Punitive damages

December 5

VI. Roles of Economists Promoting Efficiency in Litigation

A. Adversarial process (e.g., “sue or settle”, incentives, exchange of information, efficiencies)
   Dalton, “Introduction to the Litigation Process”; C & U, Ch. 10.

B. Constraints on expert testimony
   Dalton, “Impact of Revised Rules of
(e.g., reports, “gateway” requirements), efficiencies

Civil Procedure on the Use of
Experts”, PHB Insights.

December 10  Second Exam