

ANTITRUST LAW Syllabus, Fall 2018

Law 6550 (3 credit hours)

MTW 9:00 AM, Holland Hall Room 359

Professor Page: Room 312D; page@law.ufl.edu; 273-0929

Office hours: MTWTh 3:00-5:00 and by appointment.

Course Description. Antitrust Law examines the law and economics of *cartels* (including price fixing and market allocation agreements), *exclusionary practices* (including boycotts, predatory pricing, and exclusionary contracting), and *horizontal mergers*. The assignments focus on Supreme Court decisions interpreting the most important and most-litigated antitrust statutes, §§ 1 and 2 of the Sherman Act (1890), § 5 of the Federal Trade Commission Act (1914), and § 7 of the Clayton Act (1914).

Purpose and Objectives of the Course. At the end of the class you should be able to state and apply to new practices the elements of the law and the relevant economic analysis of horizontal price fixing and market allocation; resale price maintenance; vertical exclusionary agreements; predatory pricing; and horizontal mergers. The specific topics covered are more fully listed in the assignments in this syllabus.

Assigned Texts. Assignments are to E. THOMAS SULLIVAN, HERBERT HOVENKAMP, HOWARD A. SHELANSKI, & CHRISTOPHER R. LESLIE, *ANTITRUST LAW, POLICY, AND PROCEDURE: CASES, MATERIALS, PROBLEMS* (7th ed. 2014) and some handouts.

Instructional Methods. I use a modified version of the Socratic method, with some lecture and review. Everyone is always on call, although I encourage volunteers to answer (or ask) questions and make comments.

Syllabus. This syllabus has assigned readings for each subject we cover, in the sequence that we will cover them. But every class is different, so it's not possible to predict exactly how much time we'll need to devote to a topic. *If we fall behind the dates I've listed for the assigned readings, as usually happens, please stay at least 2 assignments ahead of wherever we stop, and be prepared to discuss that material.* I've left several periods at the end of the syllabus to absorb the overruns. If those are insufficient, I will amend the syllabus.

Notice that I will miss three classes (September 10, 11, and 17). Those classes will be made up by three narrated PowerPoint lectures, which are available on the Course Materials page of the TWEN site. You're responsible for those materials just as you would be if we covered them in class. I'll refer to those materials in other classes, and you'll have opportunities to ask questions about them any time, including by email or in my office.

Required knowledge. The only prerequisite to this class (for law students) is the first year of law school. Still, economics is integral to antitrust law. Former federal judge (and antitrust scholar) Judge Richard Posner has written:

Almost everyone professionally involved in antitrust today—whether as litigator, prosecutor, judge, academic, or informed observer—not only agrees that the only goal of the antitrust laws should be to promote economic welfare, *but also agrees on the essential tenets of economic theory that should be used to determine the consistency of specific business practices with that goal.*

That's an exaggeration, because (as you'll see) politics and ideology have always played a big role in antitrust law and policy. But economics is necessarily part of any modern antitrust course. I will

lecture for a few periods at the outset of the course on some of the “essential tenets of economic theory” that govern antitrust law, and we will use that theory to examine specific practices during the semester. My lecture notes are available on the course TWEN site. As you’ll see from the notes, any math we use will not go beyond high school geometry and algebra. Some students may find the material initially daunting, but, in my experience, even students with no economics background can get it after seeing the applications over the course of the semester.

A lot of the same material is covered at <https://www.khanacademy.org/economics-finance-domain/microeconomics> in short, accessible lectures, which you can watch as many times as you want. Some of the lectures cover material that we’ll get to later in the course.

TWEN Site. There is a course web site at <http://lawschool.westlaw.com/twen/>. The site has course materials including the PowerPoint lectures I mentioned above, handouts, and old exams as well as some suggested outside sources and links.

Exam. The grade will be based on a final exam (or “summative assessment,” in current jargon), which is scheduled for **Thursday, December 6, at 8:30 AM.** The exam will include both objective and essay questions, and will test only material on the syllabus, as amended. Many of my past exams (and some answers) are available on the TWEN page in the Course Materials section.

The law school grading policy and mandatory mean and distributions are available a <http://www.law.ufl.edu/student-affairs/current-students/academic-policies#9> This class adheres to those standards and the following grades and grade point equivalents:

Letter Grade	Point Equivalent
A (Excellent)	4.0
A-	3.67
B+	3.33
B	3.0
B-	2.67
C+	2.33
C (Satisfactory)	2.0
C-	1.67
D+	1.33
D (Poor)	1.0
D-	0.67
E (Failure)	0.0

If a grade is on the borderline between grades based on the exam score, I may assign the higher grade based upon class performance.

Preparation for Class. Class preparation is required. You should expect to spend an average of about 2 hours preparing for each hour of class. **Please let me know before class if you’re unprepared that day.**

Absences. I will take roll using a sign-in sheet, which (of course) is covered by the Honor Code (see below). You can miss up to five classes without an excuse. If you miss more than six, you may not be allowed to take the final exam.

Classroom Civility. As you know, studies have shown that students, on average, learn better if they take class notes by hand. Nevertheless, you may use your computer to take notes in this class. But

don't use your phone or any wireless networks for any reason. These activities are a distraction to you and the students around you and a violation of College rules.

Accommodation. Students requesting classroom or exam accommodation must first register with the Office of Disability Resources. The UF Office of Disability Resources will provide documentation to the student who must then provide this documentation to the Law School Office of Student Affairs when requesting accommodation.

Honor Code. Please review the College honor code: <https://www.law.ufl.edu/life-at-uf-law/office-of-student-affairs/additional-information/honor-code-and-committee/honor-code>

Recommended Reading. The best single-volume work on antitrust law is RICHARD A. POSNER, *ANTITRUST LAW* (2d ed. 2001). A good hornbook is HERBERT HOVENKAMP, *FEDERAL ANTITRUST POLICY: THE LAW OF COMPETITION AND ITS PRACTICE* (4th ed. 2011). A shorter treatment is E. THOMAS SULLIVAN & JEFFREY L. HARRISON, *UNDERSTANDING ANTITRUST AND ITS ECONOMIC IMPLICATIONS* (5th ed. 2009). For a detailed examination of a single monopolization case, see WILLIAM H. PAGE & JOHN LOPATKA, *THE MICROSOFT CASE: ANTITRUST, HIGH TECHNOLOGY, AND CONSUMER WELFARE* (2007).

Class	Date	Assignment	Topic & Principal Cases
Introduction			
1.	8/13	Casebook, pp. 14-25 and Sherman Act, §§ 1 & 2; Clayton Act, §§ 2(a), 7; FTC Act, §§ 1 & 5 (in Appendix B of the casebook) <i>Meyer v. Kalanick</i> (pdf on TWEN)	Overview of antitrust history, & principal statutes
2.	8/14	Handout: "Economic Notes for Antitrust Law" (on TWEN)	Demand
3.	8/15		Supply & the Firm
4.	8/20		Market Structure and Market Power
Cartels			
5.	8/21	Casebook pp. 25-36	Early cases: <i>Trans-Missouri</i> , <i>Addyston Pipe</i>
6.	8/22	108-12; 88-97 (up to note 3); 164-66	Antitrust injury & standing: <i>Brunswick</i> , <i>Illinois Brick</i>
7.	8/27	177-200	Development of the per se rule: <i>Chicago Board of Trade</i> , <i>Trenton Potteries</i> , <i>Appalachian Coals</i> , <i>Socony</i>
8.	8/28	200-13	Data Dissemination: <i>Maple Flooring</i> , <i>Container</i>
9.	8/29	220-35	Characterization I: <i>Engineers</i> , <i>BMI</i>
	9/3	Labor Day	
10	9/4	235-59	Characterization II: <i>Catalano</i> , <i>Maricopa</i> , <i>NCAA</i>
11	<i>Narrated PowerPoint on TWEN</i>	259-79; 347-63	Characterization III & "Single Entities": <i>Cal. Dental</i> , <i>Dagher</i> , <i>American Needle</i>

12	9/5	283-306	Definition, pleading, and proof of agreement: <i>Interstate Circuit, Theatre Enters.; Twombly</i>
	9/10	No Class (<i>makeup class by PowerPoint Lecture for Assignment 11</i>)	
	9/11	No Class (<i>makeup class by PowerPoint Lecture for Assignment 14</i>)	
13	9/12	306-46	Summary Judgment: <i>Matsushita, Fructose, Williamson Oil</i>
14	<i>Narrated PowerPoint on TWEN</i>	365-81	Market Allocation: <i>Topco, Polk Bros.</i>
15	9/17	435-63	Vertical price restraints: <i>Leegin</i>
16	<i>Narrated PowerPoint on TWEN</i>	484-96	Vertical territorial restraints: <i>Sylvania</i>
17	9/18	382-93	Boycotts I: <i>Eastern States, Klor's, NYNEX</i>
Exclusionary Practices			
	9/19	No Class (<i>makeup class by PowerPoint Lecture for Assignment 16</i>)	
18	9/24	393-413, 420-33	Boycotts II: <i>NW Wholesale, Indiana Dentists, Associated Press, Actavis</i>
19	9/25	502-16	Exclusive dealing: <i>Tampa Electric</i>
20	9/26	516-31	Tying I: <i>Times-Picayune, Northern Pacific</i>
21	10/1	531-46	Tying II: <i>Jefferson Parish</i>
22	10/2	546-71	Tying III: <i>Kodak, Microsoft</i>
23	10/3	Handout (on TWEN)	Non-discrimination agreements: <i>American Express</i>
24.	10/8	603-29	Monopolization: Early cases: <i>American Can, Alcoa</i>
25.	10/9	638-63	Market power & definition: <i>DuPont (Cellophane)</i>
26.	10/10	668-85	Exclusion and Innovation I: <i>Berkey Photo, CalComp</i>
27.	10/15	567-75; 685-706	Exclusion and Innovation II: <i>Microsoft</i>
28.	10/16	575-92; 706-18	Antitrust and IP: <i>Ill. Tool Works, Rambus, Independent Service Orgs.</i>
29.	10/17	718-47	Predatory pricing: <i>Brooke Group</i>
30.	10/22	753-72	Package Discounts: <i>Cascade Health</i>
31	10/23	773-96	Refusals to deal: <i>Aspen, Trinko</i>
32	10/24	796-817	Exclusionary Contracting & Price Squeezes: <i>Dentsply, LinkLine</i>
33	10/29	817-32	Attempts and Conspiracies to Monopolize
34	10/30	862-84	Horizontal mergers: <i>Brown Shoe, Philadelphia Bank, General Dynamics</i>
35	10/31	884-98	Horizontal mergers—2010 Merger Guidelines

36	11/5	899-906	Horizontal mergers: <i>Staples</i>
37	11/6	906-35	Horizontal mergers: <i>Hospital Corp., Heinz</i>
38	11/7		
	11/12	Veteran's Day	
39	11/13		
40	11/14		
41	11/19		
	11/20	Constructive Friday	
	11/21	Thanksgiving break	
42	11/26		