**Antitrust: (Spring 2021)**

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This course examines the laws that protect consumers by ensuring competition in the marketplace. Specific topics include agreements among competitors, joint ventures, mergers, and monopolization. We will examine Supreme Court doctrine, influential modern lower court decisions, and government enforcement guidelines. Economic concepts and thinking characteristic of modern antitrust analysis are integrated throughout the course.   
  
**Learning Outcomes:** By the end of the course students should be able to:

* Understand the goals of antitrust, its basic institutions, and enforcement structures
* Understand the antitrust laws and enforcement policies governing horizontal mergers, including Section 7 of the Clayton Act, the 2010 Horizontal Merger Guidelines, and the 2020 Vertical Merger Guidelines
* Understand the antitrust laws and enforcement policies governing horizontal restraints of trade, including Section 1 of the Sherman Act
* Understand the antitrust laws and enforcement policies governing monopolization and vertical restraints of trade, including Section 1 and Section 2 of the Sherman Act

**Class:** This is a hybrid live and synchronous online course that meets Monday to Wednesday from 08:00 am to 09:00 am.

**Virtual Classroom Rules:**

* Your camera should be on during class. Your microphone should be muted until called upon or recognized to ask a question.
* If you need to step away for any reason during class, please feel free to turn your camera off until you return.
* Use the chat function to indicate that you have a question and I’ll call on you. I’ll also stop from time to time to ask if there are any questions.
* Please have your settings such that your full name shows.
* I will be recording class sessions. These recordings may be available for students who miss class for COVID-related or other reasons upon request from to me or the Assistant Dean of Student Academic Affairs.

**Office Hours:** All office hours will be via appointment and through Zoom meetings. I will always be available **Monday 2-3 pm**. I am also generally available via appointment and email.

**Required Casebook:**  Andrew I. Gavil, William E. Kovacic, Jonathan B. Baker, and Joshua D. Wright,*Antitrust Law in**Perspective: Cases, Concepts and Problems in Competition Policy* (2016) (3rdEdition).

Wewill also read enforcement agency guidelines, and other supplementary materials I will post on Canvas or are otherwise available on the web.

**Grading and Basis of Evaluation & Assessments:**   
  
You should come to class having read and thought about the material and prepared to participate in discussion. The assigned readings are a starting point for our learning.

**Grading**:

First day assignment 3 points

Class exercises 12 points

Midterm 30

Group assignment 10

Final Exam 45 points

**Final Exam:** The final exam is scheduled for **TBD**.

**Final Exam Permissible Materials:** Open book, open note, and open materials.

This course follows the Levin College of Law’s grading policies found [here](https://www.law.ufl.edu/life-at-uf-law/office-of-student-affairs/current-students/uf-law-student-handbook-and-academic-policies). The Levin College of Law’s mean and mandatory distributions are posted on the College’s website and this class adheres to that posted grading policy. The following chart describes the specific letter grade/grade point equivalent in place:

|  |  |
| --- | --- |
| Letter Grade | Point Equivalent |
| A (Excellent) | 4.00 |
| A- | 3.67 |
| B+ | 3.33 |
| B | 3.00 |
| B- | 2.67 |
| C+ | 2.33 |
| C (Satisfactory) | 2.00 |
| C- | 1.67 |
| D+ | 1.33 |
| D (Poor) | 1.00 |
| D- | 0.67 |
| E (Failure) | 0.00 |

The law school grading policy is available at: [http://www.law.ufl.edu/student-affairs/current-students/academic-policies#9 (Links to an external site.)](http://www.law.ufl.edu/student-affairs/current-students/academic-policies#9).

**Makeups**

The law school policy on exam delays and accommodations can be found [here](http://www.law.ufl.edu/student-affairs/current-students/forms-applications/exam-delays-accommodations-form).

**Class Attendance, Safety, and Participation**

We will have face-to-face instructional sessions to accomplish the student learning objectives of this course. In response to COVID-19, the following policies and requirements are in place to maintain your learning environment and to enhance the safety of our in-classroom interactions:

1. You are required to wear approved face coverings at all times during class and within buildings. Following and enforcing these policies and requirements are all of our responsibility. Failure to do so will lead to a report to the Office of Student Conduct and Conflict Resolution.  You also will no longer be permitted on the UF Law campus.  Finally, Dean Inman will also report your noncompliance to the relevant state board of bar examiners.
2. This course has been assigned a physical classroom with enough capacity to maintain physical distancing (6 feet between individuals) requirements. Please utilize designated seats and maintain appropriate spacing between students. Please do not move desks or stations.
3. Sanitizing supplies are available in the classroom if you wish to wipe down your desks prior to sitting down and at the end of the class.
4. Follow your TA’s guidance on how to enter and exit the classroom.  Practice physical distancing to the extent possible when entering and exiting the classroom.
5. If you are experiencing COVID-19 symptoms ([https://www.cdc.gov/coronavirus/2019-ncov/symptoms-testing/symptoms.html (Links to an external site.)](https://www.cdc.gov/coronavirus/2019-ncov/symptoms-testing/symptoms.html)), please do not come to campus or, if you are already on campus, please immediately leave campus. Please use the UF Health screening system and follow the instructions about when you are able to return too campus. [https://coronavirus.ufhealth.org/screen-test-protect/covid-19-exposure-and-symptoms-who-do-i-call-if/ (Links to an external site.)](https://coronavirus.ufhealth.org/screen-test-protect/covid-19-exposure-and-symptoms-who-do-i-call-if/).
6. Course materials will be provided to you with an excused absence, and you will be given a reasonable amount of time to make up work.[https://catalog.ufl.edu/UGRD/academic-regulations/attendance-policies/ (Links to an external site.)](https://catalog.ufl.edu/UGRD/academic-regulations/attendance-policies/).

1. **Any student that misses more than six (6) classes for the course may be dropped from the class.** I use *may* rather than *shall* because health issues will be treated differently from other absences (so long as you email me in advance).  Habitual tardiness to class will be treated the same as absence from the class.  I take attendance in the beginning of each class.  I take this policy seriously because in the real word, absenteeism and tardiness are punished.  You need to start thinking and acting like a professional while in school.  I can give you lots of war stories of people who do not hit the ground running in practice and were tainted with a bad reputation from Day 1.  Do not let it happen to you.
2. I may need to reschedule some classes during the course of the semester.  My preference is to front load these make-up dates so as to provide for some cushion later on in the class to go over old exams and general questions.
3. Finally, let me address a subject that has agitated a great many electrons on the law professor blogs and listservs: the use of laptop computers in class for things other than taking notes or looking at the statutes.   I think it is anachronistic and honestly, beneath me, to do anything so draconian as to force students to write instead of type (I work almost exclusively on a keyboard). I am going to work very, very hard to teach this complex material in a way that makes sense and highlights the theory and practice in a digestible way.  I hope you reciprocate by using (i.e. not using) your electronic window to the world and others responsibly while in class.

**Tentative Syllabus:** We may deviate from the tentative syllabus with assignmentstaken from current events, new cases, to accommodate guest speakers, scheduling reasons, etc. Please make sure you are signed up to receive updates via Canvas.

**Attendance**

Attendance in class is required by both the ABA and the Law School. If you miss more than six classes, your grade for the semester may be adversely affected. If you have a legitimate reason for missing class, you should contact me before or soon after class ends for your absence to be excused.

Please do not arrive late to class, leave early, or leave to take a break during class absent extenuating circumstances. Please turn off your cell phone during class. I reserve the right to lower your final grade if you engage in behavior that disrupts the learning environment for your classmates.

Students registered for the in-person section must attend in person unless they receive approval in advance from the instructor to participate in class virtually. Students who do not comply with this policy will be counted as absent.”

**Academic Honesty**

UF students are bound by The Honor Pledge which states, “We, the members of the University of Florida community, pledge to hold ourselves and our peers to the highest standards of honor and integrity by abiding by the Honor Code. On all work submitted for credit by students at the University of Florida, the following pledge is either required or implied: ‘On my honor, I have neither given nor received unauthorized aid in doing this assignment.’ The Honor Code specifies a number of behaviors that are in violation of this code and the possible sanctions. Click [here](https://sccr.dso.ufl.edu/process/student-conduct-code/) to read the Honor Code. Furthermore, you are obligated to report any condition that facilitates academic misconduct to appropriate personnel. If you have any questions or concerns, please consult with the instructor.

**Students with disabilities**

Students with disabilities who experience learning barriers and would like to request academic accommodations should connect with the Disability Resource Center. Click [here](http://www.dso.ufl.edu/drc/) to get started with the Disability Resource Center. It is important for students to share their accommodation letter with their instructor and discuss their access needs as early as possible in the semester.

**Health and Wellness Resources:**

* *U Matter, We Care*: If you or someone you know is in distress, please contact [umatter@ufl.edu,](mailto:umatter@ufl.edu) 352-392-1575, or visit [U Matter, We Care website](https://umatter.ufl.edu/) to refer or report a concern and a team member will reach out to the student in distress.
* *Counseling and Wellness Center*: [Visit the Counseling and Wellness Center website](https://counseling.ufl.edu/) or call 352-392-1575 for information on crisis services as well as non-crisis services.
* *Student Health Care Center*: Call 352-392-1161 for 24/7 information to help you find the care you need, or [visit the Student Health Care Center website](https://shcc.ufl.edu/).
* *University Police Department*: [Visit UF Police Department website](https://police.ufl.edu/) or call 352-392-1111 (or 9-1-1 for emergencies).
* *UF Health Shands Emergency Room / Trauma Center:* For immediate medical care call 352-733-0111 or go to the emergency room at 1515 SW Archer Road, Gainesville, FL 32608; [Visit the UF Health Emergency Room and Trauma Center website](https://ufhealth.org/emergency-room-trauma-center).

**Student evaluations**

Students are expected to provide professional and respectful feedback on the quality of instruction in this course by completing course evaluations online via GatorEvals. Click [here](https://gatorevals.aa.ufl.edu/students/) for guidance on how to give feedback in a professional and respectful manner. Students will be notified when the evaluation period opens, and can complete evaluations through the email they receive from GatorEvals, in their Canvas course menu under GatorEvals, or via [ufl.bluera.com/ufl/](file:///C:\Users\rmcilhenny\AppData\Local\Microsoft\Windows\INetCache\Content.Outlook\QH37XRU4\ufl.bluera.com\ufl\). Summaries of course evaluation results are available to students [here](https://gatorevals.aa.ufl.edu/public-results/).

**Class recording**

Students may not take, circulate, or post photos or videos of classroom discussions, whether they are in-person, hybrid, or completely online. Students failing to follow this rule will be referred to the College of Law Honor Code Council and the University’s Office of Student Conduct and Conflict Resolution.

**Course workload and class preparation**

Students should expect to spend at least two hours outside of class reading and preparing for every hour of class.

**READING ASSIGNMENTS**

**UNIT 1: Antitrust’s Goals, Enforcement Institutions, and Foundational Concepts**

**Class 1 Introduction to Antitrust Law**  
Chapter 1: 1-17; 55-67; 85-92  
Watch [this video](https://www.youtube.com/watch?v=W0hySWGHKj4)

Read this [short teaser](https://hbr.org/2019/06/when-tech-companies-compete-on-their-own-platforms) about how platform competition is hotter than [BTS’s Dynamite](https://www.youtube.com/watch?v=gdZLi9oWNZg):

Assignment 1: Answer questions regarding the video (see Canvas)

**Class 2 Antitrust Institutions and Objectives**

Chapter 1: 41-47 (Brunswick Corp.)   
Chapter 8: 1347 – 1361 (Illinois Brick)   
Apple v. Pepper (10 page Supreme Court decision from 2019 [handout](https://www.supremecourt.gov/opinions/18pdf/17-204_bq7d.pdf)) (on the modern mess)

**Week 2 (Classes 3-5) No in-class meeting**

Virtual assignments at your own pace ([https://www.theforage.com/landing/6550/FHfB7L5cpHrqz69b2/Florida](https://urldefense.proofpoint.com/v2/url?u=https-3A__www.theforage.com_landing_6550_FHfB7L5cpHrqz69b2_Florida&d=DwQCAg&c=sJ6xIWYx-zLMB3EPkvcnVg&r=hEk4tCQFx1RXnTeRBrXFaznyAJzEq0pjB3iRP9dMXZ4&m=Ou2_S9Cm33WvrF_aCL5NXT-H-7l7Spd7RFg8QNKn63A&s=Lu8ZyKJKt-B6I7GBvdAXaxJMRt8Qhw01e7OZbmSHhAs&e=))

– this will take 8 hours or so to complete

* 1. Airtech Antitrust Matter: Investigation/Cartels
     1. Assignment: Draft an email for a partner regarding your review of materials shared by Airtech’s in-house counsel and the applicable case law
  2. Airtech Antitrust Matter: Litigation/Deposition
     1. Analyze key documents and prepare targeted questions for an upcoming deposition
  3. Airtech Antitrust Matter: Mergers
     1. Analyze potential target companies that Airtech is considering acquiring and showcase your findings in a short presentation deck

**Class 6 Antitrust Institutions and Objectives 2: Federalism**Chapter 8: 1291-1303

**Class 7 Economics Primer**Chapter 1: 70-85

**UNIT 2: Horizontal and Vertical Mergers**

**Class 8 Merger Process and Overview**Chapter 5: 722-727  
[Premerger Notification and the Merger Review Process](https://www.ftc.gov/tips-advice/competition-guidance/guide-antitrust-laws/mergers/premerger-notification-merger-review)  
  
[guest speaker TBD]

**Class 9 The Structural Presumption**  
Clayton Act §§ 7-16  
Chapter 5: 671-709, 717-719  
  
Optional Reading: [Note on Corporate Concentration](https://one.oecd.org/document/DAF/COMP/WD(2018)69/en/pdf) (OECD)

**Class 10 2010 Horizontal Merger Guidelines & Market Definition**  
[Horizontal Merger Guidelines](https://www.ftc.gov/sites/default/files/attachments/merger-review/100819hmg.pdf) (all but skim coordinated and unilateral effects)

**Class 11 Coordinated Effects 1**  
Reread HMG § 7  
Chapter 5: 738-764; 774-779; 788-794

**Class 12 Coordinated Effects 2**Chapter 5: 517–535 (*HCA*)

Handout on *H&R Block* (section on coordinated effects and notes at the end)

**Class 13 Unilateral Effects**  
Chapter 5: 799- 828; 853-858

**Class 14 Market Definition in Practice**Guest presentation: Antara Dutta (Amazon) and Rebecca Kirk Fair (Analysis Group)

# Class 15 Potential Competition, Nascent Competition, Killer Acquisitions, and Consummated Mergers

# [guest lecture - TBD]

# [OECD Start-ups, killer acquisitions and merger control – Note by the United States](https://www.ftc.gov/system/files/attachments/us-submissions-oecd-2010-present-other-international-competition-fora/oecd-killer_acquisiitions_us_submission.pdf)

# Class 16 Efficiencies New York, et al. v. Deutsche Telekom AG (handout - excerpts)

**Class 17 Vertical Mergers**

Chapter 5: 870-880  
  
[United States v. AT&T, Inc](https://www.cadc.uscourts.gov/internet/opinions.nsf/390E66D6D58F426B852583AD00546ED6/$file/18-5214.pdf)., (D.C. Circuit 2019)

2020 Vertical Merger Guidelines ([all](https://www.ftc.gov/system/files/documents/reports/us-department-justice-federal-trade-commission-vertical-merger-guidelines/vertical_merger_guidelines_6-30-20.pdf))

**Midterm**

**UNIT 3: Horizontal Restraints**

**Class 18 Per Se Rule and the Rule of Reason I**Sherman Act §1  
Chapter 2: 101-123; 160-165; 181-184

**Class 19 Per Se Rule & Rule of Reason II**Chapter 2: 123-160

**Class 20 Per Se Rule & Rule of Reason III**

Chapter 2: 184-199; 246-258

**Class 21 Per Se Rule & Rule of Reason IV**

Chapter 2: 217-224  
FTC v. Polygram ([Opinion](https://www.ftc.gov/sites/default/files/documents/cases/2003/07/polygramopinion.pdf)): 13-35 only  
American Needle, Inc. v. NFL ([Opinion](https://www.supremecourt.gov/opinions/09pdf/08-661.pdf))

**Class 22 Modern Applications 1: FTC v. 1800 Contacts**   
  
Commission Opinion Part I and Part V only: <https://www.ftc.gov/system/files/documents/cases/docket_no_9372_opinion_of_the_commission_redacted_public_version.pdf>  
  
Commissioner Phillips Dissenting Opinion Part I & Part II: <https://www.ftc.gov/system/files/documents/public_statements/1421309/docket_no_9372_dissenting_statement_of_commissioner_phillips_redacted_public_version.pdf>

**Class 23 Modern Applications 2: *US v. Apple* and Proving Agreement**Chapter 3: 311-335; 370-371 (Figure 3-3)  
U.S. v. Apple ([Opinion](http://cases.justia.com/federal/appellate-courts/ca2/13-3741/13-3741-2015-06-30.pdf?ts=1435674605))

**UNIT 4: Exclusionary Conduct & Monopolization**

**Class 24 Monopoly Power, Exclusionary Effects & Raising Rivals' Costs I**Chapter 1: 47-55  
Chapter 4: 437-477

**Class 25** **Monopoly Power, Exclusionary Effects & Raising Rivals' Costs II** 482-504

**Class 26 Unilateral Refusal to Deal**Chapter 4: 504-522; 625-636  
  
[FTC v. Qualcomm](https://cdn.ca9.uscourts.gov/datastore/opinions/2020/08/11/19-16122.pdf)   
(guest speaker TBC)

**Assignment 2: Group project –** make the strongest arguments for your side in the Qualcomm case

**Class 27 Exclusive and Exclusionary Contracts I: Tying**Chapter 6: 965-995

**Class 28 Exclusive & Exclusionary Contracts II: Exclusive Dealing 1**Chapter 6: 996-1014; 1040-1046

**Class 29 Exclusive & Exclusionary Contracts III: Exclusive Dealing 2**Chapter 6: 1014-1040

**Class 30 Exclusive & Exclusionary Contracts IV: Predation & Discounting**Chapter 4: 566-584; 593-595

**Class 31 Anticompetitive Distribution Practices: Non-Price Conduct**

Chapter 6: 897-922

**Class 32 Anticompetitive Distribution Practices: Resale Price Maintenance**

Chapter 6: 937- 952

**Class 33 Exclusive & Exclusionary Contracts V: Predation & Discounting** Chapter 6: 1051-1078

**Class 34 Antitrust, Innovation, and Intellectual Property: Reverse Payments**

Chapter 10: 1163-84

[Guest lecture (TBC)]

**Class 35 Antitrust, Innovation, and Intellectual Property: Licensing**

Chapter 10: 1208-1222

**Class 36 Antitrust, Innovation and Intellectual Property: Patent Holdup and Holdout**

Chapter 10: 1223-1253

**Class 37** **Two Sided Markets**

Ohio v. American Express 2018 ([Supreme Court](https://www.supremecourt.gov/opinions/17pdf/16-1454diff_6579.pdf) – only majority decision)

**Class 38** **Google**

(readings TBD)

**Class 39** **Facebook**

(readings TBD)

**FINAL EXAM: TBD**