**Antitrust Law** Syllabus, Spring 2020

Law 6550 **(**3 credit hours**)**

MTW 9:30 AM-10:25AM, Holland Hall Room 270

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 *mergers*. The assignments to the casebook focus on Supreme Court decisions interpreting §§ 1 and 2 of the Sherman Act (1890), § 5 of the Federal Trade Commission Act (1914), and § 7 of the Clayton Act (1914), as the apply to these practices.

**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 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 (8th ed. 2019) 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 session 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.

**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 overstatement, because (as you’ll see) politics and ideology have always played a big role in antitrust law and policy—and that is still true today. 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 mainstream 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, 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, April 20, at 1:00 PM.** 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:

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| **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 four 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).

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| **Class** | **Date** | **Assignment** | **Topic & Principal Cases** |
| **Introduction** | | | |
| 1. | 1/13 | Casebook, pp. 17-28 and Sherman Act, §§ 1 & 2; Clayton Act, §§ 2(a), 4 & 7; FTC Act, §§ 1 & 5 (in the Appendix of the casebook) | Overview of antitrust history, & principal statutes |
| 2. | 1/14 | Handout: “Economic Notes for Antitrust Law”  (on TWEN) | Demand |
| 3. | 1/15 | Supply & the Firm |
| 4. | 1/21 | Market Structure and Market Power |
| **Cartels** | | | |
| 5. | 1/22 | Casebook pp. 28-39; 117-32 | Early cases: *Trans-Missouri*, *Addyston Pipe*  Antitrust Injury: *Brunswick*, *Cargill* |
| 6. | 1/27 | 95-112; 172-79 | Standing: *Illinois Brick, Apple v. Pepper* (handout) |
| 7. | 1/28 | 194-215 | Development of the per se rule: *Chicago Board of Trade*, *Trenton Potteries*, *Appalachian Coals*, *Socony* |
| 8. | 1/29 | 215-29 | Data Dissemination: *Maple Flooring*, *Container* |
| 9. | 2/3 | 236-52 | Characterization I: *Engineers*, *BMI* |
| 10 | 2/4 | 252-84 | Characterization II: *Catalano*, *Maricopa*, *NCAA, O’Bannon* |
| 11 | 2/5 | 285-305; 407-16 | Characterization III & “Single Entities”: *Cal. Dental*, *Dagher*, *American Needle* |
| 12 | 2/10 | 323-49; 308-21 | Definition, pleading, and proof of agreement: *Interstate Circuit*, *Theatre Enters.; Twombly* |
| 13 | 2/11 | 349-98 | Summary Judgment: *Matsushita*, *Fructose*, *Williamson Oil, Text Messaging* |
| 14 | 2/12 | 421-34 | Market Allocation: *Topco*, *Polk Bros*. |
| 15 | 2/17 | 495-522 | Vertical price restraints: *Leegin* |
| 16 | 2/18 | 541-51 | Vertical territorial restraints: *Sylvania* |
| **Exclusionary Practices** | | | |
| 17 | 2/19 | 435-46 | Boycotts I: *Eastern States*, *Klor’s*, *NYNEX* |
| 18 | 2/24 | 447-68; 474-91 | Boycotts II: *NW Wholesale*, *Indiana Dentists*, *Associated Press*, *Actavis* |
| 19 | 2/25 | 558-70 | Exclusive dealing: *Tampa Electric* |
| 20 | 2/26 | 571-92 | Anti-Steering Rules: *American Express* |
| 21 | 3/9 | 592-607 | Tying I*: Times-Picayune*, *Northern Pacific* |
| 22 | 3/10 | 607-21 | Tying II: *Jefferson Parish* |
| 23 | 3/11 | 621-42 | Tying III: *Kodak* |
| 24. | 3/16 | 677-705 | Monopolization: Early cases: *American Can*, *Alcoa* |
| 25. | 3/17 | 714-30 | Market power & definition: *DuPont (Cellophane)* |
| 26. | 3/18 | 747-65 | Exclusion and Innovation I: *Berkey Photo*, *CalComp* |
| 27. | 3/23 | 642-48; 765-86 | Exclusion and Innovation II: *Microsoft* |
| 28. | 3/24 | 648-64; 786-99 | Antitrust and IP*: Ill. Tool Works*, *Independent Service Orgs*. |
| 29. | 3/25 | 799-835 | Predatory pricing: *Brooke Group* |
| 30. | 3/30 | 835-55 | Package Discounts: *Cascade Health* |
| 31 | 3/31 | 855-81 | Refusals to deal: *Aspen*, *Trinko* |
| 32 | 4/1 | 881-904 | Exclusionary Contracting & Price Squeezes: *Dentsply*, *LinkLine* |
| 33 | 4/6 | 904-14 | Attempts and Conspiracies to Monopolize |
| **Mergers** | | | |
| 34 | 4/7 | 963-82 | Horizontal mergers: *Brown Shoe*, *Philadelphia Bank*, *General Dynamics* |
| 35 | 4/8 | 985-99 | Horizontal mergers—2010 Merger Guidelines |
| 36 | 4/13 | 999-1013 | Horizontal mergers: *Staples* |
| 37 | 4/14 | 1038-62 | Horizontal mergers: *Lundbeck* |
| 38 | 4/15 | 937-56 | Vertical Mergers: *AT&T-TimeWarner* |
| 39 | 4/20 |  |  |