

ANTITRUST LAW
UNIVERSITY OF FLORIDA LEVIN COLLEGE OF LAW
SPRING 2024 SYLLABUS – LAW 6550 – 3 CREDITS

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Office Hours: Tuesday, 5:00 p.m.–6:00 p.m. (virtual), or by appointment
Friday, 8:45 a.m.–9:45 a.m. (in-person)

MEETING TIME: Thursday, 5:30 p.m.–6:55 p.m.
Friday, 10:00 a.m.–11:25 a.m.

CLASS LOCATION: TBD

COURSE DESCRIPTION AND OBJECTIVES:

Welcome to antitrust! This class is about the law of competition, monopoly, and markets – the laws that protect consumers by ensuring competition in the marketplace. We will discuss many questions, some of which are front and center in today’s biggest antitrust challenges. What is the policy behind the antitrust laws and why? What makes a monopoly unlawful? What rules limit businesses in dealing with their competitors and those in their supply chain? When does tough competition become unlawful exclusion? And how does all this work when applied to massive entities like Big Tech and Big Pharma? Are some companies blatantly violating the antitrust laws? When should one entity be prevented from buying or merging with another? We will explore these and other important questions throughout the course, with a focus on some of the most burning issues of today.

The class is aimed towards those who are new to antitrust law and concepts. Topics for discussion will include agreements among competitors, joint ventures, mergers, and monopolization. We will examine Supreme Court doctrine, influential modern lower court decisions, and government enforcement guidelines. There will be a class on economics, but no prior knowledge or training in economics or business is required.

STUDENT LEARNING OUTCOMES:

At the end of this course, students should be able to:

- Understand the goals of antitrust, its basic institutions, and enforcement structures;
- Understand the antitrust and enforcement policies governing mergers, including Section 7 of the Clayton Act;
- Understand the antitrust laws and enforcement policies governing horizontal restraints of trade, including Section 1 of the Sherman Act; and
- Understand the antitrust laws and enforcement policies governing monopolization and vertical restraints of trade, including Section 1 and 2 of the Sherman Act.

REQUIRED READING MATERIALS:

You do not need to buy a casebook for this course! We are using an open-source publication from the American Bar Association (ABA), *Antitrust: Principles, Cases, and Materials* (1st ed. 2023), by Daniel Francis and Christopher Jon Sprigman, which will be available on Canvas. Please be sure to register for the Canvas course and have any required materials with you in print or easily accessible electronic form in class. You are responsible for checking your Canvas page and the e-mail connected to the page on a regular basis for any class announcements or adjustments.

We will also read enforcement agency guidelines and other supplementary materials and articles that will be posted on Canvas or otherwise available online.

COURSE EXPECTATIONS AND GRADING EVALUATION:

You should come to class having read and thought about the material and prepared to participate in the discussion. The assigned readings are starting points for our learning. You are welcome to bring laptops to class: absent a formal accommodation from UF, we prefer for laptops to be closed during discussion, but it is up to you.

Your course grade will be based entirely on your performance on the final examination. The final exam will be in-person, with the date TBD.

CLASS ATTENDANCE POLICY:

Attendance in class is required by both the ABA and the Law School. Attendance will be taken at each class meeting. Students are allowed 4 absences during the course of the semester. Students are responsible for ensuring that they are not recorded as absent if they come in late. A student who fails to meet the attendance requirement will be dropped from the course. The law school's policy on attendance can be found [here](#).

UF LEVIN COLLEGE OF LAW STANDARD SYLLABUS POLICIES:

Other information about UF Levin College of Law policies, including compliance with the UF Honor Code, Grading, Accommodations, Class Recordings, and Course Evaluations can be found at this link: <https://ufl.instructure.com/courses/427635/files/74674656?wrap=1>.

ABA OUT-OF-CLASS HOURS REQUIREMENTS:

ABA Standard 310 requires that students devote 120 minutes to out-of-class preparation for every “classroom hour” of in-class instruction. Each weekly class is 3 hours in length (two 1.5-hour classes), **requiring at least 6 hours of preparation** outside of class, including reading the assigned materials and preparing for any additional class exercises.

COURSE SCHEDULE OF TOPICS AND ASSIGNMENTS:

This syllabus is offered as a guide to the direction of the course. Our pace will depend in part on the level of interest and the level of difficulty of each section and is subject to change.

MODULE 1: INTRODUCTION	
1 1/18	<p><i>Class 1: Introduction and Overview (Profs. Conners, Hoffman, Sarrine, and Conlon)</i></p> <ul style="list-style-type: none">• Course overview• History of antitrust law• Foundations of U.S. antitrust• Landmark cases: <i>Von’s Grocery</i>; <i>Utah Pie</i>; and <i>Cargill</i> <p><i>Required Reading:</i> Chapter I, The Antitrust Project; Press Release, Fla. Att’y Gen. Off., Attorney General Moody Secures \$700 Million from Google over Play Store Misconduct (Dec. 19, 2023), https://www.myfloridalegal.com/newsrelease/attorney-general-moody-secures-700-million-google-over-play-store-misconduct; 9th Circuit Upholds Trial Rulings in Epic-Apple Antitrust Suit, Law360 (Apr. 24, 2023), https://www.law360.com/articles/1600479/9th-circ-upholds-trial-rulings-in-epic-apple-antitrust-suit; Epic Games Jury Says Google Monopolized App Market, Law360 (Dec. 11, 2023), https://www.law360.com/articles/1775859/epic-games-jury-says-google-monopolized-app-market.</p>
2 1/19	<p><i>Class 2: (Non-Tech) Antitrust Economics (Profs. Hoffman and Akleman)</i></p> <ul style="list-style-type: none">• Introduction to economics / why do we use economics in antitrust?• Supply and demand; static and dynamic competition; monopoly; and oligopoly• Some key concepts: substitutes, complements, horizontality, and verticality <p><i>Required Reading:</i> Chapter II, Antitrust Economics: A Nontechnical Introduction.</p>
MODULE 2: SHERMAN 1 – AGREEMENTS	
3 1/25	<p><i>Class 3: Sherman Act, Section 1: Agreements, Part I (Prof. Conlon)</i></p> <ul style="list-style-type: none">• One entity or several?• What is an agreement?

	<ul style="list-style-type: none"> Landmark cases: <i>Copperweld</i> (parent-subsidary collusion), <i>American Needle</i> (single entity standards); <i>Monsanto</i> (definition of agreement); <i>Text Messaging</i> (inference of conspiracy); <i>Matsushita</i> (inference of agreement at summary judgment); <i>Twombly</i> (plausibility of agreement at MTD). <p>Required Reading: Chapter IV, Agreements, Sections A through B.</p>
4 1/26	<p>Class 4: Sherman Act, Section 1: Agreements, Part II (Prof. Conlon)</p> <ul style="list-style-type: none"> Standards of legality: the per se rule, rule of reason and “quick look” Landmark cases: <i>Trenton Potteries</i> (the per se rule); <i>Chicago Board of Trade, Professional Engineers, NCAA v. Alston</i> (what benefits count under the “rule of reason”); <i>Board of Regents</i> (intermediate scrutiny) <p>Required Reading: Chapter IV, Agreements, Section C.</p>
5 2/1	<p>Class 5: Sherman Act, Section 1: Horizontal Agreements, Part I (Profs. Connors and Sarrine)</p> <ul style="list-style-type: none"> Price fixing and market division Group boycotts and hub-and-spoke conspiracies Landmark cases: <i>Palmer</i> (market definition); <i>Klor’s</i> (boycotts); <i>Apple e-books</i> (hub-and-spoke) <p>Required Reading: Chapter V, Horizontal Restraints, Sections A and B.</p>
6 2/2	<p>Class 6: Sherman Act, Section 1: Horizontal Agreements, Part II (Profs. Connors and Sarrine)</p> <ul style="list-style-type: none"> The per se/rule of reason boundary Landmark cases: <i>Topco</i> (competitor collaboration condemned as per se illegal); <i>BMI</i> (joint product) The quick look/rule of reason boundary Landmark cases: <i>Indiana Federation of Dentists</i> (clarifying (?) the boundaries of quick look); <i>Cal. Dental</i> (advertising restraints not subject to quick look) <p>Required Reading: Chapter V, Horizontal Restraints, Sections C and D.</p>
7 2/8	<p>Class 7: Sherman Act, Section 1: Vertical Agreements, Part I (Prof. Conlon)</p> <ul style="list-style-type: none"> The interbrand vs. intrabrand distinction Nonprice distribution restraints Resale price maintenance Landmark cases: <i>GTE Sylvania</i> (exclusive distribution territory); <i>Leegin</i> (minimum resale price maintenance)

	Required Reading: Chapter VI, Vertical Restraints, Sections A through C (excluding pp. 273-end of Lafontaine & Slade article on 278).
8 2/9	<p>Class 8: Sherman Act, Section 1: Vertical Agreements, Part II (Prof. Conlon)</p> <ul style="list-style-type: none"> • Exclusivity and Tying • Landmark cases: <i>Tampa Electric</i> (exclusivity); <i>Jefferson Parish</i> (tying). <p>Required Reading: Chapter VI, Vertical Restraints, Sections D through E.</p>

MODULE 3: MARKET DEFINITION AND MARKET POWER	
9 2/15	<p>Class 9: Market Definition and Market Power, Part I (Profs. Hoffman and Akleman)</p> <ul style="list-style-type: none"> • Introduction to markets and market power • Substitutability and ways of measuring it • The Hypothetical Monopolist Test (HMT) and <i>Brown Shoe</i> <p>Required Reading: Chapter III, Market Definition and Market Power, Sections A and B.</p>
10 2/16	<p>Class 10: Market Definition and Market Power, Part II (Profs. Hoffman and Akleman)</p> <ul style="list-style-type: none"> • Landmark cases: <i>DuPont</i> (the “Cellophane fallacy”); <i>Brown Shoe</i> (qualitative market definition); <i>H&R Block</i> (market definition applied) • Geographic markets • Oligopoly <p>Required Reading: Chapter III, Market Definition and Market Power, Sections C through F.</p>

MODULE 4: MERGERS AND ANTITRUST INSTITUTIONS	
11 2/22	<p>Class 11: Merger Control, Part I (Prof. Akleman)</p> <ul style="list-style-type: none"> • Clayton Act, Section 7 • Burden-shifting framework for evaluating mergers • Structural presumption of illegality • Unilateral effects <p>Required Reading: Chapter VIII, Mergers and Acquisitions, Sections A through B.2(a); Chapter XI, Government Enforcement, Section E.</p>
12 2/23	<p>Class 12: Merger Control, Part II (Prof. Akleman)</p> <ul style="list-style-type: none"> • Unilateral effects (cont’d)

	<ul style="list-style-type: none"> • Coordinated effects <p>Required Reading: Chapter VIII, Mergers and Acquisitions, Sections B.2(b) (pp. 448-453) and B.2(c) (pp. 462-463); <i>FTC v. Elders Grain, Inc.</i>, 868 F.2d 901 (7th Cir. 1989).</p>
13 2/29	<p>Class 13: Merger Control, Part III (Prof. Akleman)</p> <ul style="list-style-type: none"> • Potential competition • Efficiencies and other defenses • Remedies to unlawful mergers <p>Required Reading: <i>FTC v. Meta / Within</i> (case excerpt); Chapter VIII, Mergers and Acquisitions, Sections D.1, D.3 through E.1, and E.3.</p>
14 3/1	<p>Class 14: The Chicago School, Neo-Brandeisians, and the Tweens (Guest Speaker – John Newman, Former Deputy Director, FTC Bureau of Competition, Professor of Law, University of Miami, with Prof. Akleman)</p> <p>Required Reading: TBD.</p>
15 3/7	<p>Class 15: Case Study – JetBlue / Spirit (Guest Speaker – Andrew Finch, Antitrust Practice Group Co-Chair and Partner, Paul, Weiss, Rifkind, Wharton & Garrison LLP, introduced by Prof. Hoffman)</p> <p>Required Reading: TBD.</p>
16 3/8	<p>Class 16: Merger Control, Part IV (Prof. Akleman / Hoffman)</p> <ul style="list-style-type: none"> • Vertical merger analysis • Competitive responses to mergers <p>Required Reading: Chapter VIII, Mergers and Acquisitions, Sections B.2(d), C (pp. 478-489), <i>Illumina / Grail v. FTC</i>, No. 23-60167 (5th Cir. Dec. 15, 2023), and D.2 (pp. 506-509).</p>

SPRING BREAK: 3/11–3/15	
17 3/21	<p>Class 17: Class Exercises – Agreements and Mergers (Profs. Conlon, Connors, Sarrine, and Akleman)</p> <p>Required Reading: Class Exercises (to be provided a week prior to class).</p>

MODULE 5: SHERMAN 2 – MONOPOLIZATION AND EXCLUSIONARY CONDUCT

18 3/22	<p><i>Class 18: Monopolization/Anticompetitive and Exclusionary Conduct, Part I (Prof. Conlon / Akleman)</i></p> <ul style="list-style-type: none">• When does Section 2 come into play? The idea of monopoly power.• What does Section 2 prohibit? Acquisition or maintenance vs. abuse or exploitation.• But how do we know whether a monopolist’s conduct is lawful? The concept of anticompetitive vs. procompetitive conduct/exclusion and predation.• Landmark cases: <i>Dentsply</i> (exclusion); <i>Microsoft</i> (contribution to monopoly); <i>Alcoa</i> (older views of exclusionary conduct); <i>NYNEX</i> (monopoly power) <p><i>Required Reading:</i> Chapter VII, Monopolization, Sections A through C.2 (excluding pp. 334-middle of 338).</p>
19 3/28	<p><i>Class 19: Monopolization/Anticompetitive and Exclusionary Conduct, Part II (Prof. Conlon / Akleman)</i></p> <ul style="list-style-type: none">• Refusal to deal and the freedom (?) of the monopolist• Justification• Exclusivity• Landmark cases: <i>Aspen Skiing</i> (refusal to deal); <i>Trinko</i> (refusal to deal); <i>Microsoft</i> (justifications); <i>McWane</i> (justifications and exclusivity) <p><i>Required Reading:</i> Chapter VII, Monopolization, Sections C.3 through D.1.</p>
20 3/29	<p><i>Class 20: Monopolization/Anticompetitive and Exclusionary Conduct, Part III (Prof. Conlon / Akleman)</i></p> <ul style="list-style-type: none">• Tying• Predatory pricing• Landmark cases: <i>Brooke Group</i> (predation); <i>Microsoft</i> (monopoly maintenance through various complementary practices) <p><i>Required Reading:</i> Chapter VII, Monopolization, Sections D.1 and D.3 (excluding <i>Linkline</i>).</p>

MODULE 6: ADVANCED TOPICS

21 4/4	<p><i>Class 21: Immunities and Exemptions (Profs. Connors and Sarrine)</i></p> <ul style="list-style-type: none">• Petitioning immunity• State action• Landmark cases: <i>Noerr Motor Freight, Inc.</i> (petitioning); <i>North Carolina Dental</i> (state-sanctioned cartel); <i>Trinko</i> (effect of sectoral regulation on antitrust)
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	<p>Required Reading: Chapter IX, Immunities and Exemptions, Sections A through C; Skim Chapter IX, Section E.</p>
22 4/5	<p>Class 22: Antitrust Institutions and Objectives: Federalism and Government Enforcement (Profs. Conners, Sarrine, and Hoffman)</p> <ul style="list-style-type: none"> • The Federal Trade Commission • The U.S. Department of Justice – Antitrust Division • State Attorneys General <p>Required Reading: Chapter XI, Government Enforcement, Sections A through D and F.</p>
23 4/11	<p>Class 23: Criminal Enforcement (Guest Speaker – Mark Rosman, former DOJ Criminal Antitrust Assistant Attorney General, introduced by Prof. Conlon)</p> <p>Required Reading: TBD.</p>
24 4/12	<p>Class 24: Monopolization/Anticompetitive and Exclusionary Conduct, Issues in Health Care (Prof. Conlon)</p> <ul style="list-style-type: none"> • The Hatch-Waxman framework; abuse of patent monopolies and related anticompetitive schemes • <i>Doryx</i> (product hopping); <i>FTC vs. Actavis</i> (pay for delay) • Class Exercise on Monopolization <p>Required Reading: Chapter X, Antitrust and Intellectual Property (pp. 588-89 (Hatch-Waxman note); pp. 612-616 (product hopping); pp. 623-630 (Infringement settlements / <i>Actavis</i>)); Class Exercise.</p>
25 4/18	<p>Class 25: Class Exercises (Profs. Conners, Hoffman, Akleman, Sarrine, and Conlon)</p> <p>Required Reading: Class Exercises (to be provided a week prior to class).</p>
26 4/19	<p>Class 26: Course Overview and Exam Preparation (Profs. Conners, Hoffman, Akleman, Sarrine, and Conlon)</p> <p>NO READING REQUIRED</p>