

PRELIMINARY Antitrust Analysis

Law 252.2

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UC, Berkeley

Spring 2013

Room:

105

Time: Monday, Tuesday, Wednesday: 10:00-11:10

Week 1: Classes 1, 2, 3; Jan 7, 8, 9

Week 2: Classes 4, 5, 6; Jan 14, 15, 16

Week 3: Holiday, Class 7, Class 8; Jan 21, 22, 23

Week 4: Classes 9, 10, 11; Jan. 28, 29, 30

Week 5: Classes 12, 13, 14; Feb 4, 5, 6

Week 6: Classes 15, 16, 17; Feb 11, 12, 13

Week 7: Holiday, Classes 18, 19; Feb 18, 19, 20

Week 8 Classes 20, 21, 22; Feb 25, 26, 27

Week 9 Classes 23, 24, 25; March 4, 5, 6

Week 10 Classes 26, 27, 28; March 11, 12, 13

Week 11 Classes 29, 30, 31; March 18, 19, 20

SPRING RECESS No classes Mar 25-29

Week 12 Classes 32, 33, 34; April 1, 2, 3

Week 13 Classes 35, 36, 37; April 8, 9, 10

Week 14 Classes 38, 39, 40; April 15, 16, 17

Week 15 Classes 41, 42; April 22, 23

Exam

Final exam will be in class. You can use the casebook or supplements and any outlines printed out and created by you.

Email:

edlin@law.berkeley.edu: Substantive questions can't be answered by email by me
Please come to office hours with any substantive question.

Laptop computers:

In past years, I have banned laptops during class, but I will allow them in 2013.

Office hours:

Wed 2:15-3:30, Evans Hall 582.

Email Announcements: Email announcements will sometimes be sent about the course via the bSpace Course Website.

Textbook: 1. Areeda, Kaplow, and Edlin, *Antitrust Analysis* (6th edition, 2004).
2. Supplement, 2010
3. “2011 Professor’s Update” available on Course Website.

Course Website: Supplementary materials, including the Professor’s Update will be provided sometime closer to the time when they are actually assigned, and may be found under “Resources” at [bspace](https://bspace.berkeley.edu). (<https://bspace.berkeley.edu>)

SYLLABUS

I will generally assign somewhat more than we will cover during the next class.

Class Participation. Class participation is strongly encouraged. If I feel more participation is needed, I will cold call on students and may institute panels midway through the term. Class participation may be counted at my discretion in final grade.

FIRST DAY ASSIGNMENT: Please read Ch. 1, ¶¶103-117.

1. (Classes 1, 2, and 3) INTRODUCTION TO ANTITRUST LAW AND ANTITRUST ECONOMICS

Introduction to Antitrust Law and Antitrust Economics

Read ch. 1, ¶¶103-117, and, within the first couple of weeks, skim ch. 1C-1D. read primer on antitrust (See course website);

Optional economics reference: Modern Industrial Organization, 4th ed. by Dennis Carlton and Jeffrey M. Perloff, chapter 2, 3, and 4. Or Pindyck and Rubinfeld, Microeconomics (any edition). (Read only if you want).

2. COLLABORATION AMONG COMPETITORS

2.1. Agreements Restricting Competition among Competitors

2.1.1. Development of the Rule of Reason:

¶¶200-201; Sherman Act §1; *Trans-Missouri* (1897) (¶202); *Addyston Pipe* (1899) (121-123); *Joint Traffic* (1898) (¶203); CLASS 4

Standard Oil (1911) (¶204), ¶132, ¶205(a)(c); *Chicago Board* (1918) (126-129), ¶206(a)(b). CLASS 5

2.1.2. The Per Se Illegality of Price Fixing:

Trenton Potteries (1927) (130-131), ¶207; *Appalachian Coals* (1933) (¶208), *Socony* (1940) (134-140), ¶¶209-212; *Texaco v. Dagher* (2010 Supplement). CLASS 6

2.1.3. What Cooperation is Allowed? Determining Which Restraints Are Reasonable:

¶¶213-214; *Topco* (1972) (145-147), ¶215; *Palmer* (1990) (¶216); *BMI* (1979) (149-158), ¶217; *Maricopa* (1982) (159-165), ¶218; CLASS 7

Engineers (1978) (166-171), ¶¶219-220; *NCAA* (1984) (173-180), ¶221; *California Dental Assoc.*(1999) (181-196). ¶¶222-229. CLASS 8

2.1.4. Application:

Indiana Dentists (1986) (295-300) ¶269.

Media One Acquisition (see website) CLASS 9

2.2. Agreements Excluding Competitors

2.2.1. Group Boycotts of Competitors or Customers/Distributors:

¶258; *FOGA* (1941) (275-278), ¶261, *Klor's* (1959) (280-282), ¶262, *AMA & Molinas* (¶263) (282-283), ¶264; CLASS 10

AP (1945) (284-288), ¶¶265-266; *Northwest* (1985) (289-294), ¶¶267-268. *Nynex* (1998) (¶270), ¶¶271-272. Class 11

2.3. State Action and Influencing Government Action

¶¶164-165 (state laws & state action -- skim); ¶273, *Noerr* (1961) (303-307), ¶274; *Professional Real Estate Investors* (1993) (311-315), ¶276; *Indian Head* (1988) (322-328), ¶¶278-279; Class 12

2.4. On the Existence of Agreements

2.4.1. Intraenterprise Conspiracy and Twoness:

¶242, *Copperweld* (1984) (233-240), ¶¶243-244. *American Needle* (Supplement) Class 13

2.4.2. Oligopoly Theory: ¶¶230-235.

2.4.3. Tacit and Inferred Express Agreements:

Interstate Circuit (1939) (216-220), *Theatre Enterprises* (1954) (220-222), *American Tobacco* (222-224), ¶238, ¶¶239-240; Class 14

Matsushita (1986) (¶241), ¶152. *Twombly* (2007). Class 15

2.5. Facilitating Practices

¶¶245-247; *American Column & Lumber* (1921) (244-249), *Maple Flooring* (1925) (249-251), ¶¶248-249; *Container* (1969) (253-257), ¶¶250-251; *Airline Tariff Publishing Co.* (see Website). Class 16

3. Horizontal Mergers

3.1. Background:. ¶¶500-504, ¶506.

3.2. Older Cases:

¶¶507, *Brown Shoe* (1962) (687-692), ¶¶508-509; *Philadelphia Bank* (1963) (694-699); *Von's* (1966) (¶515); ¶516. *General Dynamics* (1974) (703-707), ¶¶517-518,. ¶519, Class 17

3.3. 2010 Horizontal Merger Guidelines (see Professor's Update on Website) Section 1 (p. 18-19 of Professor's Update), Sections 4&5 (p. 5-16 of Professor's Update), Section. 6.1 (p. 26-28), Section 7 (p. 30-33), Sections 9&10 (p. 33-37) Class 18.

3.4. Modern Cases

Staples (1997) (718-736) ¶¶521 - 527. *U.S. v. Oracle* (Website) Class 19.

4. MONOPOLY

4.1. Monopolization

4.1.1. Element #2: Bad Acts

The Distinction Between Monopoly and Monopolization. ¶ 129-131, ¶300, Sherman Act Section 2, ¶¶301-304; *Alcoa* (1945) (372-378), ¶¶305-307; ¶308; *American Tobacco*; Classes 20,21.

Leverage and the Single Monopoly Profit Theorem. ¶310; *Griffith*; ¶311; Class 22

Refining the Notion of Exclusionary Behavior. *United Shoe* (1954) (386-393), ¶312 (*U.S. v. Grinnell Corp.*), ¶313-316. Class 23

¶318, *Microsoft* (2001) (398-414). ¶319-321 Class 24

4.1.1.1. Vertical Integration and Dealing with Competitors: ¶325; *Otter Tail* (1973) (¶326), *Berkey* (1979) (¶327); Class 25

Aspen (1985) (426-432), ¶¶328-329; Class 26

¶330 (*AT&T divestiture*, 1982). *Trinko* (2004) (437-444); ¶331-332. Class 27

4.1.1.2. Predatory Pricing: *Barry Wright* (1983) (446-452), ¶¶333-334; *Brooke Group* (1993) (455-471), ¶335; Class 28

Spirit v. Northwest (Website) ¶336-337 ; *Weyerhaeuser* (see Supplement). *Pacific Bell v. Linkline* (Supplement). Class 29.

4.1.2. Element #1: Monopoly Power:

¶¶342-350; review 2010 Horizontal Merger Guidelines (Professor's Update); ¶352; (Not *Alcoa*), ¶354; *Cellophane* (1956) (509-514), ¶¶355-358. *Microsoft* (2001)(518-524); ¶359-360. Class 30

4.2. **Attempted Monopolization**: ¶361; *Lorain Journal* (1951) (526-527), ¶¶362-363; *American Airlines* (1985) (¶364). *Spectrum* (1993) (529-531), ¶365. Class 31

5. VERTICAL ARRANGEMENTS

5.1. Restricted Distribution

5.1.1. Resale Price Maintenance: ¶¶400-408; *Dr. Miles* (1911) (540-543), ¶409-410; *Albrecht* (1968) (¶411); *Kahn* (1997) (546-552), ¶412. *Leegin* (Supplement). Class 32

5.1.2. Sole Outlets; Territorial and Customer Limitations: ¶413; *Packard* (1957) (554-556), ¶414; ¶415; *Sylvania* (1977) (558-565), ¶¶416-418. Class 33.

5.1.3. On the Existence of Vertical Agreements: Refusal to Deal: ¶421, *Colgate* (1919) (571-572), ¶422, *Parke, Davis & Co.* (1960) ¶423, *Monsanto* (1984) (574-579), ¶424 (not *Business Electronics*). Class 34.

5.2. Tying:

¶¶426-427 (read ¶290a, b with ¶427c), ¶429, Clayton Act §3; *International Salt* (1947) (594-596), ¶430; *IBM* (1936) (¶439), ¶442; *Jefferson Parish* (1989) (618-630), ¶446; Class 35.

Illinois Tool Works (2010 Supplement), *Kodak* (1992) (638-652), ¶448; *Microsoft* (2001) (632-637), ¶447. Class 36.

5.3. Exclusive Dealing:

¶¶449-450; *Standard Oil* (1949) (656-661), ¶¶451-454; *Tampa Electric* (1961) (¶455), ¶¶456-457. *U.S. v. Delta Dental* (on Website); Class 37.

5.4. Vertical Mergers

¶538; *Brown Shoe* (1962) (764-769), ¶¶539-541. Class 38.

Space has been left at the end to allow for the inevitable possibility that we move more slowly than the Syllabus suggests. We will find something to do otherwise!