

PRELIMINARY
(Subject to change)

Syllabus -- Franchise and Distribution Law/Professor Devlin/Fall 2006

Meets Monday and Tuesday 1:00 – 2:30 p.m. Room TBD

Casebook – **Schneider and Ney - Business Franchise Law: Cases and Materials, (Carolina Academic Press)**

The course is designed to provide a kaleidoscopic view of franchise and product distribution law. The syllabus is ambitious because the subject is quite broad and is governed by both federal and state statutes as well as common law. The areas of the law involved include, among others, contract, intellectual property, antitrust, and constitutional law. We will devote time to motor fuel franchises and touch on environmental issues relevant to motor fuel distribution. The assignments may appear extensive, but we will be as flexible as possible both in timing and material covered during the semester to assure that we can cover as much as possible tempering ambition with reasonable limits.

I expect the final exam to consist of two fact pattern/essay type questions and a group of objective questions. Class participation will also be considered in final grading.

I will let you know of my on-the-premises availability during our initial classes, and I plan to make myself available on a fairly regular basis.

My hope and intention is that we will have an enjoyable time together exploring an interesting, timely, and relevant subject.

August 21 and 22

Introduction and Overview; Brief History of Franchising

What is a Franchise?

Laws governing relationships and registration and/or disclosure

Significant Control and Community of Interest Issues

Distinguish “Business Opportunities” and Sales Representative

Assignment for 08/21-22 – pp. 3-40 and Texas Business Opportunity Act, Texas Business & Commerce Code - Chapter 41; Wisconsin Fair Dealership Law (Chapter 135, Wisconsin Laws; and Wisconsin Franchise Investment Law, Chapter 553, Wisconsin Laws)

August 28

Trademarks Briefly
Trade Dress
Licensing and Enforcement

Assignment for 08/28 -- pp. 41-97 (read *Two Pesos* decision on 75-81, *Fotomat* on 81-91, and *Jiffy Lube* on 91-97)

August 29 and September 5

Registration and Disclosure Laws
FTC Rule
State Franchise Investment Laws
Enforcement and Penalties

Assignment for 08/29 -- pp. 277-79; Appendix A (“FTC Rule”) (pp. 471-82); FTC cases (pp. 284-90 and 304-10)

Assignment for 09/05 – pp. 280-84; Appendix B (“UFOC”) (pp. 483-543); State cases (pp. 290-304, and pp. 310-13)

September 11

Franchise Relationships and Relationship Laws - Overview
Transfers of Franchises and Contract Prohibitions; Inheritance
“Blue Sky” on franchise sales

Assignment for 09/11 -- pp 99 and 197; pp 198-204 (*Creamland* and *DQ* cases on 198-200 and 202-04) and 152-61;

September 12

Franchise Relationships and Relationship Laws
Encroachment – common law and statutory
Forum Selection and Choice of Law
Arbitration and Mediation Provisions

Assignment for 09/12 -- pp. 245-67 and 140-44 and Minnesota law (Minnesota Rule 2860.4440.C) on encroachment; pp. 216-33 on forum selection; pp. pp. 233-42 on choice of law and jurisdiction; pp. 204-16 on arbitration

September 18 and 19

Termination and Nonrenewal
Constructive Termination and Nonrenewal

Assignment for 09/18 and 09/19 -- pp. 99-140 and 152; New Jersey Franchise Practices Act, § 56:10-5 of NJ Statutes

September 25

Discrimination Among Franchisees
Repurchase and Compensation
Rights of First Refusal
Remedies

Assignment for 09/25 – pp. 161-67 and 242-45; Illinois Franchise Disclosure Act § 20, 815 ILCS 705/20

September 26

UCC and Other Contract Issues – Overview
Duty of Competence and Due Care
Implied Covenant of Good Faith and Fair Dealing
Pricing (Open Price Terms)
Integration Clauses

Assignment for 09/26 – On implied covenant, Texas Business & Commerce Code §§1-203, 1-201(19), and 2-103(1). On Open Price Terms - Texas Business & Commerce Code §2-305; *Mathis v. Exxon Corp.*, 302 F.2d 448 (5th Cir. 2002); *Shell Oil Co. v. HRN, Inc.*, 144 S.W.3d 429 (Tex. 2004). On integration clauses, casebook pp. 267-75.

October 2

No-Compete Agreements

Assignment for 09/26 – Texas Business & Commerce Code §§ 15.50-.52; *Hill v. Mobile Auto Trim, Inc.*, 752 S.W.2d 168 (Tx. 1987); *Butts Retail, Inc. v. Diversifoods, Inc.*, 840 S.W.2d 776 (Tx. App. Beaumont) 1992); *Light v. Central Cellular Co.*, 883 S.W. 2d 642 (Tex. 1994).

October 3

Vicarious Liability

Assignment for 10/02 - pp. 451-471

October 9 and 10

International Franchising Materials to be assigned

October 16 and 17

Industry-Specific Franchise Laws (ex-PMPA)

Assignment for 10/03 – pp. 315-30 and 343-90; examples – Illinois Motor Vehicle Franchise Act, 815 ILCS 710; Illinois Equipment Fair Dealership Law, 815 ILCS 710; and Illinois Beer Industry Fair Dealing Act, 815 ILCS 720

October 23, 24, and 30

Petroleum Marketing Industry

Assignment for 10/23 – Petroleum Marketing Practices Act (15 U.S.C §§ 2801-06; *Exxon Corp. v. Governor of Maryland*, 437 U.S. 117 (1978). Legislative History and additional cases and statutes to be assigned

October 31

Introduction to Distribution Law and Antitrust

Brief History of Antitrust Law

Competition Principles (Competition v. Competitors; Inter v. Intra-brand)

Federal and State Laws and their Relationship

Assignment for 10/3 -- pp.390-91; Sherman Act, 15 U.S.C. § 1 et seq., Clayton Act, 15 U.S.C. § 14 et seq, and FTC Act, 15 U.S.C. § 45 et seq. *Standard Oil Co. (New Jersey) v. U.S.*, 221 U.S. 1 (1911); *Dr. Miles Medical Co. v. John D. Park & Sons*, 220 U.S. 373 (1911); *U.S. v. Colgate & Co.*, 250 U.S. 1919

November 6

Rule of Reason v. Per se Treatment

Horizontal/Vertical

Development of Vertical Price and Non-Price Restraints Jurisprudence

Assignment for 11/06 – *U.S. v. Parke, Davis & Co.*, 362 U.S. 29 (1960); *Simpson v. Union Oil Co.*, 377 U.S. 13 (1964); *U.S. v. Arnold, Schwinn & Co*, 388 U.S. 365 (1967); *Continental T.V., Inc. v. GTE Sylvania Inc.*, 433 U.S. 36 (1977); *Matsushita Elec. Industrial Co. v. Zenith Radio Corp.*, 475 U.S. 574 (1986); *Business Electronics Corp. v. Sharp Electronics Corp.*, in Casebook at 443-450; *State Oil Co. V. Kahn* in Casebook at 424-29; *Texaco Inc. v. Dagher*, U.S. Supreme Court Docket No. 04-805 (Decided February 28, 2006)

November 7 and 13

Tying

Assignment for 11/07 and 11/13 – *Siegel v. Chicken Delight, Inc.*, 448 F.2d 43 (9th Cir. 1971); Casebook pp. 392-424; *Illinois Tool Works, Inc. v. Independent Ink, Inc.*, U.S. Supreme Court Docket No. 04-1329 (Decided March 1, 2006)

November 14 and 20

Price Discrimination
Robinson-Patman Act
Fred Meyer Guides
Slotting Allowances

Assignment for 11/14 and 20 – pp. 429-43; *F.T.C. v. Sun Oil Co.*, 371 U.S. 505 (1963); *J. Truett Payne Co. v. Chrysler Motors Corp.*, 451 U.S. 557 (1981); *Falls City Industries, Inc. v. Vanco Beverage, Inc.*, 460 U.S. 428 (1983); *Texaco Inc. v. Hasbrouck*, 496 U.S. 543 (1990); *Volvo Trucks North America, Inc. v. Reeder-Simco GMC, Inc.*, U.S. Supreme Court Docket No. 04-905 (Decided January 10, 2006). See 16 CFR 240.1 for Fred Meyer Guides (<http://www.ftc.gov/bc/docs/16cfr240.htm>)

November 21

Predatory Pricing
State Below-Cost Selling Statutes
Price Gouging Legislation

Assignment for 11/21 – Sherman Act § 2; on below-cost selling, see Florida Motor Fuel Marketing Practices Act, Florida Statutes, Chapter 526, §§ 526.301 et seq.; on price gouging, see Fla. Stat. § 501.601(1) and Code of Ala. § 8-31-3; see also proposed post-Hurricane Katrina Federal legislation – Energy Emergency Consumer Protection Act of 2005 (S. 1735) and Prohibiting Reprehensible Increases in Costs of Essential (PRICE) Act of 2005 (HR. .3808); Testimony of Chairman of the FTC before U.S. Senate Committee on November 5, 2005 (<http://www.ftc.gov/os/testimony/051109gaspricetest3.pdf>)

November 27

International Antitrust issues - materials to be assigned

November 28

Wrap-up