

## ANTITRUST – FALL 2021

Professor: Darren Bush

Office: TUII-126

Office Phone (713) 743-3346

E-mail: [Dbush@central.uh.edu](mailto:Dbush@central.uh.edu)

Office Hours: Monday and Wednesday, 12:00– 1:00 p.m. and by appointment

### INTRODUCTION

Course Description: The Antitrust and Regulated Industries courses examine two different legal approaches for controlling private economic power--the antitrust laws, which are designed to establish and maintain competitive markets, and regulatory statutes, which establish government agencies to supervise entry, rates, and service. These two approaches are examined in a way that focuses on the theoretical and practical difficulties of each approach. In Antitrust, the Sherman and Clayton Acts are studied. Topics include monopolization, mergers, agreements among competitors (such as price fixing and market allocation), and distribution agreements (such as tying and exclusive dealing). Discussion will consider whether these statutes seek only to advance economic efficiency, or are intended to achieve broader political or social goals; and will also consider whether the case law does (or can) advance any of these goals.

### COURSE DESCRIPTION AND REQUIREMENTS

#### **Required Texts:**

- JOHN FLYNN, HARRY FIRST, AND DARREN BUSH, FREE ENTERPRISE AND ECONOMIC ORGANIZATION: ANTITRUST (7<sup>TH</sup> ED. 2014)

#### **Recommended Texts:**

- JOHN FLYNN, HARRY FIRST, AND DARREN BUSH, ANTITRUST: STATUTES, TREATIES, REGULATIONS, GUIDELINES, & POLICIES (STATUTORY SUPP.)(7<sup>TH</sup> ED. 2014)

#### **Course Requirements:** Grades will be determined based upon the following percentages:

- a. *Participation (10%)*. Participation should be regular and of good quality. Participation will include, but should not be limited to, answering questions when called upon to do so. Participation will be discussed in greater detail during the first class session.
- b. *Final Exam (90%)*. You will have a comprehensive, 24-hour take home final exam consisting of two or three questions relating to: Sections 1 and 2 of the Sherman Act, Section 7 of the Clayton Act; all relevant case law, statutes, guidelines, policies, and treaties, and; all related exemptions, defenses, and excuses. You will be allowed to bring to the exam whatever (inanimate) objects bring you comfort, *except* (i) those prohibited by law or University Policy; (ii) commercial outlines, and; (iii) outlines created by other students (apart from any group outlines created by students consisting entirely of members of this course). The final exam will be discussed in greater detail during the first class session.

## COURSE ASSIGNMENTS

I reserve the right to add, delete, or otherwise modify assignments.

<u>Assignment</u>	<u>Pages</u>
<i>Chapter 1: Introduction to Antitrust</i>	
1. Overview of the United States Antitrust System	32-55
2. Themes for the Study of Antitrust	1-32
3. Jurisdictional Scope, Antecedents and Other Antitrust Systems	56-68
4. Economics & Ideological Goals	69-94
<i>Chapter 2: Monopoly</i>	
5. Introduction, <i>Otter Tail</i> , <i>Aspen Ski</i> , & <i>Kodak</i>	95-119
6. <i>Verizon</i> , <i>Conwood</i> ,	119-133
7. Predation	134-169
8. Predation Continued and Design Predation	169-207
9. Microsoft	207-239
10. Problem 1	Handout
<i>Chapter 3: Mergers and other Integrations</i>	
11. Introduction and Horizontal Mergers	249-284
12. Jurisprudence of Horizontal Mergers	284-318
13. Post-Guidelines Analysis	318-351
14. Non-Horizontal Merger	351-385
15. Non-Horizontal Mergers (cont'd) & Remedies	386-415
16. Problem 2	Handout
<i>Chapter 4: Relationships Among Competitors</i>	
17. ADM Price Fixing Video	Movie
Collaboration Among Competitors Guidelines	Stat. Supp.
18. Supreme Court Jurisprudence	417-447
19. Maricopa Co., Topco	447-471
20. FOGA, Trial Lawyers, Broadcast Music	471-506
21. NCAA, NCAA (recent)	507-524
22. Cal Dental	524-553
23. American Needle	553-584
24. Joint Ventures	601-621

25. Problem 3 Handout

*Chapter 5: Vertical Restraints on Price*

26. Resale Price Maintenance 681-709

27. Tying 710-744

28. Microsoft 744-762

*Chapter 6: Immunities and Exemptions*

29. Primary Jurisdiction and implied immunity 857-878

30. State Action Doctrine 878-900

31. State Action and Local Governments,  
Noerr-Pennington Doctrine 900-933

32. Extraterritorial Application 933-959

33. Review

## **THE COMPLETE LIST OF MANDATORY AND RECOMMENDED SYLLABUS LANGUAGE**

### **ABA MANDATORY SYLLABUS LANGUAGE**

Learning Outcomes: Through and as a result of this course, students will: (1) demonstrate understanding of the tools of contract analysis (see course title); (2) demonstrate understanding of basic issues of contract law (see course title); (3) understand judicial review of contract litigation (implied in course title but see course description) and (4) understand the economic implications of enforcement or lack of enforcement of promises (see course title).

### **ACADEMIC ENRICHMENT PROGRAM (FIRST YEAR COURSES ONLY)**

The Law Center Student Handbook reads: “The Academic Enrichment Program (AEP) is designed to provide academic support, counseling, and advice to first year students. In order to assist new students with developing the skills necessary for successful completion of law school, AEP offers open tutorial programs in the fall and spring. Second and third year law students with strong academics serve as Academic Enrichment Tutors, for first year fall classes. The tutors meet regularly, with first year students in the open sessions, to assist them with enhancing their law school study skills.”

My teaching assistant’s name and contact information will be provided to you the first day of class (if applicable).

### **ANTI-DISCRIMINATION AND SEXUAL MISCONDUCT POLICIES**

UHLC and the University of Houston are committed to maintaining and strengthening an educational, working, and living environment where students, faculty, staff, and visitors are free from discrimination and sexual misconduct. If you have experienced an incident of discrimination or sexual misconduct, a confidential reporting process is available to you. For more information, please refer to the University System’s [Anti-Discrimination Policy SAM 01.D.07](#) and [Sexual Misconduct Policy SAM 01.D.08](#).

Please be aware that under the sexual misconduct policy, SAM 01.D.08, faculty and other University employees are required to report to the University any information received regarding sexual misconduct as defined in the policy. Due to this reporting requirement, faculty members and other employees are not a confidential resource. The reporting obligations under the sexual misconduct policy extends to alleged conduct by University employees and students.

## COUNSELING AND PSYCHOLOGICAL SERVICES

[Counseling and Psychological Services](#) (“CAPS”) can help students who are having difficulties managing stress, adjusting to the demands of a professional program, or feeling sad and hopeless. You can reach CAPS by calling 713-743-5454 during and after business hours for routine appointments or if you or someone you know is in crisis. No appointment is necessary for the [“Let’s Talk” program](#), a drop-in consultation service at convenient locations and hours around campus.

The Texas Lawyers’ Assistance Program (“TLAP”) also supports law students who are dealing with stress, anxiety, depression, substance abuse, and other mental health problems. You can reach TLAP at any time at 1-800-343-8527. TLAP’s website includes a page with links to sources about mental health that are of interest to law students: <https://www.tlaphelps.org/law- students>.

## HONOR CODE

The [UHLC Honor Code](#) applies to all aspects of my class. *You are responsible for knowing all Honor Code provisions and for complying with the Honor Code.* Please ask me if you have any questions regarding how the Honor Code’s provisions apply to specific activities or situations related to my course. *It is an Honor Code violation to review the graded or ungraded assignments distributed to, or written by, any of my students from prior years.*

## ONLINE INSTRUCTION REQUIREMENTS

In the event that this course is offered online, by accessing the online class you agree to comply with all University of Houston requirements as if you were sitting in a physical classroom at the time you are online. While of course there will be some exceptions because life happens (family members, pets), inappropriate behavior will cause me to turn off your cam or expel you from the session. Additional requirements will be sent under separate document.

## PREFERRED NAME

I will gladly honor your request to address you by an alternate name or gender pronoun. Please advise me of this preference early in the semester so that I may make appropriate changes to my records.

## UNIVERSITY MANDATORY SYLLABUS LANGUAGE

The University of Houston requires the following language. To the extent that the University in the course of the semester or after this syllabus has drafted changes any language, the University's new language governs and not that contained in the syllabus:

### Face Covering Policy (should we revert to a face-to-face classroom)

To reduce the spread of COVID-19, the University [requires face coverings](#) on campus including classrooms for both faculty and students. Face coverings must cover your mouth and nose and be worn throughout the class session. A mask with a valve is not considered an adequate face covering and should not be used, as it can expel exhaled air, increasing the risk to others. Eating or drinking during class is discouraged and is not an excuse for removing the face covering for any extended length of time. For additional information on the use of face coverings, please see [Face Covering FAQs](#). Failure to comply with the requirement to wear a face covering in class will result in your being asked to leave the classroom immediately and a disciplinary referral through the Dean of Students Office. Requests for accommodations relating to the face covering policy may be directed to the [Center for Students with DisABILITIES \(CSD\)](#).

### Required Daily Health Self-Assessment (should we revert to on-campus courses)

Your presence in class each session means that you have completed a daily self-assessment of your health/exposure and you:

- Are NOT exhibiting any [Coronavirus Symptoms](#)
- Have NOT tested positive for COVID-19
- Have NOT knowingly been exposed to someone with COVID-19 or suspected/presumed COVID-19

If you are experiencing any COVID-19 symptoms that are not clearly related to a pre-existing medical condition, do not come to class. Please see [COVID-19 Diagnosis/Symptoms Protocols](#) for what to do if you experience symptoms and [Potential Exposure to Coronavirus](#) for what to do if you have potentially been exposed to COVID-19.

### Recording of Class

Students may not record all or part of class, livestream all or part of class, or make/distribute screen captures, without advanced written consent of the instructor. If you have or think you may have a disability such that you need to record class-related activities, please contact the [Center for Students with DisABILITIES](#). If you have an accommodation to record class-related activities, those recordings may not be shared with any other student, whether in this course or not, or with any other person or on any other platform. Classes may be recorded by the instructor. Students may use instructor's recordings for their own studying and notetaking. Instructor's recordings are not authorized to be shared with *anyone* without the prior written approval of the instructor. Failure to comply with requirements regarding recordings will result in a disciplinary referral to the Dean of Students Office and may result in disciplinary action.

### Syllabus Changes

Due to the changing nature of the COVID-19 pandemic, please note that the instructor may need to make modifications to the course syllabus and may do so at any time. Notice of such changes will be announced as quickly as possible through the class e-mail distribution list.