

## ANTITRUST – FALL 2022

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

Class Meeting Time and Location: MW 1:00-2:30, Room 211

### 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 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. <i>Maricopa Co.</i> , <i>Topco</i>	447-471
20. <i>FOGA</i> , Trial Lawyers, Broadcast Music	471-506
21. <i>NCAA</i> , <i>NCAA</i> (recent)	507-524
22. <i>Cal Dental</i>	524-553
23. <i>American Needle</i>	553-584
24. Joint Ventures	601-621

25.	Problem 3	Handout
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*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

The University of Houston or other regulators require the following language. To the extent that the University changes any language after this syllabus was drafted and required to be submitted, the University's new language governs and not that contained in the syllabus. Should this syllabus fail to include mandatory syllabus language the University requires, that language still applies to the course even if it is not expressly provided in this syllabus. **As the University requires my syllabus many months in advance of the course commencing yet frequently mandates updates days before the semester commences, you should check the posted online syllabus for such changes at the beginning of the semester.**

## **ABA Mandatory Syllabus Language**

Learning Outcomes: Through and as a result of this course, students will: (1) demonstrate understanding of the tools of antitrust analysis (see course title); (2) demonstrate understanding of basic issues of antitrust law and regulation (see course title); (3) understand judicial review of antitrust enforcement (implied in course title but see course description) and (4) understand the economic implications of antitrust enforcement or lack of enforcement. One such example might be having an unregulated monopolist compel language in a syllabus.

## **UNIVERSITY OF HOUSTON SYLLABUS LANGUAGE: FALL 2022**

**Required Language for Courses with a Face-to Face Component (Received by Professor on 8/16/2022)**

### **REQUIRED LANGUAGE FOR COURSES WITH A FACE-TO FACE COMPONENT**

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 [STUDENT 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.

### **REQUIRED LANGUAGE FOR ALL COURSES**

#### **COVID-19 INFORMATION**

STUDENTS ARE ENCOURAGED TO VISIT THE UNIVERSITY'S [COVID-19](#) WEBSITE FOR IMPORTANT INFORMATION INCLUDING DIAGNOSIS AND SYMPTOM PROTOCOLS, ON-CAMPUS TESTING, AND VACCINE INFORMATION. PLEASE CHECK THE WEBSITE THROUGHOUT THE SEMESTER FOR UPDATES.

## VACCINATIONS

DATA SUGGESTS THAT VACCINATION REMAINS THE BEST INTERVENTION FOR RELIABLE PROTECTION AGAINST COVID-19. STUDENTS ARE ASKED TO FAMILIARIZE THEMSELVES WITH PERTINENT [VACCINE INFORMATION](#) AND TO CONSULT WITH THEIR HEALTH CARE PROVIDER. THE UNIVERSITY STRONGLY ENCOURAGES ALL STUDENTS, FACULTY AND STAFF TO BE VACCINATED.

## REASONABLE ACADEMIC ADJUSTMENTS/AUXILIARY AIDS

THE UNIVERSITY OF HOUSTON COMPLIES WITH SECTION 504 OF THE REHABILITATION ACT OF 1973 AND THE AMERICANS WITH DISABILITIES ACT OF 1990, PERTAINING TO THE PROVISION OF REASONABLE ACADEMIC ADJUSTMENTS/AUXILIARY AIDS FOR DISABLED STUDENTS. IN ACCORDANCE WITH SECTION 504 AND ADA GUIDELINES, UH STRIVES TO PROVIDE REASONABLE ACADEMIC ADJUSTMENTS/AUXILIARY AIDS TO STUDENTS WHO REQUEST AND REQUIRE THEM. IF YOU BELIEVE THAT YOU HAVE A DISABILITY REQUIRING AN ACADEMIC ADJUSTMENTS/AUXILIARY AID, PLEASE CONTACT [THE JUSTIN DART JR. STUDENT ACCESSIBILITY CENTER](#) (FORMERLY THE JUSTIN DART, JR. CENTER FOR STUDENTS WITH DISABILITIES).

## 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 [JUSTIN DART, JR. STUDENT ACCESSIBILITY CENTER](#). 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 VIA EMAIL.

## **UNIVERSITY RECOMMENDED LANGUAGE**

## RESOURCES FOR ONLINE LEARNING

THE UNIVERSITY OF HOUSTON IS COMMITTED TO STUDENT SUCCESS, AND PROVIDES INFORMATION TO OPTIMIZE THE ONLINE LEARNING EXPERIENCE THROUGH OUR [POWER-ON](#) WEBSITE. PLEASE VISIT THIS WEBSITE FOR A COMPREHENSIVE SET OF RESOURCES, TOOLS, AND TIPS INCLUDING: OBTAINING ACCESS TO THE INTERNET, ACCESSUH, AND BLACKBOARD; REQUESTING A LAPTOP THROUGH THE LAPTOP LOANER PROGRAM; USING YOUR SMARTPHONE AS A WEBCAM; AND DOWNLOADING MICROSOFT OFFICE 365 AT NO COST. FOR QUESTIONS OR ASSISTANCE CONTACT [UHONLINE@UH.EDU](mailto:UHONLINE@UH.EDU).

#### UH EMAIL

PLEASE CHECK AND USE YOUR COUGARNET EMAIL FOR COMMUNICATIONS RELATED TO THIS COURSE. TO ACCESS THIS EMAIL, [LOGIN](#) TO YOUR MICROSOFT 365 ACCOUNT WITH YOUR COUGARNET CREDENTIALS.

#### TITLE IX/SEXUAL MISCONDUCT

PER THE UHS SEXUAL MISCONDUCT POLICY, YOUR INSTRUCTOR IS A “RESPONSIBLE EMPLOYEE” FOR REPORTING PURPOSES UNDER TITLE IX REGULATIONS AND STATE LAW AND MUST REPORT INCIDENTS OF SEXUAL MISCONDUCT (SEXUAL HARASSMENT, NON-CONSENSUAL SEXUAL CONTACT, SEXUAL ASSAULT, SEXUAL EXPLOITATION, SEXUAL INTIMIDATION, INTIMATE PARTNER VIOLENCE, OR STALKING) ABOUT WHICH THEY BECOME AWARE TO THE TITLE IX OFFICE. PLEASE KNOW THERE ARE PLACES ON CAMPUS WHERE YOU CAN MAKE A REPORT IN CONFIDENCE. YOU CAN FIND MORE INFORMATION ABOUT RESOURCES ON THE TITLE IX WEBSITE AT [HTTPS://UH.EDU/EQUAL-OPPORTUNITY/TITLE-IX-SEXUAL-MISCONDUCT/RESOURCES/](https://UH.EDU/EQUAL-OPPORTUNITY/TITLE-IX-SEXUAL-MISCONDUCT/RESOURCES/).

#### SECURITY ESCORTS AND COUGAR RIDE

UHPD CONTINUALLY WORKS WITH THE UNIVERSITY COMMUNITY TO MAKE THE CAMPUS A SAFE PLACE TO LEARN, WORK, AND LIVE. OUR SECURITY ESCORT SERVICE IS DESIGNED FOR THE COMMUNITY MEMBERS WHO HAVE SAFETY CONCERNS AND WOULD LIKE TO HAVE A SECURITY OFFICER WALK WITH THEM, FOR THEIR SAFETY, AS THEY MAKE THEIR WAY ACROSS CAMPUS. BASED ON AVAILABILITY EITHER A UHPD SECURITY OFFICER OR POLICE OFFICER WILL ESCORT STUDENTS, FACULTY, AND STAFF TO LOCATIONS BEGINNING AND ENDING ON CAMPUS. IF YOU FEEL THAT YOU NEED A SECURITY OFFICER TO WALK WITH YOU FOR YOUR SAFETY PLEASE CALL [713-743-3333](tel:713-743-3333). ARRANGEMENTS MAY BE MADE FOR SPECIAL NEEDS.

PARKING AND TRANSPORTATION SERVICES ALSO OFFERS A LATE-NIGHT, ON-DEMAND SHUTTLE SERVICE CALLED COUGAR RIDE THAT PROVIDES RIDES TO AND FROM ALL ON-CAMPUS SHUTTLE STOPS, AS WELL AS THE MD ANDERSON LIBRARY, COUGAR VILLAGE/MOODY TOWERS AND THE UH TECHNOLOGY BRIDGE. RIDES CAN BE REQUESTED THROUGH THE UH GO APP. DAYS AND HOURS OF OPERATION CAN BE FOUND AT [HTTPS://UH.EDU/AF-UNIVERSITY-SERVICES/PARKING/COUGAR-RIDE/](https://UH.EDU/AF-UNIVERSITY-SERVICES/PARKING/COUGAR-RIDE/).

#### **HELPFUL INFORMATION**

**COOGS CARE:** [HTTPS://UH.EDU/DSA/COOGSCARE/](https://UH.EDU/DSA/COOGSCARE/)

**STUDENT HEALTH CENTER:** [HTTPS://WWW.UH.EDU/HEALTHCENTER/](https://WWW.UH.EDU/HEALTHCENTER/)