

ANTITRUST – FALL 2023

Professor: Darren Bush

Office: 341D

Phone: 281-795-3852 (cell)

E-mail: Dbush@central.uh.edu

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

Class Meeting Time and Location: MW 10:30-noon, Room TBD

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 (7TH ED. 2014)(ISBN # 9781587785726)

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>Trinko</i> , <i>Conwood</i>	119-133
7. Predatory Pricing	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	Handout
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

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: 2023

Required Language for Courses with a Face-to Face Component (Received by Professor on 8/05/2023)

Mental Health and Wellness Resources

The University of Houston has a number of resources to support students' mental health and overall wellness, including CoogsCARE and the UH Go App. UH Counseling and Psychological Services (CAPS) offers 24/7 mental health support for all students, addressing various concerns like stress, college adjustment and sadness. CAPS provides individual and couples counseling, group therapy, workshops and connections to other support services on and off-campus. For assistance visit uh.edu/caps, call 713-743-5454, or visit a Let's Talk location in-person or virtually. Let's Talk are daily, informal confidential consultations with CAPS therapists where no appointment or paperwork is needed.

The Student Health Center offers a Psychiatry Clinic for enrolled UH students. Call 713-743-5149 during clinic hours, Monday through Friday 8 a.m. - 4:30 p.m. to schedule an appointment.

The A.D. Bruce Religion Center offers spiritual support and a variety of programs centered on well-being.

Need Support Now? - If you or someone you know is struggling or in crisis, help is available. Call CAPS crisis support 24/7 at 713-743-5454, or the National Suicide and Crisis Lifeline: call or text 988, or chat 988lifeline.org.

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/>.

Reasonable Academic Adjustments/Auxiliary Aids

The University of Houston is committed to providing an academic environment and educational programs that are accessible for its students. Any student with a disability who is experiencing barriers to learning, assessment or participation is encouraged to contact the Justin Dart, Jr. Student Accessibility Center (Dart Center) to learn more about academic accommodations and support that may be available to them. Students seeking academic accommodations will need to register with the Dart Center as soon as possible to ensure timely implementation of approved accommodations.

Please contact the Dart Center by visiting the website: <https://uh.edu/accessibility/> calling (713) 743-5400, or emailing jdcenter@Central.UH.EDU.

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.

UH Recommended Syllabus Elements

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 (<https://uh.edu/power-on/learning/>). Please visit this website for a comprehensive set of resources, tools, and tips, including: obtaining access to the internet, AccessUH, Blackboard, and Canvas; using your smartphone as a webcam; and downloading Microsoft Office 365 at no cost. For questions or assistance contact UHOnline@uh.edu.

UH Email

Please check and use your Cougarnet email for communications related to this course. Faculty use the Cougarnet email to respond to course-related inquiries such as grade queries or progress reports for reasons of FERPA. To access your Cougarnet email, login to your Microsoft 365 account with your Cougarnet credentials. Visit University Information Technology (UIT) for instructions on how to connect your Cougarnet e-mail on a mobile device.

Webcams

Should this course be offered with a remote component (it is *not* currently), access to a webcam is required for students participating remotely in this course. Webcams must be turned on absent consent of instructor for extenuating circumstances (e.g., illness).

Security Escorts and Cougar Ride

UHPD continually works with the University community to make the campus a safe place to learn, work, and live. The 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.

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/>.

Syllabus Changes

Please note that the instructor may need to make modifications to the course syllabus. Notice of such changes will be announced as quickly as possible via e-mail.

Law Center Required Language

Honor Code

The UHLC Honor Code applies to all aspects of this course. You are responsible for knowing all Honor Code provisions and for complying with the Honor Code. Please inquire if you have any questions regarding how the Honor Code’s provisions apply to specific activities or situations related to this course. Your continuing enrollment in this course is deemed to be a pledge by you under the Honor Code to comply with the Honor Code in relation to this course and to comply with the instructions in the course syllabus.

AI Generated Text

The software technology known as artificial intelligence has recently expanded its capability to generate text (AI Generated Text). Examples of the technology include what are known as “generative” large language models (LLMs), and a specific implementation what is well known in the general public is ChatGPT. These systems can generate text in response to prompts and/or input of other text/documents/code/images. The output, the AI Generated Text, appears to have human-mimicking “intelligence” and is thus potentially usable as a substitute for written work product one might generate themselves. AI Generated Text can include computer code or programs as well as human language content.

Your continuing enrollment in this course is deemed to be a pledge by you under the Honor Code to not prompt, generate, obtain, read, or use any AI Generated Text in relation to any activity or assessment in this course. This applies to AI Generated Text from yourself or others. This pledge includes that your assessment work product in the course is without any contribution from AI Generated Text. This specifically extends to the plagiarism policy and unauthorized aid/materials parts of the Honor Code: AI Generated Text will be treated as from another/other in applying the plagiarism policy to this course. The term “assessment” means any work product generated for this course that is submitted to the instructor or presented in a class session, regardless of whether it is graded content or not. Assessments include mid-terms and final exams. AI Generated Text may not be used in the development or drafting of any assessments created by you in a non-proctored

environment, such as a “take-home” final examination unless specified as an exception below. The parts of the Honor Code that refer to unauthorized materials or aid are specifically prohibited from any use of AI Generated Text in this course unless specified as an exception below.