

UNIVERSITY OF BALTIMORE SCHOOL OF LAW
Spring 2019

Course: Antitrust
Law 704/311 and Law 704/412

Instructor: Professor Robert H. Lande

Days/Time: Tuesdays & Thursdays Law 704/311 at 3:00-4:15; Law 704/412 at 7:45-9:00.

Location: Check the Law School class schedule for the room assignment.

Antitrust Course Description from the Law School catalog: “The study of the federal laws affecting competition between businesses. This course will examine the concepts of competition, market power, monopoly, and practices that might restrain trade. Mergers, boycotts, conspiracies, predation, joint ventures, price discrimination and marketing and other distribution restraints will be analyzed in light of the statutory desire to foster a more competitive economy.”

Required material - Sullivan, Hovenkamp, Shelanski & Leslie, “Antitrust Law, Policy and Procedure: Cases Materials, Problems” (Eighth Ed. 2019) (Carolina Academic Press)
- Professor's Spring 2020 Supplement

For the first class watch the short clips of the film, "Fair Fight In The Marketplace," including the Mark Whiticare material, available for free on YouTube (don't buy the entire film). For the second class study, from the textbook, pages 1-17. Also read (but don't study) pages 26-28 and 63-70. Also read Averitt & Lande, “Consumer Sovereignty: A Unified Theory of Antitrust and Consumer Protection Law,” 65 *Antitrust L.J.* 713–34 (2007), available in the Professor’s Supplement, item 1

Course Web Site: This course will have a TWEN page through Westlaw. Assignments and important announcements will be made via TWEN E Mails and posted on the TWEN Calendar page. Sign up for this as soon as possible.

	<u>Pages in Textbook & corresponding pages in the Professor's Supplement</u>
I. Introduction and the Goals of Antitrust	1-17, 26-28 (read), 63-70 (read)
II. Antitrust Economics	41-44, 50-62 (non-technical material only), 864-66 n. 1 (read)
III. Monopoly (including Market Definition)	688-91 (read), 691-705, 714-22 (read), 723-30, 747-58, 855-64, 765-82, ns 4 & 5 on 783-85, 904, 904-10, n. 6 on 912-14, 799-800 (read), 815-19 (read), 801-10 (read), 870-72 (read), 872-80, including notes 1-3
IV. Mergers	963-64 (read), 985-94, 964-70, 971-80, n. 3 on 981-82, 999-1005, 1020-22, 1022-29, 1030-33 (read), 922-25, notes 4-6 on 1082-85 (read)

V. Agreements Among Competitors	191-94 (read), 192-97, 236-50, 255-74, 285-99, 1095-1100, 323-24, 330-44, 324-28, 398-415, 433
VI. Joint Ventures and Boycotts	418-21 (read), 1086-91, 437-39, 422-27, 447-52, 454-63, 440-45, 463-66, 468-74 (read)
VII. Vertical Agreements	493-95, 541-48, ns. 1-6 on 514-20, 524-25, 495-514, 592-97, 607-20, 621-35
VIII. The Robinson Patman Act	1101
IX. Defenses & Exemptions	1132-50 (read), 1156-70 (read), 1076-83, 1198-1203 (read), n. 1 on 471-73

Student Learning Outcomes

By the end of the Antitrust course successful students will be able to:

1. Analyze complex business situations and spot the relevant Antitrust claims and likely defenses.
2. Clearly state the Antitrust law and principles affecting these issues.
3. Provide all the legal elements of these claims and likely defenses.
4. Construct arguments that analyze the facts in light of these laws and principles.
5. Present relevant economic and other policy arguments for all sides of the controversy.
6. Evaluate the merits of competing arguments, including possible defenses.
7. Articulate the arguments in a manner likely to appeal to different decisionmakers.
8. Vigorously represent a client on any side of any controversy.

Course Attendance, Preparation, and Expectations

American Bar Association Accreditation Standards establish guidelines for the amount of work students should expect to complete for each credit earned. Students should expect approximately one hour of classroom instruction and two hours of out-of-class work per week for each credit earned in a class. Additional time is required for review and for preparation for examinations. In addition, it is recommended that each student spend about thirty minutes reviewing that day's material as close to class time as possible.

Attendance: Class attendance is a primary obligation of each student whose right to continued enrollment in the course and to take the examination is conditioned upon a record of attendance satisfactory to the professor. A student who exceeds the maximum allowed absences (5 for this course) may be compelled to withdraw from the course, or may be barred from sitting for the final exam. Students who are forced to withdraw for exceeding the allowed absences may receive a grade of FA (failure due to excessive absence). This policy is consistent with American Bar Association Standards for Law Schools. The ABA, the Law School, and I require regular and punctual attendance. Repeated tardiness, other absence from class for part of a period, and/or inattention may be classified as an absence.

Each student is expected to study all of the assigned material and consistently to be prepared to discuss it during each class. This means that the student has learned the material and is ready to refine his or her understanding of its underlying policy concerns, analytical framework and nuances, and to help the class analyze and understand the material. For students not prepared, the class may not have much meaning.

On those rare occasions when a student is not prepared for class discussion, he or she should give a note so stating to the instructor before class. The instructor will not call on these students. If a student does this infrequently, no subtraction from that student's grade will be made. As noted above, however, if a student often is unprepared for class discussion his or her grade may be lowered one level.

Office Hours

Professor Lande will be available after class (but not immediately before class). Subject to meetings of the faculty and its committees, Professor Lande's office hours in Room 1106 of the Angelos Law Center (telephone 410-837-4538; E-Mail is rlande@ubalt.edu) will be Tuesdays and Thursdays from 4:20 to 5:00 pm, and he also often will be available from 5:00 to 6:15 pm. Other times by appointment, or just stop by my office. There will be a sign up sheet on the door of room 1106.

Grading Policy

Course grades primarily will be based upon the midterm and the final exam. Voluntary class participation that is thoughtful and non-domineering can raise a student's grade as much as one level (*i.e.*, from a B to a B+). Quality, not quantity, counts. Voluntary class participation that does not contribute to the discussion will not, however, cause a grade to be lowered. If a student often is unprepared for class discussions the instructor may lower his or her grade by one level. A student who is prepared but does not do well on the assigned problems or cases will not be penalized.

Students will be assigned cases, problems, and exercises to prepare for class discussion, and students will be called upon Socratically. These are integral parts of the course and must be completed. Students also may be required to prepare self-evaluations after they analyze specific problems. As will be announced, for some of these assignments, if you perform them in good faith and turn them in on time, you will receive a 2 point bonus for the entire course.

Administrative Matters

Seating: Students should decide where they want to sit by the second class. Students should sit at the seat they picked their second class for the remainder of the course. Students should sit as close to the front as possible. This will facilitate eye contact between the instructor and the students.

Recording: The instructor will attempt to record every class using Panopto. There could be times when you are forced to miss class due to illness, or for religious or other nondiscretionary reasons. Subject to the caveat that I cannot change or waive the law school's attendance policies in any way, if you do miss class, after you view that class's recording, E Mail this information to me and I will give you full credit for being present in class that day. And you will get more out of the class than you would from just reading a classmate's notes. If you know you have to miss class, as a backup (because sometimes things go wrong when I attempt to record class) you might ask a friend to record the class.

Cell phone: Turn your cell phone and other personal electronic devices off before class starts. You will be embarrassed if your cell phone goes off during class.

Laptop use: Students may not take notes on their laptop except in a specified corner of the room. Students may not use their laptop, tablet, cell phone, iPod, or other electronic device for anything not directly related to the Antitrust course. Prohibited activity includes reading or sending E Mails, playing games, surfing the Web, text messaging, twittering, blogging and IMing.

Class rules: Class will start promptly. Students may not read outside hard copy or electronic material during class. Students may not speak out in class unless recognized. Moreover, students may not be recognized or may be interrupted by the instructor if time is short. The instructor apologizes in advance for these situations and urges these students to see him immediately after class or during office hours.

Students may not talk with each other during class. This is distracting and discourteous and will not be tolerated. This policy will be strictly enforced.

Forms of address: Students will be addressed as Mr. or Ms.

Class Cancellation

If the instructor must cancel a class, notices will be sent to students via email and posted on the classroom door. If there is inclement weather, students should visit the University of Baltimore web site or call the University's Snow Closing Line at (410) 837-4201. If the University is open, students should presume that classes are running on the normal schedule.

Academic Integrity

Students are obligated to refrain from acts that they know or, under the circumstances, have reason to know will impair the academic integrity of the University and/or School of Law. Violations of academic integrity include, but are not limited to: cheating, plagiarism, misuse of materials, inappropriate communication about exams, use of unauthorized materials and technology, misrepresentation of any academic matter, including attendance, and impeding the Honor Code process. The School of Law Honor Code and information about the process is available at http://law.ubalt.edu/academics/policiesandprocedures/honor_code/.

Title IX Sexual Misconduct and Nondiscrimination Policy

The University of Baltimore's Sexual Misconduct and Nondiscrimination policy is compliant with Federal laws prohibiting discrimination. Title IX requires that faculty, student employees and staff members report to the university any known, learned or rumored incidents of sex discrimination, including sexual harassment, sexual misconduct, stalking on the basis of sex, dating/intimate partner violence or sexual exploitation and/or related experiences or incidents. Policies and procedures related to Title IX and UB's nondiscrimination policies can be found at: <http://www.ubalt.edu/titleix>.

Disability Policy.

If you are a student with a documented disability who requires an academic accommodation, please contact Leslie Metzger, Director of Student Services, at 410-837-5623 or lmetzger@ubalt.edu.

Additional Reference Material

- Areeda et al., "Antitrust Law: An Analysis of Antitrust Principles and their Applications" (a multi-volume treatise with Hovenkamp replacing Areeda as the lead author in later volumes) (1978 et. seq.)
- ABA, "Antitrust Law Developments 5th"
- Bork, "The Antitrust Paradox" (1978)
- Scherer & Ross, "Industrial Market Structure and Economic Performance"
- americanbar.org/groups/antitrust_law.html