Welcome to Antitrust II

This course examines advanced topics in antitrust law. Specific topics include vertical restraints, criminal enforcement, innovation markets, exemptions and immunities, the territorial scope of U.S. antitrust law, and remedies. We will examine Supreme Court doctrine, influential modern lower court decisions, and government enforcement guidelines. Economic concepts and thinking characteristic of modern antitrust analysis are integrated throughout the course. **No background in economics is necessary or assumed.**

Antitrust I is a prerequisite for this course.

Class: We will meet **Tuesday and Thursday from 10:00 am to 11:50 am.** We will not meet on some regularly scheduled class dates. We will meet 21 times in all.

Office Hours: I am available via appointment and email.


We will also read enforcement agency guidelines, scholarly commentary, and other supplementary materials that I will post on TWEN or are otherwise available on the web.

Grading: The final exam will account for 100% of your grade, subject to a discretionary class participation adjustment of 1/3rd of a grade in either direction. **You should come to class having read and thought about the material, and ready to participate in a discussion.**

Final Exam: The final exam is scheduled for May 8 at 6:00 PM. There is no make up exam.

Final Exam Permissible Materials: Open book; your own notes; no commercial publications.

Tentative Syllabus: We may deviate from the tentative syllabus with assignments taken from current events or new cases, to accommodate guest speakers, or for scheduling reasons, etc. Please make sure you are signed up to receive updates via TWEN.
READING ASSIGNMENTS

**Vertical Restraints:**

Tues. Jan. 16 – *Sylvania*
  a. Figures 6-1 and 6-2, Casebook pp. 898-99
  b. *Sylvania* and notes, Casebook pp. 902-23

Thurs. Jan. 18 – *Leegin*
  a. *Leegin*, Casebook pp. 923-52
  c. Problem 6-1, Casebook pp. 1090-92

**State Antitrust Law:**

Tues. Jan. 23 – State Antitrust Law
  a. *O’Brien v. Leegin Creative Leather Prods., Inc.* (Kan.), Supplement at 68-77

**Antitrust Exemptions:**

Thurs. Jan. 25 - Federalism:
  a. Note on Antitrust Federalism, Casebook pp. 1303-06

Tues. Jan. 30 - State Action:
  a. Note on State Regulation, Casebook pp. 1306-10
  c. *Cal. Retail Liquor Dealers Ass’n v. Midcal Alum., Inc.*, Supplement at 143-152

Thurs. Feb. 1 - State Action Cont’d:
  b. *Teladoc, Inc. v. Texas Medical Board*, Supplement at 153-160
  c. FTC Staff Guidance on Active Supervision of State Regulatory Boards Controlled by Market Participants (2015), Supplement at 161-69
  d. Joseph M. Miller, *Comments on Competition in Healthcare & Certificates of Need*,
Supplement at 170-78

e. Dissenting Statement of Commissioner Brill, Supplement at 179-188
f. Heartland Institute, *Rolling Back South Carolina's Certificate of Need Law*, Supplement at 189-92
g. Wall Street Journal, *For Hospital Chains, Competition is a Bitter Pill*, Supplement at 193-196
h. Rebecca H. Allensworth, *The New Antitrust Federalism*, Supplement at 197-204

**Tues. Feb. 6 - First Amendment:**
d. *Prof'l Real Estate Investors, Inc. v. Columbia Pictures Indus.*, Casebook pp. 1341-45
e. FTC Charges that Shire Viro Pharma Abused Government Processes Through Serial, Sham Petitioning, Supplement at 223-24

**Territorial Limitations:**

**Thurs. Feb. 8 - Foreign Trade Antitrust Improvements Act (FTAIA)**
b. *Hartford Fire*, Casebook pp. 1262-70
e. *Motorola Mobility LLC v. AU Optronics Corp.*, Supplement at 243-254
f. *In re Capacitors Antitrust*, Supplement at 255-262

**Tues. Feb. 13 - International Comity and Cooperation**
a. Note on Act of State doctrine, Sovereign Immunity, and Comity, Casebook 1282-88
c. Davis Polk client letter re: Vitamin C Antitrust Litigation, Supplement at 267-74
d. *In re Vitamin C Antitrust Litigation*, 837 F.3d 175 (2d Cir. 2016), Supplement at 275-282
f. Note on International Convergence, Casebook 1288-91
g. ABA Presidential Transition Report (International Section), Supplement at 290-95

**Antitrust Remedies:**

**Thurs. Feb. 15 – Criminal Enforcement Program**
a. Scott Hammond, *The Evolution of Criminal Antitrust Enforcement Over the Last Two Decades* (speech from Feb. 25, 2010), Supplement at 304-320
Fri. Feb. 16 – George Mason Law Review Symposium: Attendance recommended for as much of the day as you are not in class.

Tues. Feb. 20-- No Class

Thurs. Feb. 22-- Criminal Sentencing
   a. DoJ Criminal Enforcement Trends Chart, Supplement at 391-92
   b. Casebook pp. 1371-76 (Criminal sanctions; Hoffman-LaRoche sentencing submission)
   c. United States v. VandeBrake, Supplement at 393-405
   d. Plea Agreements with Antitrust Division Post-VandeBrake, Law360, Supplement at 406-09
   e. Albert Foer, Douglas H. Ginsburg, Robert Lande, and Joshua Wright, How DOJ Can Fix the Price Fixers, USA TODAY (May 29, 2015), Supplement at 410-11

Tues. Feb. 27-- Civil Remedies
   a. Casebook pp. 1376-1400 (Nat’l Soc’y Prof’l Eng’rs; Microsoft; note on treble damages)
   c. Press Release for Google-ITA Consent Decree, Supplement at 420-21
   e. Douglass Ginsburg & Joshua Wright, The Costs and Benefits of Antitrust Consents, Supplement at 435-446

Thurs. Mar. 1-- No Class

Tues. Mar. 6-- Guest Speakers: Criminal Enforcement

Thurs. Mar. 8-- Section 5 of the FTC Act (Prof. Wright to Present)
   a. Casebook pp. 427-432
   b. Section 5 Policy Statement, Supplement at 447
   c. Statement of the FTC on the Issuance of the Section 5 Policy Statement, Supplement at 448-49
   d. Dissenting Statement of Commissioner Ohlhausen regarding the FTC Section 5 Policy Statement, Supplement at 450-55
   e. Joshua D. Wright and Angela M. Diveley, Unfair Methods of Competition After the 2015 Commission Statement, Supplement at 456-68
Tues. Mar. 13-- Spring Break

Thurs. Mar. 15-- Spring Break

**Antitrust and Intellectual Property:**

**Tues. Mar. 20-- Background Principles and the Microsoft Lawsuit**
- a. Casebook pp. 1095-1111

**Thurs. Mar. 22-- The Qualcomm Cases**
- a. KFTC Summary of Complaint and Sanctions, Supplement at 497-514
- d. *FTC v. Qualcomm Inc.*, Decision on Qualcomm’s Motion to Dismiss, Supplement at 549-573

**Tues. Mar. 27-- Patents and the SEP Holdup Problem:**
- a. Overview of the Patent System – Selected readings from CHISUM ON PATENTS, Supplement at 584-593
- b. Casebook pp. 1148-59
- c. Intellectual Property and Standard Setting, Note by U.S. to OECD, Supplement at 594-601
- d. *Broadcom Corp. v. Qualcomm Inc.*, Casebook pp. 1223-36
- e. *Rambus v. FTC*, Supplement at 602-06
- f. Statement of the FTC, *In re Google (Motorola Mobility)*, Supplement at 607-611
- g. DOJ-PTO Joint Statement: Policy Statement on Remedies for Standards-Essential Patents Subject to Voluntary F/RAND Commitments, Supplement at 612-621
- h. European Court of Justice’s Judgment in *Huawei v. ZTE*, Supplement at 622-24

**Thurs. Mar. 29-- Patent Assertion Entities**
- b. FTC Patent Assertion Entity Activity Study, Supplement at 658-672
Tues. Apr. 3-- “Product Hopping”

Thurs. Apr. 5-- Pay for Delay, a/k/a Out-of-Court Settlements
   b. Agreements Filed with the FTC under the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, Nov. 2017, Supplement at 763-66
   d. Covington Client Alert, *Lundbeck Loses Appeal Against ‘Pay-for-Delay’ Decision*, Supplement at 805-08
   e. Bruce Kobayashi, Joshua Wright, Douglas H. Ginsburg, and Joanna Tsai, *Actavis and Multiple ANDA Entrants: Beyond the Temporary Duopoly*, Supplement at 809-817

Tues. Apr. 10-- Guest Speakers

Thurs. Apr. 12-- ABA Section on Antitrust Law, Spring Meeting: Attendance strongly recommended

Tues. Apr. 17-- Guest Speakers: Careers in Antitrust

Thurs. Apr. 19-- No Class

Tues. Apr. 24-- No Class

Thurs. Apr. 26-- No Class

FINAL EXAM: May 8, 2018 at 6:00 P.M.