

Antitrust I: Principles (Fall 2022) (156-002)

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Antitrust I: Principles

This course examines the laws that protect consumers by ensuring competition in the marketplace. Specific topics include agreements among competitors, joint ventures, mergers, and monopolization. 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.

This course is a prerequisite for Antitrust II.

No background in economics is necessary or assumed.

Learning Outcomes: By the end of the course students should be able to:

- Understand the goals of antitrust, its basic institutions, and enforcement structures.
- Understand the antitrust laws and enforcement policies governing horizontal mergers, including Section 7 of the Clayton Act, the 2010 Horizontal Merger Guidelines, and the 2020 Vertical Merger Guidelines.
- Understand the antitrust laws and enforcement policies governing horizontal restraints of trade, including Section 1 of the Sherman Act.
- Understand the antitrust laws and enforcement policies governing monopolization and vertical restraints of trade, including Section 1 and Section 2 of the Sherman Act.

Class: This course meets Tuesday and Thursday from 8:10 pm to 9:35 pm.

Pursuant to Academic Regulation 4-2.2, no portion of a class session or an examination may be preserved by means of a recording device such as an audio recording device or camera. Any exceptions to this policy must be expressly permitted in writing by one of the instructors.

Office Hours: We have none. Please email one or both of us if you would like to discuss the class or matters related to the class. You can also catch us before or after class. We are generally accessible, but we do not have office hours because we do not have offices at the law school.

Required Casebook: Andrew I. Gavil, William E. Kovacic, Jonathan B. Baker, and Joshua D. Wright, *Antitrust Law in Perspective: Cases, Concepts and Problems in Competition Policy* (2022) (4th Edition).

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Supplemental Casebook: Daniel Francis & Christopher Jon Sprigman, *Antitrust: Principles, Cases, and Materials* (Working Draft, Fall 2022). This text is in draft form. An electronic copy will be circulated. It should not be shared or quoted from; please read the introductory note to the textbook.

Grading and Basis of Evaluation & Assessments: 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. The final exam is comprised of essay questions and may include multiple-choice questions.

You should come to class having read and thought about the material and prepared to participate in discussion. The purpose of the lecture is not to review the assigned readings but to use them as a starting point for our learning.

Final Exam: The final exam is scheduled for **DECEMBER 10 at 12:00 PM**. There is no make-up exam.

Final Exam Permissible Materials: Open book, open note, and open materials.

Tentative Syllabus: We are likely to deviate from the tentative syllabus with assignments taken from current events, new cases, to accommodate guest speakers, scheduling reasons, etc. We will update the syllabus in class and through email.

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READING ASSIGNMENTS**Unit 1: Antitrust's Goals, Enforcement Institutions, and Foundational Concepts**

Aug. 23: Francis & Sprigman, pages 1-32.

Aug. 25: Francis & Sprigman, pages 59-84; Gavil, et. al., pages 51-54; 1402-1409.

Aug. 30: Gavil, et. al., pages 1412-1429; Francis & Sprigman, pages 85-104.

Sept. 1: Francis & Sprigman, pages 33-58; Lambert, *The Limits of Antitrust in the 21st Century*, 68 University of Kansas Law Review 1097 (2020) (will be distributed).

Unit 2: Horizontal Agreements (Agreement & Evaluation of Competitive Effects)

Sept. 6: Francis & Sprigman, pages 117-151; Gavil, et. al., 331-345.

Sept. 8: Gavil, et. al., pages 358-369; 400-439.

Sept. 13: Gavil, et. al., pages 115-156.

Sept. 15: Gavil, et. al., pages 157-194.

Sept. 20: Gavil, et. al., pages 194-236.

Sept. 22: Gavil, et. al., pages 237-285.

Sept. 27: *United States v. Apple*, 791 F.3d 290 (excerpted version to be distributed)

Unit 3: Intrabrand Price and Non-Price Agreements

Sept. 29: Francis & Sprigman, pages 254-286.

Unit 4: Exclusionary Conduct and Monopolization

Oct. 4: Gavil, et. al., pages 441-480; 494-500.

Oct. 6: Gavil, et. al., pages 501-530; 630-641.

Oct. 11: No Class (Follow Monday Schedule).

Oct. 13: Gavil, et. al., pages 988-1035.

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Oct. 18: Gavil, et. al., pages 1038-1069; Francis & Sprigman, 306-313.

Oct. 20: Gavil, et. al., pages 579-596; 606-608.

Oct. 25: Gavil, et. al., pages 1074-1102.

Oct. 27: Gavil, et. al., pages 530-536; 536-557; 572-578

Nov 1: Gavil, et. al., pages 1103-1138.

Nov. 3: *Epic Games v. Apple*, 559 F. Supp. 3d 898 (excerpted version to be circulated).

Unit 5: Horizontal & Vertical Mergers (Including Potential Competition Mergers)

Nov. 8: Gavil, et. al., pages 681-737

Nov. 10: Gavil, et. al., pages 738-796

Nov. 15: Gavil, et. al., pages 796-837

Nov. 17: Gavil, et. al., pages 838-873

Nov. 22: Gavil, et. al., pages 874-923

Review: Date(s) to be determined.