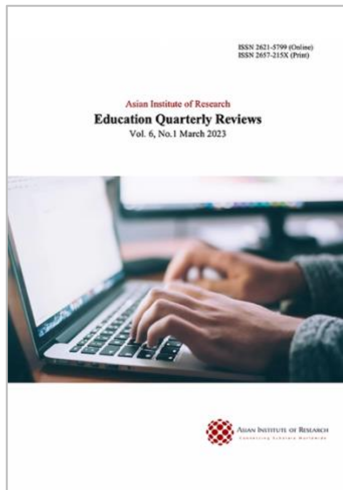

Education Quarterly Reviews

Hunter, R. J. (Jr.), Shannon, J. H., & Amoroso, H. J. (2023). A Teaching Note on Antitrust and Business. ***Education Quarterly Reviews*****, 6(1), 476-489.**

ISSN 2621-5799

DOI: 10.31014/aior.1993.06.01.722

The online version of this article can be found at:
https://www.asianinstituteofresearch.org/

Published by:
The Asian Institute of Research

The *Education Quarterly Reviews* is an Open Access publication. It may be read, copied, and distributed free of charge according to the conditions of the Creative Commons Attribution 4.0 International license.

The Asian Institute of Research *Education Quarterly Reviews* is a peer-reviewed International Journal. The journal covers scholarly articles in the fields of education, linguistics, literature, educational theory, research, and methodologies, curriculum, elementary and secondary education, higher education, foreign language education, teaching and learning, teacher education, education of special groups, and other fields of study related to education. As the journal is Open Access, it ensures high visibility and the increase of citations for all research articles published. The *Education Quarterly Reviews* aims to facilitate scholarly work on recent theoretical and practical aspects of education.

ASIAN INSTITUTE OF RESEARCH
Connecting Scholars Worldwide

ASIAN INSTITUTE OF RESEARCH
Connecting Scholars Worldwide

The Asian Institute of Research
Education Quarterly Reviews
Vol.6, No.1, 2023: 476-489
ISSN 2621-5799
Copyright © The Author(s). All Rights Reserved
DOI: 10.31014/aior.1993.06.01.722

A Teaching Note on Antitrust and Business

Richard J. Hunter, Jr.[1], John H. Shannon[2], Henry J. Amoroso[3]

[1] Professor of Legal Studies, Seton Hall University; Adjunct Professor of Business Law, Collins College of Business, University of Tulsa
[2] Professor of Legal Studies, Seton Hall University
[3] Associate Professor of Legal Studies; Chair, Department of Economics and Legal Studies, Seton Hall University

Abstract

This article is the second in a series on "teaching notes" on subject matter materials found in a standard business law or legal environment of business course. The topic of this teaching note is antitrust. The article discusses the various antitrust *statutes* as they are applied to business; the *reasoning* employed by various courts in analyzing antitrust allegations; and the *rules* utilized by courts in judging any antitrust violations. The article cites many of the most important cases decided by courts in the United States in interpreting how the various statutory and administrative materials should be applied in the context of American business practices. Once these materials have been fully explored, the basic principles and ideas can be applied to the functional area of the business curriculum such as marketing, management, finance, and sports, and the specialized area of franchising.

Keywords: Antitrust, Per Se Violation, Rule of Reason, Horizontal Restraint, Vertical Restraint, Tying Arrangements, Conscious Parallelism, Turn-Key Operation, Consignment Sale

1. Introduction

The implications of antitrust (sometimes internationally called "antimonopoly") law are especially relevant in American business (see Areeda & Hovenkamp, 2004). For roughly the first 114 years of U.S. economic history, business had a virtual free hand in the field of commerce. The courts and the government took a "hands off" attitude ("laissez-faire") towards business (Faulkner, 2016; Kanbur, 2016). In the United States, the tide began to turn in the late 1800s as the American public increasingly tired of the irresponsible behavior of some of the "captains of industry," derisively termed "robber barons."

The press began to call for reforms and for the protection of the public from abuses of "big business" (see Andrews et al., 2021). In one area, meat inspection, the work of the American author, Upton Sinclair, who centered his novel on the trials and tribulations of a Lithuania immigrant family and its patriarch Jurgis Rudkus, influenced the passage of the *Pure Food and Drug Act of 1906* (Kantor, 1976; Graf, 2020). The assault on unfettered big business, inspired by a generation of pre-World War I "muckrakers" (Lincoln Steffens, Ray Stannard Baker, Samuel Hopkins Adams, Thomas W. Lawson, Brand Whitlock, and perhaps most prominently, Upton Sinclair and Ida M. Tarbell) had begun (Fordham, 2019; Korr, 2020). Although the age of the "muckrakers" had largely faded by

1910-1912, government regulation of business was henceforth to have a significant impact on American business (see Hunter, Shannon, O'Sullivan, & Blodgett, 2011; Hunter, 2011).

Many of the regulations that affect business today in the United States can be traced to the cornerstone of business regulation. The law that changed American business so dramatically was the Sherman Antitrust Act of 1890 (Meese, 2020). This important statute and subsequent legislation in this field is predicated on increasing competition and encouraging competitive behavior (see Clark, 1954; Mahari, 2021; Andrews et al., 2021).

Competition is seen as desirable for the following reasons:

- It promotes efficiency in resource allocation;
- It provides for meaningful consumer choice;
- It assures the avoidance of concentration of political power; and
- It assures basic "fairness" in economic behavior.

Boushey and Knudsen (2021) write:

> "Healthy market competition is fundamental to a well-functioning U.S. economy. Basic economic theory demonstrates that when firms have to compete for customers, it leads to lower prices, higher quality goods and services, greater variety, and more innovation. Competition is critical not only in product markets, but also in labor markets. When firms compete to attract workers, they must increase compensation and improve working conditions."

This article will discuss the three major antitrust statutes in the United States that impact the business environment. In many instances, their specific application will be to franchising in the United States (Hunter & Lozada, 2013a; Hunter & Lozada, 2013b).

2. The Sherman Act (1890)

Section 1 of the Sherman Act is perhaps the most important legislative enactment dealing with an evaluation of a potential restraint on trade. Restraints are considered as either:

- *Horizontal*, that is, where two or more competitors in the market engage in conduct that is a restraint on trade; or
- *Vertical*, that is, a restraint that occurs within a "marketing chain" or within an organizational structure, such as between manufacturer, wholesaler, retailer and consumer, or between the franchisor and franchisee.

The text of Section 1 of the Sherman Act reads:

> "*Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal.*"

Almost immediately, however, courts began to interpret this section narrowly and developed the "*rule of reason*" as a means of applying the provisions of Section 1 (Loevinger, 1964; Blair & Sokol, 2012).

Thus, only those contracts or combinations that *unreasonably restrain trade* are generally prohibited. The first major case in the United States on point was *Standard Oil of New Jersey v. United States* (1911), in which Standard Oil had attempted to gain control of oil pipelines by engaging in regional price cutting to suppress competition, setting up "bogus" independents to give the impression of competition, and engaging in industrial espionage. While the Supreme Court recognized the existence of the "rule of reason defense," in this case, the Court ruled that in its application, Standard Oil's conduct did not fall within the rule and was not reasonable.

In contrast, it is also recognized that there is conduct that is so lacking in social value or worth that it is seen as a violation of Section 1 *on its face*. Such conduct is termed as a "*per se*" violation of Section 1. If a firm is accused of a *per se* violation, and the government can meet its prima facie burden of proof, the defendant is not permitted to defend its conduct by showing that its conduct was "otherwise reasonable" and it will be deemed guilty of violating Section 1 of the Sherman Act.

2.1. Per Se Violations

There are three generally recognized *per se* violations under Section 1 of the Sherman Act.

1. *Horizontal price fixing* (agreements on price among competitors) (Briggs, 1971; Kaplow, 2011; Kaplow, 2018). As the United States Supreme Court noted in *U.S. v. Socony-Vacuum Oil Co.*, 1940): "Any combination or agreement between competitors, formed for the purpose and with the effect of raising, depressing, fixing, pegging, or stabilizing the price of a commodity in interstate or foreign commerce is illegal per se."

Price fixing (Briggs, 1971) includes setting minimum or maximum prices (even where there is a "freedom" to charge less than the maximum or more than the minimum), the use of "list prices," and today, the use of minimum fee schedules by certain professional societies, formerly "exempted" under the "learned professions" exception (lawyers, architects, accountants, real estate brokers) (Rogister, 1974/1975; Counts, 1975/1976). Possible violations of Section 1 may also stem from "suggestions" where such actions become "active exhortation," or where the exchange of information regarding prices may take place at required sales meetings, conventions, etc.

It is also important to note that certain businesses are subject to government-regulated prices, as highly "*regulated*" industries. Industries such as airlines, railroads, shipping companies (common carriers), stock exchanges, insurance companies (Malone, 2021), and banks) may be permitted, in fact, to "fix" or set prices without violating antitrust law if a regulatory authority has determined that the rates fixed are in the "public interest" (see also Bush, 2006).

2.2. Consignment Sales

In many cases, a manufacturer (especially in a distributorship arrangement) will attempt to determine or "fix" the price of an item through a procedure known as a "*consignment" sale,* also called a "sale or return" contract (Rotherham, 1998). In *Armor All Products v. Amoco Oil Co.* (1995, p. 51), the Supreme Court of Wisconsin stated "This device is used as a price-fixing arrangement whereby the consignor insists that the consignee charge a certain price for goods." In order for a court to determine that a "true consignment" sale has taken place, and thus is exempted from antitrust scrutiny as price fixing, the following factors must be exhibited:

1. The manufacturer/distributor must retain *title* to the goods;
2. The manufacturer/distributor must retain *ownership*;
3. The manufacturer/distributor must retain *risk of loss*; and
4. The manufacturer/distributor must permit the consignee the *right to return* unsold goods.

In the case of certain new car sales, the ability of the consignor to "set" or "fix" the price was attacked because, in fact, there was "*virtually no chance that there would be any unsold goods."*

2.3. "Conscious Parallelism"

In the area of price fixing, it is doubtful that competitors will overtly conspire or agree to fix prices, although there were a few examples from American history in which competitors did just that! As a result, an agreement or conspiracy that violates Section 1 can only be proved by *circumstantial evidence*.

Page (2020, p. 347) noted:

> "The Supreme Court once said, "[C]ircumstantial evidence is the lifeblood of antitrust law" (citing *United States v. Falstaff Brewing Corp*., 1973, p. 534). That was in a merger case, but the observation could also apply to price-fixing litigation under Section 1 of the Sherman Act. Claims of price fixing and other per se violations of Section 1 usually turn on whether circumstantial evidence proves that the defendants formed an agreement—the "contract, combination . . . or conspiracy" the statute requires."

At this point, the analysis shifts to an agreement based upon the *conduct* of the parties. This is undertaken under a doctrine called "*conscious parallelism*" (see *Interstate Circuit v. United States*, 1939; Crane, 2020). In *Interstate Circuit*, the United States Supreme Court stressed the existence of three required elements:

1. *Knowledge* of competitor pricing;
2. *Motivation* (usually to undercut competition in order to keep prices high);
3. *Substantial unanimity* (usually within a limited range).

Later, in *Theater Enterprises v. Paramount Film Distributor Corp.* (1954), the Supreme Court noted that "The crucial question is whether the respondent's conduct stemmed from an independent decision; or from an agreement tacit or expressed." Conscious parallelism is a difficult and intriguing problem because of a recognized concept in marketing termed "price leadership" (see Roy, Hanssens, & Raju, 1994).

Vertical price fixing or agreements on price among suppliers and customers within a marketing chain or organizational structure, once determined to be a *per se* violation (see *Dr. Miles Medical Company v. John D. Park & Sons Company*, 1911), may be permitted in the area of franchising under a rule of reason analysis because of the unique structure of franchising, but will be closely scrutinized by the courts (Dressler, Warpula, & Young, 2021, citing *Leegin Creative Leather products v. PSKS*, 2007).

2. *Horizontal market divisions* or agreements among competitors are known as *horizontal allocations of markets*. An antitrust violation may occur where an agreement exists among businesses performing similar services or dealing in similar products, whereby the available market is divided up and each allocated a share of the market. In the United States, some heavily "regulated industries" have been granted the right to in fact divide markets if the relevant regulatory agency has determined that this practice would "benefit the public" (see Bush, 2006). One such industry is the airline industry in which regulations have allowed certain U.S. airlines to dominate certain physical markets. (For example, the combined United-Continental Airlines in Newark, N.J. or Denver, Colorado; Delta Airlines in Dallas; or American Airlines in Charlotte, N.C.)

3. *Group boycotts* may involve agreements among competitors not to sell to a particular buyer or not to buy from a particular seller (Mah, 2020). As a general rule, an individual retains discretion to choose with whom s/he wishes to deal. Such a practice or decision is protected under the *business judgment rule* (Manning, 1984; Velasco, 2021. The elements of the business judgment rule are business experience, financial ability, and moral character (especially as it relates to the element of "good will" (Runge, 2022)). However, when a group of competitors agrees not to deal with a person or entity outside the group at all, or only on certain terms, an unlawful boycott may be established, constituting a combination in restraint of trade.

Section 2 is the important antimonopoly provision of the Sherman Act. It reads:

> *"Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a misdemeanor."*

In determining what is or is not an improper or illegal monopoly, courts generally look at two aspects: the *relevant market* and the *percentage share of dominance* in that market (Laskowska, 2014). Some monopolies are deemed as "natural"; that is, they have been created by superior products or through a long-standing domination of the market (Joskow, 2007). Other industries may have been granted monopoly status by the government and are called "regulated monopolies," including power companies, water companies, and until recently, American cable companies (Pettinger, 2019).

In some cases in the past, the Justice Department had determined that 70% is the appropriate threshold that invites scrutiny; in some industries (such as the retail shoe industry or grocery stores), the percentage share may be as low as 4-6% (see *United States v. Von's Grocery Company,* 1966).

2.4. Rule of Reason Considerations

If applicable, a *rule of reason* analysis (Blair & Sokol, 2012) permits the courts to ask several important questions (Carrier, 2019), among them:

1. What is the effect of the alleged restraint on competition?
2. Would the alleged restraint actually promote competition? (see *N. Am. Soccer League, LLC v. U.S. Soccer Fed'n, Inc.*, 2018; *Metro Intercollegiate Basketball Ass'n v. NCAA*, 2004);
3. Has anyone actually been harmed?
4. Was the restraint reasonable and necessary to serve a legitimate competitive purpose?

Carrier (2019, p. 50) states:

> "The rule of reason is famously traced to *Chicago Board of Trade v. United States*, in which the Supreme Court called for a comprehensive analysis that considers the facts peculiar to the business to which the restraint is applied; its condition before and after the restraint was imposed; the nature of the restraint and its effect, actual or probable[, as well as] [t]he history of the restraint, the evil believed to exist, the reason for adopting the particular remedy, [and] the purpose or end sought to be attained."

What are some types of arrangements that may be subject to a Rule of Reason analysis?

a. *Exclusive dealing contract* (the essence of an exclusive distributorship arrangement): wherein one party agrees to deal with a second party exclusively (Solomon & Joffe, 1984; Ornstein, 1989). In some instances, the seller will insist that unless the buyer only buys from the seller, and not from a competitor of the seller, the seller will no longer deal with the buyer. The Federal Trade Commission (FTC) (2023) has noted:

> "Most exclusive dealing contracts are beneficial because they encourage marketing support for the manufacturer's brand. By becoming an expert in one manufacturer's products, the dealer is encouraged to specialize in promoting that manufacturer's brand. This may include offering special services or amenities that cost money, such as an attractive store, trained salespeople, long business hours, an inventory of products on hand, or fast warranty service."

In defense of these arrangements, Hajdini & Windsperger (2019, p. 97) state:

> "Exclusive dealing refers to a situation when franchisees agree to offer only services or products of the franchisor's brand. The clause ensures that only the franchisor's products will benefit from his marketing and other promotional activities and that the franchisee's maximum efforts to serve are related only to the franchisor's range of products. This increases its incentive to continue supporting the franchisees. … in supplier-distributor relationships, the distributor's satisfaction is positively moderated by an exclusive dealing arrangement. … exclusive dealing mitigates manufacturer-dealer conflict and enhances social welfare. Others find that such clauses facilitate

> the promotion of individual brands, increase brand-related and market sales, and lower distributor costs."

Not all exclusive dealing arrangements are illegal; in fact, most are legal and permissible. Only those arrangements which in fact close off competition or where their effect "may be to substantially lessen competition or tend to create a monopoly..." will be branded as illegal.

In this regard, the FTC (2023), citing *In re the Matter of McWane, Inc. and Star Pipe Products, Ltd.*, notes:

> "On the other hand, a manufacturer with market power may potentially use these types of vertical arrangements to prevent smaller competitors from succeeding in the marketplace. For instance, exclusive contracts may be used to deny a competitor access to retailers or distributors without which the competitor cannot make sufficient sales to be viable. For example, the FTC found that a manufacturer of pipe fittings unlawfully maintained its monopoly in domestically-made ductile iron fittings by requiring its distributors to buy domestic fittings exclusively from it and not from its competitors, who were attempting to enter the domestic market. The FTC found that this manufacturer's policy foreclosed a competitor from achieving the sales needed to compete effectively. On the supply side, exclusive contracts may tie up most of the lower cost sources of supply, forcing competitors to seek higher-priced sources. This was the scenario that led to FTC charges that a large pharmaceutical company violated the antitrust laws by obtaining exclusive licenses for a critical ingredient. The FTC claimed that the licenses had the effect of raising ingredient costs for its competitors, which led to higher retail drug prices."

b. *Requirements contracts* (a contract in which the quantity is measured by the requirements of the buyer): similar to an exclusive dealing contract, a requirements contract obligates the buyer to purchase all of its requirements from a seller. Again, the rule of reason is used to evaluate such contracts, provided that the underlying contract is legal (see FTC, 2023).

c. *Customer and territory restrictions* (to whom products/services can be sold or where products/services can be sold): Originally, territorial and customer restrictions were considered as *per se* violations by the United States Supreme Court, under a precedent termed the *Schwinn Rule*. In *United States v. Arnold, Schwinn & Co.* (1967), the Court had written: "It is unreasonable without more for a manufacturer to seek to restrict and confine areas or persons with whom an article may be traded after the manufacturer has parted with dominion and control over it." Over time, the per se view was set aside, as the Supreme Court now applies the rule of reason to such cases (Bork, 1977; Pollock, 1976/1977).

It is possible, however, for a manufacturer (distributor) to set up a "primary area of responsibility" with sales quotas for its franchisees or other representatives or sales associates. These types of restrictions are common when a franchisor guarantees territories to a franchisee in a concept termed "franchise market area protection" (Seid & Mazero, 2017). This is most often accomplished through using a radius (space/area), zip code (postal code) or population base (i.e., one franchise outlet per _____ thousands of persons) (see Emerson, 2010).

In many cases, the franchisor may allow for expansion within an area by allowing the franchisee, if qualified, to purchase the new location on the same or similar terms available in the franchise system in a comparable market (see Emerson, 2010; Gillis, Combs, & Yin 2020). This is sometimes termed an option or a "right of first refusal." In other cases, the franchisee may be contractually obligated to open a new location or locations within a specified period of time (generally Hunter & Lozada, 2013a; Hunter & Lozada, 2013b).

d. *Tying Arrangements*: In a tying arrangement (Hovenkamp & Hovenkamp, 2015), one party (usually the seller) refuses to sell one product unless the buyer also agrees to purchase a second product or service from the seller (Strasser, 1985; Klein & Saft, 1985; Sagi, 2014; Hajdini & Windsperger, 2019; Fordice, Louvis, Narula, & Salem-Mackall, 2021). In *Northern Pacific R. Co. v. United States* (1958, p. 5-6), the United States Supreme Court stated: "A tying arrangement is 'an agreement by a party to sell one product but only on the condition that the

buyer also purchases a different (or tied product), or at least agrees that he will not purchase that product from any other supplier.'" The web site *Cliently* (2023) provides the positive aspects of tie-ins as: (1) safeguarding the seller's quality reputation; (2) assuring distribution efficiencies; (3) providing for risk allocation efficiency; and (4) assuring market power leveraging from the tying to the tied market.

Originally, tying arrangements were considered as *per se* violations (Ahlborn, Evans, & Padilla, 2004). However, many exceptions or justifications have been recognized which permit a court to apply a rule of reason analysis to allegations of illegal tying.

The United States Supreme Court in *Jefferson Parish Hospital District et al v. Hyde (1984)* recognized that tying may," at least in certain circumstances, be welfare enhancing":

> "[N]ot every refusal to sell two products separately can be said to restrain competition. If each of the products may be purchased separately in a competitive market, one seller's decision to sell the two in a single package imposes no unreasonable restraint on either market, particularly if competing suppliers are free to sell either the entire package or its several parts. . . . Buyers often find package sales attractive; a seller's decision to offer such packages can merely be an attempt to compete effectively--a conduct that is entirely consistent."

The elements of a tying arrangement include (see *Sea-Land Serv. v. Atlantic Pac. Int'l*, 1999):

- Two products (*Eastman Kodak Co. v. Image Tech Servs.*, 1992) (one of the products can be the trademark or the service mark or the franchise contract itself (*Siegel v. Chicken Delight,* 1971; see also Erickson, 1971);
- "Economic power" on the part of the seller (*Schlotzsky's Ltd. v. Sterling Purchasing & Nat'l Distrib. Co.*, 2008); that is, the tying product/service must be desirable (economic power will be automatically inferred from the existence of a patent held by the seller or franchisor (Rupert, 1980; Lavey, 1982);
- There must be an *actual* tie-in (and not just the "opportunity" to purchase goods/services);
- The fact that commerce is "not insubstantially affected." Thus, even a small effect on commerce will bring a tie-in under close scrutiny (Leslie, 2015);
- "No legal justification is present," that is, the rule of reason will be applied in most cases; and
- Damages (can be shown easily if the tied product can be purchased at a lower cost from a second supplier).

A franchisor, for example, can still offer products and services to a franchisee (generally, Harkins, 1979; Klein & Saft, 1985). An *illegal* tie-in occurs where there is a *requirement of purchase* that cannot be justified under the rule of reason (see Strasser, 1985; Sagi, 2014).

Several "justifications" have been offered under a rule of reason analysis.

1. Sophistication regarding specifications for a product;
2. Quality control (see *Dairy Queen v. Wood,* 1962*;* Iacobucci, 2003);
3. Product uniformity;
4. The "practically indistinguishable" justification (examples might include Hires Root Beer, Orange Julius, Dairy Queen). In essence, there is only *one product*- the product *is* the franchise; and
5. The "failing company" defense (generally, *United States v. Phillips Petroleum Co.*, 1973).

Some franchisors may attempt to circumvent rules relating to tie-ins by offering what are called "turn-key" operations to franchisees—in essence, full package franchises including land/building/equipment and supplies). A turn-key is not illegal; however, courts have held that no more than a "reasonable amount" of supplies may be stocked in a franchise operating under an initial turn-key, as effects of the turn-key arrangement may only operate for a "reasonable period of time" (Hayes, Rhinehart, & Kvilhaug, 2022). At the outside, this may be no more than necessary to operate the franchise for an "initial reasonable period" of 3-6 months.

3. The Clayton Act

The Clayton Act of 1914 was the second statute designed to encourage competition. The relevant aspects of the Clayton act may be summarized as follows:

- As discussed earlier, Section 3 of the Clayton Act prohibits sales on the condition that the buyer will not deal with competitors of the seller. Three types of contracts fall within the scrutiny of Section 3: "tie-in " sales (Fordice, Louvis, Narula, & Salem-Mackall, 2021), exclusive dealing arrangements (found especially in distributorships), and requirement contracts.

However, perhaps the most important portion of the Clayton Act deals with the area of price discrimination found in Section 2, as amended by the Robinson-Patman Act of 1936 (Koku, 2015; DePasquale, 2015; Bao, 2019).

Under Section 2, as amended, it is unlawful for any person engaged in commerce to:

a. *Discriminate in price* between different purchasers of like grade, quantity, and quality, where the effect may be to substantially lessen competition in any line of commerce, or tend to create a monopoly (by, for example, forcing one party out of business); or

b. *To injure, destroy or prevent competition* (through such indirect actions as “dummy” brokerage fees and unsubstantiated promotional "kickbacks").

The major defense to a charge of price discrimination is that the seller is "meeting" but not "beating" the price being offered by a competitor (*Standard Oil of Indiana v. Federal Trade Commission,* 1951). The defendant can also show that a lower price is being offered because of obsolescence of inventory, seasonal variations in prices, damaged or perishable goods being sold, that the goods are of different grade or quality, or the result of actual "quantity discounts" available to all buyers.

- Section 4 provides for treble damage suits by private individuals for violations of either the Sherman or Clayton Act (Blair and Durrance, 2015), although the U.S. Department of Justice and its specialists in the "Antitrust Division" are primarily responsible for enforcing the Sherman Act.

- Section 6 exempts labor unions, certain agricultural organizations and agricultural cooperative associations, certain farmer and fisherman organizations, export promotion organizations, certain "regulated industries" and other small businesses. [Major League Baseball was granted an exemption to the Sherman Act under *Federal Baseball Club of Baltimore v. National League of Professional Baseball Clubs* (1922), in a much criticized opinion written by Justice Oliver Wendell Homes. No other professional sports organizations are so exempted (see Blair and Wang, 2020; Parker, 2022).]

- Section 7 deals with the area of acquisitions and mergers (see Brueller, Carmeli, & Drori, 2014; Lessambo, 2020). Mergers may be of three general types: *horizontal* (between competitors), *vertical* (between different levels within the marketing chain), or *conglomerate* (between essentially different businesses). A merger might also occur when a company acquires the stock or assets of another firm, involving a special statute, called the Cellar-Kefauver Act of 1950.

  Mergers may be challenged when the effect of a proposed merger would be to "substantially lessen competition or tend to create a monopoly."

  The period of "merger mania" (see Adams & Brock, 2015) in the United States in the 1980s resulted in a variety of new business practices, vocabulary, and concepts being introduced into the law such as “takeover targets,” "poison pills," "junk bonds," "insider trading," "Pac-man defenses," the “S&L scandal," etc. (see Hunter & Frese, 1989; Hunter, 1990; Hunter & Loviscek,

1997). The "failing company" doctrine, showing that without the merger, one of the firms would have gone out of business, may be raised as a defense in a Section 7 action.

- Section 8 broadly prohibits so-called "interlocking directorates" (Fletcher, Peitz, & Thepot, 2022). That is, no one individual may sit on the board of directors of two or more competing companies if *either* of the firms has capital and surplus (cash) in excess of $1 million *and* if a merger between them would violate any antitrust law. This section has been largely ignored by the Department of Justice, citing issues relating to public policy or difficulty of enforcement. Rules relating to interlocking directorates may be contrasted with business practices prevalent in Japan and their *keiretsu* (McGuire & Dow, 2002), and z*aibatsu* systems (Kobayashi, 2020; Dogrul & Korkut, 2022).

4. The Federal Trade Commission (FTC) Act of 1914

Section 5 of the FTC Act prohibits "unfair methods of competition" and "unfair and deceptive trade practices" (Carrier & Tushnet, 2021), as well as “false and misleading advertising” (Geller, 2013; Jhanwar & Khanddia, 2020). The Act also created the Federal Trade Commission (FTC) to enforce antitrust laws, especially the Clayton Act. Interestingly, a violation of the FTC Act can be found *without any overt proof* of any deception. A showing that there is a "fair prospect" that the public will be deceived is sufficient to establish that the conduct is unfair and deceptive.

The FTC Act is also intended to stem so-called "bait and switch" advertising (see Friedman, 2018) which involves advertising a product at an especially low or enticing price in order to get a customer into a store (the "bait") and then talking the customer into buying a more expensive model or service (the "switch") because the advertised model is sold out or is no longer available or has some alleged defect that is not found in the original product (see Emamalizadeh, 1983; Friedman, 2013).

Remedies under the FTC Act are also designed to deter, improper conduct. In *Warner-Lambert v. Federal Trade Commission* (1977, p. 762), Judge Skelly Wright noted:

> “The FTC may order a respondent to "cease and desist" from certain acts or practices determined to be unfair or deceptive (similar to an injunction issued by a court), or may compel the affirmative disclosure of information previously omitted from an advertisement. The order may extend to products or services other than the products or services covered by the original advertisement which drew the wrath of the FTC. The Commission has adopted the following standard for the imposition of corrective advertising:
>
> [I]f a deceptive advertisement has played a substantial role in creating or reinforcing in the public's mind a false and material belief which lives on after the false advertising ceases, there is clear and continuing injury to competition and to the consuming public as consumers continue to make purchasing decisions based on the false belief. Since this injury cannot be averted by merely requiring respondent to cease disseminating the advertisement, we may appropriately order respondent to take affirmative action designed to terminate the otherwise continuing ill effects of the advertisement.”

In certain cases, depending on whether the action was found to be deliberate or unintentional, or whether the violator has a prior history of similar conduct, the FTC may seek civil penalties (Stein, 2019; Huffman, 2022) or other forms of consumer redress such as product recalls, forced repurchases, etc. The FTC may fine a violator up to $5,000 per violation- *with each day constituting a separate violation*.

4.1. Corrective Advertising

Under *Warner-Lambert v. Federal Trade Commission* (1977) and *United States v. Philip Morris* (2006) (Berry, Burton, Kees, & Andrews, 2021), the FTC may opt for *corrective advertising* (Geller, 2013). [*Phillip Morris* is also noteworthy because on September 22, 1999, the U.S. Department of Justice ("DOJ") sued several of the largest tobacco companies in federal district court for civil violations of the Racketeer Influenced and Corrupt Organizations Act ("RICO"). On August 17, 2006, Judge Kessler of the U.S. District Court for the D.C. Circuit issued a 1,683-page opinion holding the tobacco companies liable for violating RICO due to their participation in a decades-long scheme to defraud the public about the health risks and addictiveness of smoking.]

Corrective advertising is a form of advertising that admits *in some way* that a product lacks some characteristic or performance feature it was advertised to possess and may be mandated when the FTC believes that it is necessary to correct a false impression created by the respondent's prior advertisements.

4.2. Resale Price Maintenance

The FTC Act also deals with so-called "resale price maintenance" agreements (Bao, 2019) were legal under the Miller-Tydings Price Maintenance Act of 1937, under which a retailer would agree with the manufacturer to charge a single, uniform price so as to assure that the article would be "fair traded" (Greco, 2020). These arrangements are no longer valid. Several important U.S. businesses rose to prominence under the special protection of "fair trade" legislation such as Tupperware and Corning Ware which were "fair traded" all over America.

5. Antitrust Remedies

Violations of several sections of the Sherman Act are punishable by fines—up to $1 million for a corporation and $100,000 for an individual, or up to three years in jail or both (see Huffman, 2022). If a corporation violates any of the penal provisions of antitrust laws, an individual director, officer, or agent may be held liable.

There are, in fact, a wide array of additional remedies available to federal courts in the United States including the power of a court to issue orders to:

a. *Restrain* particular acts or practices (*Federal trade Commission v. Sysco Corp.*, 2015);
b. Compel *divestiture* of a subsidiary (*Cal. v. Am. Stores Co.*, 1990);
c. *Divide* a company's assets, even to the extent of creating a competing entity;
d. Compel a company to *license a patent* with a reasonable royalty, or on a royalty-free basis (*U.S. v. Glaxo Group*, 1973);
e. *Cancel contracts* entered into in violation of any antitrust law (*Federal Trade Commission v. Great Lakes Chemical Corp.*, 1981);
f. *Disgorge illegal profits* or *impress a constructive trust* on parties (*United States v. Keyspan Corp.*, 2011).

Private parties may file suit under the Sherman, Clayton, and Robinson-Patman Acts (Blair, 2015) and obtain treble damages. In the case of a Sherman Act violation, a successful plaintiff may also receive reasonable attorney's fees.

6. Concluding Comments

Providing students with a basic understanding of core foundational materials in an area such as antitrust will provide them with the background necessary to apply these concepts and ideas to their more functional areas of study, and eventually, to their chosen professions when issues relating to antitrust may arise.

References

Adams, W. & Brock, J.W. (2015). 1980's gigantomania follies. Challenge, 35(2): 4-8.
Ahlborn, C., Evans, D.S., & Padilla, A.J. (2004). The antitrust economics of tying: A farewell to per se illegality. Antitrust Bulletin, 49(1/2): 287-341.
Andrews, J.C. et al. (2022). What exactly is marketing and public policy? Insights from JPPM researchers. Journal of Public Policy and Marketing, 41(1): 10-33.
Areeda, P.E. & Hovenkamp, H. (2007). Antitrust law: An Analysis of antitrust principles and their application (3rd ed.). Wolters Kluwer Law & Business: New York.
Armor All Products v. Amoco Oil Co., 194 Wisc. 2d 35 (1995). Supreme Court Wisconsin.
Bao, J. (2019). The economic effect of resale price maintenance and the regulation of antitrust law. 2019 5th International Conference on Economics, Management and Humanities Science (ECOMHS 2019: 28-33.
Berry, C., Burton, S., Kees, J. & Andrews, J.C. (2021). A longitudinal assessment of corrective advertising mandated in *United States v. Philip Morris USA, Inc.* Journal of Business Ethics, 171: 757-770.
Blair, R.D., & Durrance, C.P. (2015). Private damage actions under the Robinson-Patman Act. The Antitrust Bulletin, 60(4): 384-401.
Blair, R.D. & Sokol D.D. (2012). The rule of reason and the goals of antitrust: An economic approach. Antitrust Law Journal, 78(2): 471-504.
Blair, R.D. & Wang, W. (2020). Rethinking major league baseball's antitrust exemption. Journal of Legal Aspects of Sport, 30(1): 18-40.
Bork, R.H. (1977). Vertical restraints: Schwinn overruled. Supreme Court Review (University of Chicago), 1977: 171-192.
Boushey, H. & Knudsen, H. (2021). The importance of competition for the American economy (Blog), Ground News (July 9, 2021), https://ground.news/article/the-importance-of-competition-for-the-american-economy; https://www.whitehouse.gov/cea/written-materials/2021/07/09/the-importance-of-competition-for-the-american-economy/
Briggs, T.R. (1971). What is price fixing? Antitrust Law Journal, 41(1): 74-83.
Brueller, N.N., Carmeli, A. & Drori, I. (2014). How do different types of mergers and acquisitions facilitate strategic agility? California Management Review, 56(3): 39-57.
Bush, D. (2006). Mission creep: Antitrust exemptions and immunities as applied to deregulated industries. Utah Law Review, 2006(3): 761-810.
Carrier, M.A. (2019). The four-step rule of reason. Antitrust, 33(2): 50-55.
Carrier, M.A. & Tushnet, R. (2021). An antitrust framework for false advertising. Iowa Law Review, 106(4): 1841-1884.
Cal. v. Am. Stores Co., 495 U.S. 271 (1990). Supreme Court of the United States.
Chicago Board of Trade v. United States, 264 U.S. 231 (1918). Supreme Court of the United States.
Cellar-Kefauver Act. 64 Stat. 1125 (1950).
Clark, J.M. (1954). Competition and the objectives of government policy. In
Monopoly and competition and their regulation, E.H. Chamberlain (ed). International Economic Association Conference Numbers 1-50. Palgrave Macmillan: London.
Clayton Act. 38 Stat. 730 (1914).
Cliently (2021). What is tie-in sales and how to avoid it: Everything you need to know. Cliently.com (December 18, 2021), https://www.cliently.com/blog/tie-in-sales
Counts, C.W. (1975/1976). Goldfarb v. Virginia State Bar – Applying the antitrust laws to the legal profession. Howard Law Journal Bar Association, 19: 149-158.
Crane, D.A. (2020). The new crisis in antitrust (?). Antitrust Law Journal, 83(1): 253-268.
Dairy Queen v. Wood, 369 U.S. 469 (1962). Supreme Court of the United States.
DePasquale, C. (2015). The Robinson-Patman Act and the consumer effects of price discrimination. Antitrust Bulletin, 60(4); 402-413.
Dogrul, M. & Korkut, C. (2022). Transformation of the institutional political economy of Japan: From rice field property reform to zaibatsu. EGE Academic Review, 23(1): 89-105.
Dr. Miles Medical Company v. John D. Park & Sons Company, 220 U.S. 373 (1911). Supreme Court of the United States.
Dressler, E.H., Warpula, CC., & Young, C. (2021). Current advice on managing resale prices in franchising. Franchise Lawyer, 24(4): 3-6.
Eastman Kodak Co. v. Image Tech. Servs., 504 U.S. 451 (1992). Supreme Court of the United States.
Emamalizadeh, H. (1983). Bait-and-switch advertising: A conceptual approach. Proceedings of the 1983 Academy of Marketing Science: 458-460, https://link.springer.com/chapter/10.1007/978-3-319-16937-8_109**.**
Emerson, R.W. (2010). Franchise territories: A community standard. Wake Forest Law Review, 45: 779-851.

Erickson, M.L. (1971). Siegel v. Chicken Delight: Continued erosion of defenses to tying arrangements. American Business Law Journal, 9(1); 21-38.
Faulkner, H.U. (1951/2016). The decline of laissez faire, 1897-1917. Routledge: New York.
Federal Baseball Club of Baltimore v. National League of Professional Baseball Clubs, 259 U.S. 200 (1922). United States Supreme Court.
Federal Trade Commission (2023). Exclusive dealing or requirement contracts, https://www.ftc.gov/advice-guidance/competition-guidance/guide-antitrust-laws/dealings-supply-chain/exclusive-dealing-or-requirements-contracts (last accessed February 25, 2023).
Federal Trade Commission Act. 38 Stat. 719 (1914).
Federal Trade Commission v. Great Lakes Chemical Corp., 528 F. Supp. 84 (1981). U.S. District Court for the Northern District of Illinois
Federal Trade Commission v. Sysco Corp., 83 F. Supp. 3d 271 (2015). U.S. District Court for the District of Columbia.
Fletcher, A., Peitz, M., & Thepot, F. (2022). Introduction to special issue on common ownership and interlocking directorates. Journal of Competition Law & Economics, 18(1); 1-4.
Fordham, H. (2019). Muckraker. In George Seides' war for the public good. Palgrave: London.
Fordice, N.J., Louvis, E., Narula, M., & Salem-Mackall, T. (2021). Antitrust violations. American Criminal Law Review (Annual Survey of White Collar Crime), 58(3): 563-610,
Friedman, D.A. (2013). Explaining "bait and switch" regulation. William & Mary Business Law Review, 4: 575-638.
Friedman, D.A. (2018). "Dishonest search disruption": Taking deceptive-pricing tactics seriously. University of California Davis Law Review Online, 50: 121-147.
Geller, M.A. (2013). Advertising and the maintenance of competition- The Federal Trade Commission. Routledge: New York.
Gillis, W.E., Combs, J.G., & Yin, X. (2020). Franchise management capabilities and franchisor performance under alternative franchise ownership strategies. Journal of Business Venturing. 35(1): 1-20, https://econpapers.repec.org/RePEc:eee:jbvent:v:35:y:2020:i:1:s0883902617307760
Goldfarb v. Virginia State Bar, 421 U.S. 773 (1975). Supreme Court of the United States.
Graf, R. (2020). Truth in the jungle of literature, science, and politics: Upton Sinclair's *The Jungle* and food control reforms during the progressive era. Journal of American History, 106(4): 901-922.
Greco, A.J. (2020). A concise history of United States resale price maintenance arrangements and its current status under state and federal laws. Journal of Advanced Research in Law and Economics, 47: 26-36.
Hajdini, I & Windsperger, J. (2019). Contractual restraint and performance in franchise networks. Industrial Marketing Management, 82: 96-105.
Harkins, J.G. ((1979). Tying and the franchisee. Antitrust Journal, 47(4): 903-914.
Hayes, A., Rhinehart, & Kvilhaug, S. (2022). Turnkey business: Definition, how to operate with examples. Investopedia (December 17, 2022), https://www.investopedia.com/terms/turnkeybusiness.asp
Hovenkamp, E. & Hovenkamp, H. (2015). Chapter 14: Tying arrangements. In The Oxford handbook of international antitrust economics, Vol. 2, R.D. Blair & D.D. Sokol (eds.), https://scholarship.law.upenn.edu/faculty_scholarship/1902/
Huffman, M. (2022). Civil sanctions in antitrust enforcement. In The Cambridge handbook of competition law sanctions, T. Toth (ed): 205-217. Cambridge University Press: Cambridge, UK.
Hunter, R.J. (1990). Insider trading revisited. Res Gestae, 33(8): 393-395.
Hunter, R.J. (2011). Judicial review of administrative rule making. Mustang Journal of Law and Legal Studies, 2: 31-39.
Hunter, R.J. & Frese (1989). The genesis of an ethical imperative: The Sec in transition. [The ethical. Implications of statutory and administrative solutions to insider trading: A comprehensive legislative, administrative, judicial and policy study.] Gonzaga University Law Review, 25(1): 9-64.
Hunter, R.J. & Loviscek, A. (1997). Insider trading revisited: The misappropriation theory and beyond. The Howard University Law Review, 41(1): 79-123.
Hunter, R.J. & Lozada, H.E. (2013a). A primer on franchising in the United States: A vehicle for economic mobility. Global Journal of Management and Business Research: Economics and Finance, 13(4): 43-52.
Hunter, R.J. & Lozada, H.E. (2013b). The legal aspects of the franchise relationship. Global Journal of Management and Business Research: Finance, 13(6): 1-14.
Hunter, R.J., Shannon, J.H., O'Sullivan-Gavin, & Blodgett, M.S. (2011). Regulation: A historical perspective and discussion of the impact of the commerce clause and the fourteenth amendment and the move to deregulate the American economy. University of LaVerne Law Review, 32: 137-164.
Iacobucci, E.M. (2003). Tying as quality control: A legal and economic analysis. The Journal of Legal Studies, 32(2): 435-464.
Interstate Circuit v. United States, 306 U.S. 208 (1939). Supreme Court of the United States.

In the matter of McWayne, Inc., and Star Pipe Products, FTC Matter/File Number 101 0080b (April 17, 2005). Federal Trade Commission.
Leegin Creative Leather products v. PSKS, 551 U.S. 877 (2007). Supreme Court of the United States.
Jefferson Parish-Hospital District No. 1 v. Hyde, 466 U.S. 2 (1984). Supreme Court of the United States.
Jhanwar, R. & Khanddia (2020). Advertising and its misleading. International Journal of Law Management & Humanities, 3: 1126-1138.
Joskow, P.L. (2007). Chapter 16. Regulation of natural monopoly. Handbook of Law and Economics, Vol. 2: 1227-1348.
Kanbur, R. (2016). The end of laissez-faire, the end of history, and the structure of scientific revolutions. Challenge, 59(1); 35-46.
Kantor, A.F. (1976). Upton Sinclair and the Pure Food and Drugs Act of 1906. American Journal of Public Health (AJPH), 66(12): 1202-1205.
Kaplow, L. (2011). An economic approach to price fixing. Antitrust Law Journal, 77(2): 343-450.
Kaplow, L. (2018). Price-fixing policy. International Journal of Industrial Organization, 61: 749-776.
Klein, B. & Saft, L.F. (1985). The law and economics of franchise tying contracts. The Journal of Law and Economics, 28(2): 345-361.
Kobayashi, K. (2020). Effects of Japanese financial regulations and keiretsu style groups on Japanese corporate governance. Hastings International & Comparative Law Review, 43: 339-364.
Koku, P.S. (2015). Which laws do your marketers know? Some legal issues on price discrimination (Conference Paper): 395-399. Developments in Marketing Science: Proceedings of the Academy of Marketing Science, https://link.springer.com/chapter/10.1007/978-3-319-18687-0_145
Korr, M. (2020). From MD's to Muckrakers: Fighting for passage of Pure Food and Drug Act. Rhode Island Medical Journal: 64-66.
Laskowska, M. (2014). Monopoly and public policy. Business Law Review, 35: 211-213.
Lavey, W.G. (1982). Patents, copyrights, and trademarks as sources of market power in antitrust cases. Antitrust Bulletin, 27(2): 433-455.
Leslie, C.R. (2015). The commerce requirement in tying law. Iowa Law Review, 100(5): 2135-2160.
Lessambo, F.I. (2020). Economic effects of antitrust laws on mergers and acquisitions: 17-30. In Mergers in the global markets. Palgrave Macmillan: London.
Loevenger, L. (1964). The rule of reason in antitrust law. Virginia Law Review, 50(1): 23-35.
Mah, S.et al. (2020). Antitrust violations. American Criminal Law Review, 57(3): 413-458.
Mahari, R. (2021). Time for a new antitrust era: Refocusing antitrust law to invigorate competition in the 21st century. Stanford Computational Antitrust, 1: 52-63.
Malone, M. (2021). Sharing is not always caring: Reevaluating the insurance industry's antitrust exemption and information sharing in the machine-learning era. Houston law Review, 58(4): 987-1014.
Manning, B. (1984). Business judgment rule in overview. Ohio State Law Journal, 45(3): 615-628.
McGuire, J. & Dow, S. (2002). The Japanese keiretsu system: An empirical analysis. Journal of Business Research, 55: 33-40.
Meese A.J. (2020). Antitrust regulation and the federal-state balance: Restoring the original design. American University Law Review, 70: 75-166.
Metro Intercollegiate Basketball Ass'n v. NCAA, 337 F. Supp. 2d 563 (2004). U.S. District Court for the Southern District of New York.
Miller-Tydings Price Maintenance Act. 50 Stat. 693 (1937).

North Am. Soccer League, LLC v. U.S. Soccer Fed'n, Inc., 883 F.3d 32 (2018). U.S. Court of Appeals for the 2nd Circuit.
Northern Pacific R. Co. v. United States, 356 U.S. 1 (1958). Supreme Court of the United States.
Ornstein, S.J. (1989). Exclusive dealing and antitrust. Antitrust Bulletin, 34(1): 65-98.
Page, W.H. (2020). Direct evidence of a Sherman Act agreement. Antitrust Law Journal, 83(2): 347-391.
Parker, E. (2022). The inevitability of major league baseball's antitrust exemption. Arizona State University Sports and Entertainment Law Journal, 11(2): 23-62.
Pettinger, T. (2019). Regulation of monopoly. Economics Help (July 28, 2019), https://www.economicshelp.org/microessays/markets/regulation-monopoly/
Pollock, E.E. (1976/1977). Schwinn per se rule: The case for reconsideration. Northwestern University Law Review, 71(1): 1-16.
Pure Food and Drug Act. 34 Stat. 768 (1906).
Racketeer Influenced and Corrupt Organizations Act (RICO). 84 Stat. 922 (1970).
Robinson-Patman Act. 49 Stat. 1526 (1936).
Rogister, G.T. (1974/1975). Antitrust law- The Sherman Act and minimum legal fee schedules: Learned professions and state-action immunity. North Carolina Law Review, 53(2): 399-409.
Rotherham, C. (1998). Sale or return contracts. The Cambridge Law Journal, 57(3): 429-471.

Roy, A., Hanssens, D.M., & Raju, J.S. (1994). Competitive pricing by a price leader. Management Science, 46(7): 809-823.
Runge, J. (2022). What is goodwill in business? Managing Your Business (May 2, 2022), https://www.legalzoom.com/articles/what-is-goodwill-in-business
Rupert, D.W. (1980). The relationship of patent law to antitrust law. Antitrust Law Journal, 49(2): 755-774.
Sagi, G. 92014). A comprehensive economic and legal analysis of tying arrangements. Seattle University Law Review, 38(1): 1-36.
Schlotzsky's, Ltd. v. Sterling Purchasing & Nat'l Distrib. Co., 520 F.3d 393 (2008). U.S. Court of Appeals for the Fifth Circuit.
Sea-Land Serv. v. Atlantic Pac. Int'l, 61 F. Supp. 1102 (1999). U.S. District Court for the District of Hawaii.
Seid, M.H. & Mazero, J. (2017). Protected and exclusive areas in franchising. Dummies (August 30, 2017), https://www.dummies.com/article/business-careers-money/careers/franchise-management/protected-exclusive-areas-franchising-243626/
Sherman Act. 26 Stat. 209 (1890).
Siegel v. Chicken Delight, 448 F.2d 43 (1971). U.S. Court of Appeals for the 9th Circuit.
Solomon, L.M. & Joffe, R.D. (1984). Exclusive distribution and antitrust. Fordham Law Review, 53(3): 491-526.
Standard Oil of Indiana v. FTC, 340 U.S. 231 (1951). Supreme Court of the United States.
Standard Oil of New Jersey v. United States, 221 U.S. 1 (1910). Supreme Court of the United States.
Stein, G.A. (2019). Understanding the FTC's monetary equitable remedies under section 13(b) for antitrust violations. Antitrust, 34(1): 59-65.
Strasser, K.A. (1985). An antitrust policy for tying arrangements. Emory Law Journal, 34(2): 253-294.
Theater Enterprises v. Paramount Distributor Corp., 346 U.S. 537 (1954). Supreme Court of the United States.
United States v. Arnold, Schwinn & Company, 388 U.S. 365 (1967). Supreme Court of the United States.
United States v. Falstaff Brewing Corp., 410 U.S. 526 (1973). United States Supreme Court.
United States v. Glaxo Group Ltd., 410 U.S. 52 (1973). Supreme Court of the United States.
United States v. Keyspan Corp., 763 F. Supp. 2d 633 (2011). U.S. District Court for the Southern District of New York.
United States v. Phillips Petroleum Co., 367 F. Supp. 1226 (1973). U.S. District Court for the Central District of California.
United States v. Philip Morris, 9 F. Supp. 2d 1 (2006). U.S. District Court for the District of Columbia.
United States v. Socony-Vacuum Oil Co., 310 U.S. 150 (1940). Supreme Court of the United States.
United States v. Von's Grocery Company, 384 U.S. 270 (1966). Supreme Court of the United States.
Velasco, J. (2021). Fiduciary judgment rule. William & Mary Law Review, 62(4): 1397-
Warner-Lambert v. Federal Trade Commission, 361 F. Supp. 948 (1973). U.S. District Court for the District of Columbia.