

Antitrust Quiz One

Wednesday February 22, 2006
One Hour

The quiz represents 10% of your total grade for the course and consists of two parts: (Part I) 20 multiple choice questions worth 5 points each, (Part II) two short answer questions worth 20 points each, for a possible total of 140 points. Using the multi-state bar exam pace of one multiple choice question for each 1.8 minutes, you should be able to answer the multiple choice questions in 36 minutes, leaving 24 minutes (12 minutes each) for the short answer questions.

This is a no notes - closed book quiz.

Do not begin until you are told to do so.

Stop all writing when the proctor announces that the quiz is over.

The multiple choice questions should be answered on the Scantron sheet provided.

The two short answer questions should be answered in the space provided following the questions.

Clear, readable answers are required. You will not be given credit for ambiguous or unreadable answers.

Make sure your examination number is on all materials you turn in to be graded.

All references to the antitrust laws refer to the Federal antitrust laws unless otherwise noted.

IMPORTANT: because of the crowded seating for the quiz, there are four different (but equivalent) versions of the quiz. As a result, checking out your neighbor's answer sheet can be counter productive. Your version number is noted in the header information. **BE SURE TO MARK YOUR VERSION NUMBER ON YOUR SCANTRON SHEET.**

Good luck and have a pleasant break. See you in March.

1. The Omnipresent Television Corp. (Omni) has developed a patented product called the "Omni Eye" to replace cable television. The new product by Omni is a vest improvement on current attempts to deliver satellite television to the mass public. The "Omni Eye" can combine the functions of a personal computer, DVD and telephone answer answering machine. Omni is a subsidiary of Blue Horizon Telecommunications the world's 10th largest telecommunications company. Omni wishes to increase the number of persons using the "Omni Eye" in the top 20 television markets. By increasing users in these markets they hope to begin using the "Omni Eye" for on-screen advertising which they will sell to content producers such as: ABC, NBC, FOX, USA Networks and CNN. Omni currently broadcasts the programs in the same form as cable television, but content producers are concerned that most viewers using the "Omni Eye" skip commercials. The National Association of Content Producers (NACA) offers Omni a chance to reduce the licensing fees Omni pays if Omni will offer free space to NACA members to place short ads that the viewer cannot skip. In exchange, NACA members will give Omni a 25% reduction under existing licensing agreements. Under the deal, Omni will allow NACA members to set the fee for advertising and compile and provide free detailed information concerning viewers of both their conventional television advertising and the new form on Omni. Which is the best statement concerning the use of this information provided by Omni?
 - a. It is proper under the antitrust laws so long as the information is independently used by the NACA members and is not used to fix the price charged for commercials or the licensing fees.
 - b. It is proper under the antitrust laws because Omni doesn't charge for the information.
 - c. The sharing of this type of information within a trade association is per se illegal under the antitrust laws.
 - d. The sharing is an impermissible restraint on competition.

2. "Off the Wagon" is a local bar in Manly, New Hampshire. The other bar in town called "The Manly Hoot Owl" was just turned into an Applebee's. Before it's change, the "Hoot Owl" was struggling for business and was on the brink of declaring bankruptcy. In a number of surrounding communities, two months after the opening of an Applebee's other bars in those towns either closed or lost substantial business. Based on the facts presented does the owner of the "Wagon" have an antitrust case against Applebee's?
 - a. No, the owner cannot prove antitrust damage.
 - b. Yes, since the opening of an Applebee's could lead to the "Wagon" going out of business thereby creating a monopoly.
 - c. Yes, if the owner of the "Hoot Owl" (now the owner of the Applebee's) intended to put the "Wagon" out of business.

- d. None of the above.
3. The best statement of the holding in *Illinois Brick Co. v. Illinois* is:
- an indirect purchaser from an antitrust defendant may not bring an action for damages.
 - an indirect purchaser can bring an action if damages are easy to prove.
 - an indirect purchaser can file a class action suit.
 - an indirect purchaser can sue if he can prove that the entire monopoly overcharge was passed.
4. Carl Curvedback is a patient of Karen Kindhands, a licensed massage therapist in New Hampshire. Carl received a number of treatments from Karen over a few months and submitted the bills to his insurer The Concord Company. The Concord Company refused payment because it only covers this type of treatment if performed by a chiropractor. If Carl files an antitrust action alleging a group boycott of massage therapists, what is Concord's best defense?
- Carl has no antitrust injury.
 - Carl is an indirect purchaser.
 - Buyer beware – caveat emptor.
 - The Colgate Doctrine
5. The Fiberglass Insulation Producers Association is an association of companies within the fiberglass industry. Which of the following factors would facilitate the association members in cooperating to eliminate price competition among themselves?
- The lack of published prices lists.
 - High cross-elasticity of demand for the product involved.
 - Absence of base-point and delivered pricing systems.
 - Clauses in customer contracts such as "meet or release" and "most favored nation".
6. The Electronics Dealers of New England (EDNE) is an organization comprised of a group of small electronics dealers that collectively purchases electronic devices from large manufacturers such as Sony. The purpose of the group is to obtain quantity discounts so that they can better compete on prices with the national chains such as Best Buy and Circuit City. Cheap Charlie's, a small electronics store in Laconia,

New Hampshire, applies for membership in EDNE. Cheap Charlie's membership in EDNE is turned down following a secret ballot of EDNE's members. Cheap Charlie's attorney would like to pursue an antitrust claim against EDNE. Following the ruling in *Northwest Wholesale Stationers* (U.S. Supreme Court 1985) which of the following characteristics would not be necessary to make out a per se claim against EDNE for an illegal boycott?

- a. The boycott is in or affects interstate or foreign commerce.
 - b. The boycott cuts off access to a supply, facility, or market necessary for Cheap Charlie's to compete.
 - c. The practices are not justified by plausible arguments that they enhanced overall efficiency or competition.
 - d. The boycott is economically successful for EDNE's members.
7. The Ockahochee Corporation is planning to enter into some complex contractual negotiations with Shelbourne Inc. Which of the following contractual arrangements between Ockahochee and Shelbourne would probably be considered an unreasonable restraint of trade by a court?
- a. Ockahochee is paid by Shelbourne to be the exclusive licensee of Ockahochee's new manufacturing technology.
 - b. Ockahochee agrees to purchase Shelbourne's entire annual output, thereby excluding Cosmic Corporation, a competitor of Ockahochee.
 - c. Ockahochee and Shelbourne are currently not competitors but Ockahochee pays Shelbourne to agree not to enter into competition with Ockahochee in the future.
 - d. Ockahochee pays Shelbourne to agree not to compete with Ockahochee as part of the sale of Shelbourne's business to Ockahochee.
8. Which of following inquiries is irrelevant in trying to determine if a group boycott is illegal:
- a. Is the group action commercially motivated?
 - b. Are the boycotters providing a service or a physical product?
 - c. Does the action exclude competition at same level as boycotters?
 - d. Is there truly group action or merely parallel but unilateral behavior of independent actors?

9. A group of CEO's from New Hampshire lumber products manufacturers has decided to meet once a month to "discuss issues of importance to the industry and New Hampshire". Before their first meeting the general counsel of Woodsense Inc., one of the manufacturers, warned the CEO of Woodsense regarding any agreements among the group that could be illegal under the antitrust laws. Which of the following agreements would pose the least risk of a federal antitrust violation?
- An agreement aimed at lowering prices to make New Hampshire lumber products more competitive with imports from Canada.
 - An agreement aimed at eliminating cutthroat price competition among the New Hampshire manufacturers so that wages could be maintained a decent level.
 - An agreement that seeks to set prices reasonably and fairly for the consumers' benefit.
 - An agreement to collectively set prices for New Hampshire lumber products that are sold in Canada but has no effect on the U.S market.
10. In 1985 the Supreme Court set forth the currently accepted list of characteristics that are indicative of a *per se* illegal boycott in the Northwest Wholesale Stationers case [472 U.S. 284 (1985)]. From the list below which characteristics is not on the Supreme Court's accepted list?
- The boycott is not justified by plausible arguments that it enhanced overall efficiency or competition.
 - The boycotting firm(s) possess a dominant market position.
 - The boycott cuts off access to a supply, facility, or market necessary for the target firm to compete.
 - The boycott eliminates a vigorous competitor.
11. POG, a game using 2 inch cardboard disks and heavier slammers, has demonstrated unbelievable popularity since its introduction in Hawaii. The North American POG Association (NAPOGA) is composed of 112 Professional POG franchises located throughout the the continent. NAPOGA members have agreed to eligibility requirements for all persons who want to participate in a NAPOGA tournament. NAPOGA controls 96% of all "professional" (i.e. cash paid to participants) POG events. "Dynamic" Di Schaefer, a professional POG player, has been ruled ineligible under the NAPOGA developed rules and is prohibited from competing in NAPOGA sponsored tournaments. Although Dynamic Di was afforded a fair hearing under reasonable procedures to contest the NAPOGA decision, she decided to sue NAPOGA and its members on a Sherman §1 theory based on an alleged illegal group boycott. NAPOGA and its members move for summary judgment.

- a. The court should use a per se analysis to assess the arrangement.
- b. The court should use a rule of reason analysis to examine NAPOGA's eligibility arrangement.
- c. The court should summarily dismiss the case for failure to state a case of action upon which any antitrust relief can be granted.
- d. The court should dismiss the case against NAPOGA as a defendant but allow the case to proceed against the individual franchise members as defendants.

12. Which of the following statements is incorrect regarding market failures?

- a. They are the inevitable result of cartel activity.
- b. They can be caused by positive externalities.
- c. They can be caused by inadequate or erroneous information.
- d. They have an effect on a person not a party to the decision.

13. A contract in "restraint of trade" is:

- a. a common law concept no longer applicable since the passage of the Sherman Act.
- b. generally illegal per se.
- c. one the performance of which would limit competition in any business, or restrict the promisor in the exercise of a gainful occupation .
- d. termed "naked" when it is incidental to the sale of a business or other property.

14. The Chuggers Brewery Company is the second largest brewer of strawberry flavored beer in the country. Strawberry flavored beer is a specialty brew that appeals to a select group of individuals who (not surprisingly) do not view any other liquid refreshment as competitive. The management Chuggers has decided that it would like to purchase the SyberSlosh Beer Company, another producer of strawberry flavored beer. According to ATF statistics the following are the market shares for strawberry flavored beer producers:

A House & A Bush Beer Co.....	40%
Chuggers Brewery Co.	25%
Babs Brews	20%
SyberSlosh Beer Co.	10%

Fruity Beer Inc. 5%

Based on the ATF statistics what is the current HHI for the strawberry flavored beer market (prior to merger)?

- a. 35%
- b. 500
- c. 2750
- d. 3250

15. Cheap Charlie's is a small discount appliance dealer. Other local retail appliance dealers dislike Cheap Charlie's price cutting and Cheap Charlie's is equally unpopular with the appliance manufacturers who would like to have their products sold with more luxurious image. Cheap Charlie's appliance sales constitute less than .01% of the relevant market. The marketplace has an abundance of retailers, and competition is vigorous. The manufacturers and the retailers have jointly decided to boycott Cheap Charlie's, thereby significantly limiting Cheap Charlie's access to appliances and thus hoping to drive the company out of business. Cheap Charlie's has commenced legal action against the various parties based upon a violation of the Sherman Act. Cheap Charlie's is seeking injunctive relief and damages. Under the circumstances, which of the following is the most likely outcome?

- a. Cheap Charlie's will be entitled to the relief requested since the facts indicate a per se violation.
- b. Cheap Charlie's complaint should be dismissed since it alleges only a private wrong as opposed to a public wrong.
- c. Cheap Charlie's will be entitled to the relief requested against any interstate commerce manufacturers, but not against any intrastate retailers.
- d. Cheap Charlie's will not be entitled to injunctive relief. Only the Department of Justice and the Federal Trade Commission are entitled to such relief.

16. Which of the following are not features of a perfectly competitive market?

- a. Full and perfect knowledge for each buyer and seller.
- b. Numerous buyers and sellers none with substantial share of market.
- c. All buyers and sellers are utility maximizers.
- d. Any externalities are distributed evenly throughout society.

17. All the lawyers practicing in the state of Chaos belong to the state bar association. The ethical rules of the bar association of Chaos provides a minimum fee schedule for various legal services, claiming that the fees represent the minimum amount of time that a lawyer should spend on an activity in order to provide competent service. One of the minimum fees is for the examination of titles to real estate. A large amount of funding for real estate sales in the state of Chaos comes from outside the state or out-of-state lending institutions. In this situation, which of the following would be correct?
- The federal antitrust laws do not apply because the fee schedule does not significantly impact interstate commerce.
 - The federal antitrust laws do not apply because professions are not trade or commerce and are exempt.
 - The federal antitrust laws apply only if prices are maintained at a level that is higher than what would exist if there were no suggested minimum fee schedule.
 - The federal antitrust laws apply regardless of the motive of the bar association to affect competition.
18. Certain members of the New England Railway Construction Association decided that something must be done about disastrous competition, which, when coupled with the depressed status of the industry and the lack of growth of railroads in New England, was causing financial ruin for many association members. They met privately after one of the association meetings and decided to allocate construction projects among themselves based upon a historical share of the market. Under the arrangement, a certain designated company would submit the low bid, thereby assuring that the company would obtain the job. Such an arrangement is best characterized as:
- illegal per se, and a criminal violation of the antitrust law.
 - illegal under the rule of reason, but not a criminal violation of the antitrust law.
 - legally justifiable due to the economic conditions in the marketplace.
 - legal under antitrust law since it does not fix prices.
19. Rusty Kuroshin, an employee of Slezbal Corporation has lost his job allegedly as a result of a price fixing agreement between Slezbal and Dertee Inc., a competitor of Slezbal. Rusty alleges that as a direct result of the price fixing agreement Slezbal raised its prices and reduced output for the product made at the factory where Rusty worked. After the Federal Government successfully prosecutes Slezbal Corporation and Dertee, Inc. for price fixing in violation of Sherman 1, Rusty

decides to bring an antitrust suit against Slezbal claiming lost wages as his damages. What is the likely result of Rusty's lawsuit?

- a. Rusty will prevail only if he can prove that Slezbal eliminated Rusty's job because it was able to curtail production due to the price fixing agreement.
 - b. Rusty will prevail because the antitrust laws permit recovery for individuals harmed by illegal competitive behavior.
 - c. Rusty will lose for failure to demonstrate antitrust injury.
 - d. Rusty will lose because private plaintiff recovery authorized by the federal antitrust laws is available to business organizations not individuals.
20. Competing CB radio manufacturers join together and form a CB radio manufacturers trade association. After nearly fifteen years of declining sales due to cellphone competition and evaporating demand, the trade association suggests that each member of the association agree to produce no more than 75% of the CB radios they produced in the preceding year. CB radios are sold in a global market and although the United States currently makes up less than 10% of the total sales the 75% production limit includes CB radios sold in the U.S. market. No mention is made of the price for the CB radios and each company is free to charge what it independently determines is the best price. The members agree to follow the suggestion even though analysis of the market shows that even if each company adheres to the 75% limitation there will be a large global over-production of CB radios. The members feel that the plan spreads the pain of a dying industry fairly among the various participants. Assuming that these facts are true, which of the following is most correct?
- a. The CB radio manufacturers and their trade association are guilty of a per se violation of the Sherman Act.
 - b. The CB radio manufacturers will be able to escape antitrust liability because their agreement has no actual effect on competition in the United States.
 - c. The CB radio manufacturers will be able to escape antitrust liability because each company independently determines the price.
 - d. The CB radio manufacturers will be able to escape antitrust liability if they can show in a rule of reason case that their plan is the fairest way to allocate production in a dying industry.

