Version 1

Antitrust Quiz

Thursday February 3, 2000

The quiz represents 10% of your total grade for the course and consists of two parts:

PART I - 10 multiple choice questions worth 7 points each. Select the single best answer for each question.

PART II - 10 true/false questions worth 3 points each.

And one bonus True False Question worth 1 point.

IMPORTANT -> There are four versions of the quiz to discourage causal observations of your neighbor's answers. Make sure you write your quiz version number (listed above) on upper right hand corner of your scantron answer sheet so it can be properly graded.

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.

Mark your answers clearly and legibly on the Scantron answer sheet provided.

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

Good luck - class will resume at 3:15

Part I: 10 multiple choice questions (5 points each)

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

   a. illegal per se.
   b. an old common law concept no longer applicable since the passage of the Sherman Act.
   c. termed "naked" when it is incidental to the sale of a business or other property.
   d. one the performance of which would limit competition in any business, or restrict the promisor in the exercise of a gainful occupation .
   e. illegal even if it is less than required for the protection of the person on whose behalf it is imposed.

2. eDiscount is a small, start-up discount appliance dealer operating on the internet. Several large national retail appliance dealers dislike eDiscount's price cutting and have complained to the appliance manufacturers who supply them. At this point in time eDiscount's appliance sales constitute less than .01% of the relevant market. The market share of the complaining national retail appliance dealers is 57%. The marketplace has an abundance of smaller retailers, and competition has been described as vigorous. The manufacturers, under pressure from national retailers have decided to jointly raise the prices they charge to eDiscount, thereby significantly limiting eDiscount ability to compete. eDiscount has commenced legal action against the various parties based upon a violation of the Sherman Act. eDiscount is seeking injunctive relief and damages. Under the circumstances which of the following is the most likely outcome?

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

3. If you are defending a client that is involved in an activity that, as an ancillary effect, fixes prices, which of the following assigned cases would be least helpful?

   a. *US v. Socony-Vacuum*
   b. *Broadcast Music (BMI) v. Columbia Broadcasting System*
   c. *NCAA v. Bd. of Regents of University of Oklahoma*
   d. *Chicago Board of Trade v. United States*

4. You are interviewing economists for possible use in an upcoming antitrust litigation and a significant portion of the case involves market failures. Which of the following statements would demonstrate that the economist being interviewed is unqualified to testify regarding market failures?

   a. Market failures are the inevitable result of cartel activity.

b. Market failures can be caused by positive externalities.

c. Market failures can be caused by inadequate or erroneous information.

d. Market failures have an effect on a person not a party to the decision.

5. Which of the following would not be a feature of a perfectly competitive market?

a. Full and perfect knowledge for each buyer and seller.

b. Any externalities are distributed evenly throughout society.

c. Numerous buyers and sellers none with a substantial share of market.

d. All buyers and sellers are utility maximizers.

e. Free and immediate entry and exit.

6. Over the years antitrust has been pursued in order to protect competition in an effort to achieve political, moral and economic objectives. Which of the following would be least likely among the economic objectives?

a. Stability

b. Income Equality

c. Productivity

d. Efficiency

7. 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?

a. An agreement aimed at lowering prices to make New Hampshire lumber products more competitive with imports from Canada.

b. An agreement aimed at eliminating cutthroat price competition among the New Hampshire manufacturers so that wages could be maintained a decent level.

c. An agreement that seeks to set prices reasonably and fairly for the consumers' benefit.

d. An agreement to collective set prices for New Hampshire lumber products that are sold in Canada.

8. All the lawyers practicing in the state of Chaos belong to the state bar association. The bar association of Chaos provides a suggested minimum fee schedule for various services that most of the lawyers follow. 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 come from outside the state or out-of-state lending institutions. In this situation which of the following would be correct?

a. The federal antitrust laws do not apply because the fee schedule does not significantly impact interstate commerce.

b. The federal antitrust laws do not apply because professions are not trade or commerce and are exempt.

c. 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.

d. The federal antitrust laws apply regardless of the motive of the bar association to affect competition.

9. Sue Anthony purchased the Concord Film Production Company from Alexander. The contract contained a promise by Alexander that he would not engage in the film production business for one year from the date of the sale within 50 miles of the location of Concord Film Production Company. Six months later Alexander opened the Loudon Film Production Company less than a mile from the Concord Film Production Company. Sue brings suit against Alexander. Which of the following is most likely to the holding in the lawsuit?

a. Alexander has not breached the above covenant since he did not use his own name or the name of Sue Anthony in connection with the new film production business.

b. The contract is an illegal restraint of trade and can form the basis of a federal antitrust law claim against Sue.

c. The covenant is contrary to public policy and is illegal and void.

d. The covenant is reasonable and enforceable.

10. A new medical clinic opened recently in Z'hadoom, a large city in the State of Chaos. The medical clinic was founded by Doctor Anne Sheridan who has discovered and patented a new compound to reduce food cravings. The medical clinic ran a series of ads in the local newspaper, a portion of which is reproduced below:

> **Finally, a Cheap Diet that Works**
>
> **Are you fat but don't know why?**
> **More and more people are finding that they have any easily curable condition that is interfering with their ability to keep their weight in check.**
>
> **We can help you shed those unwanted pounds for the lowest prices in town. For as little as $10 a pound we will get you back into the clothes you wore as a teenager.**
>
> **No one else can make that claim.**
> **We're doctors so there is no need to put your health in danger with other risky diets.**
> **What are you waiting for?**
> **Call the Hickup Medical Clinic today.**

The medical association of Chaos, a non-profit association, has commenced disciplinary proceedings against Dr. Sheridan and the other doctors working at the Hickup Medical

Clinic citing the association's Code of Medical Responsibility to the effect that any information disclosed by a doctor in any publication or broadcast may not be "false, fraudulent, or misleading," and must be "presented in a dignified manner." Dr. Sheridan and the other doctors at the Hickup Medical Clinic are all members of the medical association since membership in the association is the only effective way to obtain low-cost malpractice insurance.

The Hickup Medical Clinic says the medical association is really up in arms because of the low prices being charged for its diet compound. It turns out that before the Hickup Medical Clinic opened it doors "weight control advice" was a high profit part of many of the practices of the state's doctors. The Hickup Medical Clinic also claims that the dieting advice they provide is simple and without significant medical risk. The Hickup Medical Clinic's lawyers have filed suit in federal district court under the federal antitrust laws, alleging a price-fixing conspiracy, and are seeking an order enjoining the medical association from any further disciplinary proceedings, claiming the medical association's actions violate Section 1 of the Sherman Act.

The state medical association moves to dismiss the complaint. Using only the facts listed in the problem statement what result is most likely based on your assessment of the antitrust claim?

a. Judgment for the Hickup Medical Clinic based on the fact the Supreme Court of the United States has held that professions are to be treated no differently than other occupations under the Federal antitrust laws and that the actions described appear to make out a prima facie case for an actionable price fixing conspiracy.

b. Judgment for the Hickup Medical Clinic based on the fact that although the Supreme Court of the United States has hinted that professions may be treated differently than other occupations under the Federal antitrust laws the actions described appear to make out a prima facie case for an actionable price fixing conspiracy and should not be dismissed at this stage of the proceedings.

c. Judgment for the state medical association based on the fact that the courts have long recognized that professional associations need to regulate the ethical conduct of their peers and eliminate any fraud that may be perpetrated on the public.

d. Judgment for the state medical association based on the fact that providers of non-profit medical care are not engaged in a trade or commerce as required to maintain a suit under the Federal antitrust laws.

Part II: Ten true/false questions (3 points each)

11. If a defendant is charged with an unfair method of competition under the Federal Trade Commission Act the complaint must be based upon the purchase or sale of goods, wares, or commodities in interstate commerce.

12. 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.

F 13. Three small competing manufacturers of Digital Video Devices (DVD), Proton, Elektron, and Quark, agree that each will produce no more than 10,000 digital video devices (DVD's) each for the year 2000 while the market for such devices grows. The companies contend that the agreed to level of output is reasonable given the currently low market demand for the product, and that the three companies are too small in the aggregate to influence the market price for DVD's, a market dominated by Sony, Panasonic and JVC. No mention is made of the price for the DVD's and each company charges what each independently determines is the best price. Assuming these contentions are true, these actions most likely constitute a per se violation of Sherman 1.

F 14. The essential teaching of the *Broadcast Music (BMI) v. Columbia Broadcasting System* case is that in certain situations the Supreme Court will not go to a *per se* approach without a "quick look" review of the magnitude of anticompetitive effects and possible redeeming virtues of the transaction.

F 15. The *Arizona v. Maricopa County Medical Society* case involved an agreement among competing doctors as to the minimum fees they would claim in payment for particular health services, and the Supreme Court held that a truncated rule of reason analysis was required because of the unusual nature of competitive in the medical service area.

F 16. By its own admission ParaCorp is the only firm operating in the relevant market. Osmo Ltd., a customer of ParaCorp, sues ParaCorp charging monopolization under Sherman §2. Counsel for Osmo Ltd. moves for summary judgment on the strength of this admission alone. Osmo's motion should be granted.

T 17. A and B are currently not competitors and A pays B to agree not to enter into competition with A in the future. It is likely that this agreement would be considered an unreasonable restraint of trade.

F 18. The antitrust laws are enforced by private parties and governmental bodies. The governmental bodies that can have antitrust jurisdiction can include the United States Department of Justice, the Federal Antitrust Agency, and the State Attorney Generals of the various States.

T 19. According to the ruling in the *Palmer v. BRG of Georgia*, the 1990 Supreme Court case which involved an agreement between bar review courses in Georgia, the Court held that an agreement to allocate markets is anticompetitive regardless of whether the parties split a market within which both do business or whether they merely reserve one market for one and another for the other.

F 20. In *California Dental Association v. FTC* (1999), the Supreme Court held that an abbreviated or "quick look" rule-of-reason analysis was not appropriate for dental association's advertising restrictions since an observer with even a rudimentary understanding of economics could conclude that the arrangements in question would have an anticompetitive effect on customers and markets.

BONUS EXTRA CREDIT TRUE FALSE QUESTION

F 21. Franklin Pierce was president of the United States when the Sherman Act was passed in 1890.

He was 2 before Lincoln 1853's