

<b>Maurice A. Deane Law School at Hofstra University</b> <b>Antitrust Law</b> <b>Fall 2016</b>	
<b>Instructor:</b> Professor Andrew H. Lupu <b>Email:</b> <a href="mailto:lawahl@hofstra.edu">lawahl@hofstra.edu</a>	<b>Lectures:</b> Tuesdays, 6:30-8:00pm, Koppelman Room 0206 Thursdays, 6:30-8:00pm, Koppelman Room 0206
<b>Office:</b> To be arranged	<b>Office Hours:</b> By appointment
<b>Phone:</b> (516) 784-6101	<b>Text:</b> <u>Modern Antitrust Law and Its Origins</u> , 5 <sup>th</sup> Edition, Thomas D. Morgan
<b>Course Description</b> This course will analyze the historical and modern application of antitrust law. The course will begin with a review of the origins and underlying principles as explained in cases and statutes in the United States, progress into an analysis of cases in the “Rule of Reason” and “Per Se” periods, and conclude in the Modern Period, paying particular attention to recent Supreme Court holdings from 2004-2016. Classes will stress a weekly review of newsworthy commercial and business trends in law and society with an antitrust law impact, particularly in light of Obama Administration enforcement and state priorities. Current business developments will be discussed and juxtaposed with and against historical cases so as to inform students of various filters through which these developments can be critically analyzed. Throughout the course, students will become aware and evaluate the adequacy of antitrust law protections in modern society, especially in light of the impact of political realities and technology innovations.	
<b>Course Objectives</b> <ul style="list-style-type: none"> <li>• To increase your knowledge of the important articles, cases and statutes establishing the scope and breadth of antitrust law in the United States and around the world.</li> <li>• To permit a reasoned application and analysis of the underlying principles while recognizing facts distinguished from opinion.</li> <li>• To discern and recognize bias, political motivation and other non-legal influences.</li> <li>• To develop and enhance your skills in the following areas: critical thinking, persuasion, problem solving, and written and oral communication.</li> </ul>	
<b>Instructional Methods</b> The course will use readings, cases, and class discussion and each lecture will be recorded. Reading assignments provide a basis for both lectures and discussions and must be completed prior to each class session. All reading assignments are listed at the end of the syllabus and may be supplemented by news developments or observations drawn from various antitrust law blogs and websites to be reviewed from time to time by students. Lectures will supplement information gleaned from the reading assignments and strive to integrate course material and draw insights from the material presented. All efforts will be made to extend the readings in addition to highlighting the most recent developments in the field of antitrust law. Students are responsible for all materials covered in the readings and discussed during classes. Remember that the success of the educational experience in this class depends upon the students’ willingness to share his/ her individual insight, experiences, and perspectives, so participation in lecture and discussions is essential.	

**Attendance**

Attendance is a critical component of class success and for the accumulation of the necessary substantive knowledge and information to succeed in the class. Note that the Student Handbook requires students to attend 85% of classes and, for a class meeting 28 times in a semester, students may not miss more than **four** classes. It is necessary for all students to sign the daily attendance sheet for each class, keep track of his/her absences and notify the Professor **prior to class** of all absences to ensure correct attendance records. Strict compliance with attendance requirements is imperative and there is no prerogative or discretion which may be exercised in this regard.

The American Bar Association also requires that you spend **at least six hours per week**, on average, **outside of class** studying for this 3-credit course. This is **in addition to** the three hours a week we spend in class. The ABA's formula for determining the requirement suggests that, in other courses, the required number of out-of-class hours may be different. I am confident that you will reach this target over the course of the semester by doing the assigned reading as well as devoting time and attention to the two Written Submissions described below; these two components will permit you to fulfill this requirement.

**Required Reading**

Text: **Modern Antitrust Law and Its Origins**, 5<sup>th</sup> Edition, Thomas D. Morgan

TWEN Postings relating to Weekly Reading Assignments

Website: [http://lawprofessors.typepad.com/antitrustprof\\_blog/](http://lawprofessors.typepad.com/antitrustprof_blog/)

Students are encouraged to visit the website from time to time to review postings providing discussion materials for classes based upon current antitrust law developments.

As developments in the area of antitrust law emerge weekly by virtue of court decisions or agency actions, additional materials may be necessary to be assigned and reviewed prior to class in order to illustrate the concepts to be discussed. If additional reading is assigned, a notice will be circulated to the class by email preceding the class. Students are urged to review such materials and any updates to the course calendar to ensure adequate preparation for the upcoming class. In addition, effective communication of information is a necessary component of educational success. Students are encouraged to post questions from time to time. Posted answers to such questions should stimulate the educational process and may serve as the basis for additional reading assignments.

**Evaluation of Student Performance:**

Several components will be used to gauge the success of student performance:

<b>Grade Component</b>	<b>Description</b>	<b>Final Grade</b>
<b>Final Examination</b>	Final Examination.	50%
<b>Written Submission*</b> <small>*Double spaced, 12 point font, 1-inch margins</small>	Two submissions providing analysis of antitrust hypothetical based upon classwork to date (5 page limit, distributed September 13/due September 25, distributed October 25/due November 6)	40%
<b>Class Participation</b>	Weekly class involvement, preparation, thoughtful and insightful comments. Seek to earn recognition by your subject expertise, not class domination.	10%

### Miscellaneous Issues

Academic dishonesty will not be tolerated. All work submitted by a student in this course must be the student's own work. Please review the Code of Conduct so that your behavior complies with the appropriate standards of academic integrity.

All cellphones and pagers should be turned to vibrate mode only during class and you should not surf the Web or Instant Message as it will interfere with the learning process and may be a distraction to your fellow students. If you need to attend to some matter during class, please take it upon yourself to leave quietly and promptly so that the class is not unnecessarily disturbed.

The Learning Outcomes for this class are posted on TWEN; please familiarize yourself with them and their objectives.

The privilege of learning in a post-graduate setting demands that respect and professional standards be maintained. First, while opinions may be offered by all participants and vigorous critical thinking exercises are encouraged, insults, swearing, ridicule and ad hominem attacks upon fellow students will not be tolerated. Second, this class occurs at a particularly late hour so please take care to eat beforehand or bring a snack to class, provided that it is not noisy or odious to your fellow students. Classes will begin on time and lateness, while permissible under certain circumstances, is a problem if chronic. Just as missing or lateness to a business meeting is insulting to the participants, missing or lateness to a class suggests a disregard of the importance of class attendance. For those who have not yet entered the working world, think of these caveats as you participate in class and as preparation for working in such a real-world environment

Students with disabilities should contact the Dean for Student Services as soon as possible to request reasonable accommodations, if necessary.

Note: The Professor reserves the right to modify this syllabus and any course readings during the semester as needed. The current version of the syllabus will always be available on TWEN.

## Reading Assignment

Week	Class Dates	Reading Assignment	Pages
1	August 23, 25	<u>Read the Preface and End of the Book First!</u> The Foreseeable Future of Antitrust Law Common Law through <u>Trans-Missouri</u>	v - vi, 943 - 948 1 - 57
2	August 30, September 1	Remainder of the First Period (to 1914)	57 - 117
3	September 6, 8	The Rule of Reason Period (1914 - 1939) Read <u>US v. Apple</u> , pp. 1-104 and Appendix A	119 - 190 (See TWEN)
4	September 13, 15	Horizontal Combination and the Per Se Rule <u>North Carolina Board of Dental Examiners v. Federal Trade Commission</u> (2014)	191- 218, 906 - 914, 220 - 240 (See TWEN)
	<b>Written Submission No. 1</b>	<b>Handout: September 13. Due September 25.</b>	
5	September 20, 22	Monopolization & Tying	257 - 306
6	September 27, 29	Vertical Arrangements Perceived as Exclusionary- Tying, Exclusive Dealing, Dealing with Dealers & Mergers	306 - 313, 325 - 342, 355 - 382, 404 - 428
7	October 6, 13	Mergers & Transition Cases	429 - 492
8	October 14, 18	Price Fixing & Group Boycotts	493 - 564
9	October 20, 25	Market Division & Vertical Issues for Dealers	564 - 601
	<b>Written Submission No. 2</b>	<b>Handout: October 25. Due November 6.</b>	
10	October 27, November 1	<u>Leegin v. PSKS</u> , <u>FTC v. Actavis, Inc.</u> and <u>US v. Apple</u> (pp. 104-160) <b>Boo! It's A Little Past Halloween Night!</b> <u>Per Se Review</u>	604 - 627 639 - 661 (See TWEN)
11	November 3, 8	Monopolization, Predatory Pricing, Tying	662 - 760
12	November 10, 15	<u>Illinois Tool</u> , <u>Microsoft</u>	760 - 818
13	November 17, 22	Merger Review, <u>Oracle</u> and <u>Whole Foods</u>	818 - 863
14	November 24 (Double Session)	Class-Led Review for Final Exam Distribute Final Exam at end of class	Review Notes
	<b>Final Exam</b>	<b>Take Home Exam due December 4, 2016</b>	<b>Open Book</b>