Vertical Restraints Part 4
(Restraints on Downstream Distribution)

Antitrust
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Vertical restraints on distribution (price, output, market division)

- Vertical non-price restraints (e.g., output, market division) were made subject to rule-of-reason analysis under *Continental TV v. GTE Sylvannia* (U.S. 1977).
- Vertical price fixing remained per se unlawful under *Dr. Miles Medical v. John D. Park & Sons* (U.S. 1911).
- Vertical price fixing now is subject to rule-of-reason scrutiny. *Leegin Creative Leather Products v. PSKS Inc.* (U.S. 2007).

Vertical price fixing – *procompetitive*

- Manufacturers should ordinarily want to squeeze retailers' profit margins in order to sell more products to customers, helping to outcompete interbrand rivals.
- In theory, where manufacturers impose vertical price restraints it must be for the purpose of getting retailers to compete on the basis of sales/service/promotion.
- Without retail price maintenance, the theory goes, no retailer will want to provide higher levels of service because they can't capture the increased sales that come from that higher level of service. Instead, charmed buyers will, after deciding what they want, go to a different retailer to get it cheaper.
- Then all retailers race to the bottom, competing only on price.
- This makes the brand as a whole provide less value to customers, allowing it to reap less value from the market.

Vertical price fixing – *anticompetitive*

Two theories (among others) for anticompetitive vertical price fixing:

1. **Retailer cartel** – enforced/coordinated via the distributor/manufacturer. Retailers collude to fix prices and compel upstream manufacturer to help coordinate the cartel with resale price maintenance.
2. **Dominant manufacturer** – Resale price maintenance gives retailers an incentive to refuse to deal with a more efficient manufacturer entrant.