Antitrust

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AMALGAMATED PRACTICE QUESTIONS – MULTIPLE CHOICE

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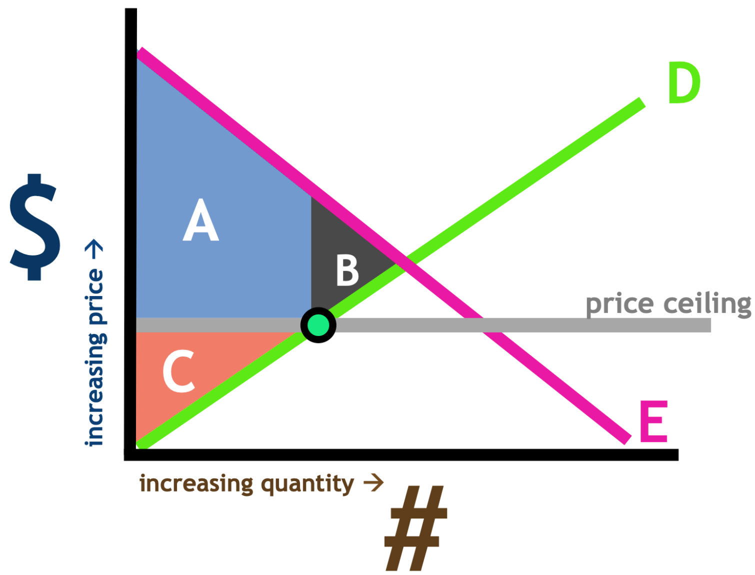
PARTIAL LIST OF TYPICAL INSTRUCTIONS:

1. Unless expressly stated otherwise, assume that the facts recited herein occur within the United States in a hypothetical state.
2. Unless directed otherwise, base your answer on the federal law and other relevant law in the United States, including all rules, procedures, and cases as presented in class and in the assigned readings, as well as, where appropriate, the theory and history discussed in class, plus any hypothetical laws presented in the facts.
3. A reference to "can sue," "can bring an action," "has a claim," etc., refers to a plaintiff's or prosecutor's ability to properly allege and plead a claim with some substantial promise of success on the merits.
4. Each question has one correct answer. Choose the correct answer based on the materials assigned and information presented in class.
5. Each correct answer is worth one point. There is no penalty for incorrect answers.

NOTE THE FOLLOWING FOR QUESTIONS 1 THROUGH 3:
The following diagram is a standard supply-and-demand diagram. The vertical axis represents price, which increases going upward. The horizontal axis represents quantity, which increases going to the right. Assume that the assignment of the letters A, B, C, D, and E is arbitrary. Assume also that the colors on the graph are arbitrary.



1. In the diagram, what represents deadweight loss, and what is deadweight loss?

    (A) A represents deadweight loss. Deadweight loss is any quantifiable decrease in productive efficiency.
    (B) B represents deadweight loss. Deadweight loss is the reduction in surplus caused by a market distortion—representing unrealized transactions that would have been mutually beneficial for producers (sellers) and consumers (buyers).
    (C) C represents deadweight loss. Deadweight loss is surplus that is transferred from producers (sellers) to consumers (buyers) because of a constraint on the market—in this case a price ceiling, which moves the point of equilibrium downward.
    (D) D represents deadweight loss. Deadweight loss is a decrease in equilibrium caused by a fixed market restraint.
    (E) E represents deadweight loss. Deadweight loss is any quantifiable decrease in allocative efficiency.

2. In the diagram, what represents consumer surplus?

    (A) A is consumer surplus.
    (B) B is consumer surplus.
    (C) C is consumer surplus.
    (D) D is consumer surplus.
    (E) E is consumer surplus.

3. Assume, for the purposes of this question only, that the diagram relates to U.S. production and sales of potatoes by potato farmers as well as the purchase of potatoes from potato farmers in the United States. Also assume that there are thousands of potato farmers in the United States each producing a tiny portion of the overall U.S. potato crop. Given those assumptions, how can the graph be accurately described? For instance, does the diagram appear to depict a market-wide view, showing the overall market for potatoes including all potato farmers and all potato purchasers? Or does the diagram appear to depict a single-farm view, showing the situation faced by a single potato farmer in making decisions such as whether to raise the price she or he charges for potatoes and whether to produce more or fewer potatoes?

   (A) The diagram represents a single-farm view because the assumptions describe a market of monopolistic competition, in which case demand and average prices are equivalent concepts.
   (B) The diagram represents both a single-farm view and a market-wide view because it depicts the occurrence of allocative inefficiency, such as is associated with monopoly, cartel, or, in this case, an imposed price ceiling.
   (C) The diagram represents a single-farm view because what is described in the assumptions is a market of monopolistic competition, thus demand is somewhat inelastic.
   (D) The diagram represents a market-wide view because, according to the given assumptions, the market is one of monopolistic competition, which explains why demand would be almost perfectly inelastic.
   (E) The diagram represents a market-wide view because the assumptions imply the market is one of essentially perfect competition, and if that is the case, then the demand faced by a single small farmer would be perfectly elastic.

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4. Which appears most plausible under current law?

   (A) A timber company brings a private civil action under Sherman Act §1 against a farming cooperative in Madagascar that admittedly has no substantial or palpable effect on U.S. commerce.
   (B) The California state attorney general, as parens patriae, brings a Sherman Act §1 civil claim in California state court against owners of truck stops for naked price-fixing of the retail price of diesel fuel.
   (C) The FTC brings a criminal action under the Sherman Act §1 against owners of truck stops for naked price-fixing of the retail price of diesel fuel.
   (D) The DOJ brings a criminal action against members of a labor union under the Sherman Act §1 for fixing the price of wages for factory work by threatening to go on strike against any factory that pays any worker less than $25 per hour.
   (E) The DOJ brings a Sherman Act §1 civil claim against makers of vehicle airbags for agreeing amongst themselves to adhere to privately adopted safety standards.

5. In the state of Floribama, three bills have been introduced in the state legislature regarding minimum retail prices for gasoline.

   A bill introduced by Rep. Xiang would create a State Commission on Gasoline Pricing, which would be composed of five state employees selected by the governor for staggered five-year terms. The Commission would consider arguments made and evidence submitted by gasoline retailers, consumer groups, and other stakeholders. After consideration of these arguments, on a weekly basis, the Commission would set the minimum price at which it is legal to sell gasoline in the state of Floribama for the following week.

   A bill introduced by Rep. Yacano would create a Floribama Department of Fuel Commerce (FDFC), a state agency, to call and oversee twice-weekly meetings of gasoline retailers to discuss minimum prices for gasoline and make recommendations to the FDFC director, who may then adopt the recommendations without hearing additional stakeholder input. The FDFC director is a state employee who is appointed for a four-year term by a three-member panel consisting of the governor, the lieutenant governor, and the speaker of the Floribama House of Representatives. Once appointed, the FDFC director cannot be fired, but may only be removed from office on the basis of criminal activity or mental incompetence by legislative impeachment proceedings.

   A bill introduced by Rep. Zabrowski would require a weekly meeting of gasoline retailers to set minimum retail prices. The meeting would be run by a private industry association whose membership would be made up of the state's gasoline retailers. The management of the association would be elected by the membership. Once the private association has set a minimum price in this way, such price would be the minimum price at which it is legal to sell gasoline in the state of Floribama until the minimum price is changed by the association.

   Which of the following is most accurate regarding what would happen if the bills were to become law?

   (A) Gasoline retailers are likely to be immune from federal antitrust liability under the bills introduced by Rep. Xiang, Rep. Yacano, and Rep. Zabrowski.
   (B) Gasoline retailers are likely to be immune from federal antitrust liability under the bills introduced by Rep. Xiang and Rep. Yacano, but would be likely be subject to federal antitrust liability for acting pursuant to the bill introduced by Rep. Zabrowski.
   (C) Gasoline retailers are likely to be immune from federal antitrust liability under the bill introduced by Rep. Xiang, but would be likely be subject to federal antitrust liability for acting pursuant to the bills introduced by Rep. Yacano and Rep. Zabrowski.
   (D) Gasoline retailers are likely to be immune from federal antitrust liability under the bill introduced by Rep. Yacano, but would be likely be subject to federal antitrust liability for acting pursuant to the bills introduced by Rep. Xiang and Rep. Zabrowski.
   (E) Gasoline retailers are likely <u>not</u> to be immune from federal antitrust liability for acting pursuant to any of the bills introduced by Rep. Xiang, Rep. Yacano, or Rep. Zabrowski.

6. Which describes conduct of Hexetron that is most likely <u>not</u> to be deemed exclusionary conduct with regard to DNA sequencers under the second prong of a monopolization claim under §2 of the Sherman Act?

   (A) Hexetron began refusing to license a patent to rivals, where the technology covered by the patent was necessary for rivals to offer DNA sequencers that, like Hexetron DNA sequencers, are interoperable with Hexetron automated lab equipment.
   (B) Hexetron began refusing to work with any distributors who are also distributors of rivals' DNA sequencers.
   (C) Hexetron has made deals with 47 of the top 50 buyers of DNA sequencers that Hexetron will be their exclusive DNA sequencer supplier for the next five years. The group of 47 buyers includes most of the major universities, government agencies, diagnostic services providers, and private research companies that are the heaviest users of DNA sequencers.
   (D) Hexetron dropped the prices on their fifth-generation real-time whole-genome DNA sequencers from $250,000 per unit to $75,000 per unit. This is below the marginal cost of rival Nakatomi Genomics, which is $125,000 per unit, but it is above Hexetron's per-unit marginal cost, which is $50,000.
   (E) Hexetron previously certified maintenance technicians for working with Hexetron DNA sequencers regardless of whether those technicians were also certified to work on DNA sequencers made by other manufacturers. Hexetron has now, however, started refusing to certify maintenance technicians unless they agree not to be certified by any other manufacturer.

7. Which of the following is most clearly <u>**incorrect**</u> regarding price discrimination?

   (A) Price discrimination can increase allocative efficiency by decreasing deadweight loss under conditions of imperfect competition.
   (B) Price discrimination can plausibly lead to increased output.
   (C) Price discrimination under conditions of producer market power can cause a transfer from consumer surplus to producer surplus.
   (D) Price discrimination can plausibly be used in a predatory pricing scheme to discipline or drive out of the market a smaller-scale rival.
   (E) The Robinson-Patman Act broadly permits challenges to price discrimination with regard to services (although not goods) where there is a palpable negative effect on consumer welfare—regardless of whether there is any effect on competition.

NOTE THE FOLLOWING FOR QUESTIONS 8 THROUGH 11:

Fitness Galaxy is a fitness center chain in Grandview Springs. With a gym membership at Fitness Galaxy, customers can use the machines and weights—but they don't receive any tangible products. With the subjective intent of driving out of business its rival Wellness World, Fitness Galaxy has just dropped prices on its gym memberships to well below Wellness World's marginal cost and just a tenth of a percent below Fitness Galaxy's average total cost. Fitness Galaxy has nine of 10 fitness centers in the Grandview Springs metropolitan area, the outskirts of which are more than an hour's drive from the next nearest fitness center and metropolitan area. Prior to Fitness Galaxy's drop in prices, Fitness Galaxy and Wellness World had both priced their gym memberships at $60 a month—as high as they could, right up to the point where if they had raised prices any more, large numbers of customers would have quit having a gym membership and all and just jogged on the streets or done push-ups. It was pretty easy for Wellness World to get started; all they needed was unused retail space (of which there's plenty), some wall mirrors, and equipment that can be rented on a month-to-month basis. There's never a wait for the weights at Fitness Galaxy or Wellness World—at any given time almost all the equipment is sitting idle because there are so few patrons present, even at the busiest times of day.

Up until last year, Conoxoco was the only retail seller of gasoline in the city of Twin Pines. The city of Twin Pines is a 45-minute drive from Galena Gulch, which has the next nearest gas station. Conoxoco, with its three Twin Pines gas stations, had been able raise prices on gasoline up to 40% higher than regional averages and 45% over Conoxoco's average variable cost—all without losing any appreciable volume of sales. Then Mr. Gas'n'Go opened up a gas station in town by leasing a retail site from Twin Pines Land Co. Mr. Gas'n'Go immediately began undercutting Conoxoco by selling gasoline at regional-average prices. Within a week, Conoxoco started pricing gasoline at $1.29 per gallon, which is 20% below what it costs Conoxoco to sell an additional gallon of gasoline. There is no provable subjective intent on the part of Conoxoco to drive Mr. Gas'n'Go out of business, but Mr. Gas'n'Go is now in a position of either pricing its own gasoline so cheaply that it will cease to be profitable, or else losing so many sales that it will cease to be profitable.

8. Between Fitness Galaxy and Conoxoco, which is most likely to be found to have engaged in exclusionary conduct under a predatory pricing theory for monopolization liability under §2 of the Sherman Act?

   (A) Conoxoco, because Mr. Gas'n'Go has been put into a position where it cannot profitably compete—even though it could do so if could sell gasoline at regional-average prices
   (B) Conoxoco, because its prices are below a relevant measure of cost
   (C) Conoxoco, because a predatory pricing theory will only work with goods, not services
   (D) Fitness Galaxy, because Conoxoco lacks provable subjective intent
   (E) Fitness Galaxy, because its prices are below a relevant measure of cost

9. What is the **worst** analysis as to whether Fitness Galaxy can be shown to have monopoly power in a relevant market for purposes of monopolization liability under §2 of the Sherman Act?

   (A) Tending in favor of a finding of monopoly power on the part of Fitness Galaxy is the fact that Fitness Galaxy has unused capacity.
   (B) Tending in favor of a finding of monopoly power on the part of Fitness Galaxy is the fact that out-of-town gyms are so far away that they likely aren't reasonably interchangeable with gym memberships in Grandview Springs.
   (C) Tending in favor of a finding of monopoly power on the part of Fitness Galaxy is the fact that Fitness Galaxy has, at least by one measure, 90% of the market, and a 90% market share is within the zone of market shares where monopoly power was found in prior cases.
   (D) Tending against a finding of monopoly power on the part of Fitness Galaxy is that Fitness Galaxy does not have the power to raise prices above $60 per month, since if they did people would substitute gym membership for jogging outdoors or doing push-ups.
   (E) Tending against a finding of monopoly power on the part of Fitness Galaxy is the fact that it was easy for Wellness World to enter the market.

10. What is the best analysis as to whether Conoxoco can be shown to have monopoly power in a relevant market for purposes of monopolization liability under §2 of the Sherman Act?

   (A) The fact that Conoxoco can price so much above its average variable cost without losing appreciable sales volume, combined with its market share and the fact that gasoline located 45 minutes away is probably not reasonably interchangeable with in-town gas, makes it plausible that a court could find Conoxoco to have monopoly power.
   (B) On these facts, on the basis of market share, Conoxoco likely could be held to have §1 market power. But Conoxoco doesn't have enough market share to support a finding of §2 monopoly power.
   (C) Conoxoco plausibly has monopoly power, but the fact that it can price above its average variable cost is irrelevant to the inquiry—to reason otherwise is to commit the *Cellophane* fallacy.
   (D) There's at least a possibility of a finding of monopoly power here, but a threshold requirement for instituting Sherman Act litigation in this case is pre-approval of the claim by the Federal Energy Regulatory Commission.
   (E) Conoxoco can be found to have monopoly power because each individual gas station can be held to be a relevant product and geographical market, which will mean that Conoxoco has 100% market share for purposes of §2 analysis.

11. If it could be proved that because of a lack of buildable and appropriately-zoned land in Twin Pines there are no suitable sites for gas stations other than the four that Twin Pines already has, and if it could additionally be proved that Conoxoco holds with Twin Pines Land Co. an option to purchase the site that Mr. Gas'n'Go is currently leasing if Mr. Gas'n'Go defaults on its lease by ceasing retail operations, how would this play into analyzing potential Sherman Act liability?

    (A) That wouldn't change the analysis much, because the relationship with Twin Pines Land Co. is a vertical restraint that could only be challenged under rule-of-reason analysis.
    (B) That could change the analysis substantially, because the relationship with Twin Pines Land Co. is a tying arrangement that could potentially be challenged as per-se unlawful.
    (C) That wouldn't have much effect on the liability picture for Conoxoco, but it suggests a path to liability for Twin Pines Land Co., because it implies that Twin Pines Land Co. has foreclosed enough of the market to have Sherman Act §1 liability.
    (D) That wouldn't have much effect on the liability picture for Conoxoco, but it suggests a path to liability for Twin Pines Land Co., because it implies that Twin Pines Land Co. has foreclosed enough of the market to have Sherman Act §2 liability.
    (E) That would help a great deal from an antitrust enforcer's perspective, because it would tend to show Conoxoco has a dangerous probability of recoupment.

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12. Last year Tashtego's coffee shop had sales revenues of $500,000, spent $300,000 on labor and utilities, and $100,000 on coffee, ingredients, and other consumables and/or saleable goods. Tashtego's paid zero in terms of rent or mortgage expense or other capital costs because the Tashtego's owns its building and all the equipment inside. Just before the beginning of last year, Tashtego's declined an offer by Pacific Blueridge Entertainment Partners to rent the store and its equipment for the year for a payment of $1,000,000 to Tashtego's, in which case the store would have been completely closed and used by Pacific Blueridge for location filming for a series of industrial training videos. Which of the following is most accurate about Tashtego's last year based on the provided figures?

    (A) It had an accounting profit of $100,000 and an economic <u>loss</u> of $900,000.
    (B) It had an accounting <u>loss</u> of $900,000 and an economic profit of $100,000.
    (C) It had an accounting profit of $100,000 and an economic profit of $100,000.
    (D) It had an accounting profit of $100,000 and an economic <u>profit/loss</u> of zero.
    (E) It had an accounting profit of $500,000 and an economic profit of $100,000.

13. The law firm of Marquez & Lawson is made up of 11 partners. The partners each own an equal share of the law firm. Each of the 11 partners focuses on different, non-overlapping practice areas. For instance, one partner each works on patent litigation, project finance, corporate M&A (mergers and acquisitions), white-collar criminal defense, corporate tax, banking regulation, securities regulation, etc. Each partner decides what clients they will take on, but there are considerable efficiencies realized from their working within one firm, including being able to share overhead, share a pool of associate attorneys and staff, and share clients as those clients need different kinds of expertise that can be provided by different partners. For instance, the corporate M&A partner may bring the corporate tax partner in on a matter to provide tax advice on a merger. Previously, the partners had all set different hourly billable rates for themselves, ranging from $530 to $670 per hour. At a recent meeting of the full partnership, however, the partners decided to standardize all of their hourly billable rates at $690 per hour. Can this agreement count as a contract, combination, or conspiracy for §1 of the Sherman Act?

    (A) Yes, because even though the partners are within a single business entity, §1 of the Sherman Act reaches unilateral conduct.
    (B) Yes, because the partners are independent centers of decisionmaking.
    (C) No, because this arrangement is procompetitive; to the extent any anticompetitive concerns exist, they are outweighed by procompetitive efficiencies.
    (D) No, because the partners have non-overlapping practice areas and thus are not horizontal competitors.
    (E) No, because this agreement takes place within the context of a single business entity.