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William & Mary Law School, "Government Regulation of Business: Final Examination (January 20, 1971)" (1971). *Faculty Exams: 1944-1973*. 280.

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Mr. Stason

Government Regulation
of Business
Final Examination

January 20, 1971

Total credit 100 points.

Instructions. The following questions were designed to elicit descriptions of basic antitrust law concepts. Please answer them briefly but analytically.

1. Are all public utilities "natural monopolies" in the antitrust sense? What administrative problem would result were they so treated?
2. What is the position, re S2, of
 - a. banks?
 - b. railroads?
3. Extraterritoriality.
 - a. What are the requirements of Alcoa's "effects" doctrine as applying US antitrust laws to foreign corporations acting abroad?
 - b. What limitations may application of this doctrine encounter in foreign courts?
4. Per se doctrine.
 - a. Why are tying contracts per se violations of antitrust laws?
 - b. Explain the reason for the antitrust per se doctrine.
 - c. What major exceptions are there to application of the per se doctrine to pricefixing contracts? Do these exceptions apply to horizontal pricefixing contracts, vertical ones, or both?
 - d. Describe briefly two other per se violations of the antitrust laws.
5. Inciplency.
 - a. What section of the Federal Trade Commission Act tends to give an effect of Inciplency to the Sherman Act? Explain.
 - b. What other antitrust statutory section(s) have been interpreted to bar Inciplent antitrust violations?

c. What language in those sections justifies such an interpretation?

d. Why is the incipency doctrine so significant in the effectiveness of our antitrust laws?

6. Mergers.

a. Why are horizontal mergers generally deemed more inimical to antitrust policy than vertical ones?

b. Are conglomerate corporations included in the scope of C7?

c. What effect has C7 on mergers of partnerships?

7. Under what circumstances can a patentee properly be deprived of his patent monopoly for antitrust violations?

8. What specific US antitrust statutory provisions, if any, are equivalent to the EEC's negative-clearance procedures (as set forth in regulation 17. See casebook, pp. 815-16)?

9. What percentages of the relevant geographic and product markets, respectively, normally are required to invoke the sanctions of S2? What major factors--such as product cross-elasticity--may affect the required percentage in any specific instance?

10. Why hasn't the Sherman Act any direct effect on agreements establishing lawyers' minimum fee scales? What arguments can you see against this seeming exemption?

11. Write a short hypothetical set of facts illustrating a monopoly that is "thrust upon" the monopolist, and therefore exempt from antitrust strictures.

12. Why can (or cannot) a corporation conspire in the S1 sense with its

a. wholly-owned subsidiary?

b. unincorporated branch?

13. What reason can you give for, and against, placing price leadership under antitrust sanctions?

14. Why is the rationale of the "falling company" doctrine consistent with that of the antitrust laws? What industry recently was assured by statute the benefit of this doctrine, and what limitation upon that benefit was built into the statute?

15. Write a short hypothetical set of facts illustrating the "backward sweep" effect of divestiture under C7.