I. Policies
   A. Maintaining Competition
   B. Lower prices

II. Standing.
   A. Injured plaintiff can sue if:
      1. Personally injured, and
      2. There was injury to competition
   B. Injured plaintiff cannot sue (including indemnity or contribution) if:
      1. *In pari delicto* - complete involvement
      2. Possible exception if involvement less than complete

   A. Elements
      1. No person shall enter into
      2. A contract, conspiracy, combination or form of trust
      3. In restraint of trade
      4. Among the several states
   B. Restraints explained
      1. Ancillary restraint legal if unreasonable
      2. Naked restraint and unreasonable ancillary restraint illegal
   C. Horizontal restraints
      1. *Illegal per se*
         a. Price fixing
            (1) ASCAP/BMI exception
            (2) Parallelism with agreement
               (a) Factors in determining if agreement exists
                  [1] Parallel conduct
                  [2] Awareness of other’s conduct
                  [3] Awareness effected decision making
                  [4] Plus factors
                     [a] Acting contrary to economic interest
                     [b] Background of illegal licensing agreements and price maintenance standards
                     [c] Artificial product standardization
                     [d] Raising prices when there is a surplus
                     [e] Policing dealers for enforcement
                     [f] Delivered price system resulting in identical prices for goods sold
                     [g] Submission of identical bids to public agencies
                  [a] Information exchange
                  [b] Incentive management
                  [c] MFN clause
                  [d] Meet competition clauses
      (3) No defense allowed
   b. Market division
(1) Horizontal
(2) Geographical
c. Refusal to deal (boycott)
   (1) Cut off from a supply or market necessary to compete
   (2) Boycotting firm has dominant market position
   (3) Lack of plausible arguments justifying increase of efficiency
d. Approach
   (1) Plaintiff proves character of the restraint
   (2) Defendant precluded from presenting procompetitive aspects

2. Rule of reason
   a. Must regulate and promote rather than suppress or destroy
   b. Factors considered in competitive cases
      (1) Balance of pro and anticompetitive effects
      (2) Market price
      (3) Efficiency
      (4) Improved technology
      (5) Free riding
      (6) Service and warranty
   c. Factors considered in joint venture cases
      (1) If anticompetitive concerns
         (a) Relevant market
         (b) Increase in market share or concentration
         (c) Ability of participants to independently compete
         (d) Other circumstances
      (2) If potential for competitive harm
         (a) Competition remaining outside scope of venture
         (b) Retention of independent control of assets
         (c) Participant's financial interests in collaboration or each other
         (d) Control of collaborations competitively significant decision making
         (e) Likelihood anticompetitive information is shared
         (f) Duration

3. Quick look
   a. Restraint sufficiently anticompetitive on its face but not per se
   b. Defendant has burden to prove procompetitive

4. Exceptions
   a. Baseball
   b. Insurance
   c. Labor (must be asserted by labor)
   d. Noerr-Pennington
      (1) Lobbying
      (2) Judicial and administrative unless sham
      (3) Exception - litigation and administrative actions
         (a) Without probable cause
         (b) Intent to interfere with relationships
      (4) Exception - associations causing direct economic impact
D. Vertical restraints
   1. Approach
      a. Anticompetitive effects
      b. Beneficial purposes and effects
      c. Whether reasonably necessary to achieve legitimate objective
   2. Price restraints
      a. No vertical price maintenance allowed - illegal per se
      b. Floor illegal per se - market share irrelevant
         (1) Termination of dealer for selling below minimum
         (2) Charging for sales to customers outside territory
      c. Ceiling - rule of reason (valid if prices lowered)
   3. Non-price restraints
      a. Territorial
         (1) Restriction location of dealership legal
         (2) Restriction on location of customers illegal
      b. Facilities, requirement to have - legal
      c. Inventory, requirement to maintain - legal
   4. Manufacturer- distributor- retailer -
      a. Agreement to terminate price cutter
         (1) If no agreement on price - legal
         (2) If agreement on price - illegal
      b. Other agreements - rule of reason
   5. Refusal to deal
      a. If unilateral and no coercion - legal
      b. If contract, combination conspiracy or coercion involved - illegal
   6. Proof
      a. Per se elements
         (1) Price fixing
         (2) Damages
      b. Agreements - evidence showing conspirators did not act independently required.

A. Elements
   1. No Person shall
   2. Monopolize, or attempt or conspire to monopolize
   3. Any part of trade or commerce
   4. Among the several states
B. Requirements
   1. Monopoly power
   2. Wilful acquisition or maintenance of monopoly power
C. Explanation
   1. Monopoly power
      a. The market
         (1) Line of commerce
         (2) Geography
      b. Market share - (probably need 75%)
c. Power over price (a price maker)

2. Anticompetitive act - wilful acquisition or maintenance of power
   a. Exclusionary or anticompetitive act
      (1) Erecting or maintaining barriers to entry
      (2) Predatory pricing
         (a) Below cost pricing
         (b) Ability to recoup losses through future higher than competitive pricing
            [1] Sherman act - dangerous possibility
            [2] Clayton act - reasonable possibility
      (c) Defenses
         [1] Loss leaders
         [2] Meeting competition
      (3) Leveraging monopoly power
      (4) Refusal to deal - boycott
      (5) Essential facilities doctrine
         (a) Monopoly over essential facility
         (b) Facility cannot be reasonably duplicated
         (c) Use of facility refused
         (d) No business justification for refusal
      (6) Exceptions - legal
         (a) Not assisting
         (b) Short term contracts
         (c) Price squeeze

D. Proof
   1. Prima facie case
      a. Anticompetitive act
      b. Exclusionary nature of act
   2. Rebuttal - pro competitive justification
   3. Reply - anticompetitive effect outweighs pro competitive justification
   4. Balance of effect on competition

E. Attempted monopolization
   1. Specific intent (often inferred)
   2. Anticompetitive act
   3. Dangerous possibility of success
      a. Market
      b. Market share
      c. Ability to lessen or destroy competition

A. Elements
   1. No person
   2. Engaged in commerce
   3. In the United States
   4. Shall fix a discount or rebate
   5. Or prohibit use or dealing in a competitors goods or equipment
   6. Where the effect is to substantially lessen competition
7. Or create a monopoly
8. In any line of commerce

B. Tying - elements
1. Tying and tied goods are two separate products
2. Market power in the tied product
3. No choice but to purchase the tied product
4. Effects substantial volume of commerce in the tied market

C. Defenses
1. Technological package
2. No separate demand

VI. Clayton Act § 7 (15 U.S.C. § 18) mergers and acquisitions

A. Elements
1. No person engaging in commerce
2. Shall acquire the whole, part or stock of
3. Any company engaging in or effecting commerce,
4. Where it may substantially lessen activity
5. In either any line of commerce or geographic area
6. Or tend to create a monopoly

B. Market definition
1. Type
   a. Product or services, or
   b. Geographical
2. Size - smallest market where in the event of a 5-10% increase
   a. Too narrow if people leave the market below 5-10%
   b. Proper if people stick with product at 5-10%
   c. Too broad if people substitute below 5-10%
3. Top four firm concentration
   a. Low if below 1000 - all increases of no concern
   b. Moderate of 1000 to 1800
      (1) Increases less than 100 of no concern
      (2) Increases over 100 raise potentially competitive concerns - look at factors
   c. High if over 1800
      (1) Increases less than 50 raise potentially competitive concerns look at factors
      (2) Increases from 50 to 100 raise potentially competitive concerns - look at factors
      (3) Increases over 100 points presumptively illegal
4. Other factors
   a. Firms enter the market - 2 years from planning to impact
   b. Efficiencies must be merger specific