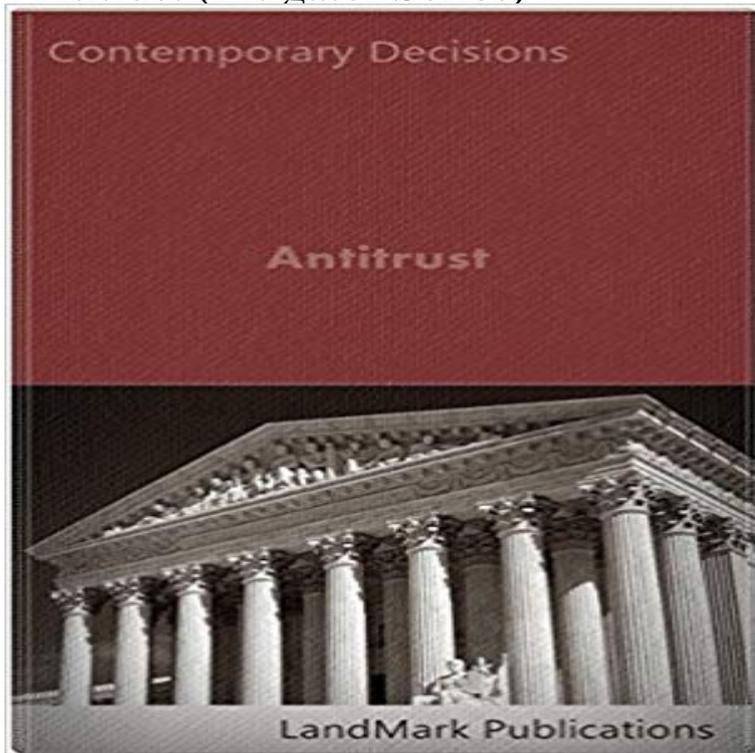


Antitrust (Litigator Series)



THIS CASEBOOK contains a selection of 180 U. S. Court of Appeals decisions that analyze, discuss and interpret antitrust doctrine. The selection of decisions spans from 2004 to the date of publication. The antitrust laws of the United States aim to protect consumers by maintaining competitive markets. To that end, 1 of the Sherman Act prohibits agreements that unreasonably restrain trade by restricting production, raising prices, or otherwise manipulating markets to the detriment of consumers. See 15 U.S.C. 1; *State Oil Co. v. Khan*, 522 U.S. 3, 10, 118 S.Ct. 275, 139 L.Ed.2d 199 (1997); *Apex Hosiery Co. v. Leader*, 310 U.S. 469, 493, 60 S.Ct. 982, 84 L.Ed. 1311 (1940). In *Re Musical Instruments & Equip. Antitrust Litigation*, 798 F. 3d 1186 (9th Cir. 2015). Section 1 of the Sherman Act prohibits [e]very contract, combination ... or conspiracy, in restraint of trade or commerce, 15 U.S.C. 1, though courts have long restricted its reach to agreements that unreasonably restrain trade, *Omnicare, Inc. v. UnitedHealth Grp., Inc.*, 629 F.3d 697, 705 (7th Cir.2011). Agreements to fix prices unambiguously fall within the ambit of 1. *Id.* To prove a 1 claim, plaintiffs must prove three things: (1) defendants had a contract, combination, or conspiracy (an agreement); (2) as a result, trade in the relevant market was unreasonably restrained; and (3) they were injured. *Id.* In *Re Dairy Farmers of America, Inc.*, 801 F. 3d 758 (7th Cir. 2015). To show concerted action, antitrust plaintiffs must produce evidence that would allow a jury to infer that the alleged conspirators had a conscious commitment to a common scheme designed to achieve an unlawful objective. *Id.* at 706 (quoting *Monsanto Co. v. Spray-Rite Serv. Corp.*, 465 U.S. 752, 764, 104 S.Ct. 1464, 79 L.Ed.2d 775 (1984)). The evidence must reveal a unity of purpose or a common design and understanding, or a meeting of minds in an

unlawful arrangement. *Id.* (quoting *Am. Tobacco Co. v. United States*, 328 U.S. 781, 810, 66 S.Ct. 1125, 90 L.Ed. 1575 (1946)). In *Re Dairy Farmers of America, Inc.*, *ibid.* The Sherman Antitrust Act is based on an often-difficult distinction between concerted and independent, unilateral action. Concerted activity is scrutinized more closely than unilateral behavior because [c]oncerted activity inherently is fraught with anticompetitive risk insofar as it deprives the marketplace of independent centers of decisionmaking that competition assumes and demands. *Am. Needle*, 560 U.S. at 190 (quoting *Copperweld Corp. v. Indep. Tube Corp.*, 467 U.S. 752, 768-69 (1984)). Specifically, Section 1 regulates concerted activity between two or more entities, outlawing [e]very contract, combination . . . or conspiracy, in restraint of trade, 15 U.S.C. 1, a provision that has subsequently been limited to target only unreasonable restraints of trade. To prevail on a claim under 1, a plaintiff must prove: (1) a contract, combination, or conspiracy; (2) producing adverse, anticompetitive effects in the relevant market; and (3) resulting in injury. See *Expert Masonry, Inc. v. Boone Cty., Ky.*, 440 F.3d 336, 342 (6th Cir. 2006). *The Medical Center At Elizabeth Place, LLC v. Atrium Health System*, (6th Cir. 2016).

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