**CHAPTER 23-GOVERNMENT REGULATION: SECURITIES AND ANTITRUST**

**TRUE/FALSE**

 1. The Sherman Act was designed to prevent extreme concentrations of economic power.

 2. Both *per se* and rule of reason violations of the Sherman Act are automatically illegal.

 3. Both the Justice Department and the Federal Trade Commission (FTC) have authority

to enforce the antitrust laws.

 4. The Clayton Act prohibits anti-competitive mergers.

 5. *Per se* violations are subject to both civil and criminal penalties.

 6. Gary, Louise, and Brian, who own competing gas stations in town, happen to see each other at a restaurant one morning and have breakfast together. While talking, they decide to set their gas prices at the same amount. They have committed an illegal act only if the agreed price is unfair to consumers.

 7. Companies with substantial assets must notify the FTC before consummating a merger.

 8. The only defense available to a defendant in a *per se* violation is that the violation never occurred.

 9. Resale pricemaintenance (RPM), also called vertical price fixing is not always illegal. It is a rule of reason violation.

 10. Insiders must turn over to the corporation any profits they make from the

purchase and sale or sale and purchase of company securities made within a six-month period.

 11. The Sarbanes-Oxley Act makes it a crime to retaliate against someone who blows the whistle on any federal offense.

 12. The 1933 Act prohibits fraud only in transactions involving registered securities.

 13. The 1934 Act requires companies with a class of stock that is publicly traded to make regular filings with the SEC.

 14. The SEC has enforcement powers, including the power to issue cease and desist orders, to levy fines, and to confiscate profits from illegal transactions.

 15. Insider trading is illegal only if the person with secret information has a duty to disclose to those with whom he trades, thus in *Chiarella v US,* Mr. Chiarella was found innocent.

**MULTIPLE CHOICE**

 1. A Tippee

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| a. | knows the information he is providing is confidential |
| b. | know it was from an insider. |
| c. | must deal with information provided by an insider who expects a profit. |
| d. | all of these answers are correct. |

 2. Which of the following is not an element of a tying agreement under the Clayton Act?

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| a. | The seller requires the buyer to purchase the two products together, |
| b. | The seller is shutting out a significant part of the market for the tied product. |
| c. | The seller has no significant power in the market place. |
| d. | All the above. |

 3. If a company has violated antitrust laws:

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| a. | the Justice Department can initiate only noncriminal charges against the violator. |
| b. | the Federal Trade Commission may file criminal proceedings against the violator. |
| c. | any private person or company that has been harmed by the violator can file a lawsuit to recover damages. |
| d. | All the above. |

 4. The most accurate statement about the Robinson-Patman Act is:

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| a. | It has rarely been enforced in recent years. |
| b. | The U.S. government has stepped up its enforcement during the last decade. |
| c. | It has been declared unconstitutional. |
| d. | It was repealed by Congress in 1998. |

 5. The U.S. Attorney General brought a Sherman Act lawsuit against competitors in the widget market. The Attorney General alleged that these companies agreed to charge $20 for widgets. Which of the following defenses may apply?

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| a. | That the $20 price was fair. |
| b. | That the $20 price was lower than the price before the agreement. |
| c. | That the businesses did not agree to charge $20 for widgets. |
| d. | That the competitors would have gone out of business without the agreement. |

 6. A marketing representative who is tempted to engage in price-fixing due to heavy competition and similar prices for competitors' products should:

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| a. | emphasize factors of her product that do not involve price. |
| b. | emphasize service, reliability, and other factors of her company. |
| c. | understand the serious criminal and civil penalties of engaging in price-fixing. |
| d. | All the above. |

 7. Ed was an independent owner of a chain of TV stores. He successfully got customers into his store by cutting his prices on widely advertised name-brand products in order to sell other products for which he received a bigger profit. When the manufacturers of three of the name-brand products discovered Ed's actions, they agreed secretly to stop selling him their TVs. The three manufacturers:

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| a. | are doing nothing illegal, as they did not get Ed to agree to anything. |
| b. | are free to agree not to deal with Ed since the public can go elsewhere and will not be hurt economically. |
| c. | can choose either as a group to deal or not to deal with any retailer they want. |
| d. | are engaged in a rule of reason violation of the antitrust laws if their action harms competition. |

 8. The following is a violation of the Sherman Abnti Trust Act.

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| a. | Setting the minimum price for an item. |
| b. | Lowering prices to put a competitor out of business. |
| c. | Monopolize a market |
| d. | all of the above |

 9. When the *per se* standard applies, the plaintiff:

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| a. | needs only to prove the existence of the conduct. |
| b. | must prove that the activity was an unreasonable restraint of trade. |
| c. | must show that there was an anti-competitive impact. |
| d. | None of the above. |

 10. What law prohibits mergers that are anti-competitive?

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| a. | Sherman Act. |
| b. | Clayton Act. |
| c. | Robinson-Patman Act. |
| d. | Radmon Act. |

 11. Pat's Pen Co. manufacturers and sells an inexpensive ball-point pen. Salley's Stationery purchases the pens for $.25 each in quantities of 1,000. Salley's discovered that a national chain, a competitor of Salley's, buys the pen at $.20 for 1,000. If Salley's Stationery sues Pat's Pen Co. for price discrimination:

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| a. | Pat's Pen Co. will win if it can prove that it has been selling to the national chain continuously at the cheaper rate. |
| b. | Pat's Pen Co. will win if it can prove that it did not intend to economically harm Salley's Stationery. |
| c. | Salley's Stationery will win unless Pat's Pen Co. can justify the price differential. |
| d. | Salley's Stationery will win since price discrimination is a *per se* violation with no real defenses. |

 12. In the case of *Leegin Creative Leather Products Inc. v. Psks, Inc*.the court had to decide..

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| a. | Is price fixing legal if the prices are reasonable? |
| b. | Is resale price maintenance a per se or rule of reason violation of the Sherman Act? |
| c. | both a & b are correct. |
| d. | None of the above. |

 13. Under the Robinson-Patman Act was it is legal to charge a different price for a product if...

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| a. | the items are the same |
| b. | the cost of doing business is less with one buyer over another |
| c. | Competition is lessened. |
| d. | All the above. |

 14. Assume that three automobile manufacturers all merged into one car company. Such a merger would be a:

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| a. | vertical merger. |
| b. | vertical cooperative arrangement merger. |
| c. | horizontal merger. |
| d. | intracompetitive merger. |

 15. A major motion picture distributor offers to provide a television station with three very popular, desirable films. However, as part of the agreement, the distributor requires that the television station also purchase four films that are not very desirable. This type of arrangement is called a:

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| a. | reciprocal dealing agreement. |
| b. | reverter arrangement. |
| c. | joint custody arrangement. |
| d. | tying arrangement. |

**Fact Pattern 39-1**

Two universities located within 30 miles of each other agree to divide their market so as to help them both. The two schools draw a line down a map and each university agrees to accept students only on their side of the line.

 16. This agreement violates the:

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| a. | Sherman Act. |
| b. | Clayton Act. |
| c. | Robinson-Patman Act. |
| d. | None of the above. |

 17. Such an agreement is:

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| a. | a *per se* violation of antitrust law. |
| b. | subject to the rule of reason test to determine if it violates antitrust law. |
| c. | not governed by antitrust law since educational institutions are exempt from this area of law. |
| d. | subject to state regulations but not to the Justice Department. |

 18. To prosecute under the Robinson Patman Act it is necessary to prove:

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| a. | price discrimination occurred and it lessoned competition. |
| b. | price discrimination occurred but the parties are not in competition with each other. |
| c. | clearly separate products are tied together for purchase and sale. |
| d. | non of these answers are correct. |

 19. A monopoly is illegal:

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| a. | under any circumstances, under Section 2 of the Sherman Act. |
| b. | only if it is gained or maintained by using wrongful tactics. |
| c. | if you have greater than 50 percent of market share. |
| d. | any time there are no interchangeable products.  |

 20. The Sherman Act was enacted to deal with.....

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| a. | Anticompetitive mergers |
| b. | Price fixing |
| c. | Discriminatory pricing |
| d. | Tying arrangements |

 21. What is true about insider trading?

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| a. | Fiduciaries have to be full time permanent executive employees |
| b. | Prior plans to sell stock do not protect and insider. |
| c. | Someone who trades on inside information is liable only if he breaches a fiduciary duty. |
| d. | It is acceptable to tip off someone off as long as the insider does not profit from any transaction involving the information. |

 22. Under what type of securities offering must the issuer determine if the investor is an accredited, sophisticated, or unaccredited investor?

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| a. | Regulation A offering. |
| b. | Regulation D offering. |
| c. | Public offering. |
| d. | An interstate offering. |

 23. A defense to a civil action brought under Section 10(b) and Rule 10b-5 of the 1934 Act would be:

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| a. | that the statute of frauds was not observed. |
| b. | that the seller of the securities was not in privity of contract with the plaintiffs. |
| c. | that the sellers did not intentionally or recklessly make a false representation. |
| d. | All of the above. |

 24. The Foreign Corrupt Practices Act makes it a crime:

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| a. | for U.S. companies to sell unregistered stock in other countries. |
| b. | for non U.S. companies to sell unregistered securities in the U.S. |
| c. | to "bribe" foreign governments or officials. |
| d. | to conspire to defraud stock purchasers in other countries. |

**ESSAY**

 1. Explain horizontal price-fixing and vertical minimum and maximum price-fixing. Discuss their status under antitrust laws.

 2. Smalltown has two family-owned hardware stores that have been in business for years. Major Hardware decides that Smalltown would be a good place to build one of its superstores. Major opens, advertising unbelievably low prices; in fact, at below cost. Because Major owns stores nationally, it is able to keep prices extremely low until both of the family-owned stores have to go out of business because they cannot compete. After Major is the only hardware store in town, it raises its prices enough to make up for its former losses and to make some additional profit. Discuss this behavior in relation to antitrust law.

 3. Explain the overall purposes of the Sherman Antitrust Act, the Clayton Act, and the Robinson-Patman Act. How do each of these Acts relate to each other?

 4. Discuss when monopoly power is not a violation of Section 2 of the Sherman Act.

 5. Violations of antitrust law are either *per se* violations or rule of reason violations. What are the differences between these two types of violations? Give examples of each.

 6. Jackie learned of insider trading information while talking to Mark, a director of a large corporation. She took advantage of the information to buy stock and make a huge financial gain. If she is accused of violating securities law, what must the government prove in order to gain a conviction against Jackie?