

CHAPTER 43

- A. The legislative branch in the Enabling Act both creates an administrative agency and [1] powers to that agency. Substantive due process requires that sufficient procedural due processes controlled by the legislative, [2], and/or [3] branches exist for oversight and control of that administrative agency.
- B. Administrative agencies frequently possess powers that ordinarily are held separately by the legislative, [2], or [3] branches. Rulemaking is a [1] legislative power. To use the rulemaking power the agency must provide the procedural due process of publishing the proposed rule in the *Federal Register* and publish the [4] rule in the *Code of Federal Regulations*. The investigation power might be either a [1] legislative power or a [1] [2] power; but, the inspection power only is a [1] [2] power. An administrative law judge (ALJ) is not an Article III judge the ALJ generally acts like a trial judge within the scope of the administrative agency's [3] powers.
- C. A person's (both legal and natural, not merely citizens) Amendment IX implied right to privacy is a right of the people against governmental actions. Broadly, the government violates the people's right to privacy when the government seeks either to: [i] collect information about a person; or [ii] retain collected information about that person; or [iii] conceal information about that person from that person; or [iv] conduct government business out of the view of the people. The Freedom of [5] Act (FOIA), the Government in the [6] Act, the Regulatory Flexibility Act, and the Small Business Regulatory Enforcement Fairness Act (SBREFA) all help provide statutory buttress for this implied constitutional right.

CHAPTER 44

- A. All consumers are [1] persons. No consumers merely are [2] persons.
- B. The Federal Trade Commission (FTC) is an administrative agency whose Enabling Act contains a jurisdictional command to prevent [3] and [4] trade practices. The FTC has adopted rules aimed at bait-and-switch advertising as such advertising is both [3] and [4].
- C. The FTC can use the enforcement tool of a [5]-and-[6] order after the FTC successfully proves that a trade practice is either [3] or [4]. The defendant also may voluntarily agree to enter into a [5]-and-[6] order so as to avoid a hearing and/or a potentially more costly outcome.

- D. Congress has adopted the Truth-in-Lending Act (TLA) which is administered by the Federal Reserve Board (the Fed). However, the Fed is not your typical administrative agency because while the Fed is an agency most of the Federal Reserve System members are private corporations. To implement the TLA the Fed has adopted Regulation __[7]_____.

CHAPTER 46

- A. Under USA law, big is not bad; but, how a firm gets big or how a firm uses its large market power can be a felony. The Sherman Act of 1890 makes unlawful via section 1 __[1]_____ of trade and via section 2 monopolization or __[2]_____ to monopolize. The Rule of Reason allows as lawful any [1] that is __[3]_____ to firm's legal business interests. The *Per Se* Unreasonable Rule, based upon experience that teaches these [1] are dis[3], makes __[4]_____ fixing, horizontal division of customers or territories, group boycotts, and tying arrangement to be felonious.
- B. In the Clayton Act of 1914 Congress addressed specific [1] that has been found lawful by the judiciary using the Rule of Reason but which Congress wished to make civilly unlawful rather than criminally unlawful. These specifically addressed [1] included [4] discrimination; __[5]_____ dealings (e.g., output contracts and requirements contracts); mergers; and interlocking directorates. Additionally, in the Clayton Act Congress also created exemptions from the antitrust laws; most notably __[6]_____ was defined as not an article of __[7]_____ and agricultural cooperative were authorized.
- C. The USA, given the breadth of the *Constitution's* [7] Clause, gives an extra-territorial application to the USA's antitrust laws. The European Union (EU) also has antitrust laws. However, the EU fundamentally differs from the USA in whether legitimate business interests exist and how large those legitimate business interests are in the context of vertical [1]. The EU also materially differs from the USA with respect to the application of antitrust laws to an Act of State.

CHAPTER 49

- A. All jurisdictions outlaw some gambling contracts and all jurisdictions make lawful most insurance contracts. Gambling contracts create __[1]_____ and then allocates that [1] upon chance for a payment. Insurance contracts pool existing [1] and then in exchange for an average price transfer that [1] to be allocated by chance.

- B. InsurERs seek to manage the [1] transferred by the insurED to the insurER. [2] selection occurs when a disproportionate number of high [1] persons seek to become insurEDs of the insurER. The [3] hazard exists every time the insurED has some control over the occurrence of the [1] covered by the insurance policy. The [3] hazard is why statutes require some degree of self insurance by the insurED (e.g., deductible and/or co-pay).
- C. An insurable [4] distinguishes a gambling contract from an insurance contract. For property insurance the insurable [4] must exist at the time of [5]. For life insurance the insurable [4] must exist at the time of contract
- D. All insurance contracts, because of the necessity of [1] pooling, are [6] contracts. Unlike the typical [6] contract where an ambiguity discovered by the non-drafting party is interpreted reasonably, all ambiguities in an insurance contract are interpreted against the insurER.

CHAPTER 50

- A. To create a will requires:
- [i] [1] (i.e., ability to grasp the natural consequences of one's actions);
 - [ii] an intent to create a will and to affix a [2];
 - [iii] the will nearly always must be written;
 - [iv] a [2] (i.e., any mark with the current intent to authenticate the document);
 - [v] disinterested witnesses of the [1] and of the [2]; and
 - [vi] published.
- B. To create a trust requires:
- [i] a grantor;
 - [ii] a corpus of the trust;
 - [iii] a [3] (gets legal [4]);
 - [iv] [4] passes;
 - [v] [5] delivery; and
 - [vi] a beneficiary (gets beneficial [4]).
- C. The [3] is a [6] who owes a duty of [7] good faith (i.e., honesty in fact and personalized objective) to the beneficiary; but, no such duty is owed by the [3] to the grantor.