

The Visible Hand: Integrating Law and Economics in the Principles Classroom JET SET 2024

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What is Law and Economics?

“... the economic causes and consequences of specific legal rules as well as the impact of the broader legal system. It encompasses the behavior of firms and individuals, and considers property rights, deterrence, and the effects of law enforcement.” - NBER

What is Law and Economics?

In Principles [or Survey, or high school] classes, we can focus on two things:

- How do we change the **incentives**?
- What is the compelling **story**?

What is Law and Economics?

- Kenneth G. Elzinga and David E. Mills, *Predatory Pricing in the Airline Industry*
- John M. Connor, *Global Cartels Redux: The Amino Acid Lysine Antitrust Litigation*

(both from THE ANTITRUST REVOLUTION)

Price-Fixing in the Tuna Market

Olean Wholesale Grocery Coop., Inc., v. Bumble Bee Foods LLC, 31 F.4th 651 (9th Cir. 2022)

From November 2010 through at least December 31, 2016, purchasers of canned tuna claim that major tuna producers like Bumble Bee, StarKist, and Chicken of the Sea engaged in illegal collusion to raise the prices of their products above the competitive level. Two of the companies pleaded guilty to federal criminal charges and a third cooperated with the federal investigation.

Price-fixing forces consumers and retailers to pay prices that are higher than they otherwise would be. The plaintiffs included consumers, retailers, and institutional purchasers like hospitals and prisons.

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Interesting for all sorts of reasons, among them

- Evidentiary issues
- Statistical problems with predominance and a *de minimis* standard
- Price-fixing is prosecuted as an individual crime through class actions
- Judges don't understand statistics generally.

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Focus today is *only* on Antitrust and why we prosecute it.



The characters:

- Consumers (elastic demand)
- Prisons (inelastic demand)
- Tuna sellers

The incentives:

- Consumers: You have to eat, but save money while you do it.
- Prisons: You have to feed your prisoners. If you can buy more, great.
- Tuna sellers: Profit!

The gimmicks:

- Students love buying and selling.
- Students become “the greedy corporations.”
- Students love candy.

Questions? Comments? Snide remarks?

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