

EXAM 6 – UNITED STATES, FALL 2012

6. (1.5 points)

a. (0.5 point)

Briefly describe two key features of the Sherman Anti-Trust Act.

b. (1 point)

Fully explain how the Sherman Anti-Trust Act has been applied to the business of insurance, citing two key legislative or judicial decisions that affected its application.

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## 6) Sample Answer

- Part a. i) Prohibits actions that create monopoly power  
ii) Prohibits boycott, coercion, and intimidation

OR

- i) Prohibits collusion to fix prices  
ii) Prohibits boycott, coercion, and intimidation

Part b.

1. Paul vs. VA: insurance is ruled not interstate commerce, Sherman act is not applied to insurance
2. After Paul v. VA, insurance was regulated by the states and exempt from the Sherman Act
3. SEUA vs. US: insurance is considered interstate commerce and is subject to Sherman act.
4. After the SEUA case, federal regulation applied to insurance and bureau ratemaking was banned.
5. McCarran-Ferguson Act: returns regulation of insurance to state level and provides limited exemption of anti-trust law to insurance.

### Examiner's Report

Part a.

Two key features of the Sherman Anti-Trust Act are:

- i. Prohibits collusion in attempts to gain monopoly power
- ii. Prohibits activities that restrain trade such as boycott, coercion, and intimidation

The two key points here are the prohibition of companies working together to form trusts or monopolies and the list of activities that were effectively banned due to this prohibition.

Common mistakes on this section included:

1. Applies to interstate commerce
2. It is a federal law
3. It does not allow rating bureaus or ratemaking in concert

Item 1 above was not given credit because this is a limitation of the act, not a key feature. The application of the Sherman Act to particular types of commerce is a key discussion point in part b. of the question.

Item 2 was not given credit because it is a general descriptor of the legislation, not a key feature.

Item 3 was not given credit because the Sherman act does not specifically address rate bureaus or insurance ratemaking. Part b. of this question asks about the varied application of the Sherman Act over time, and a statement that banning rate bureaus is a key feature implies the candidate does not understand that the effect of the Sherman Act on the insurance industry has been affected by judicial decisions and the McCarran-Ferguson Act.

Part b.

Candidates were given credit for describing the effects of the Paul v. Virginia decision, the SEUA v. US decision, or the McCarran-Ferguson Act.

Paul v. Virginia

Paul v. Virginia predates the Sherman Act, but it was acceptable to state that the Sherman Act did not apply to insurance after Paul v. VA, due to its ruling that insurance was not considered interstate commerce. This allowed for state regulation of insurance.

A common mistake that led to partial credit was stating only that the Sherman Act did not apply as a result of Paul v VA without giving the reason (not considered interstate commerce) or describing that the power of regulation stayed with the states as a result.

SEUA v. US

The SEUA v. US case overturned Paul and resulted in the Sherman Act being applied to insurance.

A common mistake that led to partial credit was stating only that the Sherman Act did apply as a result of the SEUA decision without giving the reason (insurance was now considered interstate commerce) or describing that the power of regulation moved to the federal government.

McCarran-Ferguson Act

As a result of the SEUA decision, congress passed the McCarran-Ferguson (MF) act. The act returned regulation of the business of insurance to the states and gave the insurance industry a limited exemption from the Sherman Act. The Sherman Act still applies to the extent that states do not regulate insurance and in cases of boycott, coercion, and intimidation.

Common mistakes included failing to mention that the act returned regulatory power to the state or failing to describe the limitations of the exemption provided by the MF act.

Candidates also described the following as judicial decisions or legislative acts that affected the application of Sherman. These responses were not given credit because they did not directly answer the question as it was asked.

ISO Settlement – Insurance Services Office settled anti-trust allegations with 20 state attorney generals. The result was a restructuring of ISO and the rate guidance ISO offered. This was not given credit because it is neither a judicial decision nor legislative act. As a

result, it is not clear how the settlement would set precedent or alter how the Sherman act applies to insurance more broadly.

Royal Drug – The Royal Drug decision clarified what is defined as the business of insurance that is exempt from the Sherman Act and what actions of an insurance company are still regulated by Sherman. No candidate gave a response that clearly described how this decision affected the application of Sherman. Instead, candidates listed the criteria given in Royal to decide if business is “business of insurance”

Dodd-Frank – The Dodd-Frank act enabled the creation of a Federal Office of Insurance but did not modify the application of Sherman.