1. (3.25 points)

   a. (0.75 point)

      Describe the circumstances of the Paul v. Virginia case, and briefly describe the decision of the U.S. Supreme Court.

   b. (0.5 point)

      Briefly describe the impact of the Sherman Anti-Trust Act, prior to the Southeast Underwriters Association (SEUA) decision, with respect to each of the following:

      i. Federal oversight of insurance

      ii. State oversight of insurance

   c. (1 point)

      Following the SEUA decision, the NAIC issued several recommendations and model laws. Describe one way in which these NAIC actions affected each of the following:

      i. Insurance compacts

      ii. State insurance regulation

   d. (1 point)

      Describe the Robinson-Patman Act and evaluate how individual price optimization might be in violation of this Act.

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SAMPLE ANSWERS AND EXAMINER'S REPORT

QUESTION 1	
TOTAL POINT VALUE: 3.25	**LEARNING OBJECTIVES: A1, A4**
SAMPLE ANSWERS	
Part a: 0.75 point	
• Paul is licensed NY insurers and sell business in state Virginia w/o license. State of Virginia objected and Paul sold policies anyway. Paul was sued and appealed to Supreme Court. Court decide insurance is contract delivered locally and state has sole responsibility to regulate • Agent Paul in VA want to register a license to write insurance business in VA for his NY client. Due to input guarantee deposit for the business, VA rejected Paul's application. Paul went ahead and wrote insurance anyway and got arrested. US Supreme Court decided insurance is not interstate business and should be regulated by state regulators. • Paul applied for license to sell insurance for insurers licensed in NY. VA denied him license since the insurers didn't have fund deposited properly. Paul went ahead and sold insurance in Virginia anyway and was arrested. The Supreme Court rules that insurance was not interstate commerce and thus each state had its own authority to regulate. • Paul tried to sell insurance in VA from NY insurers. Did not pay required fees to do so and sold insurance anyway. Insurance ruled as not interstate commerce. Regulation remained at the state level • Paul was arrested for selling insurance products from insurer domiciled in NY to consumers located in Virginia after Virginia DOI warned him not to do so. Supreme Court ruled that insurance is not interstate commerce and should be regulated at the state level.	
Part b: 0.5 point	
Sample part i) • Sherman Act does not apply to insurance based on Paul's case. Federal does not regulate insurance, state has sole responsibility • No impact because the Sherman Act was only applicable to Interstate commerce (and thus not insurance) before the SEUA ruling. Sample part ii) • Although it had no impact on state regulation of insurance, the Sherman Antitrust Act did prompt some states to pass similar laws, which did increase some states regulatory authority over insurer's actions. • State can pass its own laws to regulate anti-trust issues since Sherman Act does not apply to insurance.	
Part c: 1 point	
Sample part i)	

- Sherman Act now applies to insurance and insurance compacts are illegal. NAIC proposed laws passed to allow cooperative rate setting.
- NAIC advocated for the return on insurance compacts on the basis they were necessary for accurate insurer pricing. State regulation better for differing insurance environment.
- NAIC model laws allowed cooperation in setting rates through compacts after SEUA

Sample part ii)

- A subcommittee forms to urge return of regulation to states.
- NAIC model laws laid out plans for state regulation of insurance. Following SEUA, NAIC tried to pressure Congress into passing law assigning insurance regulation to states.
- State insurance regulation: many states adopted the model laws provided by the NAIc, allowing them to control of insurance regulation after McCarran-Ferguson, which required aspects of the industry not considered by the state to be regulated by the federal government

Part d: 1 point

Description of Act:

- Require price difference be justified by different operation costs and prohibited price discrimination
- Robinson Patman Act was an amendment to Clayton Antitrust Act which doesn't allow price discrimination. It stated that differences in price need to be justified, i.e. having lower operating costs.
- The Robinson-Patman Act is an amendment to the Clayton Act that allows price discrimination only if it can be explain by operation efficiencies leading to competitive advantage

Impact on price optimization:

- Price optimization adjust individual price with same risk profile based on marketing goals etc. retention, demand models and instead of operation costs. For example, increase price for customers less likely to shop around when other characteristics are the same.
- Individual price optimization might be in violation because it can result in similar insureds with the same level of risk paying different insurance premiums. i.e. price optimization can recognize willingness to shop around, etc., and apply these results to the rate.
- Individual price optimization tries to meet a business objective by finding ways to discriminate on an individual basis using non-parametric algorithms. This is not operation efficiency and so it violates Robinson-Patman.

EXAMINER'S REPORT

The candidates were expected to understand the history of insurance regulation at the state and federal level, and the reasons why it ended up being mostly regulated at the state level. Some level of knowledge of insurance compacts and the purpose of the Sherman Anti-Trust Act is also needed to earn full credit.

The subtleties of the purpose and function of the Robinson-Patman Act was lost on many candidates, and circumstances underlying *Paul v. Virginia* was not well explained or understood by

many candidates.

Part a

The candidates were expected to understand the circumstances and activities that ultimately led to *Paul v. Virginia*, and the outcome of the Supreme Court case.

Common mistakes included:

- Not realizing or not making clear that Paul was located in VA but trying to represent a NY insurer in VA
- thinking Paul lived in NY and was trying to sell insurance in VA, not that the insurer was based in NY
- not recognizing that the main issue was flouting the state law of Virginia.

Part b

The candidates were expected to know that the Sherman Anti-Trust act was a federal act that didn't apply to state's regulation of insurance due to the precedent of *Paul v. Virginia*

Common mistakes included:

- Providing the same information for both subsections. Credit was given once, but not a second time
- Stating that the Sherman act DID apply to insurance as it was a regulated at the state level

Part c

The candidates were expected to know that the NAIC wanted to amend the Sherman / Clayton Acts to allow compacts for beneficial purposes (e.g. pooling data for rate adequacy / coverage concerns) but not to hinder competition. Also, the candidate should recognize that the NAIC wanted oversight of insurance at the state level, and took actions appropriately.

Common mistakes included:

- Not giving the NAIC's viewpoint regarding the two issues (i.e. stating that compacts were illegal after the SEUA decision); stating that the NAIC desired to keep compacts illegal or that regulation should remain at the federal level.

Part d

The candidates were expected to know that the Robinson Patman (R-P) act prohibited price discrimination but made an exception for good-faith differences related to operating costs. The candidates were expected to know specific examples of price optimization variables that could possibly violate the R-P act, and explain the reason for potential violation.

Common mistakes included for subpart i):

- discussing changes in premium that are tied to changes in operating expense or, loss costs instead of making it clear that the R-P act is in regards to charging **different insured with the same risk characteristics** different rates.
- A response to the effect that "price differences related to differences in operating costs were allowed," without mentioning price discrimination specifically was not a full credit response
- Describing racial or socioeconomic discrimination, which is not part of the R-P act

Candidates erroneously thought the "discrimination" was related to race or socioeconomic variables, which isn't the intent of the R-P act.

Common mistakes included for subpart ii):

- Failure to understand the term 'price optimization', resulting in lack of specific discussion of price optimization as it is impacted by R-P
- Stating that charging insured different rates based on differences in loss cost or level of risk would be a violation or R-P
- Discussing tying or bundling, which is prohibited by the Clayton Act, as a violation or R-P