

4. (1.5 points)

Three major multi-state insurers decide to form a compact to write private passenger automobile insurance at the same rates. Members of the compact will only do business with agents that exclusively place policies with the compact, and all agents have agreed to work exclusively with the compact. As a result, non-members have a difficult time selling insurance in the states in which the compact operates.

Assume that this compact is formed prior to the Southeast Underwriters Association (SEUA) decision.

a. (0.5 point)

Discuss the impact solely due to the SEUA decision on the ability of these insurers to form the compact.

b. (0.5 point)

Discuss the impact solely due to the McCarran-Ferguson Act on the ability of these insurers to form the compact.

c. (0.5 point)

Discuss the impact solely due to the Dodd-Frank Act on the ability of these insurers to form the compact.

SPRING 2017 EXAM 6U SAMPLE ANSWERS AND EXAMINER'S REPORT

QUESTION 4	
TOTAL POINT VALUE: 1.5	LEARNING OBJECTIVE: A4
SAMPLE ANSWERS	
Part a: 0.5 point	
<p>Sample answers include:</p> <ul style="list-style-type: none"> • Sherman Act & Clayton Act will both reduce monopoly power and antitrust actions. This compact will not be in effect. • The SEUA decision determined that 1 – The Sherman Act, which prohibited collusion in attempt to gain monopoly power, now applied to insurance 2 – Insurance is considered interstate commerce. As a result, these compacts are considered illegal as they are fixing rates and using boycott and coercion. • The SEUA decision makes the Sherman Act apply to insurance which prohibits compacts as they are seen to be collusion to gain monopoly power. • In violation of antitrust laws (Sherman, Clayton Act) which apply in full to insurance after SEUA decision since insurance considered inter-state commerce & all federal law apply. • SEUA prohibits bureau ratemaking and gives regulation power to federal. After SEUA, Sherman Act is effective on insurance. Sherman Act prohibits compact to gain monopoly power. • No longer allowed. Federal anti-trust regulations apply to insurance. Insurance is now classified as interstate commerce. 	
Part b: 0.5 point	
<p>Sample answers include:</p> <ul style="list-style-type: none"> • Returns power to state to regulate insurance primarily. However, antitrust and action to reduce monopoly power will continue in effect. Compact will not be allowed even though it's interstate commerce. • McCarran Ferguson brought insurance regulation back to the states and allowed bureau ratemaking as long as it was in the public's best interest. As a result, compacts and the use of boycott, coercion, collusion are still illegal (Sherman Act still applies), but the bureau ratemaking is allowed as long as they are not fixing rates. • The McCarran Ferguson Act returned insurance regulation back to the states, but insurers were still subject to the Sherman Antitrust Act in that boycott, intimidation, and coercion were still illegal. Since the compact only allowed business with agents exclusively working with the compact, this is boycott and is illegal. • States regulation insurance, but certain anti-trust provisions from Sherman Act still apply -> cooperative ratemaking is fine, but not coercion/boycott. • The McCarran-Ferguson Act still would not allow this compact. The Sherman Act still applies to insurers after this act in the case of boycott, coercion, and intimidation. • Compacts may be formed. McCarran Ferguson determined insurance is regulated at state level (with exceptions). It is in the public's interest for insurers to share info. However, this compact has anti-competitive behavior. Sherman Act still applies. This compact is not allowed. • Compact is still not allowed because boycott is still illegal under Sherman Act. Compact would be allowed if it didn't use boycott, was used to set credible loss costs, and didn't hinder free and open competition. 	

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Part c: 0.5 point

Sample answers include:

- Dodd-Frank had no impacts on the ability of the insurers to form compacts – it is still illegal.
- Dodd-Frank does not explicitly address compacts; however, the McCarran-Ferguson Act still applies along with the federal anti-trust laws that apply. Therefore, insurers will not be allowed to form/remain in compact.
- Dodd-Frank indirectly since FIO established to collect info on insurers -> could lead to investigate issue. Still a violation of Sherman Act due to coercion & boycott of members vs non-members. Dodd Frank did not change McCarran Ferguson.
- Dodd-Frank Act still preserve regulations within state. Since it applies to surplus writer and reinsurance, this won't change the impact from prior act. It is still illegal.
- Dodd-Frank Act doesn't have impact on this activity. They are still subject to Sherman Act and cannot form the impact.
- Dodd-Frank reaffirmed insurance is regulated at state level. Insurers may share rates, but anti-competitive behavior is still outlawed by the Sherman Act.

EXAMINER'S REPORT

Candidates were expected to know the anti-trust implication of each landmark decision and understand how each would affect the scenario outlined in the problem.

Part a

Candidates were expected to recognize that insurance became subject to federal anti-trust laws after the SEUA decision and that the activities of the compact were in violation of them.

Common errors include:

- Mentioning that anti-trust laws applied after SEUA without stating the compact (or compact's behavior) was either illegal or violated the laws.
- Identifying that the compact is illegal but not describing why.

Part b

Candidates were expected to recognize that insurance was still subject to some federal anti-trust laws after the McCarran Ferguson Act and that the activities of the compact were in violation of them.

Common errors include:

- Stating that the compact is allowed.
- Explaining behaviors that are illegal but then saying the compact wasn't exhibiting any of those behaviors.
- Citing that federal anti-trust laws no longer apply and consequentially that the compact is now legal.
- Not specifically stating that the compact is illegal, violates anti-trust laws, or is engaged in illegal behaviors.

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Part c

Candidates were expected to recognize that Dodd Frank didn't have an impact on the compact but that the compact's behaviors were still illegal under anti-trust laws.

Common errors include:

- Stating that compact is allowed.
- Describing the act but not relating it to compacts or the legality of the compact.
- Stating that the act itself disallowed the compact.