RPM

In US per se illegal as a restraint against competition (Section 1 Sherman Act). But increased permissiveness when no evidence of manufacturer-retailer agreements to fix price.

**Colgate case (1919)**

Key exception to per se illegality: “A manufacturer can *unilaterally* impose retail prices and refuse to deal with retailers who discount below these prices.”

**1968 Albrecht case**

Publisher of a newspaper specified maximum prices at which the distributor was permitted to sell.

Albrecht was a newspaper dealer and sold above specified maximum prices.

Publisher’s refusal to supply led to antitrust case.

Supreme Court: maximum prices are illegal.

**BUSINESS ELECTRONICS V. SHARP ELECTRONICS (1988)**

![Diagram of Sharp, B.S., and Hartwell]

B.S. was cutting prices (below Sharp’s suggested prices)

Hartwell complained to Sharp and threatened to stop dealership.

Sharp cancelled contract with B.S.

B.S. brought suit alleging conspiracy illegal per se.

- District Court : B.S. is right!
- Court of Appeals : Decision reversed!
Supreme Court agreed

“inter-brand competition is the primary concern of antitrust laws”.

1997 Khan case

Barkat Khan leased a gas station from State Oil

State Oil had an exclusive supply agreement and set “suggested” retail prices

prices above “suggested,”
rebate all of the difference to State Oil.

Profit loss for Khan → Khan sued S.O. for violation of Section 1
Sherman Act

District Court: he lost!

Seventh Circuit: on appeal, reversed the decision!

Interesting issue: the judge at the Seventh Circuit had been a strong critic of the Albrecht case decision. He however ended up with the same type of decision; argued that prohibition of per se max prices was clear an unambiguous, and that it was up to the Supreme Court and not to him to reverse it!
TERRITORIAL RESTRAINTS

As opposed to RPM, Rule of Reason approach here
Many economists believe this asymmetric treatment of economically similar practices is not adequate. They argue both should be RofR offenses.

1965 SYLVANIA CASE

Producer of T.V. sets, only 1% or 2% market share

To gain market share, in 1962 Sylvania phased out old distributors and initiated new contacts with a smaller set of retailers, imposing territorial restraints.

1965 Continental TV, a dealer of Sylvania in San Francisco, wanted to open a new store in Sacramento.

Sylvania rejected ! Continental TV filed suit against Sylvania.

Supreme Court ruling was in favor of Sylvania and in so doing was clear that the case should be decided on a RofR basis.

VW case 95

EU fined VW €102 m. on the ground that VW discouraged authorized dealers in Italy from supplying cars to customers from parts of Northern Europe.

1993-95 northern Europeans found it attractive to buy in Italy.

VW observed Italian dealers selling cars to northern Europeans.

VW reacted restructuring the bonus-schemes and quantity discounts to discourage.

VW threatened to end dealerships with some, 12 were indeed cancelled.

After fine in 1995, appeal; in 2000 Court of First Instance allowed € 90 m fine to stand.