1. Sherman Section 2 Revisited
   
   a. Monday, the DOJ changed direction
      i. Had focused on Section I
      ii. New emphasis on Section II and complaints from rivals
   
   b. Section 2 Principles
      i. Unilateral conduct covered if actor has monopoly power or is likely to
         attain it
      ii. Possession or exercise of monopoly power is not an offense
      iii. Anticompetitive acquisition or maintenance of monopoly is an offense
      iv. Harm to competitors does not violate section 2
      v. Competitive and exclusionary conduct can look alike
      vi. Because they can look alike, type I and type II errors can be a concern
      vii. Costs of enforcement matter
   
   c. Monopoly Power
      i. Second Circuit: “Ability to price above the competitive level and to persist
         in doing so without new entry or expansion.”
      ii. Market definition from DOJ Merger Guidelines
         1. Products and geographic area where hypothetical monopolist could
            achieve a small but significant and non-transitory price increase
         2. Cellophane fallacy—monopoly demand is elastic at prevailing prices
      iii. Market share

2. Sherman 2 Practices
   
   a. Predation
      i. Anomaly—price cutting can be illegal (Utah Pie)
      ii. Price below (some measure of) cost & dangerous probability of recoupment.
         1. Usually average avoidable cost
   
   b. Tying
i. Firm sells one product (the tying good) on the condition that buyer also purchase a different product (tied good)
   1. Bundle
   2. Contractual
   3. Requirements
   4. Technological

ii. Cases
   1. A.B. Dick (1912)
   2. IBM (1936)
   3. International Salt (1947)
   5. Kodak (1992)
   6. Microsoft (2001)

iii. Price discrimination (metering of demand) vs. exclusionary tactic

c. Bundled discounts & loyalty discounts
   i. BD--Discounts offered conditional on the purchase of two or more distinct products.
      1. Can all products in the bundle be priced above cost, and still drive an equally efficient competitor out?
      2. Cases
         a. Ortho (1996)
         b. Lepage’s (2003)
         e. Virgin Atlantic (2001)
      3. Procompetitive rationale?
      4. Attribution test (discount allocation)
   ii. LD—Discounts offered conditional on share of purchases
      1. Intel/EU (2009)

d. Exclusive Dealing
   i. Party A’s willingness to deal with party B depends on B’s commitment to deal only with A.
   ii. Similarity to loyalty discounts (100%)
   iii. Cases
      1. Standard Fashions (1922)
      2. Coors
      4. Visa
iv. Free riding of one manufacturer on efforts of another; vs. exclusionary tactic
   1. Exclusion
      a. Scale economies crucial
         i. Network effects
         ii. Total exclusion not necessary
      b. Outlets have to be scarce, and of limited scale—E may only need one.

3. Section 2: Current Examples—Microsoft & Intel
   a. Microsoft—virtually every section 2 practice; US & EU
   b. Intel—Loyalty discounting; US & EU

4. Torts
   a. Law of “civil wrongs”
      i. Person(s) harmed by actions of other(s);
         1. Negligence—e.g. malpractice, product liability
         2. Defamation
         3. Contractual torts—breach of contract
      ii. Court decides liability—e.g. did the harm occur and was there negligence—and damages or injunctive relief
   b. Contrast with liability rules—e.g. harm from Vioxx
      i. Buyer beware vs. manufacturer always liable
      ii. Tradeoff: poor incentives vs. cheap to enforce/administer—moral hazard on both sides of the interaction
         1. Buyer beware—weak incentives for manufacturer
         2. Manuf. Liable—weak incentives for user
            a. Should drug manufacturer always be liable for harm?
            b. Should bar owner always be liable for DUI?
   c. Tort system is costly because there are no hard and fast rules—everything has to be decided on a case by case basis
      i. Is the Tort System inefficient? (Do costs exceed benefits?)
   d. Efficiency & Liability revisited—The Coase Theorem
      i. Property rights & the CT; assignment of rights
      ii. Externalities & harm
      iii. Moral hazard and “least cost avoider”

5. Intellectual Property and Innovation
   a. Dynamic vs. static efficiency—importance of innovation and new products
b. Patent system as one solution

c. Alternatives
   i. Prize system—government determines prizes for innovation
      1. Good idea?
      2. Replaces market values with values of government
      3. Patents establish rules and let the market choose values
   ii. Patent in “area” combined with prize
      1. Patentee earns return in, say, California
      2. Prize is extrapolation of what patentee would have gotten for full patent
      3. Free use elsewhere
   iii. Shorter patents—e.g. 2 years—combined with a prize.
      1. Same basic idea as area

d. What if no patents?
   i. Simple model
      1. “Product” can be copied
      2. Buyer must have a copy to make a copy
      3. Each buyer can make N copies, sell them
         a. What is the price at each generation?
         b. Each generation gets PDV of future sales
      4. If N is very large, collect small value (why?)
      5. May sustain substantial innovation without legal IP protection
   ii. Examples
      1. Trade Secrets
      2. Ideas that are costly to copy (teaching)

e. Some examples of copying issues
   i. BetaMax and movie studios
      1. Studios wanted to prevent VCRs from making copies—thought it would be the death of movies
      2. Turned out to be complements instead of substitutes
   ii. iTunes—technology allows copies for 4 computers
   iii. MS Office & Fair Use
      1. MS tolerated copying by certain users. Why?
         a. Cheaper substitutes/network effect
      2. Educational Version—lower price; can make 3 copies
f. Drug Reimportation
   i. Political issue—should we allow reimportation from Canada
   ii. Should we allow everyone to buy at the lowest formulary price?
   iii. What’s the difference?