Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.,* 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

LEEGIN CREATIVE LEATHER PRODUCTS, INC. *v.* PSKS, INC., DBA KAY'S KLOSET . . . KAY'S SHOES

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 06–480. Argued March 26, 2007—Decided June 28, 2007

Given its policy of refusing to sell to retailers that discount its goods below suggested prices, petitioner (Leegin) stopped selling to respondent's (PSKS) store. PSKS filed suit, alleging, *inter alia,* that Leegin violated the antitrust laws by entering into vertical agreements with its retailers to set minimum resale prices. The District Court excluded expert testimony about Leegin's pricing policy's procompetitive effects on the ground that *Dr. Miles Medical Co.* v. *John D. Park & Sons Co.*, 220 U. S. 373, makes it *per se* illegal under §1 of the Sherman Act for a manufacturer and its distributor to agree on the minimum price the distributor can charge for the manufacturer's goods. At trial, PSKS alleged that Leegin and its retailers had agreed to fix prices, but Leegin argued that its pricing policy was lawful under §1. The jury found for PSKS. On appeal, the Fifth Circuit declined to apply the rule of reason to Leegin's vertical price-fixing agreements and affirmed, finding that *Dr. Miles*' *per se* rule rendered irrelevant any procompetitive justifications for Leegin's policy.

Held: Dr. Miles is overruled and vertical price restraints are to be judged by the rule of reason. Pp. 5–28.

(a) The accepted standard for testing whether a practice restrains trade in violation of §1 is the rule of reason, which requires the fact-finder to weigh "all of the circumstances," *Continental T. V., Inc.* v. *GTE Sylvania Inc.*, 433 U. S. 36, 49, including "specific information about the relevant business" and "the restraint's history, nature, and effect," *State Oil Co. v. Khan,* 522 U. S. 3, 10. The rule distinguishes between restraints with anticompetitive effect that are harmful to the consumer and those with procompetitive effect that are in the consumer's best interest. However, when a restraint is deemed

"unlawful *per se,*" *ibid.,* the need to study an individual restraint's reasonableness in light of real market forces is eliminated, *Business Electronics Corp.* v. *Sharp Electronics Corp.*, 485 U. S. 717, 723. Resort to *per se* rules is confined to restraints "that would always or almost always tend to restrict competition and decrease output." *Ibid.* Thus, a *per se* rule is appropriate only after courts have had considerable experience with the type of restraint at issue, see *Broadcast Music, Inc.* v. *Columbia Broadcasting System, Inc.*, 441 U. S. 1, 9, and only if they can predict with confidence that the restraint would be invalidated in all or almost all instances under the rule of reason, see *Arizona* v. *Maricopa County Medical Soc.*, 457 U. S. 332, 344. Pp. 5–7.

(b) Because the reasons upon which *Dr. Miles* relied do not justify a *per se* rule, it is necessary to examine, in the first instance, the economic effects of vertical agreements to fix minimum resale prices and to determine whether the *per se* rule is nonetheless appropriate. Were this Court considering the issue as an original matter, the rule of reason, not a *per se* rule of unlawfulness, would be the appropriate standard to judge vertical price restraints. Pp. 7–19.

(1) Economics literature is replete with procompetitive justifications for a manufacturer's use of resale price maintenance, and the few recent studies on the subject also cast doubt on the conclusion that the practice meets the criteria for a *per se* rule. The justifications for vertical price restraints are similar to those for other vertical restraints. Minimum resale price maintenance can stimulate interbrand competition among manufacturers selling different brands of the same type of product by reducing intrabrand competition among retailers selling the same brand. This is important because the antitrust laws' "primary purpose . . . is to protect interbrand competition," *Khan*, *supra*, at 15. A single manufacturer's use of vertical price restraints tends to eliminate intrabrand price competition; this in turn encourages retailers to invest in services or promotional efforts that aid the manufacturer's position as against rival manufacturers. Resale price maintenance may also give consumers more options to choose among low-price, low-service brands; high-price, high-service brands; and brands falling in between. Absent vertical price restraints, retail services that enhance interbrand competition might be underprovided because discounting retailers can free ride on retailers who furnish services and then capture some of the demand those services generate. Retail price maintenance can also increase interbrand competition by facilitating market entry for new firms and brands and by encouraging retailer services that would not be provided even absent free riding. Pp. 9–12.

(2) Setting minimum resale prices may also have anticompetitive

effects; and unlawful price fixing, designed solely to obtain monopoly profits, is an ever present temptation. Resale price maintenance may, for example, facilitate a manufacturer cartel or be used to organize retail cartels. It can also be abused by a powerful manufacturer or retailer. Thus, the potential anticompetitive consequences of vertical price restraints must not be ignored or underestimated. Pp. 12–14.

(3) Notwithstanding the risks of unlawful conduct, it cannot be stated with any degree of confidence that retail price maintenance "always or almost always tend[s] to restrict competition and decrease output," *Business Electronics, supra,* at 723. Vertical retail-price agreements have either procompetitive or anticompetitive effects, depending on the circumstances in which they were formed; and the limited empirical evidence available does not suggest efficient uses of the agreements are infrequent or hypothetical. A *per se* rule should not be adopted for administrative convenience alone. Such rules can be counterproductive, increasing the antitrust system's total cost by prohibiting procompetitive conduct the antitrust laws should encourage. And a *per se* rule cannot be justified by the possibility of higher prices absent a further showing of anticompetitive conduct. The antitrust laws primarily are designed to protect interbrand competition from which lower prices can later result. Respondent's argument overlooks that, in general, the interests of manufacturers and consumers are aligned with respect to retailer profit margins. Resale price maintenance has economic dangers. If the rule of reason were to apply, courts would have to be diligent in eliminating their anticompetitive uses from the market. Factors relevant to the inquiry are the number of manufacturers using the practice, the restraint's source, and a manufacturer's market power. The rule of reason is designed and used to ascertain whether transactions are anticompetitive or procompetitive. This standard principle applies to vertical price restraints. As courts gain experience with these restraints by applying the rule of reason over the course of decisions, they can establish the litigation structure to ensure the rule operates to eliminate anticompetitive restraints from the market and to provide more guidance to businesses. Pp. 14–19.

(c) *Stare decisis* does not compel continued adherence to the *per se* rule here. Because the Sherman Act is treated as a common-law statute, its prohibition on "restraint[s] of trade" evolves to meet the dynamics of present economic conditions. The rule of reason's case-by-case adjudication implements this common-law approach. Here, respected economics authorities suggest that the *per se* rule is inappropriate. And both the Department of Justice and the Federal Trade Commission recommend replacing the *per se* rule with the rule

of reason. In addition, this Court has "overruled [its] precedents when subsequent cases have undermined their doctrinal underpinnings." *Dickerson* v. *United States*, 530 U. S. 428, 443. It is not surprising that the Court has distanced itself from *Dr. Miles'* rationales, for the case was decided not long after the Sherman Act was enacted, when the Court had little experience with antitrust analysis. Only eight years after *Dr. Miles*, the Court reined in the decision, holding that a manufacturer can suggest resale prices and refuse to deal with distributors who do not follow them, *United States v. Colgate & Co.,* 250 U. S. 300, 307–308; and more recently the Court has tempered, limited, or overruled once strict vertical restraint prohibitions, see, *e.g., GTE Sylvania*, *supra,* at 57–59. The *Dr. Miles* rule is also inconsistent with a principled framework, for it makes little economic sense when analyzed with the Court's other vertical restraint cases. Deciding that procompetitive effects of resale price maintenance are insufficient to overrule *Dr. Miles* would call into question cases such as *Colgate* and *GTE Sylvania*. Respondent's arguments for reaffirming *Dr. Miles* based on *stare decisis* do not require a different result. Pp. 19–28.

171 Fed. Appx. 464, reversed and remanded.

KENNEDY, J., delivered the opinion of the Court, in which ROBERTS, C. J., and SCALIA, THOMAS, and ALITO, JJ., joined. BREYER, J., filed a dissenting opinion, in which STEVENS, SOUTER, and GINSBURG, JJ., joined.