

## WINE LAW - FALL, 2010

### Course Description

California accounts for 90% of all wines produced in the United States and is the fourth largest wine producer in the world behind France, Italy and Spain. The California wine industry has an annual impact of \$51.8 billion on the state's economy and \$125.3 billion on the national economy. Wine is the number one finished agricultural product in the state. This course examines the major legal issues facing the wine industry in the areas of constitutional law, administrative law, intellectual property, land use and environmental laws, and international trade. Specific topics include Prohibition and Twenty-first Amendment jurisprudence, federal and state alcohol beverage regulatory systems (market structure, licensing, taxation, product standards, trade practices), wine labeling, appellations of origin, wine and health, liquor liability, land use planning and resource conservation issues for vineyards and wineries, and international trade agreements and trade policy. There are no prerequisites.

### Syllabus

#### 8/17/10      **Introduction; Pre-Prohibition (1790-1919)**

##### Required Reading

Richard Mendelson, *From Demon to Darling: A Legal History of Wine in America* 1-5, 187-190 (2009).

#### 8/24/10      **Historical Approaches to Alcohol Control; Wine Industry Economics**

##### Required Reading

Richard Mendelson, *From Demon to Darling: A Legal History of Wine in America* 6-49.

Jon Fredrikson, "The Context for Marketing Strategies: A Look at the U.S. Wine Market," in James Lapsley and Kirby Moulton, *Successful Wine Marketing* 47-55 (2001).

##### Recommended Reading

John S. Billings, Charles W. Eliot, Henry W. Farnam, Jacob L. Greene, and Francis G. Peabody, *The Liquor Problem: A Summary of Investigations Conducted by the Committee of Fifty, 1893-1903* (1905).

Norman Clark, *Deliver Us From Evil* (1976).

**8/31/10 Prohibition and Repeal (1920-1933)**

Required Reading

Richard Mendelson, *From Demon to Darling: A Legal History of Wine in America* 50-93.

National Commission on Law Observance and Enforcement (Wickersham Commission), *Report on the Enforcement of the Prohibition Laws of the United States*, 21-84 (January 7, 1931).

Recommended Reading

National Prohibition (Volstead) Act, ch. 85, 41 Stat. 305 (1919).

**9/7/10 Concurrent Regulation: State Liquor Control (Part 1)**

Richard Mendelson, *From Demon to Darling: A Legal History of Wine in America* 94-136.

Raymond Fosdick and Albert Scott, *Toward Liquor Control* 36-106 (1933).

Legislative Drafting Research Fund of Columbia University, *The Model Alcoholic Beverage Control Act* 1-29 (1981).

Pacific Institute for Research and Evaluation, *The Effects of Privatization of Alcohol Control Systems* 1-9, for National Alcoholic Beverage Control Association (NABCA).

**9/14/10 Concurrent Regulation: Federal Liquor Control, Trade Practices and Tied Houses with guest lecturer Jim Seff (Part 2)**

Richard Mendelson, U.S. Wine Law In Perspective, *Wine Law in America: Law and Policy* (Aspen, 2011).

James Seff, Trade Practices and Tied Houses, *Wine in America: Law and Policy*.

FAA Act, 27 USC §§ 203-207.

**9/21/10 Fall Break - no class**

**9/28/10 Twenty-First Amendment Jurisprudence – The Commerce Clause**

Required Reading

Margot Mendelson, 21<sup>st</sup> Amendment Jurisprudence, *Wine Law in America: Law and Policy*.

Brandeis Decisions: *State Board of Equalization v. Young's Market Co.*, 299 U.S. 59 (1936); *Indianapolis Brewing Co. v. Liquor Control Comm'n*, 305 U.S. 391 (1939).

Retreat from Brandeis Decisions: *Hostetter v. Idelwild Bon Voyage Liquor Corp.*, 377 U.S. 324 (1964); *Bacchus Imports v. Dias*, 468 U.S. 263 (1984).

Richard Mendelson, *From Demon to Darling: A Legal History of Wine in America* 172-186.

**10/5/10**      **Twenty-First Amendment Jurisprudence – Assault on the Three-Tier System and the First Amendment; guest lecturer, Margot Mendelson**

Required Reading

*Granholm v. Heald*, 125 S.Ct. 1885 (2005).

*Costco Wholesale Corp. v. Maleng*, 514 F.3d 915 (2008).

Recommended Reading

Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury, Industry Circular No. 96-3, *Direct Shipment Sales of Alcoholic Beverages* (Feb. 11, 1996), at [http://www.ttb.gov/industry\\_circulars/archives/1996/96-03.html](http://www.ttb.gov/industry_circulars/archives/1996/96-03.html)

Twenty-First Amendment Enforcement Act, 27 U.S.C. §122a, et seq. (2004).

H.R. 5034 (proposed), 111<sup>th</sup> Congress (2009-2010), at <http://thomas.loc.gov/cgi-bin/query/z?c111:H.R.5034>:

**10/12/10**      **Wine Labeling and Advertising; guest lecturer, Wendell Lee**

Required Reading

Wendell Lee, Wine Labeling and Advertising, *Wine in America: Law and Policy*.

27 CFR Parts 4 and 13, follow the link to Code of Federal Regulations Title 27 at <http://www.ttb.gov/other/regulations.shtml>.

Cal. Admin. Code, tit. 17, §17001 – 17075.

Recommended Reading

Oregon Administrative Rules §§ 845-010-0280 to -0930.

Wine Institute, *Code of Advertising Standards*, at <http://www.wineinstitute.org/initiatives/issuesandpolicy/adcode>.

Center for Science in the Public Interest, *The Booze Merchants: The Inebriating of America* 1-23 (1983).

**10/19/10 Winery Business Models – bricks and mortar wineries, custom crush, alternating proprietorships, grape purchase agreements and vineyard leases; guest lecturer, Jim Terry**

Required Reading

James Terry, *The Business of Wine, Wine in America: Law and Policy*.

**10/26/10 Appellations of Origin; Winetasting**

Required Reading

Richard Mendelson, *From Demon to Darling: A Legal History of Wine in America* 137-158.

Richard Mendelson, *Appellations of Origin for Wine in the U.S.: Past, Present and Future in Wine Law in America: Law and Policy*.

Recommended Reading

TTB Rulemaking Notice No. 78 (Proposed Revision of the American Viticultural Area Regulations), 72 Fed. Reg. 65261-75 (Nov. 20, 2007).

**11/2/10 Appellations of Origin and Trademarks; guest lecturer, Scott Gerien**

Required Reading

Scott Gerien, *Selecting a Wine Brand [tentative title], Wine in America: Law and Policy*.

*Bronco Wine Co. v. Jerry Jolly & Napa Valley Vintners*, 33 Cal.4<sup>th</sup> 943 (2004).

*Bronco Wine Co. v. Jerry Jolly & Napa Valley Vintners*, WL 1244920 (May 26, 2005).

Recommended Reading

Michael Maher, On Vino Veritas? Clarifying the Use of Geographical References on American Wine Labels, 89 Calif. L. Rev. 1881 (2001).

**11/9/10 Land Use; Wine Frauds with guest lecturers Bill Casey and Andrew Wanger**

Required Reading

Richard Mendelson and Lynne Carmichael, Land Use: Rural Wineries and Urban Bars, *Wine in America: Law and Policy*.

Benjamin Wallace, *The Billionaire's Vinegar* 156-164, 199-212 (2008).

Recommended Reading

California Business and Professions Code §§ 23790, 23790.5, 23815-23824, 24200, 25601, 25602, 25631-25667.

California Penal Code §§ 172-172.95, 382.

**11/16/10 Environmental Issues; guest lecturer, Tom Lippe**

Required Reading

*Borden Ranch Partnership v. U.S. Army Corps of Engineers*, 261 F.3d 810 (9<sup>th</sup> Cir. 2001), aff'd 537 U.S. 99 (2002); *Rapanos v. United States*, 547 U.S. 715 (2006); *N. Cal. River Watch v. City of Healdsburg*, 457 F.3d 1023, 1028 (9<sup>th</sup> Cir. Cal. 2006); *U.S. v. Moses*, 496 F.3d 984 (9<sup>th</sup> Cir. Idaho 2007).

Recommended Reading

Janet Broome, Lisa Scott and Bonnie Hoffman, *Growers' Guide to Environmental Regulations and Vineyard Development* (2000) pp. 1-30, 48-50.

**11/23/10 Wine and Public Health**

Richard Mendelson, Public Health and Social Responsibility, *Wine in America: Law and Policy*.

Richard Mendelson, *From Demon to Darling: A Legal History of Wine in America* 158-172.

Recommended Reading

“Strategies to reduce the harmful use of alcohol,” World Health Organization, Report A61/13 (March 20, 2008), at [http://apps.who.int/gb/ebwha/pdf\\_files/A61/A61\\_13-en.pdf](http://apps.who.int/gb/ebwha/pdf_files/A61/A61_13-en.pdf).

Health Claims and Other Health-Related Statements in the Labeling and Advertising of Alcoholic Beverages,” TTB Final Rule, 68 Fed. Reg. 10076-10106 (March 3, 2003).

**11/30/10**      **International Trade in Wine**

Required Reading

Jacques Audier, International Trade: Institutions and Accords, *Wine in America: Law and Policy*.

Richard Mendelson and Kate Gehring, *Regulation of Oenological Practices and the WTO Agreement on Technical Barriers to Trade* (2004).

**TBD**            **Review Class**