

## WINE LAW - FALL, 2013

### 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, 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

#### **Class #1            Introduction; Pre-Prohibition (1790-1919)** (Aug. 27)

##### Required Reading

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

Richard Mendelson, Wine Law in the U.S.: An Overview (chapter 1), in *Wine in America: Law and Policy*.

#### **Class #2            Historical Approaches to Alcohol Control; Wine Industry Economics** (Sept. 3)

##### 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).

**Class #3**  
(Sept. 10)      **Prohibition and Repeal (1920-1933)**

Required Reading

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

Recommended Reading

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

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

**Class #4**  
(Sept. 17)      **Concurrent Regulation: State Liquor Control (Part 1)**

Required Reading

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

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

Recommended Reading

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).

**Class #5**  
(Sept. 24)      **Concurrent Regulation: Federal Liquor Control, Trade Practices and Tied Houses (Part 2), guest speaker Jim Seff**

Jim Seff, Trade Practices (chapter 2), in *Wine in America: Law and Policy*.

Federal Alcohol Administration Act, 27 USC §§ 203-207.

**Class #6**  
(Oct. 1)      **Wine Labeling and Advertising, guest speaker Wendell Lee**

Required Reading

Wendell Lee, Labeling and Advertising (chapter 3), in *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).

**Class #7**  
(Oct. 8)

### **Twenty-First Amendment Jurisprudence (Part 1)**

#### Required Reading

Margot Mendelson, The Commerce Clause and the 21<sup>st</sup> Amendment (chapter 5), in *Wine Law in America: Law and Policy*.

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

#### Recommended Reading

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. Idlewild Bon Voyage Liquor Corp.*, 377 U.S. 324 (1964); *Bacchus Imports v. Dias*, 468 U.S. 263 (1984).

**Class #8**  
(Oct. 15)

### **Twenty-First Amendment Jurisprudence (Part 2)**

#### Required Reading

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

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

*44 Liquormart v. Rhode Island*, 517 U.S. 484 (1996).

**Class #9**  
(Oct. 22)

**Winery Business Models – bricks and mortar wineries, custom crush, alternating proprietorships, grape purchase agreements and vineyard leases**

Required Reading

James Terry, Business Models for Making Wine and Growing Grapes (chapter 4), in *Wine in America: Law and Policy*.

**Class #10**  
(Oct. 29)

**Appellations of Origin; Winetasting**

Required Reading

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

Scott Gerien and Richard Mendelson, Wine Brands and Appellations of Origin (chapter 6), in *Wine Law in America: Law and Policy*.

Recommended Reading

TTB Final Rule – Revision of American Viticultural Area Regulations, 76 Fed. Reg. 3489-3502 (Jan. 20, 2011).

**Class #11**  
(Nov. 5)

**Appellations of Origin and Trademarks**

Required Reading

*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).

**Class #12**  
(Nov. 12)

**Land Use; Wine Frauds**, guest lecturer, Bill Casey and Andrew Wanger

Required Reading

Richard Mendelson and Lynne Carmichael, Rural Wineries and Urban Bars (chapter 7), in *Wine in America: Law and Policy*.

Bill Casey and Andrew Wanger, Litigating a Case of Counterfeit Wine (chapter 8), in *Wine in America: Law and Policy*.

Recommended Reading

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

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

California Penal Code §§ 172-172.95, 382.

**Class #13**  
(Nov. 19)

**Environmental Issues**, guest lecturer, Tom Lippe (tentative)

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* pp. 1-30, 48-50 (2000).

**Class #14**  
(Nov. 26)

**Wine and Public Health; U.S.-EU Trade in Wine**

Richard Mendelson, Public Health and Social Responsibility (chapter 9), in *Wine in America: Law and Policy*.

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

Jacques Audier, International Trade: Institutions and Accords (chapter 10), in *Wine in America: Law and Policy*, pages 429 – 438.

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).

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

**TBD**

**Review Class**