

WINE LAW

1 credit – May 2021 Intersession

May 10-14

SYLLABUS

Contact Information

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Materials

- 1) The Federal Alcohol Administration Act, 27 USC 201 et seq.
- 2) Code of Federal Regulations, 27 CFR et seq
- 3) Oregon Alcoholic Liquors Generally, ORS 471.001 et seq.
- 4) Caselaw and statutes as identified in the syllabus below and generally posted to the WISE site for the class.
- 5) Log in to the WISE for the class.

Course Description

Oregon has over 900 wineries and even more vineyards. The state enjoys international prestige for the quality of the soil and its effect on the taste of wine (“terroir”). In addition to being evocative and artistic, wine adds to Oregon’s economy, producing a billion in wages a year related to wine jobs and with five times the statewide economic impact. But wine is more than a charming avocation - alcohol is a highly-regulated commodity under international treaty, the United States Constitution, federal law, state statutes and assorted regulations. This class will present an overview of the laws that the alcohol industry faces on a daily basis. We will discuss the history of the role of alcohol in the early days of the United States until Prohibition; and then how the Repeal Amendment shifted the moral and economic perspective of winemakers. Although winemakers must face a variety of ancillary laws, such as land use, administrative law, and agricultural law, the fifth day of this intersession will focus on employment law. Finally, each class will have a guest speaker to illustrate the relevant topics each day.

Learning Outcomes

By the end of this class, students should understand and articulate the historical and Constitutional underpinnings of alcohol regulation in the United States; understand the “three-tier system” (also known as “tied house”) and how each tier interacts with each other; apply national and international appellation of origin rules to federal and state labeling requirements; be able to draft contracts related to wine law, including those for grape purchases, alternating proprietor relationships, custom crush agreements, and franchise agreements; and issue-spot employment issues in the wine industry, including independent contractors, volunteers, minors, agriculture workers, labor issues, and exempt and non-exempt employee classification. Most importantly, students will be able to find the statute or regulations that pertain to the issues their winery clients will face.

Preparation, Attendance, and Grading

The law school attendance policy applies. However, your presence in and preparation for class will also affect your eligibility (and whether you ultimately receive) a half-point grade increase (i.e., B to B+) for class participation or decrease (i.e., B- to C+) for the lack thereof. Given that there are only five classes, I expect you to be prepared for class and to participate.

1. Presence. You are eligible for a grade increase for participation (i.e., B+ to A-) only if you attend all five classes. Even then, such an increase is awarded only for exceptional participation.

You are “present” in my class if you are connected remotely by zoom with your camera on for the vast majority of the class (I won’t worry about occasional blank screens, if you have to manage things at home, that’s fine, but keep blank screens to a minimum (i.e., <5% of the total class time). If this is a problem for you for some reason, please contact me *before* class. If I call on you when you are remote and your video is off, I will come back to you at some point in the class and will mark you absent if you are again not there.

2. Preparation. Alcohol regulation is not intuitive and therefore I do not expect you to know all the answers, but do come prepared for class. If you are called upon and not prepared, your final grade may be reduced by a half grade (i.e., B to B-). You may have one “free pass” if you inform me, by note or email, prior to the beginning of the class that you are unprepared (no explanations necessary). If I get a note, I won’t expect your participation.

3. Assignments. Twenty percent of your grade will be based on four daily assignments. You should read the materials for the following day and prepare the assignment, which I will post on WISE at the end of each class day at 4 pm. Please do not coordinate answers with your classmates.

4. Participation. Being a lawyer is, to a large degree, about communicating well. Part of learning to do that is through participating in class. While you can sit quietly and speak only when spoken to, you will learn more and, I think, enjoy the class more if you make an effort to participate. Raise your hand on the zoom function. Speak up or use the chat to offer questions, ideas, comments, and responses to your classmates’ ideas, and you will be well on the way to not merely receiving a good grade, but to being a good attorney. **I will, and regularly do, give bump-ups for participation. Why leave that on the table?**

5. Grade. 80% of the final grade will be a contract drafting activity.

Feedback and Office Hours

Although I have taught English grammar and have been a Bearcat Moot Court coach, this is my first experience teaching law students in a classroom setting. I welcome feedback at any time (anonymous or otherwise) about the amount and nature of work in the class, about what topics you do and don’t understand, as well as about my own approach in trying to teach those topics. I will answer email (and I will often do so by providing you with an answer but cc’ing the entire class). I am available to talk via telephone between 10 am and 11 am during the week of class: 503-862-8583.

Schedule and Reading

Day One: Three-Tier System; Twenty-First Amendment

Guest speaker: Ross Maloof, Maloof Wines

Read: The Twenty-First Amendment

The Alcohol Federal Administration Act, 27 USC Sec 121 – 124, Sec 205

27 CFR 6.1 – 6.102

27 CFR 10.4 – 10.24

Lebamoff Enters v. Whitmer, 18-2199/2200 (Apr. 21, 2020).

Retail Digital Network v. Prieto, 861 F3d 839 (9th Cir. 2017).

Day Two: State Regulation of Alcohol Sales

Guest speaker: Tom Wark, Executive Director of the National Association of Wine Retailers

Read: *Granholm v. Heald*, 544 US 460 (2005).

Tenn. Wine and Spirits Retailers Ass'n v. Thomas, 139 SCt 2449 (2019).

Day Three: Contracts and Agreements

Guest speaker: Brianne Day, winemaker, Day Wines

Read: The Alcohol Federal Administration Act, 27 USC part 11

27 CFR 11.1 – 11.24

West Virginia Nonintoxicating Beer Act, WV 11-16-3

New Mexico Alcohol Beverages Franchise Act, NM Stat 60-8A-8

Day Four: Appellations of Origin; American Viticultural Areas; International Designations; Trademarks

Guest speaker: John Mansfield, JD, Mansfield Law

Read: 27 CFR 4.1 – 4.101

27 CFR 9.1 – 9.21

Day Five: Employment Laws in the Wine Industry

Guest speaker: Jenny Mosbacher, Deputy Chief of Staff, Fossil & Fawn

Read: 29 CFR 541 *ff*

29 CFR 780.103

ORS 653 *ff*

OAR 839-020-0004

Gafur v. Legacy Good Sam, 344 Or. 525 (2008).