

# University of Miami School of Law

## COURSE SYLLABUS

### Alcohol Beverage Law [Law249A] Fall, 2021 Professor Louis J. Terminello, J.D.

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### COURSE DESCRIPTION

Survey of beverage alcohol and governance of all 3 tiers of the beverage alcohol industry in conjunction with various state and federal alcoholic beverage statutory schemes, promulgated rules and decisional case law.

### COURSE OBJECTIVES

Introduce students to the basic federal, state and municipal regulatory schemes governing beverage alcohol businesses in Florida.

### LEARNING OUTCOMES

Gain a general understanding of the basic structure of the regulation of beverage alcohol on both state and federal levels; a specific understanding of Florida's Division of Alcoholic Beverages & Tobacco regulations, procedures, and licensing scheme; and, a specific understanding of state, county, and municipal regulations, taxation, licensure, and public hearing/zoning requirements with regards to alcoholic beverage retail vendors.

### COURSE PRE-REQUISITES / CO-REQUISITES

There are no course pre-requisites, but it will be helpful to have background knowledge of business entity structures.

### TEXTBOOK & OTHER REQUIRED MATERIAL

The text will be a collection of documents compiled by the professor, including published cases, articles, promulgated rules and statutes.

## COURSE PROCEDURES/METHODOLOGY

Each student will have an assigned case or statute from the reading list below to be presented in class on the assigned date. Please note that while not all cases or statutes will be specifically discussed in class, all students are responsible for all assigned reading and all reading material may be covered on the Final Exam.

The course will cover three (3) main areas: 1) Introduction to Alcoholic Beverages, Prohibition and Three Tier System; 2) Florida's Regulatory and Licensing Schemes and County and Municipal Regulation; and, 3) Judicial review of alcohol issues.

Note: The class will NOT meet on October 7, 2021. Syllabus will be adjusted accordingly after the course starts.

Note: Recommended Reading for course:

“LAST CALL: *The Rise and Fall of Prohibition*” by Daniel Okrent (2010)

### I. Introduction to Alcohol Beverage Law

- Temperance Movement
- Prohibition/Eighteenth Amendment & the Twenty First Amendment
- Introductory discussion of the three-tier alcohol regulatory system

### II. Introduction to Alcohol Beverage Law, continued...

- Wets v Drys*
- Liquor Authority Plans: Control v Licensing

### III. Florida Regulation: Licensing & Enforcement

- Florida Statutes Sections: 561.01, 561.02, 561.14, 561.15, 561.17, 561.18, 561.19, 561.20, 561.29
- Cursory Review: Florida Statute Chapters 561 and 562
- Florida Administrative Rules Section 61A-1.006-.020, 61A-2.002-.022, 61A-3.001-.055
- Florida District Court of Appeal *supreme triumvirate* – the Triple Crown: *La Galere v State*, 289 So.3d 553; *MB Doral v DBPR*, 295 So. 3d 850; *MB Doral v DBPR*, 298 So.3d 132 (FL 1DCA – 2020)

### IV. Florida Regulation: Licensing & Enforcement, continued...

### V. Local Zoning and Its Use to Restrict Alcohol-Related Activities

- Florida statutes: 562.45
- Miami-Dade County Ordinances: Alcoholic Beverages
- City of Miami Ordinances: Alcoholic Beverages
- Augusta-Richmond County v. Lee*, 277 Ga.483, 592 S.E.2d 71 (Ga. 2004)

### VI. Free Speech And Expression Challenges To Adult Regulations

- Oasis Goodtime Emporium I, Inc. v. City of Doraville*, 773 S.E.2d 728 (Ga. 2015)
- BBL, Inc. v. City of Angola*, 809 F.3d 317 (7<sup>th</sup> Cir. 2015)
- Foxy Ladyz Adult World, Inc. v. Village of Dix, Illinois*, 779 F.3d 706 (7<sup>th</sup> Cir. 2015)

## **VII. Tied House Evil/Three Tier System**

- Florida Statutes: 561.42
- Administrative Rules: 61A-1.010; Approved Advertising and Promotional Gifts Chart
- Florida Exceptions to Tied House
- Burger King Corp (BKC) v. Florida's Division of Alcoholic Beverages & Tobacco

## **VIII. Preemption and Local Control Issues**

- Iowa Grocery Industry Ass'n v. City of Des Moines, 712 N.W.2d 675 (Iowa 2006)
- Connecticut Fine Wine & Spirits, LLC v. Harris, 255 F. Supp. 3d 355 (D. Conn. 2017)
- Cruz v. Anheuser-Busch, LLC, 2015 WL 3561536 (C.D. Cal) 2015; Cruz v. Anheuser-Busch Companies, LLC, 682 Fed. Appx. 583 (9th Cir. 2017)
- Florida Statutes: 252.36

## **IX. Judicial Review – Alcohol - 1<sup>st</sup> Amendment:**

- Central Hudson Gas v. PSC, 100 S.Ct. 2343 (1980)
- 44 Liquormart, Inc. v. Rhode Island, 116 S.Ct. 1495 (1996)
- Retail Dig. Network, LLC v. Appelsmith, 810 F.3d 638 (9<sup>th</sup> Cir. 2016), *rev'd en banc*, No. 13-56069, 2017 WL 2562047 (9th Cir. 2017)
- Cinema Pub, LLC vs Petilos, 2017 WL 3836049 D. Utah (March 21, 2017)
- "Direct Or Indirect Interest": Cadena Comercial USA Corp. v. Texas Alcoholic Beverage Comm'n, 518 S.W.3d 318 (Tex. 2017)
- Mom and Pop Protectionism: Retail Services & Sys., Inc. v. S.C. Dep't of Rev, 419 S.C. 469 (2017)
- 4<sup>th</sup> Amendment: City of Los Angeles, CA v. Patel, 135 S.Ct.2443 (2015)

## **X. Florida's APA application/DOAH proceedings through Final Order**

- Café Iguana v. DABT
- Epicure Market v. DABT
- RJR/Party Latino v. DABT (RO Only)

## **XI. Florida's APA application/DOAH proceedings through Final Order, continued...**

## **XII. Direct Shipping; The Twenty First Amendment & Commerce Clause**

- Lebamoff Enter., Inc. v. Whitmer, 956F.3d 863 (6<sup>th</sup> Cir. 2020), cert denied, 141 S. Ct. 1049 (2021)
- Sarasota Wine Market v. Parson, 381 F.Supp.3d 1094 (E.D. MO. 2019)
- Granholm v. Heald, 544 U.S. 460, 125 S.Ct. 1885 (2005)
- Tennessee Wine and Spirits Retailers Association v. Thomas, 139 S. Ct. 2449 (2019)
- Stiff v. Alabama Alcoholic Beverage Control Bd., 933 So. 2d 348 (Ala. 2006)
- Costco Wholesale Corp. v. Hoen, 2006 WL 1075218 (W.D. Wash. 2006); 407 F. Supp. 2d 1234 (W.D. Wash. 2005)

## **XIII. Continue Direct Shipping discussion and other Commerce Clause challenges to state regulation.**

## **XIV. REVIEW and Final Exam prep.**

## CLASS or PROFESSOR POLICIES

**Participation/Attendance Standards** - Attendance is mandatory. Missing two classes will result in the lowering of a student's grade by one entire letter grade; three or more missed classes will result in the student being administratively withdrawn from the class. Failure to be prepared for a class may result in being marked absent. Students entering the class late must do so with no class disruption.

**Assignments Policies** – Reading is mandatory; as an interactive Socratic discussion is envisioned, the course cannot function if students have not read the material.

## GRADING STANDARDS/PERFORMANCE MEASURES

There will be one final exam, cumulative in nature to include essay/short answer questions.

The final grade is also subject to adjustment up or down, in my sole discretion, based upon class participation, i.e., upward for high quality contributions to class discussions, and downward in the event of failure to participate usefully in class discussions.

## CLASS POLICIES

### **Cell Phones, Recording Devices, Laptops, etc.**

Cell phones, beepers and similar devices are prohibited during class. Recording of class lectures using any device of any nature whatsoever, is strictly prohibited. Laptops and pads are permitted.

### **Misconduct**

Misconduct includes: **Cheating** – The unauthorized use of books, notes, aids, electronic sources; or assistance from another person with respect to examinations, course assignments, field service reports, class recitations; or the unauthorized possession of examination papers or course materials, whether originally authorized or not. **Plagiarism** – The use and appropriation of another's work without any indication of the source and the representation of such work as the student's own. Any student who fails to give credit for ideas, expressions or materials taken from another source, including internet sources, is responsible for plagiarism.

*Violation of this policy will result in a failing grade for the course.*

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If you have a disability, or suspect that you may have a disability, the Law School encourages you to contact The Office of Disability Services for information about available opportunities, resources, and services. You may also visit the Office of Disability Services website at [www.law.miami.edu/disability-services](http://www.law.miami.edu/disability-services).