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The Emerging Landscape of Craft Beer Law: A Symposium Introduction

Daniel J. Croxall*

Just four years ago, a law school class and a law review symposium issue centered around craft beer law would have been unimaginable. But here we are. Despite a seeming overly-niche name, it turns out that craft beer law is a challenging and useful tool to analyze a wide swath of regulatory conduct that impacts constitutional law, intellectual property, contracts, unfair competition, employment law, administrative law, taxes, and many legal doctrines. In that sense, think of craft beer law as a lens through which to analyze and test various legal theories and practices. Craft beer law is thus an inclusive area of study where most legal disciplines impact the manufacture, distribution, and sale of our beloved beverage. While this introduction could go on for pages about craft beer law's unique qualities, three particular areas stand out in the legal landscape of today: the size and scope of the craft beer industry, the emergence of craft beer law as an area of serious academic study, and social movements that permeate the landscape.

Many readers and legal academics might initially dismiss craft beer law as a small, unimportant area in which to explore legal ideas. That approach misreads the economic, legal, and cultural significance of craft beer. The craft beer industry is huge. During the pandemic, craft beer managed \$22.2 billion in sales, and that was down 22% from the year prior due to restaurant and bar closures.¹ In addition, 8,764 independent craft breweries operated in the U.S. during 2020²; it remains to be seen how many closures the pandemic will cause. The most recent numbers available show that craft beer contributed \$82.9 billion to the U.S. Economy in 2019 and more than 580,000 jobs.³ These numbers are impressive for almost any industry, particularly in light of the often-times antiquated and unhelpful laws that linger as post-Prohibition relics.⁴ Given that the Twenty-First Amendment left alcohol regulation to the states, the result has been a jurisdictional morass of laws designed to curb, not enhance the alcohol industry.⁵

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1. *National Beer Sales & Production Data*, BREWERS ASS'N, <https://www.brewersassociation.org/statistics-and-data/national-beer-stats/> (last visited May 30, 2021) (on file with the *University of the Pacific Law Review*).

2. *Id.*

3. *Id.*

4. See Daniel J. Croxall, *Cheers to Central Hudson: How Traditional Intermediate Scrutiny Helps Keep Independent Craft Beer Viable*, 113 NW. U. L. REV. ONLINE 5-7 (2018), https://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=1262&context=nulr_online (on file with the *University of the Pacific Law Review*).

5. See Daniel J. Croxall, *Helping Craft Beer Maintain and Grow Market Shares With Private*

Most state alcoholic beverage laws and regulations were passed around Prohibition's demise and lightly amended over time.⁶ Thus the regulatory scheme that craft breweries must operate in was not designed for a modern, mature market such as the one we have today. Yet, craft beer has been resilient, grown exponentially in a harsh regulatory environment, and managed to encourage positive change in the industry for craft breweries going forward.

As the articles in this issue show, craft beer law is a fruitful lens through which legal academics and practitioners can employ their expertise. For example, Professor Zahr Said and attorney Rebecca Crandall explore trademark law and comment on the future trademarks in the craft beer market.⁷ Professors Erin Archerd and Drew Thornley explore craft beer regulation and distribution contracts in the craft beer industry.⁸ And attorney Lucas Noble considers the government's response to the COVID-19 pandemic and its impact on craft beer.⁹ These articles show that craft beer presents a nuanced and complex landscape worthy of serious intellectual exploration. A simple search of law reviews shows an increasing number of articles centered around craft beer with many more of the horizon.

The University of the Pacific Law Review hopes that you engage with and enjoy the articles contained in this volume. Consider how your practice area impacts the craft beer industry and apply your expertise to emerging area. One of the cornerstones of craft beer law is the David versus Goliath battle that happens every day between large, multi-national brewing conglomerates ("Big Beer") and small, independently owned craft breweries. As craft beer continues to expand its market share, Big Beer and large wholesalers will continue to employ legal and illegal tactics to regain that market share.¹⁰ If you root for the underdog, craft beer law is the area for you.

Enforcement of Tied-House and False Advertising Laws, 55 GONZ. L. REV. 171–73 (2019).

6. See Thomas A. Gerhart, *Undermining the Law: How Uninformed Legislating Helps Big Beer Erode California's Tied-House Laws*, 51 U. PAC. L. REV. 30–32 (2019).

7. Rebecca E. Crandall, *A Confusing Sixer of Beer: Tales of Six Frothy Trademark Disputes*, 52 U. PAC. L. REV. 783 (2021); Zahr K. Said, *Attitudes Towards IP Present Among Seattle Craft Breweries*, 52 U. PAC. L. REV. 763 (2021).

8. Erin R. Archerd, *Two Hearts and Brewer/Distributor Conflicts*, 52 U. PAC. L. REV. 803 (2021); Drew Thornley, *Opening the Taps of Freedom to Distribute Alcohol: An Overview of State Alcohol Regulation in the United States and Recommendations for Reform*, 52 U. PAC. L. REV. 821 (2021).

9. Lucas B. Noble, *Free Beer: How Current Relief Efforts and Proposed Legislation May Be Signs of Loosening Restrictions in the Craft Beer Industry*, 52 U. PAC. L. REV. 863 (2021).

10. See Croxall, *supra* note 6, at 169–71.