Overview

1. What is Food Law?
2. Sources of Food Law
3. Distinction Between Food Law Other Practice Areas
4. Food Law as a Focused General Practice
5. Examples, Anecdotes, Weird Stuff

What is Food Law?

• Special laws and regulations written just for farmers, food producers.
• Exemptions to broadly applicable law
• Special burdens
• Unique commercial agreements
Sources: Special Benefits
• Farm Bill
• Packers and Stockyards Act
• Perishable Agricultural Commodities Act
  – Video is better!
• National Organic Program

Sources: Exemptions
• Capper-Volstead Act
• Chapter 12 Bankruptcy
• Clean Water Act
• Right to Farm, nuisance exemptions
  – Drunken “Agritourism”
• Labor Law
  – Overtime, confusion about overtime
  – Child Labor

Sources: Special Burdens
• Food Safety Modernization Act
• Marketing and Labeling
  – Food, Drug, Cosmetic Act
  – Federal Trade Commission
  – USDA Meat Labeling (prior restraints on speech)
  – Alcohol and Tobacco Tax and Trade Bureau
    • “Beer Bottle Dictator”
• Strict Liability
  – Primary consideration in most commercial transactions
Sources:
Unique Commercial Agreements

• Co-packer Agreements
• CSA Agreements
• Livestock Production Contracts
  – Farmers Who Scale
  – Meat Hubs
• Insurance
  – Recall, Residential vs. Commercial
• Lease Agreements: soil fertility, chicken litter

Distinction Between Food Law and Other Practice Areas

• Multiplicity of Sources
  – Criminal Law
  – Family Law
  – Bankruptcy Law
• Relatively weak “brand”
• Extensiveness of law creates overlapping legal priorities
  – Trademark, Labeling
• New Business Models in Food Industry, blur old distinctions
• Limited professional resources

Food Law as Focused General Practice

• Effective counsel requires
  – Familiarity with these and other sources of food law
  – Constant communication with clients, who are often unable to spot issues themselves.
    • Standing Guidance to clients: cc us on anything that would trigger the statute of frauds.
Labeling & Marketing Regulation

You are not free to say anything you want about your products.

- “High Fiber”, “low sodium”
- Hearts
  - Trademark Implication

Label Review

- FDA Labeling Regulations
  - Geometry, information size and placement
  - Claims
  - Food Allergen Labeling
  - Consumer Protection Act
- FDA Labeling Guide
  - Impacts graphic design of labeling and marketing materials
  - Contracts with designers should specify FDA compliance before aesthetics

Standard of Identity Challenges

New Foods do not fit old definitions

- Unilever vs. Hampton Creek, eggless mayonnaise violates 21 C.F.R. 169.115
- Field Roast, simulated meat product. Sales contingent on experimentation with live rats
Protectionism
• Almond Milk vs. Dairy Industry
  – Long history of antagonism
    • National Milk Producers Federation, letter to FDA
    • New Marketing Campaign
• Dairy Regulators vs. Almond Milk
  – Require pasteurization

Livestock
• Meat Hubs
  – Quality control, timing of delivery, price forecasting
• Livestock Contracting
  – Chicken, Hogs
  – Model can be pushed down to producers of non-commodity livestock, creating efficiencies
• The Recall Problem
  – Small farms and ranches assuming disproportionate risk
  – Requires recall insurance, indemnification

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