Introduction

“A person knows it’s manufactured when he drops it on his foot.”

—Richard Freeman

One summer between college semesters, I worked on an assembly line in a manufacturing plant. The factory made boxes and chests, but the line was sufficiently flexible that it could also accommodate other products if needed. During that summer, I worked on assembling more than ten different products.

The work was humdrum, repetitive, and boring. Sometimes, depending on what came down the line, it involved hard, almost back-breaking physical labor. At lunchtime, most of the male workers went to a nearby watering hole and drank their lunch in order to numb themselves sufficiently to make it through the rest of the shift. I felt blessed that I would not have to earn my living doing this kind of work for the rest of my working life.

Today’s factory bears no resemblance to what I just described. The transformation has been remarkable, from repetitive-motion, assembly-line work to “advanced manufacturing,” where robots and computers, and the people who run them, reign.

Until very recently, U.S. manufacturing had been in decline for more than a generation. The great manufacturing juggernaut that defined the country from around the middle of the 19th century until the last quarter of the 20th century became a dim memory.

But that is changing. Manufacturing is on the rebound, and getting stronger. The Institute for Supply Management’s January 2015 report says that U.S. manufacturing expanded for the 20th consecutive month. The Wall Street Journal says that U.S. manufacturers are outpacing their global rivals due to increased domestic demand, an export surge, huge problems in China, cheap energy, and headwinds facing foreign competitors. This book is about this revival and the business and legal career opportunities it is generating.
To paraphrase Mark Twain, reports of the death of U.S. manufacturing are greatly exaggerated. Suddenly, manufacturing is coming back thanks to a serendipitous confluence of events and phenomena that makes the U.S. look like a good bet for both domestic and foreign manufacturers. This book describes these favorable conditions in order to provide a platform for attorneys and law students who might be interested in working for or representing manufacturers.

This topic is important for two reasons:

- First, U.S. economic growth and widely shared prosperity are directly proportional to whether American manufacturing survives and thrives. This is not opinion: it is fact, based upon our history as a nation. Manufacturing has always been our dominant economic sector, accounting for more of our exports, technology innovation, and good-paying jobs that sustain the middle class and allow it to purchase the goods and services that enhance both the quality of individual lives and economic growth, as well as our national security.

- Second, manufacturing success lifts all boats. The more manufacturers, the more potential clients for legal services and talents. The more successful your manufacturing clients are, the more successful you are likely to become.

The title of this book—Manufacturing Business and the Law—is significant. It is not limited only to the law of manufacturing. It also encompasses the business of manufacturing, and for a very significant reason: the attorneys who do best at advising and counseling their manufacturing firm clients, and whose clients and practices prosper as a result, are generally the ones who take the time and make the effort to learn as much as they can about their clients’ businesses from the ground up. Working in-house for, or representing, manufacturing firms is, to a greater extent than any other law practice area, a “hands-on” undertaking.

In a booming industry sector such as viticulture and enology (winemaking), which this book examines in some detail, “from the ground up” is a literal description. Wine lawyers need to know their clients’ businesses, from decisions about what vines to plant and when through all of the many steps involved in nurturing sensitive plants to maturity and harvest, surviving blights and insects and climate, and
turning the grapes into wine, as well as bottling, labeling, marketing, and advertising, all the way through to shipping and distribution. Attorneys who invest the “sweat equity” to climb this learning curve will be well rewarded for their efforts and will be able to take pride in participating in something approaching the magical (as well as benefiting from a steady supply of good wine).

Manufacturing lawyers have to know as much as they can absorb about their clients’ operations in order to provide effective representation. While this may appear daunting, it has a considerable upside: it makes this practice fun and dynamic, not terms normally associated with most law practice areas.

The practice areas relevant to U.S. manufacturing, and the legal issues that impact this core economic sector, are many and diverse. Some are general, applying across all industries, while others are industry-specific. The laws that apply to manufacturing are as diverse as manufacturing itself. This contributes to a challenging but also richly rewarding practice in all meanings of the term.

Manufacturing practice has gone global, whether you represent General Motors or a start-up down the street. Every 21st century manufacturing firm has to be cognizant of relevant domestic law, regulation, and policy emanating from each level of government—federal, state, local, special district, and regional compact—and also those of foreign countries whose manufacturers compete with your employer/client or to which your employer/client exports its creations. In addition, the growing number of international organizations that impact on U.S. manufacturers means that you also have to be up-to-date on their pronouncements and issuances.

Potential employers and clients include America’s 330,000+ manufacturing enterprises, and also its 2,500+ economic development agencies and industrial development organizations, site selection consulting firms, almost 8,000 chambers of commerce and boards of trade, 3,250 utilities, 1,000 colleges and universities that commercialize technology, research institutions, industry trade associations, government agencies at all levels, and numerous other organizations. Attorneys who practice manufacturing law can work directly for law firms and consulting firms (including law firm subsidiaries that provide specialized manufacturing consulting services). They also work for a host of international organizations and multilateral development agencies.
Manufacturing Business and the Law is intended to be both a road map and a “tool kit” for legal practitioners and law students interested in participating in an American industrial renaissance. At the same time, it is also an advocacy brief for promoting both sound policies that will lock in and continue the current U.S. manufacturing revival and its many opportunities, rewards, and benefits for attorneys, which include legal job opportunities, financial success, job and career security, in-depth involvement in both law and business, and the satisfaction of contributing to tangible, measurable, and productive results.

The book is divided into 13 parts:

Part 1—How We Got There examines the origins of U.S. manufacturing. It describes how the law facilitated industrial development, economic growth, and the emerging U.S. preeminence across multiple industrial sectors. The lessons of this history are important to today’s manufacturing revival strategies.

Part 2—The Second Industrial Revolution is an overview of the manufacturing surge in the 19th century, its contribution to American prosperity—and its downsides.

Part 3—Down . . . Up . . . Down describes the first flattening of the upward curve of manufacturing, its comeback during World War II, the succeeding “Great Prosperity,” and the 30-plus year U.S. industrial decline that followed.

Part 4—The Potential Turnaround explores the confluence of developments that, if managed wisely, present us with the opportunity to return the U.S. to its historical position as the global leader in manufacturing while retaining its standing as the world’s strongest economy.

Part 5—Defining “Manufacturing Law” is an overview of manufacturing practice, looking at both generic and selected specialty practices. It also identifies factors that distinguish manufacturing law from other practices.

Part 6—Manufacturing Laws and Regulations: The Basics looks at the statutory and regulatory structure underlying manufacturing law. It enumerates the laws that cut across all manufacturing sectors as well as those that are industry-specific.
Part 7—Key Regulators and Administrators and Other Employers examines the respective roles of all levels of government as well as relevant international organizations that administer the laws, regulations, executive actions, treaties, and international agreements that impact manufacturing. In addition, this part pinpoints the organizations among them that hire attorneys to advise and assist with manufacturing regulation and administration, and discusses other employers of manufacturing practitioners.

Part 8—The Business Side discusses the necessity for attorneys to understand their clients’ businesses beyond a superficial level, and drills down into the multiple component parts of developing that in-depth understanding.


Part 10—Identifying Legal and Business Opportunities offers a detailed, due diligence “template” designed to assist aspiring manufacturing attorneys in pinpointing where the opportunities are located and how to analyze them.

Part 11—Potential Vulnerabilities identifies some of the concerns that could slow the manufacturing rebirth and the pitfalls of neglecting to perform a thorough due diligence investigation before committing yourself to a particular industry, employer, or geographic location.

Part 12—Law-Related Opportunities expands attorney horizons by pointing out and describing legal job and career opportunities in manufacturing outside of the legal mainstream, but where a law degree is valued.

Part 13—Positioning Yourself to Practice enumerates the essential skill sets required to perform as a capable manufacturing attorney, and concludes with advice on how to enhance and promote your credentials.

The Appendixes contain supplemental information designed to advance a manufacturing law career.

Note: The views and opinions expressed in this book are entirely my own and do not necessarily reflect those of the American Bar Association.