

Preface

Food law is a hot topic in today's legal practice. For one thing, food is a highly regulated product with fragmented oversight on the federal and state levels. Producers and retailers face an array of compliance obligations, especially as they operate in an increasingly interconnected, globalized world. Litigation risks are on the rise for food companies, with a food litigation practice area emerging in both the plaintiff and defense bars. Meanwhile, producers are adapting to developments in technology, such as blockchain, and so, too, are regulators, who have announced a "New Era of Smarter Food Safety."¹ Indeed, the Food Safety Modernization Act (FSMA) ushered in a sea change as to the federal regulation of the food system. It is hard to believe it has only been a little more than a decade since FSMA's effective date, with its sweeping changes and new requirements. Meanwhile, consumers are facing new realities, not least of which are due to the ongoing coronavirus pandemic, which has drastically altered consumer buying patterns. The economic consequences of the pandemic have left many families with gaping holes in their food budgets due to furloughs or layoffs, in addition to the terrible human costs associated with the illness.

The study of food, from both legal and policy perspectives, has become a "flourishing" field with leading scholars proclaiming it is now a "a permanent fixture within the American legal academy."² Within law schools, food law and policy is now "firmly rooted as a growing and thriving legal field" and these "courses—and the faculty who teach them—are now the norm at many of America's top schools, with more than a dozen schools offering two or more such courses each year."³

Even while the number of law school courses on food law proliferates to meet growing student demand, substantial disagreement remains over just what constitutes *food law*. Can students tell firms they want

1. U.S. Food and Drug Administration, *New Era of Smarter Food Safety*, <https://www.fda.gov/food/new-era-smarter-food-safety> (last updated Apr. 29, 2021).

2. Emily M. Broad Leib & Baylen J. Linnekin, *Food Law & Policy: An Essential Part of Today's Legal Academy*, 13 J. FOOD L. & POL'Y 228, 230 (2017).

3. *Id.* at 260.

to go into “food law” as a defined field of practice? Even for practicing lawyers, wrapping their arms around the contours of this nebulous field can be difficult at first.

The goal of this practical guide to food law is to offer attorneys of all stripes an introduction to how different areas of law and legal practice intersect with food. Ranging from intellectual property to food policy and food regulation, this guide aims to whet the appetite for individuals looking to engage with the unique needs of clients in the food and beverage industry.

Food law, by its very nature, is both interdisciplinary and multidisciplinary.⁴ Indeed, the vastness of the subject of “food law” leads some to question whether this area is merely a subfield of other areas of law, whether sounding in torts, consumer protection, administrative law, animal welfare, or some combination of any number of other legal domains.⁵ However, the challenges facing food and beverage clients in today’s modern food system require creative thinking, pragmatic approaches, and a focus on how food is regulated; that is to say, to best serve food and beverage clients, well-prepared lawyers should aim to meet these clients’ particular needs.⁶ Often these clients are seeking legal counsel who understand their business and are willing to dig into the details by, among other things, communicating risk mitigation strategies, consulting with experts in medical and nutrition science, and appreciating how their product is differentiated from competitors.

Food law is truly a unique field. It has the advantage of being eminently approachable for one simple reason: Everyone eats. As consumers ourselves, we each bring to the table our own perspectives on food. We each have made memories around the dinner table. Lawyers are central to assisting companies meeting their compliance obligations in getting food safely from farm to table and counseling businesses in helping consumers make informed choices about their food. In addition, attorneys assist individuals struggling with food insecurity to receive and maintain public benefits, especially in administrative appeals, to ensure that families obtain benefit levels to which they are entitled.

Put simply, food law is an approachable topic. In pieces, it may be easy to digest, but all at once, it appears hard to swallow. For readers new

4. Baylen J. Linnekin & Emily M. Broad Leib, *Food Law & Policy: The Fertile Field's Origins and First Decade*, 2014 WIS. L. REV. 557, 586–87 (2014).

5. MICHAEL T. ROBERTS, FOOD LAW IN THE UNITED STATES 10 (2016).

6. *See id.*

to the field of food law in its many forms, this practical guide aims to provide an overview of what lawyers actually do to assist food and beverage clients across various domains of legal practice. It is written by practicing lawyers *for* practicing lawyers, with a focus on information that is both practical and actionable.

Reader, this guide is intended to be your entrée into this engaging field of practice. Bon appétit!