

CANNABIS LAW

A Framework for Practical Learning

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CANNABIS LAW AND PRACTICE

June McLaughlin

Cannabis Law and Practice is a textbook designed for law school, undergraduate students, and those interested in cannabis regulation. It covers legal topics, including but not limited to, cannabis in the workplace; on the roadways; drug specialty courts, constitutional issues; the business of cannabis; and current legislation and regulations. It also addresses trending topics like the status of cannabis federal legislation, psychedelics, and hemp derivatives. It provides practical resources and references to assist the practitioner and student.



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Regulatory History of Cannabis	Cannabis Driving & Youth
Constitutional Concerns	Cannabis in the Workplace
Cannabis Neuroscience, Toxicology	The Business of Cannabis, Banking and Tax
Cannabis Regulation & Licensing	International Cannabis Regulation
Cannabis Crimes	Psychedelics and Hemp Derivatives
Drug Courts and Testing	

SCAN THE CODE
to contact editor Brady Curtis
to be notified when complete!



Kendall Hunt
publishing company

ADMINISTRATIVE LAW
CONSTITUTIONAL
TAX
BUSINESS FORMATION
CONTRACTS
LEGAL RESEARCH

WHY INCLUDE CANNABIS ASSIGNMENTS?

TRANSFERRABLE KNOWLEDGE AND SKILLS

INTERESTING HYPOTHETICALS

FUNDAMENTAL RULE OF LAW CONCEPTS

INTERESTING CASELAW

UPPER LEVEL
MARIJUANA JUSTICE

Cannabis Law & Policy

1-2nd year elective

Don't do drugs. Drugs are bad.



LEARNING OBJECTIVES FOR THIS SESSION

- Understand Cannabis as a regulated industry
- Provide assignments and fresh ideas for law classes

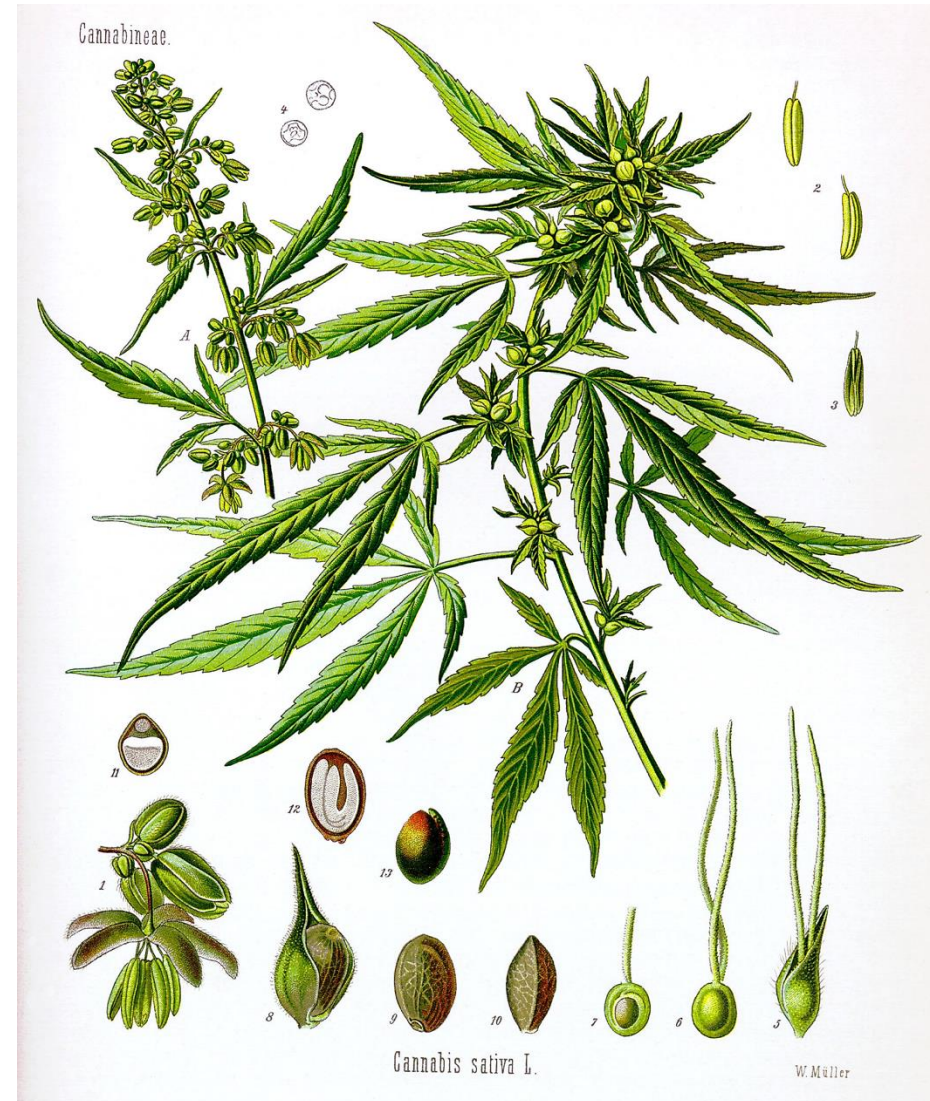


*PLEASE ANSWER IN
THE CHAT:*

ON A SCALE OF 1-5

HOW FAMILIAR ARE
YOU WITH THE
REGULATION OF
CANNABIS?

1 BEING UNFAMILIAR



Federal Prohibition: possible reschedule from 1 to 3

Little access to banking, bankruptcy, insurance,
deprived of normal business tax deduction

Schedules I-V

Schedule I: Drug or other substance with a high potential for abuse, no currently accepted medical use in treatment in the United States, and a lack of accepted safety protocols for use under medical supervision.

Examples: Diamorphine (heroin), marijuana

Schedule II: High potential for abuse; a currently accepted use in treatment in the United States, or currently accepted medical use with severe restrictions; abuse may lead to severe psychological or physical dependence.

Examples: Cocaine, morphine, pentobarbital

Schedule III: Potential for abuse less than Schedule I or II substances; currently accepted medical use in treatment in the United States; abuse may lead to moderate or low physical dependence or high psychological dependence.

Examples: Ketamine, buprenorphine, testosterone

Schedule IV: Low potential for abuse relative to Schedule III; currently accepted medical use in treatment in the United States; abuse may lead to limited physical or psychological dependence relative to Schedule III.

Examples: Diazepam, barbitol

Schedule V: Low potential for abuse relative to Schedule IV; currently accepted medical use in treatment in the United States; abuse may lead to limited physical or psychological dependence relative to Schedule IV.

Examples: Pregabalin, lacosamide

THE CONTROLLED SUBSTANCES ACT (CSA) 1970

5 SCHEDULES
MARIJUANA IS UNDER SCHEDULE I,
ALONGSIDE HEROIN AND LSD
“NO CURRENTLY ACCEPTED MEDICAL
USE...”

United States v. Oakland Cannabis buyer's Cooperative

2001 United States Supreme Court ruled 8-0 against medicinal marijuana under federal law. Despite the fact that 9 States allow medicinal use of marijuana, United States federal law prohibits medicinal use of marijuana.

- ▶ “The Controlled Substances Act, 84 Stat. 1242, 21 U. S. C. § 801 *et seq.*, prohibits the manufacture and distribution of various drugs, including marijuana. In this case, we must decide whether there is a medical necessity exception to these prohibitions. We hold that there is not.”

SHE TRADED HER BODY FOR DRUGS AND KICKS!

MARIJUANA GIRL

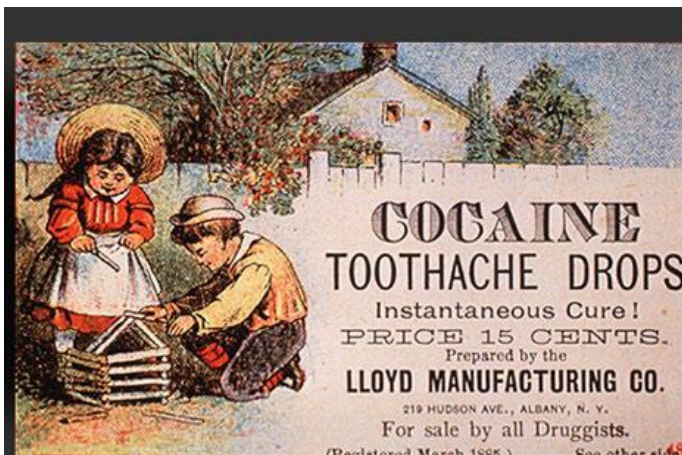
DRAMATIC
DYNAMITE
FOR
ADULTS
ONLY

NEVER was there so OUTSPOKEN
a movie as this... Telling the
PLAIN, UNCENSORED TRUTH
about teen-age ADDICTS -
and their desperate
search for THRILLS!



*MORE RISQUE THAN ANYTHING
YOU'VE EVER SEEN BEFORE*

LEGAL HISTORY OF CANNABIS REGULATION DRUG USE AND CHANGING ATTITUDES



Social Justice

- ▶ Black and white Americans have roughly the same rates of marijuana consumption, a [2020 ACLU analysis](#) found that Black Americans are roughly four times as likely to be arrested for marijuana offenses.
- ▶ Once arrested for a drug offense, Black Americans are 10 times as likely as whites to go to prison.
- ▶ [War on Drugs video](#)



**ASSIGNMENT : ETHICS
REPRESENTING A
CANNABIS CLIENT**



ABA MODEL RULES: SEEING THIS RULE ALONE COULD A LAWYER WORK ON A CANNABIS MATTER?

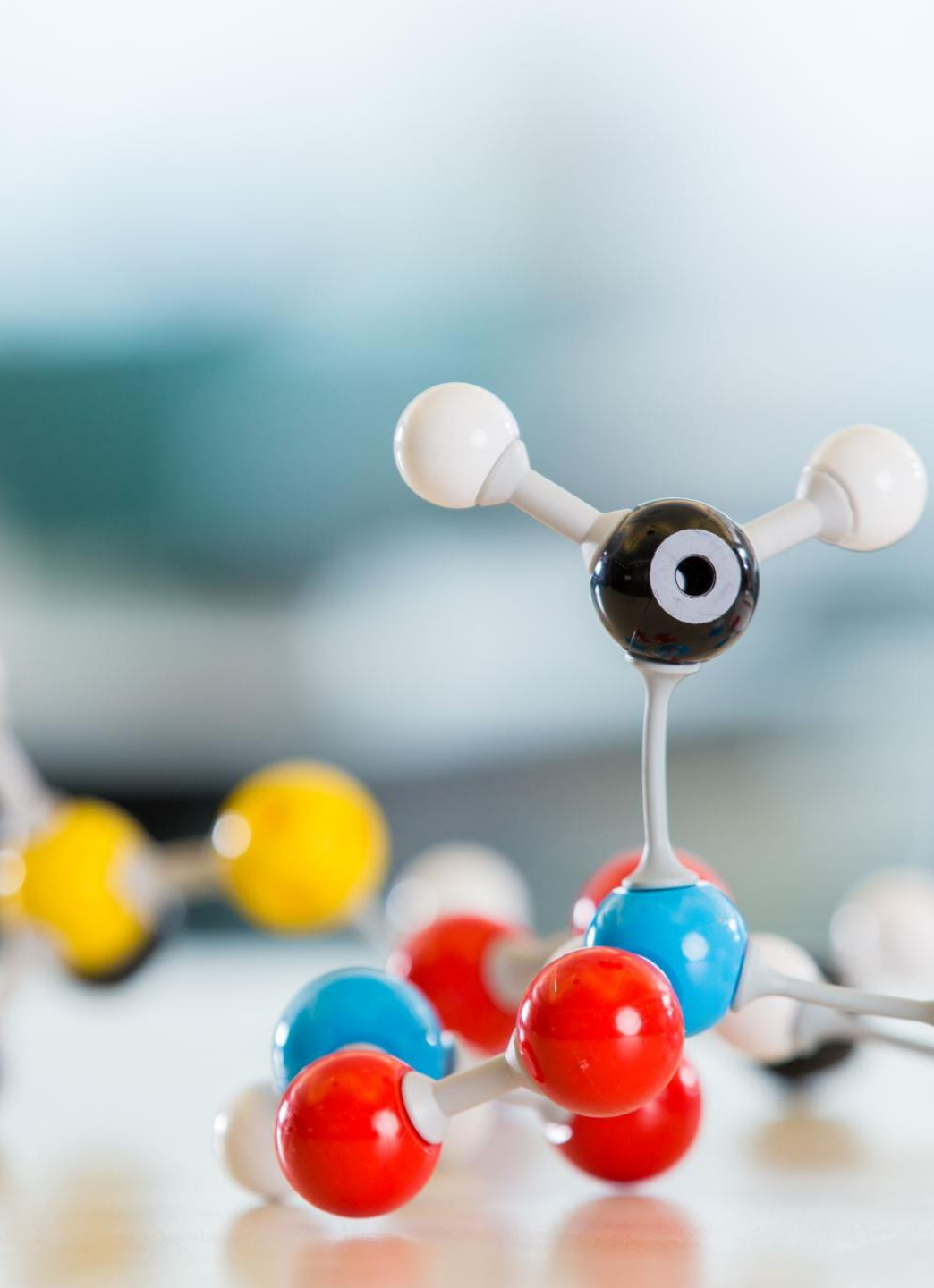
As noted in Comment [2] to Rule 2.1, “[p]urely technical legal advice ... can sometimes be inadequate.”

“[a] client is entitled to straightforward advice expressing the lawyer’s honest assessment” according to Comment [1].

Comment [5] warns that “when a lawyer knows that a client proposes a course of action that is likely to result in substantial adverse legal consequences to the client, the lawyer’s duty to the client under Rule 1.4 [Communication] may require the lawyer offer advice if the client’s course of action is related to the representation.”

Model Rule 2.1 requires the lawyer to exercise independent professional judgment and render candid advice.

Model Rule 2.1 authorizes a lawyer to include not only the law, but other considerations such as “moral, economic, social and political factors” in advising the client.



Plot Twist!

MODEL RULE OF PROFESSIONAL CONDUCT 1.2

California Rules of Professional Conduct

Rule 1.2: Scope of Representation & Allocation of Authority Between Client & Lawyer

(a) Subject to paragraphs (c) and (d), a lawyer shall abide by a client's decisions concerning the objectives of representation and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer shall abide by a client's decision whether to settle a matter. In a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.

(b) A lawyer's representation of a client, including representation by appointment, does not constitute an endorsement of the client's political, economic, social or moral views or activities.

(c) A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent.

(d) A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent, but a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning or application of the law.

TO DO: After State legalization, State Bars began to update Rules. Compare and Contrast

Advising vs. Assisting

Law on the books vs. Law in action

Possible actions by lawyers

- Advice clients that it is federally illegal and abandon the project (and the client)
- Or describe the Federal acquiescence to state “legalization” which provides a more nuanced picture
 - Advise client of the risks and allow them to risk assess and manage

THE STATE BAR OF ARIZONA

Crime Fraud Exception:

What if lawyers are advising
clients on future crime?

Answer? Attorney client privilege
may not apply.

FIRST TO ISSUE AN OPINION. [ARIZONA ETHICS OPINION 11-01 \(2011\)](#)

A LAWYER DOES NOT VIOLATE THE ARIZONA RULES OF PROFESSIONAL CONDUCT WHEN THE LAWYER ADVISES AND ASSISTS A CLIENT UNDER THE ARIZONA MEDICAL MARIJUANA ACT, BUT THE LAWYER ALSO MUST EXPLAIN TO THE CLIENT THAT THE CLIENT'S CONDUCT MAY VIOLATE THE CONTROLLED SUBSTANCE ACT.

Florida State Bar

Rather than an amendment to the state rules of professional conduct or an ethics opinion, Florida adopted a non-prosecution disciplinary policy:

- *The Florida Bar will not prosecute a Florida Bar member solely for advising a client regarding the validity, scope, and meaning of Florida statutes regarding medical marijuana or for assisting a client in conduct the lawyer reasonably believes is permitted by Florida statutes, regulations, orders, and other state or local provisions implementing them, as long as the lawyer also advises the client regarding related federal law and policy.*

ASSIGNMENT :

PRESIDENTIAL LAWMAKING

Discussion Prompt: The Department of Justice issued guidance to states outlining their priorities of enforcement under the CSA. They will not enforce unless state activities violate these.

What if discretionary non-enforcement had to do with corporate tax collection or securities law compliance not federal criminal cannabis enforcement? Is that problematic?

Department of Justice (DOJ) Memorandums Explaining enforcement priorities under Obama, Biden, and Trump

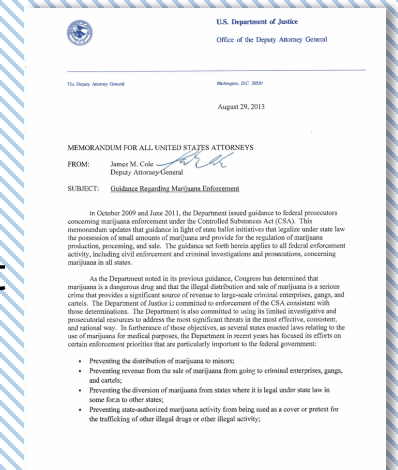
[Ogden Memo \(10/19/2009\)](#)

Cole Memo I (06/29/2011)

[Cole Memo II \(08/29/2013\)](#)

- [Sessions Memo 2018](#)

Checks and balances – is this an appropriate use of Executive power? Why doesn't Congress legalize?



DEA CONTROLLED SUBSTANCES ACT

ENFORCEMENT PRIORITIES

- Preventing the distribution of marijuana to **minors**;
- Preventing revenue from the sale of marijuana from going to **criminal enterprises, gangs, and cartels**;
- Preventing the **diversion of marijuana** from states where it is legal under state law in some form to other states;
- Preventing state-authorized marijuana activity from being used as a cover or pretext for the **trafficking of other illegal drugs** or other illegal activity;
- Preventing **violence and the use of firearms** in the cultivation and distribution of marijuana;
- Preventing **drugged driving** and the exacerbation of other adverse public health consequences associated with marijuana use;
- Preventing the **growing of marijuana on public lands** and the attendant public safety and environmental dangers posed by marijuana production on public lands; and
- Preventing marijuana **possession or use on federal property**.

ASSIGNMENT: BRIEFING CANNABIS CASES

RIGHT TO PRIVACY

CASE BRIEF SCAFFOLDED OVER MULTIPLE MODULES

[RAVIN V. STATE OF ALASKA](#) (1975) - IRVIN RAVIN WAS ARRESTED FOR POSSESSION OF MJ. **SUPREME COURT OF ALASKA FINDS THE RIGHT OF PRIVACY TO USE SMALL AMOUNTS MARIJUANA PRIVATELY IN THE HOME.** IT BALANCED THE GOVERNMENT'S ARGUMENT THAT PRIVATE USE COULD LEAD TO DRUGGED DRIVING. STATE DID NOT PROVIDE MUCH EVIDENCE TO DEMONSTRATE THAT PRIVATE USE LED TO DRUGGED DRIVING.

WEEK 1: STUDENTS LEARN TO IRAC AND HOW TO IDENTIFY RELEVANT FACTS AND PROPERLY CITE A CASE USING *RAVIN*

WEEK 2: STUDENTS LEARN TO IDENTIFY ISSUES AND PROCEDURAL HISTORY USING *RAVIN*

WEEK 4: STUDENTS UTILIZE IRAC AND UNDERSTAND LEGAL ANALYSIS USING *RAVIN*

WEEK 5: FINAL CASE BRIEF SUBMITTED – COMPILATION OF ALL PREVIOUS ASSIGNMENTS INCORPORATING FEEDBACK AND REVISIONS

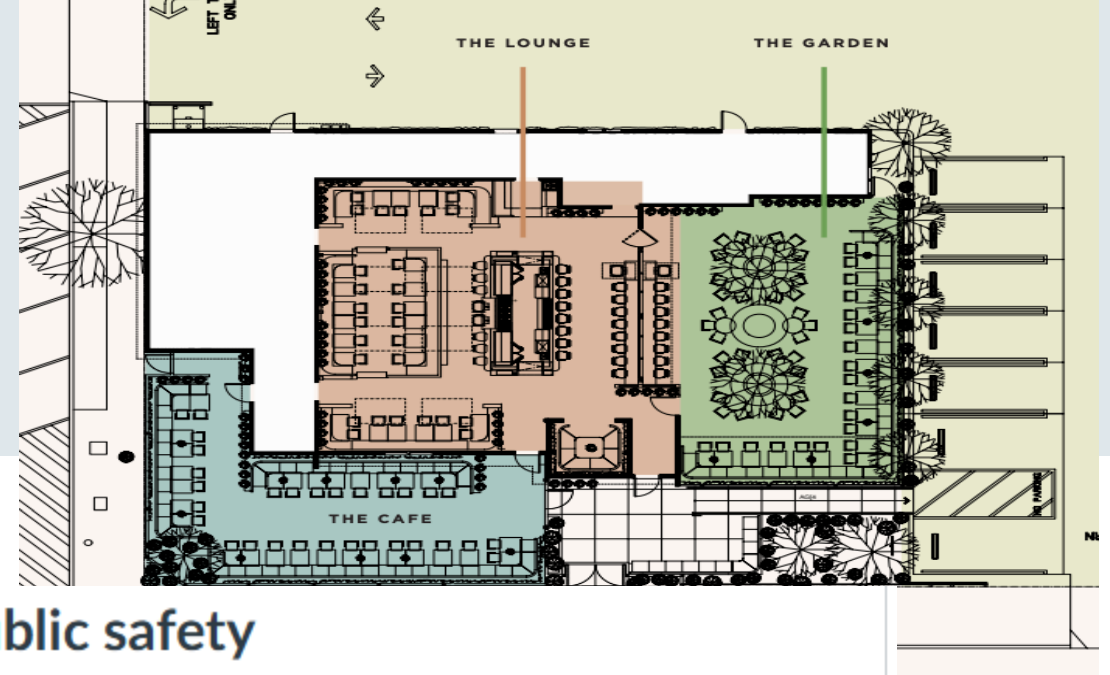
ASSIGNMENT 4:

DISCUSSION POST: THE RIGHT TO USE VS. IMPACT ON THE PUBLIC

Cannabis is not harmless.

Secondhand smoke is dangerous,
dosage and knowing limits is nearly impossible. (unlike alcohol)

MJ CONSUMPTION LOUNGES APPROVED



Discussion post: The right to use and public safety

For this discussion post, I am presenting you with competing interests. Two interests with different priorities and different rights. After reading the discussion prompt, try to think from the perspective you are least sympathetic to. After being able to see both sides your suggested solutions may have more depth.

California has approved the establishment of consumption lounges where patrons smoke cannabis in a restaurant like setting. Licensed businesses may serve food and non-alcoholic drinks. There are rules around ventilation requirements for the dispersal of secondhand smoke.

However, law enforcement has little ability to accurately identify if someone is impaired due to cannabis consumption. This leaves the public at risk for accidents related to impaired drugged driving after patrons leave the consumption lounge. Citizens have the right to use legal substances in a social setting. The public has a right to feel safe on the road. Will budtenders cut people off like bartenders do? Also, secondhand smoke is serious we know that already.

Please post your thoughts on this dilemma and possible solutions to alleviate any tension people the public's right to use and the need for public safety. Feel free to use comparisons with the sale and use of alcohol beverages or even smoking regulations.

ASSIGNMENT:

THE SUPREMACY CLAUSE AND PREEMPTION DOCTRINE

IN CLASS DISCUSSION:

INTRODUCE THE
SUPREMACY CLAUSE AND
PREEMPTION DOCTRINE

CONSIDER THE LAST TIME
SUCH A DISCONNECT
OCCURRED

HOW IS CANNABIS SIMILAR
OR DIFFERENT?

Reference to the [Defense of Marriage Act](#) (DOMA) and history around state legalization of same sex marriage, federal struggle, and ultimate Supreme Court decision in [Obergefell v. Hodges](#)

ASSIGNMENT:

YOU BE THE JUDGE – CANNABIS CONTRACTS

January 23, 2017

The undersign hereby agreed to the following:

The members of DO Maryland OP LLC will desire to amend the operating agreement upon issuance of the final, stage 2, Maryland State Licenses for the cultivation, processing and dispensing of cannabis.

Prior to execution of the Second Amendment by Black as manager of Doctors Orders Maryland LLC and as manager of DO Maryland OP, LLC, the undersign agree and acknowledge the following:

1. The undersigned agree that upon issuance of the final cultivation, processing or dispensary license, that the members of DO Maryland OP LLC, will draft a new operating agreement before the removal of Jeff Black as the manager of DO Maryland OP LLC. The members of DO Maryland LLC agree that Black shall have no less than a 4.75% Class A interest, Ashley Peebles with no less than 1.5% Class A Interest, Mackie Barch with no less than 26.875% Class A interest and David Joshua Barch with no less than 26.875% Class A interest in Doctor's Orders Maryland LLC, which such interest may be through DO Maryland OP, LLC, the current majority member of Doctors Orders Maryland LLC. These share are subject to mutually agreed upon dilution and do not reflect future capital raises.
2. In the event that Black is subject to a state or federal audit as a result of Black's interest in Doctors Orders Maryland LLC or DO Maryland OP LLC, all costs incurred in connection with such audits will be supported by Doctors Orders Maryland LLC. Should Doctors Orders Maryland LLC be unwilling or unable to support such financial expense, it will be the responsibility of DO Maryland OP LLC to reimburse Black for such audit costs within 30 days.

Jeff Black



Joshua Barch



Mackie Barch

[Agreement Bartch and Barch.pdf](#) ↓

David Joshua Bartch ("Josh") and Mackie A. Barch ("Mackie") were partners in a marijuana business, Culta, LLC, in Maryland. Josha and Mackie were also partners in cannabis businesses in Colorado. They were partners in business. They decided to try to break into the Maryland market once it legalized adult use.

In order to apply for the required license in Maryland, Josh had to temporarily relinquished his ownership in the Maryland business due to concerns about a past misdemeanor cannabis possession charge in Colorado affecting their application. Applicants cannot have criminal charges. Josh and Mackie signed an agreement that states that Josh would be reinstated (as a full partner) later after the Maryland venture was a success. Relinquishing his rights meant Josh was giving up his rights to profits. Read their agreement linked above very top ^

However, Mackie prevented Josh from rejoining as agreed. Josh sued Mackie and Trellis Holdings Maryland, Inc. (Trellis), Mackie's company, for breach of contract. The district court found Mackie and Trellis liable and awarded Josh \$6.4 million in damages. Mackie and Trellis did not appeal or pay the judgment.

Josh sought to enforce the judgment. The district court ordered Mackie and Trellis to sell Trellis's equity in Culta and turn over the proceeds to Josh, and to avoid devaluing the equity until the sale. Mackie and Trellis appealed, arguing for the first time that enforcing the judgment would violate the Controlled Substances Act (CSA) . Essentially, Mackie sought to avoid enforcement of the agreement due to federal illegality.

How should the court decide the matter?

Explain your reasoning using your understanding of contract law. Based on the lecture and your reading.

ASSIGNMENT:

CANNABIS AND THE ENVIRONMENT

ENVIRONMENTAL IMPACT OF CANNABIS CULTIVATION

- Water consumption
- Habitat disruption
- Water diversion
- Pesticide
Contamination
- Energy consumption



Exploratory Research assignment:

Cannabis and the environment

As more and more states legalize cannabis, realization of the impact of legalization on the environment is growing and it is a concern.

Your assignment is this:

Read the brief resources provided in your Canvas Module for this week.

Research the impact of cannabis (including hemp) on the environment at any level - cultivation, distribution, extracting, retail, consumption focus on environmental impact.

- What laws regulate it?
- What have some states done to mitigate its detrimental impact on water?
- What is the waste management impact of cannabis cultivation and consumption?
- How does federal prohibition make this so problematic to deal with?

Create a 5-slide deck presentation of what you found in your research. You can use Google slides, PowerPoint, Canva - just use something I can open. The slides can contain pictures, video, bullet points. Please include links to the sources you found in your research.

ASSIGNMENT:

STARTING A CANNABIS BUSINESS IN CALIFORNIA

Go to the Secretary of State website

[More about Business Entities](#)

[bankruptcy.](#)

[More about UCC](#)

bizfile⁺
CALIFORNIA

Starting a New Business Checklist

Cannabizfile

Related Links

[Legislation](#)

Victims of Corporate Fraud Compensation Fund

The Victims of Corporate Fraud Compensation Fund (VCFCF) provides limited restitution to victims of corporate fraud who have otherwise been unable to collect on their judgment for corporate fraud.

[More about how the VCFCF Works](#)

Trademarks and Service Marks

The Secretary of State's office maintains registration and all updates of California state trademarks and service marks, container brands, laundry marks and the names of farms, ranches, estate or villas.

[More about Trademarks and Service Marks](#)

Special Filings

The Secretary of State administers numerous other filings including immigration consultant and various business bonds, notices of joint powers, successor-in-interest, statement of facts – roster of public agencies, and athlete agents.

[More about Special Filings](#)



Compare with started another type of Biz

Home ▶ Business Programs ▶ Cannabizfile

Business Programs

Business Entities

Uniform Commercial Code

Special Filings

Trademarks & Service Marks

Victims of Corporate Fraud Compensation Fund

Forms, Samples & Fees

Contact Information

Los Angeles Office

Customer Alerts

Welcome to **cannabizfile**, the Secretary of State's online portal for all information relevant to cannabis-related business and trademark filings with the Secretary of State. The Secretary of State's office is the first stop for those seeking to establish a cannabis-related business. The Secretary of State supports California businesses by registering business entities and processing millions of filings and records requests each year. The Secretary of State's office also maintains registration and updates of California state trademarks and service marks. To further the Secretary of State's mission of making it easier to do business in California, it is our goal to make this site a valuable resource for cannabis-related business and trademark filings with the Secretary of State.

The Secretary of State is accepting organization documents for cannabis-related business entities. Please be aware that filing documents with the California Secretary of State alone does not provide a business with the necessary licenses to conduct commercial cannabis-related activities. For more information about licensing, visit the [Department of Cannabis Control](#).

The information provided in the links below is meant to act as a guide for cannabis-related business entity and trademark filings with the Secretary of State and as a general tool to help you broadly **assess** other steps that may be required with other state and local agencies. Information relating to requirements with other local or state agencies is not exhaustive.

- [Register or Update Your Business](#)
- [10 Steps to Starting a Cannabis Business \(PDF\)](#)
- [Register a Trademark or Service Mark](#)
- [Search for Business Records](#)
- [SOS Role in Starting a Cannabis Business](#)

Questions?



ASSIGNMENT:


FREEDOM OF RELIGION

SCAFFOLDING THIS CURRENTLY


Skills:

- Reading a case
- Identifying legally relevant facts
- Summarizing
- Understanding statutes
- Apply to the facts of the case



Westlaw Practice - The Native American Church

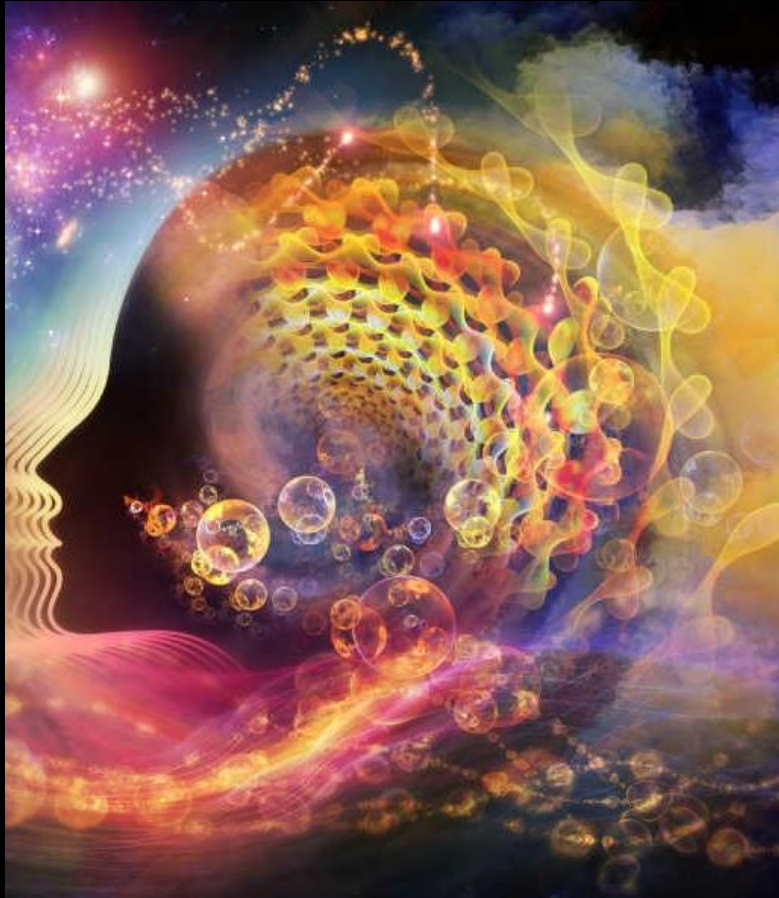
 Publish

 Assign To

 Edit



1. Your supervising attorney asks you to understand each law listed above and briefly describe what it does. Take the list above and briefly provide a description of what it does and who/what it protects.
2. She asks you also to describe the facts and procedural background of *Navajo Nation v. U.S. Forest Serv.*, 535 F.3d 1058, 1068 (9th Cir.2008) because it might be problematic if Mr. Raging Bear does not actually lead a church but just really believes in the power of cannabis or cannabis is not required only peyote is. She asks that you summarize the facts in *Navajo Nation* for her. (Practice your skills at only describing relevant facts for your case)
3. American Indians Religious Freedom Act [AIRFA](#)  – the attorney would like to know if this law provides protections that might help the client
4. She remembers some case and asks you to find a US Supreme Court case from 2014 where the Religious Freedom Restoration Act [RFRA](#)  permitted a for-profit business to successfully object to implementation of the Affordable Care Act under religious belief grounds. a) Give a complete citation and b) any relevant quote from the Court's opinion.



PSYCHEDELIC ASSISTED THERAPIST TRAINING ARTICLE



FDA FACT SHEET

Right to Try

What is Right to Try?

- Right to Try is one pathway for patients diagnosed with life-threatening diseases or conditions who have exhausted all approved treatment options and are unable to participate in a clinical trial to access certain drugs that have not been approved by the Food and Drug Administration (FDA).
- Right to Try allows eligible patients to request access to certain investigational drugs (including biologics¹) that have not yet been approved by the FDA.
- Under Right to Try, patients and their doctors work with a company that is developing a drug or biologic to request access without involving FDA in the process.
- The FDA does not review or approve Right to Try requests.



**THANK YOU FOR
ATTENDING!**

**PLEASE FILL OUT MY
GOOGLE FORM**

JMCLAUGHLIN12@IVC.EDU