

**Cannabis Law & Regulation: Challenges & Opportunities, LAW 5200
(Pot Policy in Paradise: Cannabis Law & Policy)**

1-2 Credits

Lecturers-in-Law: Garrett I. Halydier, Esq. and Michelle N. Nakata, Esq.

Tues: 7:45 pm – 9:00 pm; Thurs: 6:55 pm – 8:40 pm
Class Dates: Jan. 14, 16, 21, 23, 28, 30, Feb. 4, 6, 11

Classroom CR5

Office Hours by Appointment
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Course Description

Cannabis is simultaneously regulated as one of the most dangerous substances on the planet and as a growing industry providing health and economic benefits. While still federally illegal, a growing majority of states have joined several international jurisdictions in permitting medical and legal access to cannabis. This course surveys legal issues and policy considerations facing the cannabis industry, exploring: constitutional law and federalism; criminal law; public health law; business law; intellectual property; taxation, banking, and bankruptcy; employment law; and legal ethics. We will compare policy approaches, resulting regulations, and real-world impacts in Hawai‘i, the U.S., and foreign jurisdictions. Students completing the course will gain a firm grasp of the fundamentals of the cannabis compliance industry and a set of tools for responding to the challenges facing governments, individuals, and businesses engaged in this vibrant new industry.

Goals of the Course and Student Learning Outcomes

This is a lecture course covering cannabis law and policy. At the end of the course we hope that students will acquire the following:

- (a) An understanding of the history, legal and policy frameworks, and effects of cannabis regulation federally, in Hawai‘i, and in other jurisdictions;
- (b) Fluency in analyzing differing degrees of cannabis regulation and likely social, economic, and health results based on current, observed results in other jurisdictions;
- (c) A general knowledge and exposure to the general types of work and specific tasks that attorneys regularly perform in the cannabis industry.

Course Materials

All materials for the course will be available online, either through a link to the materials in this syllabus or via Lulima.

Attendance

To complete this course successfully, students must regularly prepare for, punctually attend, and actively participate in class. Students achieving ninety percent (90%) attendance coupled with excellent classroom participation will be able to raise their final course grade by a one-half step, i.e., (B to B+). Depending on class discussions, we reserve the right, on behalf of the class, to limit or augment readings to coincide with the level of class interest on a topic.

All members of the class are expected to follow rules of common courtesy in all email messages, threaded discussions, chats and in class discussions. Please do not disparage or discourage others' views and participations. Any such actions will negatively impact the grading for the 10% of the students' overall participation grade.

Course Requirements

10% of the students' class grade will be based on the above attendance policy and 90% of the class grade will be based on completion of two individual, unique research papers that meet the following requirements:

1. Every student will choose a different U.S. or international jurisdiction to study via a sign-up sheet on the first day of class.
2. (40%) The first paper will be either 5 (for 1-credit) or 10 (for 2-credits) pages long. The paper will briefly overview the history, development, current status, and projected future of a particular jurisdiction's cannabis law and policies and describe any documented social, economic, and health effects related to cannabis policy in that jurisdiction. This paper will serve as the midterm and is due by 11:55 pm HST on January 27th.
3. (50%) The second paper will be either 5 (for 1-credit) or 10 (for 2-credits) pages long. In the same jurisdiction as the first paper, the student will choose some aspect of cannabis law and policy – whether a current case, law, administrative rule, or general policy – and advocate for a specific change to that law or policy. The paper should detail the effects of the current law or policy, the specific change the student advocates for, and a projection of the likely social, economic, and health effects, if any, of that change. This paper will serve as the final and is due by 11:55 pm HST on February 18th.
4. All papers must be in Times New Roman Font, double-spaced, with 1-inch margins on all four sides.
5. A student may submit either and/or both papers at any point before the relevant deadline for comments on how to improve the paper's score.
6. Papers more than one-half page short of the page requirements or not in compliance with the formatting requirements will have substantial points deducted.
7. All assignments must be submitted by email to both lecturers by the required deadlines.

Students must come prepared to present and discuss the assigned material for each class period as well as the material they have discovered in preparation of the required papers. It is expected that students spend approximately 2 hours outside of class in preparation for class or in work on the assigned papers for every 1 hour of classroom instruction.

Cellphones and Laptops

Cellphones are prohibited in class to promote engagement with the lecture. Laptops are permitted during regular instruction and must be closed during presentations from guest speakers to promote engagement with the guest speaker.

Readings & Assignments

Suggested General Resources:

- Marijuana Law, Policy & Reform (http://lawprofessors.typepad.com/marijuana_law/), by Douglas Berman, a professor at Ohio State.
- Canna Law Blog (<http://www.cannalawblog.com/>), by the Canna Law Group, a group of lawyers who represent cannabis clients.
- Marijuana Business Daily (<https://mjbizdaily.com/>), largest industry publication, useful for keeping up on the state of the industry across the country, sign-up for their daily emails

January 14 – Introduction of Class, Syllabus, History of Cannabis & Prohibition

Required Reading

- Bender, Joint Reform, 6 Albany Gov. L. Rev. 359-383 (2012).
<https://pdfs.semanticscholar.org/986c/a7b236dfd51e76f0a10834be44640a10b848.pdf>
- Act 170 (SLH 2017).
https://www.capitol.hawaii.gov/session2017/bills/GM1284_.PDF

Suggested Reading

- Timeline of cannabis regulations in the United States, PBS.org.
<https://www.pbs.org/wgbh/pages/frontline/shows/dope/etc/cron.html>

January 16 – Cannabis and the Constitution, Scheduling, and Federal Realities

Required Reading

- Cole Memo I, August 29, 2013 (Guidance Regarding Marijuana Enforcement).
<https://www.justice.gov/iso/opa/resources/3052013829132756857467.pdf>
- Cole Memo II, February 14, 2014 (Guidance Regarding Marijuana Related Financial Crimes). <https://dfi.wa.gov/documents/banks/dept-of-justice-memo.pdf>

- Sessions Memo, January 4, 2018 (Marijuana Enforcement).
<https://www.justice.gov/opa/press-release/file/1022196/download>
- DEA, Maintaining Marijuana in Schedule I of CSA, pp. 1-5, 31-40.
<https://www.deadiversion.usdoj.gov/schedules/marijuana/Maintaining%20Marijuana%20in%20Schedule%20I%20of%20the%20Controlled%20Substances%20Act.pdf>
- National Academy of Science, Engineering and Medicine, *Committee Conclusions: The Health Effects of Cannabis and Cannabinoids*, pp. 1-6.
https://www.nap.edu/resource/24625/Cannabis_committee_conclusions.pdf

Suggested Reading

- Controlled Substances Act, 21 U.S.C.,
<https://www.deadiversion.usdoj.gov/21cfr/21usc/index.html>
 - Definition of “marihuana”, 21 U.S.C. § 802
<https://www.deadiversion.usdoj.gov/21cfr/21usc/802.htm>
 - Exception to definition of “marihuana”, 21 U.S.C. § 1308.35
https://www.deadiversion.usdoj.gov/21cfr/cfr/1308/1308_35.htm
- *2018 Farm Bill Legalizes Hemp, but Obstacles to Sale of CBD Products Remain*, The National Law Review, March 5, 2019, <https://www.natlawreview.com/article/2018-farm-bill-legalizes-hemp-obstacles-to-sale-cbd-products-remain>
- *Congress Attaches Marijuana, Hemp and CBD Provisions to Federal Spending Bills*, Marijuana Moment, December 20, 2019,
<https://www.marijuanamoment.net/congress-attaches-marijuana-hemp-and-cbd-provisions-to-federal-spending-bills/>
- *The Evolving Federal Response to State Marijuana Reforms*, Robert A. Mikos, 25 Widener Law Review, 2019,
https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3478299
- *Gonzales v. Raich*, 545 U.S. 1 (2005).
- *US v. Pickard*, 100 F. Supp. 3d 981 (E.D. Cal. 2015).
- *Conant v. Walters*, 309 F.3d 629 (9th Cir. 2002).
- *U.S. v. Lynch*, (9th Cir. 2018),
<https://cdn.ca9.uscourts.gov/datastore/opinions/2018/09/13/10-50219.pdf>

January 21 – Cannabis Science and Public Health

Required Reading:

- National Academies of Sciences, Engineering, and Medicine. 2017. *The health effects of cannabis and cannabinoids: Current state of evidence and recommendations for research*. Washington, DC: The National Academies Press., pp. 1-22.
<https://www.nap.edu/catalog/24625/the-health-effects-of-cannabis-and-cannabinoids-the-current-state> (Click “Read Online” and go forward to the “Summary” chapter, pp 1-22).
- *Monitoring Health Concerns Related to Marijuana in Colorado: 2018, Summary*.
https://www.compassmark.org/wp-content/uploads/2019/02/Monitoring_Health_Concerns-Marijuana_Colorado_2018.pdf

- NIDA. (2019, December 24). Marijuana. Retrieved from <https://www.drugabuse.gov/node/pdf/1380/marijuana>
- Rocky Mountain HIDTA Marijuana Impact Report, Vol. 6 – September 2019., pp. 1-48 <https://rmhidta.org/files/D2DF/FINAL-Volume6.pdf>
- Marijuana Legalization Impact Assessment - Health.NY.gov https://www.health.ny.gov/regulations/regulated_marijuana/docs/marijuana_legalization_impact_assessment.pdf

January 23 – Medical Cannabis Regulations

Required Reading:

- Hawaii Revised Statutes, Chapter 329, part IX, Medical Use of Cannabis. https://www.capitol.hawaii.gov/hrscurrent/Vol06_Ch0321-0344/HRS0329/HRS_0329-0121.htm
- Hawaii Revised Statutes, Chapter 329D, Medical Cannabis Dispensary System. https://www.capitol.hawaii.gov/hrscurrent/Vol06_Ch0321-0344/HRS0329D/HRS_0329D-.htm
- Hawaii Administrative Rules, Title 11, Chapter 160, Medical Use of Cannabis. <https://health.hawaii.gov/medicalcannabisregistry/files/2015/07/2015-FINAL-Approved-Rules-Effective-7-18-15-Stamped.pdf>
- Hawaii Administrative Rules, Title 11, Chapter 850, Medical Cannabis Dispensaries. <https://health.hawaii.gov/opppd/files/2015/06/11-850.pdf>
- Central Hudson Gas & Electric Corp. v. Public Service Commission of New York (No. 79-565), 447 U.S. 557 (1980).

January 28 – Cannabis Compliance Work and Legal Ethics

Professional Panel, Readings TBA

January 30 – Medical Cannabis Industry Outcomes

Readings TBA

February 4 – Criminality and Social Justice

- **Legal Ethics in Advising the Cannabis Industry**
 - Disciplinary Board of the Hawaii Supreme Court, Formal Opinion No. 49, August, 2015, <http://hawaiidispensaryalliance.org/wp-content/uploads/2015/09/DISCIPLINARY-BOARD.FORMAL-OPINION-49.MED-MARIJUANA..pdf>

- Supreme Court of Hawaii, Order Amending Rule 1.2(d), October 20, 2015.
<http://hawaiiidispensaryalliance.org/wp-content/uploads/2015/10/2015.10.20-HRPC-Rule-1.2d-Change.pdf>
- **Social Equity in the Cannabis Industry**
 - Not all States' Cannabis Social Equity Programs Are Equal, August 20, 2019,
<https://mjbizdaily.com/chart-not-all-states-cannabis-social-equity-programs-are-equal/>
 - Social Equity Provisions in Illinois Cannabis Law, January 7, 2020,
<https://www.jdsupra.com/legalnews/social-equity-provisions-in-illinois-24055/>
 - Social Equity Provisions in Massachusetts Cannabis Law, March 2018,
<http://mass-cannabis-control.com/wp-content/uploads/2018/03/UPDATED-Guidance-Summary-of-Equity-Provisions-with-6th-criterion-added-1.pdf>
- **DUI and Criminality**
 - The Cannabis DUI in Hawaii, Summer 2017,
<http://hawaiiidispensaryalliance.org/wp-content/uploads/2020/01/Landsberg-DUI-Article-2.pdf>
 - The Cannabis Effect on Crime: Time-Series Analysis of Crime in Colorado and Washington State, October, 2018,
<https://www.tandfonline.com/doi/full/10.1080/07418825.2019.1666903>

February 6 – Banking, Taxes, and Bankruptcy

- **Banking**
 - Treasury Department Memo, Feb. 14, 2014, BSA Expectations Regarding Marijuana Related Businesses,
<https://www.fincen.gov/sites/default/files/shared/FIN-2014-G001.pdf>
 - Cannabis Banking Challenges in Legal States Go Far Beyond Pot, October 2019,
<https://www.insurancejournal.com/news/national/2019/10/16/545303.htm>
- **Taxation**
 - Hawaii Income tax as Applied to Legal Marijuana Dispensaries, April 2016,
<http://hawaiiidispensaryalliance.org/wp-content/uploads/2020/01/Steve-Pingree-Taxation-Article.pdf>
 - Tax Court Reinforces IRS Code 280E in Harborside Ruling, December 3, 2018,
<https://www.cannabisbusinesstimes.com/article/harborside-tax-court-ruling-280e/>

- Caregiving Californians Helping to Alleviate Med. Problems, Inc. v. C.I.R., 128 T.C. 173 (2007), <https://www.leetcode.com/decision/2007301128ntc1731288#>
- Olive v. Commissioner, 792 F.3d 1146 (9th Cir. 2015), <https://cdn.ca9.uscourts.gov/datastore/opinions/2015/07/09/13-70510.pdf>
- Loughman v. Commissioner, T.C. Memo 2018-85 (2018), <https://www.ustaxcourt.gov/ustcinop/OpinionViewer.aspx?ID=11681>
- **Bankruptcy**
 - Cannabis and Bankruptcy: 2019 in Review, December 17, 2019, <https://www.natlawreview.com/article/cannabis-and-bankruptcy-2019-review>
 - Garvin v. Cook Investments, NW, SPNYW, LLC, 922 F.3d 1031 (9th Cir. 2019), <http://cdn.ca9.uscourts.gov/datastore/opinions/2019/05/02/18-35119.pdf>

February 11 – Additional Topics: Employment, Intellectual Property, Real Estate

Readings TBA

Title IX Policy

Please refer to the Law School Student Handbook for detailed information on the Law School and campus Title IX policies. Here is the contact information for the UHM and Law School Title IX coordinators if you have a concern about sexual discrimination, sexual harassment, or sexual violence involving yourself or other Law School students, faculty, or staff:

(a) Title IX Coordinator for UH Mānoa **Dr. Dee Uwono** Director and Title IX Coordinator Hawai'i Hall 124 2500 Campus Road Honolulu, HI 96821 Phone: 956-2299 Email: t9uhm@hawaii.edu

(b) Deputy Title IX Coordinator and Law School Associate Dean of Student Services **Ronette Kawakami** Law School 221 2515 Dole Street Honolulu, HI 96822 Phone: 956-7986 Email: ronettek@hawaii.edu

The William S. Richardson School of Law recognizes the inherent dignity of all individuals and promotes respect for all people. Sexual misconduct will NOT be tolerated. If you have been the victim of sexual misconduct, we encourage you to report this matter promptly. As a faculty

member, I am interested in promoting a safe and healthy educational environment, and should I learn of any sexual misconduct I must report the matter to the Title IX Coordinator, who oversees the University's centralized review, investigation, and resolution process for reports of sexual misconduct, and also coordinates the University's compliance with Title IX.

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If you want **direct services** offered by confidential resources within the University, you are encouraged to contact the following resources:

University Health Services Mānoa | 808.956.8965 | 1710 East-West Road
Counseling & Student Development Center | 808.956.7927 | 2600 Campus Road QLCSS
312
Office of Gender Equity | 808.956.9977 | 2600 Campus Road QLCSS 210

These are only a few of the many resources available. For a more comprehensive list, please see the Student Handbook and the following link: <http://manoa.hawaii.edu/genderequity/resources/>

Content Warning: Some of the materials covered in this course might remind you of upsetting experiences that you, or a friend or family member, have gone through. If you would like to talk to someone, please know that there are University resources available to you, such as the Counseling Center.

If you would like to discuss a need for reasonable accommodations, please contact Associate Dean for Student Services Ronette Kawakami.