

Medical Marijuana Law

State Regulation in the Shadow of Federal Prohibition

Summer 2016

Professor Jamie Olson

Professor Thaddeus Pope

- Time:** This is an asynchronous online course. Students do not need to be available on any particular day or at any particular time. This course is comprised of seven modules (June 1 to July 20, 2016) and a final exam (July 21 to July 29, 2016). One week is devoted to each of these eight course units. Students must complete assignments for each unit within the designated week for that unit.
- Place:** All course materials (videos, statutes, cases, articles, quizzes, discussion boards) will be distributed through the course Blackboard site.
- Registration:** This course is open to JD students at Mitchell Hamline School of Law and to JD students in good standing at any other law school. Under ABA Standard 306, JD students may count up to 15 online credits toward their degree once they have earned 28 JD credits. This course is also open both to students in other degree programs and to Minnesota lawyers for CLE credits.
- Credits:** This is a 2-credit course. That means your total time commitment is approximately 90 hours, or around 11 hours per week. This is inclusive of watching lectures, reading, discussion boards, quizzes, and the final exam.
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Table of Contents

1. Course Description
2. Guest Presenters
3. Course Objectives
4. Prerequisites
5. Required Materials
6. What to Do First – Before June 1
7. Components of Your Grade
8. Multiple Choice Quizzes
9. Discussion Boards
10. Final Exam
11. Exam Grading Criteria
12. Office Hours
13. Subject Matter Outline

1. Course Description

Since 1996, 23 states and Washington DC have adopted various forms of medical marijuana laws. Remarkably, these laws were enacted even though the possession, manufacturing, and distribution of marijuana remain a federal crime under the Controlled Substances Act. How is it possible that nearly half the country has “legalized” something that is federally illegal?

This course will address the unique features of medical marijuana law while focusing on the ultimate question: what about preemption? This course will critically examine issues arising under constitutional law, contracts, employment, tax, civil rights, and criminal law. We will undertake this examination through the lens of medical marijuana and what it is like to practice in that field.

2. Guest Presenters

This course will feature guest presenters that have been or are directly related to the medical marijuana industry in Minnesota. These presenters will include Representative Carly Melin, the chief legislative author of Minnesota's Medical Marijuana law and Dan Pollock, the Deputy Commissioner of the Minnesota Department of Health, charged with regulation of Minnesota's medical marijuana program. Other presenters involved in the industry may be added.

3. Course Objectives

Upon completion of this course, students will have:

- A. A basic systematic understanding of:
 1. How and when a state law is preempted by a federal law
 2. How preemption jurisprudence may be applied to medical marijuana laws
 3. How common legal issues are further complicated when applied to medical marijuana patients, manufacturers, and health care providers
 4. Public policy behind medical marijuana laws and the legal and policy differences between the varying models applied by states

- B. Further honed legal analysis and writing abilities, through:
 1. Exposure to and critique of legal arguments in judicial opinions, legislative reports, and scholarly writing
 2. Participation in discussion boards
 3. Completion of, and feedback on, weekly problems
 4. Completion of, and feedback on, a written final examination

- C. Integration of material learned in other classes, such as: constitutional law, tax, criminal law, and employment law.

4. Prerequisites

- A. The class will draw on basic principles of preemption and federalism from *Constitutional Law*. Almost all law students will have already covered this in their 1L year.

- B. The course will also cover issues in *Tax*, *Employment Law*, and *Criminal Law*. But completion of these courses is not required. The instructors will provide basic background primers in these areas.

5. Required Materials

- A. There is no traditional published, bound casebook for this course. There is nothing to purchase.
- B. Blackboard Documents
 - 1. All course materials will be distributed through the course Blackboard course management system for this course. Remember to use Firefox or Chrome as your web browser.
 - 2. While we will use a fair number of traditional appellate court opinions, a substantial portion of the written course materials will be comprised of: (1) statutes; (2) regulations; (3) government reports; and (4) medical, law, and policy journal articles.
 - 3. Due to the rapid and current changes in this area, other materials may be added or substituted.
- C. Video Lectures
 - 1. We have created and posted at least one video overview for each of the seven course modules.

6. What to Do First – before June 1

- A. You will be automatically enrolled in the Blackboard site, because it is directly linked to the College's registration system. Confirm that you are registered for the course Blackboard site with the email address that you use most regularly.
- B. If you have not used Blackboard before, review the student user guide. <http://mitchellhamline.edu/technology/blackboard/student-blackboard-information/>
- C. Review this syllabus.
- D. Read the initial class assignments posted on Blackboard and emailed to you.
- E. Calendar key course dates into your planning and calendaring systems.

7. Components of Your Grade

- A. This course is comprised of three components from which you can earn a total of 100 points.

Course Component	Percent	Points	Explanation
Weekly Quizzes	14%	14	see section 7
Discussion Boards	21%	21	see section 8
Final Exam	65%	65	see section 9
	100%	100	

- B. Your total point sum (of 100) is meaningful only relative to the point sums of other students in the class. Your total will be converted to a scaled score, based on the class curve. For example, if the highest raw score in the class were 80/100, then that student would receive an A.
- C. The final grades will comport with Law School’s grading policies.
<http://mitchellhamline.edu/students/student-handbook/>

8. Multiple Choice Quizzes

- A. **Rationale:** We assign quizzes for three reasons. First, we want to ensure that you get feedback, “formative assessment,” and not just “summative assessment” from the final exam.” Second we want you to “actively” engage the material. Third, we want to provide some external motivation to stay current and “connected” to the material.
- B. **Format:** Most quizzes will be comprised of five multiple choice questions. A few may include short answer questions.
- C. **Coverage:** These weekly quizzes are primarily meant to test basic understanding of material covered at about the time of the quiz.
- D. **Blackboard:** You will complete the quizzes on the course Blackboard site. They are not timed. They are designed to take less than 15 minutes to complete, if you have already completed that week’s lecture and reading.
- E. **Feedback:** We will review the quiz in a feedback memo or video. If you have a more particular question, please let us know.
- F. **Grading:** We will grade the quizzes. The seven quizzes, in the cumulative, comprise 14% of your total course grade (14 of 100 points). Therefore, each quiz is worth 2 points, 2% of your total course grade.
- G. **Late Quiz:** A student who fails to take a quiz within the designated time period for taking the quiz receives a score of 0 on the quiz.

- H. **Grades:** You should be able to view your own grades on the Blackboard site. If you see any discrepancy, please let us know. If you have any technical issues with Blackboard, please see section 11(c) below.
- I. **Due Dates:** A quiz is due by 11:59 p.m. (CDT) at the end of each week of the semester.

Quiz	Available by 12:00 p.m.	DUE by 11:59 p.m.
1	Wednesday, June 1	Tuesday, June 7
2	Wednesday, June 8	Tuesday, June 14
3	Wednesday, June 15	Tuesday, June 21
4	Wednesday, June 22	Tuesday, June 28
5	Wednesday, June 29	Tuesday, July 5
6	Wednesday, July 6	Tuesday, July 12
7	Wednesday, July 13	Tuesday, July 19

9. Discussion Boards

- A. **Rationale:** You should think of the discussion boards as your classroom; it is an essential component of this course. You will be expected to log into the class discussion boards frequently during the week and engage actively into the discussions.
- B. The discussion boards in this course work best when conducted as a discussion among students – not as a dialogue between the instructor and the students. We (your instructors) will prompt the discussion by posing several questions. Discussion generally begins when someone takes the initiative to be the first to answer the posted questions. Subsequent participants should address either the questions or respond to previous comments. We will try to refrain from substantive participation during the early part of the week, to let the discussion evolve without pre-empting your own contributions, comments, and efforts to examine all dimensions of the issues.
- C. Most of you will find the discussion boards to be both highly enjoyable and highly valuable. This course is more interactive and stimulating than you might expect. We look forward to interacting with each of you on the discussion boards.
- D. **Quantitative Requirement:** We expect you to participate actively in forum discussions at least five times each week. You do not need to offer a comment to every topic or subtopic, but you do need to participate actively at least five separate times each week. A forum will begin on Wednesday morning, and close the following Tuesday night. So, your active participation needs to be within that period of time.

- E. **Qualitative Requirement:** In addition to the quantitative requirement, we will also assess whether your comments were well-reasoned, reflected the reading and lecture material, exhibited a solid grasp of the issues, and whether you helped promote meaningful discussion by the class.
- F. **Three Different Days:** We expect you to participate actively in forum discussions on at least three different days each week. For the forum discussion to be most productive and valuable, your participation must not be confined to the just last day of week. Otherwise, there is inadequate opportunity for at least a response and counter-response to the original comment.
- G. **Active Participation** means more than one or two brief remarks; it means thoughtful comments (between 200 and 400 words) that reflect both critical thinking and familiarity with the reading and/or the lectures.
- H. **Grading:** The seven discussion boards in the cumulative comprise 21% of your course grade, 21 of the 100 total course points. Each week’s discussion board comprises 3% of your course grade.
- I. **Grading Criteria:** Your week’s discussion board grade will be based 75% on whether you have met the quantitative requirement for at least 5 separate instances of active participation not all on the last day of the discussion board. Another 25% of your grade will be based on our judgment of the quality of that substantive participation.
- J. **Feedback:** Within a week after each discussion board closes on Tuesday night, we will review and grade your participation and make that grade available to you confidentially. In addition, we may comment on the quality of your participation either privately in the Sakai grade folder (e.g., “Please try to refer to the reading or lectures more in your answers”), or by comments in the forum itself (“Excellent, well-reasoned point. Good work.”)

10. Final Exam

- A. **Date:** The final exam is a take-home that you may obtain and complete during any 48 hours within the final exam period in a method approved by the Law School Registrar.
- B. **Duration:** This exam is designed to be completed within just five hours. The 48-hour window is designed to permit you to step away and refresh. That way, you can revise and polish your answer to be more complete and lucid.
- C. **Weight:** The final exam comprises 65% of your course grade, 65 of the 100 total course points.

- D. **Format and Length:** The final examination will be comprised of three roughly equal parts. This three-part structure has been proven to maximize an exam’s reliability and validity.
1. The first part will include around 25 multiple choice questions.
 2. The second part will include around two short or “directed” essay questions focused on one or two specific issues.
 3. The third part will include a long essay problem. The essays are essentially hypothetical factual circumstances in which you will be expected to: (i) identify the legal issues, (ii) analyze the problems by applying the correct legal principles to the facts, and (iii) argue for a reasonable conclusion.
- E. **Coverage:** The exam will test those concepts and issues either covered in assigned readings or explored during class lectures and discussions. The exam will roughly reflect the relative time and emphasis devoted to topics in the course. For example, malpractice will be tested more heavily than licensure.
- F. **Open Book:** The final exams is OPEN book. You may use any written or printed materials, including, but not limited to: any required and recommended materials, any handouts from class, PowerPoint slides, class notes, and your own personal or group outlines. But no consultation or discussion with any other person is permitted.
- G. **Additional Research:** While you may use any materials that you have collected for this class, you are neither expected nor are you permitted to do any online or library research (e.g. on Lexis, Westlaw, Google, Bing, reference materials) to answer the exam questions.
- H. **Warning about Open Book:** Having your notes and materials will **not** relieve you of the need to already know the material. Indeed, it is very probable that if you do not study for this exam **exactly** as you would for a closed-book exam, then you will do very poorly and perhaps not pass.
- I. **Grading:** All exams will receive a raw score from zero to 65. The raw score is meaningful only relative to the raw score of the other students in the class. The raw score will be added to the quiz and discussion board totals. That total will then be converted to a scaled score, based on the class curve. For example, if the highest raw score in the class were 80/100, then that student would receive an A. The final grades will comport with Law School’s grading policies.
- J. **Missed Exam:** A student who fails to take an exam within the designated time period for taking the exam receives a 20%-point deduction on the exam and must take the exam within one week of the designated time period to receive any credit.

- K. **Exam Feedback:** Several weeks after the exam, we will post on Blackboard:
1. A copy of the exam
 2. A blank scoring sheet and explanatory memo
 3. Model answers.
- L. **Grade Finality:** All grades are final. While sometimes seemingly unfair in application, pursuant to school rules, there will be no negotiations regarding revisions, except to correct any mathematical or clerical errors in computing the final score.
- M. **Exam Review:** We will be happy to go over the exam with anyone who schedules an appointment to review the exam. On request, we will scan and email you a copy of **your** exam answers. If – after reviewing these against the exam, the feedback memo, model answers, and your notes – you have questions about your exam, please email those to us in advance of our meeting so that we can be sufficiently prepared to ensure a productive and efficient meeting.

11. Exam Taking Tips

- A. **Grading Criteria:** In your exam answer, we look for:
1. An ability to muster relevant evidence and authority to make arguments both cogently and clearly
 2. An understanding of substantive legal doctrine
 3. An appreciation for broader policy concerns that influence how legal doctrine applies to novel situations
- B. **Outline Your Answer:** We strongly encourage you to use at least one-fourth of the allotted time per question to outline your answers before beginning to write. Do this because you will be graded not only on the substance of your answer but also on its clarity and conciseness. In other words, organization, precision, and brevity count. If you run out of insightful things to say about the issues raised by the exam question, stop writing until you think of something. Tedious repetition, regurgitations of law unrelated to the facts, or rambling about irrelevant issues will negatively affect your grade.
- C. **Answer Format:** This is important. Use headings and subheadings. Use short single-idea paragraphs (leaving a blank line between paragraphs). Do not completely fill the page with text. Leave white space both between sections and paragraphs.
- D. **Headings & Subheadings:** Use headings and subheadings to divide different legal theories and distinct types and parts of analysis. Keep your paragraphs short – to around three to eight lines.

- E. **Answer Content:** Address all relevant issues that arise from and are implicated by the fact pattern and that are responsive to the “call” of the question. Do not just summarize all the facts or all the legal principles relevant to an issue. Instead, apply the law you see relevant to the facts you see relevant. Take the issues that you identify and organize them into a coherent structure. Then, within that structure, examine issues and argue for a conclusion. If you are writing whole paragraphs of pure law or pure fact, that is a symptom that you may not be engaged in legal analysis.
- F. **Citing Cases:** You are welcome, but not required, to cite cases. While it is sometimes helpful to the reader and a way to economize on words, do not cite case names as a complete substitute for legal analysis. For example, do not write: “Plaintiff should be able to recover under A v. B.” Why? What is the rule in that case? What are the facts in the instant case that satisfy that rule?
- G. **Cross-Referencing:** You may reference your own previous analysis (e.g. B’s claim against C is identical to A’s claim against C, because __.” But be very clear and precise what you are referencing. As in contract interpretation, ambiguity is construed against the drafter.
- H. **Balanced Argument:** Facts rarely perfectly fit rules of law. So, recognize the key weaknesses in your position and make the argument on the other side.
- I. **Additional Facts:** If you think that an exam question fairly raises an issue but cannot be answered without additional facts, state clearly those facts (reasonably implied by, suggested by, or at least consistent with, the fact pattern) that you believe to be necessary to answer the question. Do not invent facts out of whole cloth.
- J. **Honor Code:** While you are taking a midterm or final exam, you are subject to the Mitchell Hamline Code of Conduct. You may not discuss it with anyone until after the end of the entire exam period. It is a violation of the Honor Code to share the exam questions. Shred or delete the exam questions (hard and e-copies) immediately upon completion of the exam. They will be reposted after the end of the exam period.
- K. **Exam Misconduct.** The Code of Conduct prohibits dishonest acts in an examination setting. Unless specifically permitted, prohibited conduct includes: (1) discussing the exam with another student; (2) giving, receiving, or soliciting aid; (3) referencing unauthorized materials; (4) reading the questions before the examination starts; and (5) exceeding the examination time limit.

12. Office Hours

- A. **Telephone:** Feel free to phone Professor Pope at his office 651-695-7661 or cell 310-270-3618. Professor Olson is available at 763-245-1126.
- B. **Email:** Feel free to e-mail us anytime at jamie.olson21@gmail.com or thaddeus.pope@mitchellhamline.edu. In urgent circumstances cc thadmpope@aol.com and thaddeus.pope@gmail.com, and text 310-270-3618. We will try to promptly answer any question as soon as possible.
- C. **Technical Questions:** If you have any problems accessing or using Blackboard, call 651-290-6411 during normal business hours. Send an email to IT@mitchellhamline.edu. Or call the 24-hour Blackboard support number: (855) 402-4696.

13. Subject Matter Outline

Week 1	June 1 to June 7	Health benefits of cannabis	What are the potential health benefits of medical cannabis?
		Overview of federal law	What federal statutes apply to cannabis? What is the DOJ policy on handling medical cannabis in the states that have decriminalized its use?
Week 2	June 8 to June 14	Preemption: express and field	Why is preemption the foundational pillar to medical cannabis analysis? What are the basic tests for express and field preemption?
Week 3	June 15 to June 21	Preemption: conflict	Why is conflict preemption the test most likely to be applied to medical cannabis? What are the arguments for and against conflict preemption?
Week 4	June 22 to June 28	Comparing state regulatory approaches	What are the key provisions of the Minnesota cannabis law? What different approaches have states taken to regulating medical cannabis?

			What are the policy goals behind these various laws?
		Consequences of rescheduling cannabis	How are controlled substances scheduled under the CSA? What are the implications of rescheduling cannabis?
Week 5	June 29 to July 5	Criminal	With what federal crimes could a patient, healthcare provider, or manufacturer be charged? What are potential defenses to medical cannabis related criminal charges?
Week 6	July 6 to July 12	Civil rights and discrimination	What are the key points of tension between federal civil rights protection for something that is federally illegal?
Week 7	July 13 to July 19	Tax	What are potential federal tax issues for patients, manufacturers, and distributors?
		Attorney ethics	What ethical issues arise when working as an attorney on medical cannabis related matters?
		Health insurance coverage	
		Products liability	How do patients pay for medical cannabis?
HIPAA			
Final Exam	July 21 to July 29	Exam period	