

Are Your Old Cannabis and CBD Contracts Enforceable? Maybe Not.

Individuals and businesses involved in the cannabis or CBD industry are likely in the habit of making sure they are apprised of new laws and regulations in the jurisdictions impacting their businesses. However, when focusing on the future, sometimes, people forget to pay attention to the past — namely past business contracts. A recent unpublished case in the California Appellate Court demonstrates the importance of updating or rewriting contracts as the legality, rules, and regulations of cannabis and CBD products continue to evolve.

The California Appellate Court recently refused to enforce a contract for the production and distribution of edible cannabis products, which was entered into in 2014, when cannabis was not yet legal for recreational use in California. *Susan Metsch et al. v. Jesse Heinowitz et al*, No. D074999, 2020 WL 1933189 (Cal. Ct. App. Apr. 22, 2020). The plaintiffs alleged breach of contract, breach of fiduciary duty, and conversion arising out of the contract for the production and distribution of edible cannabis products. On review of defendants' motion for summary judgment, the trial court held that the plaintiffs could not enforce the contract because the parties had operated an unlicensed entity that produced and distributed edible cannabis products. The court reasoned that the commercial cannabis business they operated together was illegal at the time, and the plaintiffs had no right to seek recovery or enforcement based on an illegal transaction.

On appeal, the appellate court affirmed the trial court's holding. The court emphasized that a contract must be lawful *when the contract is made* and that the court must apply the law in effect *at the time the parties entered into the contracts at issue*. The court's analysis focused on whether the object of the contract is illegal, not the extent of either party's participation in illegality. The court held that the defendants met their initial burden that marijuana was a Schedule 1 controlled substance in January 2014 when the contract was made and, at that time, California law prohibited its possession, planting, harvesting, drying, processing, and/or possession for sale, transportation, importation, sale, or gift. As such, the contract could not be enforced.

Although this is an unpublished opinion and is not binding precedent for other litigants, it is a good reminder for businesses and individuals in the cannabis industry to review past contracts and evaluate whether any should be revised or replaced by new agreements.

DISCLAIMER: Cannabis is still classified as a Schedule I controlled substance by the U.S. Drug Enforcement Agency, and as such it remains a federal crime to grow, sell and/or use cannabis. Any content contained herein is not intended to provide legal advice to assist with violation of any state or federal law.



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Industry Sectors

- Cannabis