



PennState Law

Center for Agricultural
and Shale Law

Negotiating Hemp Contracts

**Ross Pifer, Director,
Center for Agricultural and Shale Law**





Our Website



The screenshot shows the website's interface. At the top, there is a browser window with the URL `aglaw.psu.edu`. Below the browser, the website header includes the Penn State Law logo, the center's name, a "SUBSCRIBE FOR UPDATES" button, and a search bar. A navigation menu contains links for HOME, ABOUT THE CENTER, EVENTS, PUBLICATIONS, RESEARCH BY TOPIC, WATCH OR LISTEN, MEDIATION, and LEGAL CLINIC. The main content area features a large image of a golden field with a path, overlaid with the text "Welcome to the Center for Agricultural and Shale Law". Below this, there are sections for "Agricultural Law Weekly Review" with sub-headers for "Week Ending April 16, 2021" and "Week Ending April 9, 2021". The first review discusses COVID-19 impacts on the Farmer to Families Food Box Program. The second review discusses an antitrust settlement in a peanut class action suit. To the right, there is a "Tweets by @AgShaleLaw" section showing two tweets with links to news articles. At the bottom right, there are social media sharing options for Facebook and Twitter.



Overview of Presentation

- Contracts in general
- Specific contractual provisions
- Additional resources



Do I Need A Contract for Agricultural Production?

- You don't until you do.
- Compare sales of produce at a farmer's market with raising of poultry for integrator
- A well-written contract is an important risk management tool for an agricultural producer or processor.



Does My Contract Need to be in Writing?

- Generally oral contracts are valid, but . . .
- How do you prove specific contractual terms?
- Does an oral contract protect your expectations?



Contract Specificity

- 50 pages vs. 2 pages
- What is the appropriate level of detail in contractual terms?
- Who benefits from a lack of clarity in contractual terms?



“Borrowing” Contracts from Other Transactions

- No need to unnecessarily reinvent the wheel, but . . .
- Who wrote the contract?
 - General rule – The contract drafter protects the interests of the contract drafter.
- When was the contract written?
- Understand how to adapt contracts for your own use.



Winning a Contract Negotiation?

- Litigation is adversarial / Contract negotiation doesn't need to be.
- Litigation
 - Both parties are focused on the same issue with each side taking a different position.
- Contract negotiation
 - Parties may not be focused on the same issues as each side is focused on protecting their own interests.



Current Environment for Hemp Contracts

- Need to manage risk:
 - Industry in infancy
 - Companies without extensive track records
 - Regulations not fully established
 - New markets being developed
- Typical contracts will evolve as industry evolves.



Do I Need an Attorney?

- Yes



Do I Need an Attorney?

- Ideally, your attorney has experience drafting or reviewing hemp contracts from your business perspective.
- If not, you will need to more fully explain your wants/needs/business operation.
- You should not pay for your attorney to educate him/herself on hemp contracts.
- Get referrals from trade organizations.



The Process of Drafting or Reviewing a Contract

- Walk through each step of your business operation.
 - Identify what could go wrong.
 - Include contract term to ensure compliance by other party.
 - Include contract term to excuse your performance where appropriate.
- Understand every word of the contract.
 - There are no unimportant terms.



The Process of Drafting or Reviewing a Contract

- The contract must include the entire agreement between the parties.
 - No side agreements



Marketing vs. Production Contract

- Marketing contract
 - Producer generally owns product until sale
 - Contract specifies price and quality standards
- Production contract
 - Integrator generally owns product throughout process
 - Integrator generally provides all inputs
 - Producer is paid for raising crop



Contractual Terms

Identity of Parties:

- All parties must use legal names for themselves or for validly formed legal entities (research every entity name at PA Corporation Bureau website:
 - <https://www.corporations.pa.gov/search/corpsearch>
- Verify the authority of the person who is signing to act on behalf of the entity
- Research who you are dealing with!



Contractual Terms

- Does the contract allow for assignment to another party?



Length of Contract

- How long does contract last?
- Can the terms of the contract or the length of the contract be changed after it is signed?



Length of Contract

- Does the contract provide for a renewal or extension?
 - Does renewal automatically occur?
 - Is a notice of termination required?
 - When can renewal occur?
 - What are the terms of renewal?



Ownership / Intellectual Property Issues

- Who owns the product?
- Who owns the seed?
- Are there any restrictions on the use of the seed?
- Is there a transfer of title?
 - If so, at what point in the production process?



Payment Terms

- How is the price calculated?
 - Specifically enumerated price vs. market price
- When is payment required?
- Remedies for non-payment
- Use of escrow



Quality Terms

- Any required or prohibited production practices?
- Moisture requirements
- Use of pesticides
- Free from insects or disease
- Free from trash or debris



Delivery Terms

- When is delivery required?
- Penalties for late delivery?
- In what form must product be delivered?
- Who is responsible for storage?



Testing Terms

- Who will conduct testing?
 - When?
 - Who pays?
- Who bears responsibility for hot crop?



Permits and Licensure

- Who is responsible for obtaining licenses, permits, environmental compliance, zoning, etc.
- Ongoing requirement for licensure



Remedies for Breach

- What constitutes a breach?
- What remedies are needed to protect expectations of parties?
- Can attorney's fees be recovered?



Excuses for Non-Performance

- Force majeure
 - What constitutes force majeure?
 - Weather?
 - Government regulation or enforcement?
 - Market disruption or uncertainty?
 - Other production disruption?



Risk of Loss

- How could product be lost?
- Who bears responsibility for loss?
- Who is required to carry insurance?
 - For liability
 - For loss of crop



General Provisions

- Confidentiality Requirement
 - To whom can contract provisions be disclosed?
- Exclusivity Requirement
 - Is producer free to deal with other buyers?



General Provisions

- Venue
 - Where will litigation be conducted?
- Arbitration / Mediation
 - Is alternate form of dispute resolution required prior to, or in lieu of, litigation



Additional Resources

- Hemp Production Contract Checklist – University of Maryland
 - <https://www.agrisk.umd.edu/hempcontractingchecklist>
- Hemp Contract Considerations – University of Kentucky
 - https://agecon.ca.uky.edu/files/hemp_contract_considerations.pdf
- Industrial Hemp in North Carolina: A Guide to Understanding and Evaluating Contracts – NC State
 - <https://content.ces.ncsu.edu/industrial-hemp-in-north-carolina-guide-to-understanding-and-evaluating-contracts>



PennState Law

Center for Agricultural
and Shale Law



Penn State Law
Lewis Katz Building
University Park, Pennsylvania

Center for Agricultural and Shale Law
Ross Pifer, Director
rpifer@psu.edu