

ASPEN CASEBOOK SERIES

WASHBURN

GAMING AND  
GAMBLING LAW  
Cases and Materials



Wolters Kluwer

Law & Business

ASPEN CASEBOOK SERIES

# GAMING AND GAMBLING LAW

---

*Cases and Materials*

**Kevin Washburn**

Dean and Professor of Law  
University of New Mexico School of Law



**Wolters Kluwer**

Law & Business

AUSTIN BOSTON CHICAGO NEW YORK THE NETHERLANDS

© 2011 Aspen Publishers. All Rights Reserved.  
<http://AspenLaw.com>

No part of this publication may be reproduced or transmitted in any form or by any means, electronic or mechanical, including photocopy, recording, or any information storage and retrieval system, without permission in writing from the publisher. Requests for permission to make copies of any part of this publication should be mailed to:

Aspen Publishers  
Attn: Permissions Department  
76 Ninth Avenue, 7th Floor  
New York, NY 10011-5201

To contact Customer Care, e-mail [customer.service@aspenpublishers.com](mailto:customer.service@aspenpublishers.com), call 1-800-234-1660, fax 1-800-901-9075, or mail correspondence to:

Aspen Publishers  
Attn: Order Department  
PO Box 990  
Frederick, MD 21705

Printed in the United States of America.

1 2 3 4 5 6 7 8 9 0

ISBN 978-0-7355-8845-5

**Library of Congress Cataloging-in-Publication Data**

Washburn, Kevin (Kevin K), 1967-

Gaming and gambling law / Kevin Washburn.

p. cm.

Includes bibliographical references and index.

ISBN 978-0-7355-8845-5 (alk. paper)

1. Gambling—Law and legislation—United States. I. Title.

KF3992.W37 2011

344.73'099—dc22

2010045592

---

## About Wolters Kluwer Law & Business

Wolters Kluwer Law & Business is a leading provider of research information and workflow solutions in key specialty areas. The strengths of the individual brands of Aspen Publishers, CCH, Kluwer Law International and Loislaw are aligned within Wolters Kluwer Law & Business to provide comprehensive, in-depth solutions and expert-authored content for the legal, professional and education markets.

**CCH** was founded in 1913 and has served more than four generations of business professionals and their clients. The CCH products in the Wolters Kluwer Law & Business group are highly regarded electronic and print resources for legal, securities, antitrust and trade regulation, government contracting, banking, pension, payroll, employment and labor, and healthcare reimbursement and compliance professionals.

**Aspen Publishers** is a leading information provider for attorneys, business professionals and law students. Written by preeminent authorities, Aspen products offer analytical and practical information in a range of specialty practice areas from securities law and intellectual property to mergers and acquisitions and pension/benefits. Aspen's trusted legal education resources provide professors and students with high-quality, up-to-date and effective resources for successful instruction and study in all areas of the law.

**Kluwer Law International** supplies the global business community with comprehensive English-language international legal information. Legal practitioners, corporate counsel and business executives around the world rely on the Kluwer Law International journals, loose-leafs, books and electronic products for authoritative information in many areas of international legal practice.

**Loislaw** is a premier provider of digitized legal content to small law firm practitioners of various specializations. Loislaw provides attorneys with the ability to quickly and efficiently find the necessary legal information they need, when and where they need it, by facilitating access to primary law as well as state-specific law, records, forms and treatises.

Wolters Kluwer Law & Business, a unit of Wolters Kluwer, is headquartered in New York and Riverwoods, Illinois. Wolters Kluwer is a leading multinational publisher and information services company.

---

## PREFACE

---

Commercial gambling has been one of the fastest growing sectors of the economy in the last three decades. Trillions of dollars have been gambled and billions have been lost and earned. Brick and mortar gambling establishments now exist in most American states and illegal sport betting and Internet gaming is, no doubt, occurring in all of them. Indian gaming, which first developed in the 1970s, is now occurring in around 30 states. Most of the states without Indian casinos nevertheless have lotteries, horseracing, bingo, or riverboats. Gambling is ubiquitous in American culture.

What is gambling? The legal boundaries of the term are ill-defined and courts often have difficulty determining how broadly it should reach. Consider the following questions: is the day-trading investor “gambling” when he “plays” the stock market? Is the political candidate “gambling” when she invests millions of dollars of her own and others’ money to seek political office, uncertain if she will prevail? Is the patient “gambling” when he chooses surgery over another treatment? Is the average student “gambling” when she attends college, not certain whether there will be a job for her when she graduates? And to draw a finer point, if job opportunities are rare, is a law student gambling when she attends law school? Worse, what about the student earning a Ph.D. in English? Are young parents “gambling” when they pay premiums on life insurance policies so that there will be funds available to raise their children if they die unexpectedly? Is the MIT-trained mathematician “gambling” when he plays blackjack with a predetermined amount of money fully aware of the probabilities in the game and the strategies available to maximize those probabilities to his own benefit?

If betting on an uncertain outcome that is partially determined by luck constitutes “gambling,” then most human beings are guilty of gambling many times every day. So why is casino gambling or sports-betting subject to American gambling laws while so many other gambling activities, such as entering the stock market or politics, or choosing medical treatment, investing in an education, or buying life insurance, are not? What are the particular concerns that lead us to apply our gambling laws to activities that happen in casinos, but not to the other activities of life?

Gambling poses numerous riddles in American law and society. In some jurisdictions, gambling is subject to a full and outright prohibition. In others, it is authorized, but only in a very limited manner. In still others, it is legal and even encouraged. Indeed, a majority of American state jurisdictions authorize a particular limited form of gambling, the state lottery, that is not only lawful, but marketed aggressively using public funds. In some of these jurisdictions, state law strongly limits or even prohibits other forms of gambling. Even in jurisdictions in which gambling has been broadly legalized, it is highly regulated. What drives the decision to prohibit gambling or to legalize and regulate it? What are the concerns at work in this calculus? When the decision is made to legalize and regulate gambling, what ought to be the goals of regulation? Indeed, what are the risks presented by the activity and what are the problems sought to be addressed by regulation?

Still another reflection of the enigmatic status of gambling in the United States is this question: what constitutes “fair” gambling? If gambling is a legal and regulated commercial enterprise, what are the responsibilities of the vendor regarding the “game” itself. What is the casino selling? Is it merely providing “entertainment” or is it offering a fair game? That is, must the vendor also provide each player-patron an even playing field as to the game itself? Must the vendor, for example, offer the same gaming opportunity to all patrons, or may the vendor change the rules and even exclude particularly successful patrons from play precisely because they are so successful? May players cooperate with one another to try to minimize the casino’s advantage, for example, in a blackjack game in which the game involves players betting against one another and the house? When the patron approaches the blackjack table, is the casino merely offering the patron “entertainment” or is it offering terms that are far more specific? From the patron’s vantage point, is the patron merely buying the opportunity to get lucky or is the patron buying the opportunity to use all his skills to make money at the casino?

These are some of the difficult questions that will be addressed in the coming chapters. The first two chapters are closely related. Chapter 1 addresses the fundamental legal question of what constitutes gambling, that is, what is the legal definition of gambling in the laws as interpreted by the courts in the United States. However, the definition of gambling in any given regulatory or prohibitory law is necessarily dependent on the underlying reason for regulating or prohibiting gambling. Chapter 2 takes up the specific concerns that motivate the prohibition or regulation of

gaming and thus sheds additional light on how broadly gambling ought to be defined in the law.

Next, the book examines prohibitory approaches to gambling. In Chapters 3 and 4, it explains the legal strategies that have been used to prohibit or discourage gambling in the United States. Chapter 3 takes up private law strategies for discouraging gambling and draws upon the myriad issues that arise from gaming law's nexus with contract law and conflicts of law. Chapter 4 explores federalism and the inherent difficulties in maintaining a gambling prohibition within a nation that has numerous political subdivisions that are authorized to make their own policies about gambling. It also addresses many of the federal laws that were principally developed as tools to prevent unlawful gambling.

Chapters 5 through 8 address issues that arise in efforts to legalize and regulate gambling. Chapter 5 highlights the cross-boundary problems and the difficulties in limiting the expansion of gambling and limiting gambling to certain geographic areas. Chapter 6 takes up licensure, which is the leading regulatory strategy for addressing the potential harms of gambling, and introduces the due process questions that arise in a regime that allows wide discretion for regulators. It also addresses the vexing issues that arise in light of the inevitable and sometimes unhealthy relationship between organized sports and gambling.

Chapter 7 addresses the nature of the regulation of the players and the games themselves, dealing with the relationship between the casino or gaming operator and the consumer. It also addresses what constitutes cheating in the casino context.

Finally, Chapter 8 addresses issues of taxation that are unique to the gambling context and applies many of the principles presented earlier in the course. Taxation requires us to address fundamental questions about the nature of gambling, such as whether the player engages in gambling for entertainment or as a commercial enterprise for profit. Chapter 8 thus brings us full circle and requires us to address the initial questions raised in the first two chapters. What kind of behavior is this and what is the purpose of taxation?

Kevin Washburn

November 2010  
Albuquerque

## ACKNOWLEDGMENTS

---

The genesis for this book was a seminar and then a course at the University of Minnesota Law School. Before joining the faculty at Minnesota, I served as General Counsel of the National Indian Gaming Commission. During my time there, I realized that Indian gaming was regulated much like other forms of commercial gaming across the United States. While some of my Indian law colleagues teach courses on Indian gaming law, most of these courses focus on aspects of federal Indian law and concentrate very little on the general regulatory structure of gambling that occurs inside Indian casinos and in most other American gambling venues. As I taught a course on general gambling law for the first time, I sensed a need for a book that recognizes the common concepts and legal principles that cross all forms of gambling.

In preparing this manuscript, I had tremendous assistance from students and research assistants. At Minnesota, I benefited greatly from the guidance and assistance of Ben Hendrick and Lotem Almog Levy, as well as Julie Strother. I am also grateful to the Prairie Island Sioux Community as well as the Shakopee Mdewakanton Dakota Community for providing my classes back-of-the-house tours of their respective gaming operations, the Treasure Island Casino and the Mystic Lake Casino. I am grateful that then-Dean Alex Johnson and then-Associate Deans Steve Befort and Jim Chen allowed me to explore this new course at Minnesota. Because Minnesota has a robust gaming market and a sophisticated bar, it was a fantastic place to begin.

The manuscript was further refined when I taught the course at Harvard Law School. Approximately 60 students enrolled in the course, the first general course on gambling law ever offered in that school's history. The class benefited greatly by visits from Frank J. Fahrenkopf, Jr., President of the American Gaming Association, former Rep. Jim Leach of Iowa, who was then serving as director of the Kennedy School's Institute of Politics, and Massachusetts State Treasurer Tim Cahill. I am grateful to the Mohegan Tribe of Connecticut which hosted a back-of-the-house tour of its casino for the class, and to then-Dean Elena Kagan and Associate Dean Andy Kaufman for providing generous funding for the course and allowing me to teach



it. I was assisted in my work at Harvard by several outstanding students, including Adam Hosmer-Henner, Ethel Branch, Kyle Scherer, Brian Vito, Andrew Woods, and Michael Kaiser.

I last taught the course at the University of Arizona's James E. Rogers College of Law. I am grateful to then-Dean Toni Massaro and Associate Dean Kay Kavanough for allowing me to teach the course, and also to students John Barwell, Leah Lussier, Vanessa Chavez, Trini Contreras, Jason Doucette, Johanna Farmer, Tory Fodder, Erick Gjerdingen, Katie Grounds, A.J. Hart, Mike Ivancie, Tony King, Maria Manibusan, Alex Mayer, Eric Moores, Aaron Nance, Vicki Robertson, Morgan Rodman, and Jesse Sixkiller for helping me to continue to refine my thinking about the course. One of my students, a part-time racing official named Steve May, provided an excellent back-of-the-house tour of the Rillito Downs racetrack. I am also grateful to the Pascua Yaqui Tribe for providing the students a hands-on, back-of-the-house tour of the Casino del Sol.

At the University of New Mexico, I must thank my research assistant Julia Maccini, librarian Ann Hemmens, and especially my wonderful administrative assistant Sandra Bauman for helping me to bring this book to publication.

Over the years, I have learned as much about gaming from teaching the subject with able colleagues and students as I have from studying it alone. From teaching courses with the National Judicial College and the National College of District Attorneys, I have met many colleagues in the field, who have guided my understanding. I am grateful to them.

I am also grateful to the Saginaw Chippewa Indian Tribe of Michigan for appointing me the Chief Judge of the tribe's Court of Appeals in 2008. Through this appointment, I have been exposed to additional issues involving Indian gaming in Michigan, and also helped me to learn the issues faced at the tribal level.

I have several colleagues in academia and the gaming industry to whom I owe intellectual debts for exposing me to, or helping me think through, various problems. These include Montie Deer, Barry Brandon, Penny Coleman, Rick Schiff, and Phil Hogen at the NIGC, as well as Senator John McCain, and many Congressional staffers over the years. These also include numerous attorneys and professors, including, among others, Bradley Bledsoe Downes, Henry Buffalo, Anthony Cabot, Eric Dahlstrom, Skip Durocher, Glenn Feldman, George Forman, Rob Gips, Vanya Hogen, Willie Hardacker, Dan Israel, Danna Jackson, John Jacobson, Mark Jarboe, Professor Tadd Johnson (Univ. of Minnesota-Duluth), Bill Buffalo, Mark Van Norman, Professor Colette Routel (William Mitchell), Heidi McNeil Staudenmaier, Kevin

Gover, Professor Steven Andrew Light (North Dakota), Professor William Rice (Tulsa), Professor Robert N. Clinton (Arizona State), Professor Nelson Rose (Whittier), Professor (and Dean) Kathryn Rand (North Dakota), Professor Ron Rychlak (Ole Miss), Professor Gregg Polsky (UNC), Professor Rebecca Tsosie (ASU), Professor Carole Goldberg (UCLA), and Professor Richard Aaron (Utah).

Judge William C. Canby, Jr., first exposed me to gaming law by assigning me a bench memorandum in what I have since come to recognize as a common type of litigation known as a “a game classification case” while I was clerking for him. He continues to be an outstanding mentor and a role model.

During most all of this work, I have had the generous support of my wife Libby and the love of my sons, Cole and Ford, who traveled all over the country with me to numerous different law schools and cities so that I could pursue an exciting and very rewarding academic career.

Finally, my thanks to the following for permission to reproduce all or portions of their work:

Barbara E. Armacost, *Qualified Immunity: Ignorance Excused*, 51 VAND. L. REV. 583 (1998). Copyright 1998 by Vanderbilt Law Review, Vanderbilt University School of Law; Barbara Armacost. All Rights Reserved.

Cory Aronovitz, *The Regulation of Commercial Gaming*, 5 CHAP. L. REV. 181 (2002). Copyright 2002 by Chapman Law Review; Cory Aronovitz. All Rights Reserved.

Tom W. Bell, *Internet Gambling: Popular, Inexorable, and (Eventually) Legal*, Cato Institute Policy Analysis No. 336, Mar. 8, 1999. Copyright 1999 by the Cato Institute; Tom W. Bell. All Rights Reserved.

Alexandra Berzon, *The Gambler Who Blew \$127 Million*, WALL STREET JOURNAL (Dec. 5, 2009). Reprinted by permission of the Wall Street Journal. Copyright © 2009 Dow Jones & Company, Inc. All Rights Reserved worldwide. License number 2540971170669.

AMERICAN PSYCHIATRIC ASSOCIATION, DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS (4th ed., text revision, 2000). Copyright 2000 by American Psychiatric Association. All Rights Reserved.

Anthony N. Cabot & Louis V. Csoka, *The Games People Play: Is It Time for a New Legal Approach to Prize Games?*, 4 NEV. L.J. 197 (2004). Copyright 2004 by Nevada Law Journal; Anthony N. Cabot; Louis V. Csoka. All Rights Reserved.

Anthony N. Cabot & Robert Hannum, *Advantage Play and Commercial Casinos*, 74 MISS. L.J. 681 (2005). Copyright 2005 by Mississippi Law Journal, Inc.; Anthony N. Cabot; Robert Hannum. All Rights Reserved.

- Theft Worse Than Infidelity: Poll*, TORONTO STAR (Feb. 18, 2002) at A3. Copyright 2002 by the Canadian Press. All Rights Reserved.
- Charles T. Clotfelter, *Do Lotteries Hurt the Poor? Well, Yes and No*, Expert Testimony to the House Select Committee on a State Lottery (April 19, 2000). Copyright 2000 by Charles T. Clotfelter. All Rights Reserved.
- Ronnie D. Crisco, Jr., *Follow the Leaders: A Constructive Examination of Existing Regulatory Tools That Could Be Applied to Internet Gambling*, 5 N.C. J.L. & TECH. 155 (2003). Copyright 2003 by North Carolina Journal of Law and Technology; Ronnie D. Crisco, Jr. All Rights Reserved.
- William R. Eadington, *The Casino Gaming Industry: A Study of Political Economy*, THE ANNALS OF THE AMERICAN ACADEMY 474 (July 1984). Copyright 1984 by Sage Publications Inc., Journals; William R. Eadington. All Rights Reserved.
- William R. Eadington, *The Economics of Casino Gaming*, 13 JOURNAL OF ECONOMIC PERSPECTIVES 173 (Summer 1999). Copyright 1999 by the American Economic Association; William R. Eadington. All Rights Reserved.
- Ronald A. Farrell & Carol Case, THE STARDUST AND FRANK LARRY ROSENTHAL, THE BLACK BOOK AND THE MOB (Univ. of Wisc. Press 1995). Copyright 1995 by the Board of Regents of the University of Wisconsin System. Reprinted by permission of the University of Wisconsin Press. All Rights Reserved.
- Matthew J. Gries, *Judicial Enforcement of Agreements to Share Winning Lottery Tickets*, 44 DUKE L.J. 1000 (1995). Copyright 1995 by the Duke Law Journal; Matthew J. Gries. All Rights Reserved.
- Ryan D. Hammer, *Does Internet Gambling Strengthen The U.S. Economy? Don't Bet On It*, 54 FED. COMM. L.J. 103 (Dec. 2001). Copyright 2001 by Federal Communications Bar Association; Ryan D. Hammer. All Rights Reserved.
- Adam Hosmer-Henner, *Leveraging Sports Books to Reduce Game-Fixing*, 14 GAMING L. REV. & ECON. 31 (2010). Copyright 2010 by Mary Ann Liebert, Inc.; Adam Hosmer-Henner. All Rights Reserved.
- Christine Hurt, *Regulating Public Morals and Private Markets: Online Securities Trading, Internet Gambling, and the Speculation Paradox*, 86 B.U. L. REV. 371 (2006). Copyright 2006 by Christine Hurt. All Rights Reserved.
- Erik Jensen, *Economic Performance and Progressive Slots: A Better Analysis*, 45 TAX NOTES 635 (1989). Copyright 1989 by Tax Analysts; Erik Jensen. All Rights Reserved.
- Shannon Kari, *City Of Richmond Plays Down Casino-Crime Allegations*, GLOBE BRITISH COLUMBIA (Aug. 16, 2006) at B1. Copyright 2006 by Shannon Kari. All Rights Reserved.

- Joseph Kelly, *Caught in the Intersection Between Public Policy and Practicality: A Survey of the Legal Treatment of Gambling-Related Obligations in the United States*, 5 CHAP. L. REV. 87 (2002). Copyright 2002 by Chapman Law Review; Joseph Kelly. All Rights Reserved.
- John Warren Kindt, *Legalized Gambling Activities: The Issues Involving Market Saturation*, 15 N. ILL. U. L. REV. 271 (1995). Copyright 1995 by the Board of Regents, for Northern Illinois University Law Review; John Warren Kindt. All Rights Reserved.
- Brian Lester, *The Free Replay Feature in Pinball Machines: A Fresh Look at the Elements of Gambling and a Revised Method of Analysis*, 41 BRANDEIS L.J. 297 (2002). Copyright 2002 by University of Louisville; Brian Lester. All Rights Reserved.
- Stephanie Martz, *Note: Legalized Gambling And Public, Corruption: Removing the Incentive to Act Corruptly, or, Teaching an Old Dog New Tricks*, 13 J.L. & POL. 453 (1997). Copyright 1997 by Journal of Law and Politics, Inc.; Stephanie Martz. All Rights Reserved.
- Jeremy C. Marwell, *Trade and Morality: The WTO Public Morals Exception After Gambling*, *Note*, 81 N.Y.U.L. REV. 802 (May 2006). Copyright 2006 by New York University Law Review; Jeremy C. Marwell. All Rights Reserved.
- By permission. From *Merriam-Webster's Collegiate® Dictionary, Eleventh Edition* ©2010 by Merriam-Webster, Inc. ([www.Merriam-Webster.com](http://www.Merriam-Webster.com)).
- Richard S. Murphy & Erin A. O'Hara, *Mistake of Federal Criminal Law: A Study of Coalitions and Costly Information*, 5 SUP. CT. ECON. REV. 217 (1997). Copyright 1997 by University of Chicago Press; Richard S. Murphy; Erin O'Hara. All Rights Reserved.
- Ronald J. Rychlak, *Lotteries, Revenues and Social Costs: A Historical Examination of State-Sponsored Gambling*, 34 B.C. L. REV. 11 (1992). Copyright 1992 by Ronald J. Rychlak. All Rights Reserved.
- Tim Searchinger, *The Procedural Due Process Approach to Administrative Discretion: The Courts' Inverted Analysis*, 95 YALE L. J. 1017 (1986). Copyright 1986 by the Yale Law Journal Co., Inc.; Tim Searchinger. All Rights Reserved.
- Daniel Shaviro, *The Man Who Lost Too Much: Zarin V. Commissioner and the Measurement of Taxable Consumption*, 45 TAX L. REV. 215 (1990). Copyright 1990 by the New York University School of Law; Daniel Shaviro. All Rights Reserved.
- Lynn A. Stout, *Antispeculation Rules in American Law*, in *Why the Law Hates Speculators: Regulation and Private Ordering in the Market for OTC Derivatives*, 48 DUKE L. J. 701 (1999). Copyright 1999 by Duke Law Journal; Lynn A. Stout. All Rights Reserved.

- Kathleen M. Sullivan & Gerald Gunther, *CONSTITUTIONAL LAW* 324 (15th ed. 2004). Copyright 2004 by Thomson Reuters; Kathleen M. Sullivan; Gerald Gunther. All Rights Reserved.
- United Methodist Church, *Statements on Gambling*, *BOOK OF RESOLUTIONS* 2004. Copyright 2004 by The United Methodist Publishing House. All Rights Reserved.
- Should Online Gambling Be Banned?*, *WALL STREET JOURNAL ONLINE NEWS ROUNDUP* (April 4, 2006). Copyright 2006 by Dow Jones & Company, Inc. Reproduced with permission of Dow Jones & Company, Inc., in the format Textbook via Copyright Clearance Center. All Rights Reserved.
- Kevin K. Washburn, *Federal Law, State Policy, and Indian Gaming*, 4 *Nev. L. J.* 285 (2004). Copyright by Nevada Law Journal; Kevin K. Washburn. All Rights Reserved.
- Kevin K. Washburn, *The Legacy of Bryan v. Itasca County: How a \$147 County Tax Notice Helped Bring Tribes \$200 Billion in Indian Gaming Revenues*, 92 *MINN. L. REV.* 919 (2008). Copyright 2008 by Minnesota Law Review Foundation; Kevin K. Washburn. All Rights Reserved.
- Kevin K. Washburn, *Recurring Problems in Indian Gaming*, 1 *WYO. L. REV.* 427 (2001). Copyright 2001 by University of Wyoming; Kevin K. Washburn. All Rights Reserved.

## SUMMARY OF CONTENTS

---

<i>Contents</i>	<i>xi</i>
<i>Preface</i>	<i>xix</i>
<i>Acknowledgments</i>	<i>xxiii</i>
Chapter 1	What Is Gambling? 1
Chapter 2	The Social Harms of Gaming/Gambling 63
Chapter 3	Private Law and the Prohibition of Gambling 125
Chapter 4	Federalism and Direct Enforcement of Gambling Prohibitions 171
Chapter 5	The Challenge of Limiting Gambling in a Permissive Legal Environment 273
Chapter 6	Regulating Lawful Gaming Through Licensure 339
Chapter 7	Regulating Fair Play, Cheating, and Gaming Profitability 425
Chapter 8	Taxation of Gambling 489
<i>Table of Cases</i>	<i>551</i>
<i>Index</i>	<i>557</i>

# CONTENTS

---

<i>Preface</i>	<i>xix</i>
<i>Acknowledgments</i>	<i>xxiii</i>

---

## CHAPTER 1

---

<b>WHAT IS GAMBLING?</b>	<b>1</b>
A. The Element of Consideration	2
<i>Geis v. Continental Oil Co.</i>	2
Notes	6
<i>Albertson's, Inc. v. Hansen</i>	7
Notes	15
<i>Glick v. MTV Networks</i>	16
Notes	20
B. The Element of Chance	21
<i>Valentin v. El Diario La Prensa</i>	21
Notes	23
<i>People v. Hunt</i>	24
Notes	26
<i>Utah State Fair Ass'n v. Green</i>	26
Notes	33
<i>Joker Club, L.L.C. v. Hardin</i>	34
Notes	37
<i>Humphrey v. Viacom</i>	38
Notes	42
C. Prize or Reward	43
<i>McKee v. Foster</i>	43
Notes	46
D. Gambling in Other Contexts	47
Christine Hurt, Regulating Public Morals and Private Markets: Online Securities Trading, Internet Gambling, and the Speculation Paradox	47
Notes	49

<i>Grigsby v. Russell</i>	50
Notes	52
Lynn A. Stout, Why the Law Hates Speculators: Regulation and Private Ordering in the Market for OTC Derivatives	53
Notes	62

## CHAPTER 2

---

<b>THE SOCIAL HARMS OF GAMING/GAMBLING</b>	<b>63</b>
A. Compulsive Gambling and the Public Health	64
<i>State v. Lafferty</i>	64
Notes	65
Diagnostic and Statistical Manual of Mental Disorders (Fourth Edition)	66
Notes	69
<i>United States v. Libutti</i>	70
Notes	75
<i>Mark Merrill v. Trump Indiana, Inc.</i>	75
Notes	79
Alexandra Berzon, the Gambler Who Blew \$127 Million	80
Note	87
B. Immorality	87
Don Feeney, Beyond the Odds: Is Gambling Immoral?	88
Notes	89
Stephanie Martz, Legalized Gambling and Public Corruption: Removing the Incentive to Act Corruptly	90
United Methodist Church, Statements on Gambling	91
Notes	92
<i>Creach v. State</i>	93
C. Economic Concerns	97
1. Poverty	97
Ronald J. Rychlack, Lotteries, Revenues and Social Costs: A Historical Examination of State-Sponsored Gambling	98
Notes	99
Charles T. Clotfelter, Do Lotteries Hurt the Poor? Well, Yes and No	100



2. Impact on the Economy	102
John Warren Kindt, Legalized Gambling	
Activities the Issues Involving Market	
Saturation	102
Notes	104
D. Crime and Corruption	104
1. Loan Sharking	105
Shannon Kari, City of Richmond Plays	
Down Casino-Crime Allegations	105
Notes	106
2. Public Corruption	106
Stephanie Martz, Legalized Gambling and	
Public Corruption: Removing the Incentive	
to Act Corruptly, or Teaching an Old	
Dog New Tricks	106
3. Money Laundering	108
<i>Casino Vulnerabilities</i>	108
Notes	110
4. Fraud	111
<i>People v. Smith</i>	111
Notes	118
5. Embezzlement and Other Property Offenses	118
<i>Citibank v. Trump Taj Mahal</i>	118
Notes	124

### CHAPTER 3

---

## PRIVATE LAW AND THE PROHIBITION OF GAMBLING 125

A. Contract Law Approaches to Prohibitions on Illegal Gambling	126
1. Private Gambling Agreements	126
<i>Dickerson v. Deno</i>	126
Notes	130
<i>Pearsall v. Alexander</i>	131
Notes	136
2. Charitable Gaming in Prohibitive Jurisdictions	138
<i>Williams v. Weber Mesa Ditch Extension Co.</i>	138
Notes	140
<i>Harris v. Economic Opportunity Commission of</i>	
<i>Nassau County</i>	140
Notes	145