
Preface

The practice of an attorney in the field of regulated gambling is remarkably cross-doctrinal. The range of issues presented spans contract law, administrative practice, state constitutional law, securities regulation, and business entity issues such as reorganizations and currency reporting requirements, to name just a few.

This book emerged from conversations Gaming Law Committee members have had with business attorneys whose practice does not predominantly involve gaming clients. Nevertheless, these attorneys reported numerous instances where client matters they handled touched up against gaming law. The examples included the following:

- A client was a lighting contractor who did a substantial amount of business with an Indian tribe. The tribe failed to pay the contractor's invoice for equipment for the tribe's casino property, and claimed the person who entered the contract on behalf of the tribe didn't have authority to do so. What were the contractor's remedies?
- A valued employee of a firm represented by the business attorney disclosed that he had a serious gambling problem and sought treatment. The firm's health insurer resisted extending coverage to the individual even though employees with alcohol and substance disorders were being covered. What are the rights of this employee whom the firm wants to retain?
- A high school booster club contacted the attorney to ask about sponsoring a fund-raising "sweepstakes" for the high school athletic teams. The "sweepstakes" event was a trivia contest with five-person teams paying \$100 to enter. The winning team would receive 60 percent of the money collected and the remainder would go to paying for a new weight room at the high school. Does this type of activity constitute illegal gambling?
- The creditor of a casino that had filed for reorganization wanted the casino to continue to operate during the pendency of the proceeding. The creditor also wanted to purchase assets of the casino. Is this a matter of

interest only to the debtor, the creditors, and the court? What is the role of gaming regulators in the state where the casino is located?

- An elderly grandmother apparently won a \$10 million slot machine jackpot at a local casino and several neutral witnesses observed the machine display a win of \$10,000,000. The casino refused to pay, however, claiming that the machine had malfunctioned and that they had no liability whatsoever. Isn't this just a simple contracts case?

These are just a few illustrations of situations where business lawyers were contacted by clients or prospective clients on matters directly or indirectly involving gaming law. All the lawyers involved commented that an awareness of regulated gambling law would have been helpful in evaluating these situations.

The committee decided that a book that would familiarize the business attorney with some of the basics of gaming law would be a worthy undertaking. Lawyers and academics with specialties in gaming law have written this book with a goal of helping the practicing business lawyer better understand this challenging area of practice. Authors have worked to keep their audience in mind. This book is for the lawyer who may be described as the “inadvertent” or “accidental” gaming law attorney, or one who does not have gaming clients as the core of a business practice.

Our goal with this book is to impart to a business attorney a heightened awareness of regulated gambling law. If and when a client issue arises in the gaming field, we hope this book helps to give that attorney the confidence of knowing how to handle the matter, or the wisdom to recognize when to consult a gaming law specialist.

The following descriptions provide a brief summary of the chapters. The book is divided into three sections.

Part One offers an introduction to gambling in the United States.

Chapter 1, *Regulated Gambling in the United States*, written by **Kate Lowenhar-Fisher, Greg Gemignani, Jennifer Gaynor, and Jeff Silver**, introduces the reader to the various gaming markets that operate in the United States. The expansion of regulated gambling in the United States has been dramatic, and technological advances promise future business opportunities. The chapter also provides a helpful history of the development of gambling in the United States, including a guide to landmark events in the world of regulated gaming.

Chapter 2, *What Is Gambling?*, written by **Karl Rutledge and Glenn Light**, examines the fascinating question of what activities actually constitute gambling and which do not. States have developed a variety of tests to decide this question, and the chapter guides the reader through this maze. What does it mean to say a contest is a “game of skill”? Why does it matter? The answers to these questions implicate a variety of games and contests.

Part Two presents legal issues in the world of commercial gambling in the United States.

Chapter 3, *The Basics of Gaming Regulation*, written by **Anthony Cabot**, offers a comprehensive outline of how gaming is regulated in the United States, including the process of seeking a gaming license. While states differ in some of the details, common elements are present and the chapter explores these features. States regulate gambling to further several interests, and the material makes it clear that gaming regulation takes a backseat to no area of law in its detail and breadth.

Chapter 4, *Currency Reporting and Anti-Money Laundering Requirements for Gaming Properties*, is written by **Peter Kulick**. Currency reporting and anti-money laundering requirements are not unique to the gaming world, and many business lawyers are familiar with the Bank Secrecy Act. However, because gambling is primarily a cash business, gaming entities are saddled with special requirements that the chapter details. Failure to comply, as the discussion illustrates, can produce very expensive consequences for casinos.

Chapter 5, *Corporate Reorganizations, Bankruptcy, and Restructuring*, written by **Sean McGuinness and Adam Langley**, discusses the issues of corporate reorganizations and bankruptcies in the context of a gaming entity. The peculiar nature of gaming operations has implications for how the Bankruptcy Code applies and how creditors protect their interests. In some instances, gaming law intersects with bankruptcy proceedings, adding an additional layer of issues for the attorney.

Chapter 6, *Gaming Contracts*, written by **Keith Miller**, looks at several settings where contract law is entangled with the statutory and regulatory framework for gaming. Casino credit is a controversial issue, as is the process of a casino collecting on outstanding debts. Contract principles are also at play when patrons have conflicts with casinos over matters such as disputes about machine jackpots.

Chapter 7, *Problem Gambling and the Business Lawyer*, is written by **Stacey Tovino**, who explores issues relating to disordered gambling. The material digs into the nuanced insurance and employment issues that can arise when a person is diagnosed with gambling disorder. When the *Diagnostic and Statistical Manual of Mental Disorders*, fifth edition (*DSM-5*) reclassified gambling disorder from an “impulse-control disorder” to a “substance-related and addictive disorder,” there were many implications. The chapter also offers case studies of disbarred attorneys with gambling disorders seeking to regain their license.

Part Three covers other forms of gambling.

Chapter 8, *Tribal Gaming*, written by **Kathryn Rand and Steven Light**, considers the subtle issues associated with tribal gaming. Many tribes have gained economic

self-sufficiency from casinos on their tribal lands, though the majority of tribal gaming operations are modest and supply jobs if not riches to the tribe. The sovereignty of tribes, even when acting in a commercial environment, can present challenges to businesses, and their lawyers, to protect their economic interests. The chapter navigates the reader through the mix of federal, state, and tribal law.

Chapter 9, *Internet Gambling*, is written by **Karl Rutledge, Glenn Light, Mary Tran, and Jason Bacigalupi**. This chapter mines down into the controversial world of Internet gambling. Few issues are as fraught with political intrigue as online or mobile gambling. The chapter assesses the range of federal laws that govern Internet gambling, including how the Department of Justice has created confusion with various interpretations of a 1961 law that was directed at organized crime but is now being applied to states.

Chapter 10, *State Lotteries*, written by **David Ranscht**, is a comprehensive treatment of issues involving state lotteries. Disputes involving lottery jackpots are numerous and state law can vary on important details. Sometimes the clashes are between the lottery and a player, but the chapter also discusses the litigation between lotteries and vendors and between players.

Chapter 11, *Sports Betting in the United States*, authored by **Tamara Malvin**, immerses the reader in one of the most topical of gaming issues—sports wagering. A Supreme Court decision in 2018 opened the door to states to authorize and regulate sports betting, and several states have already jumped in. However, it isn't simply a matter of adding betting windows. The chapter delves into the many issues that policymakers have to consider in legislating to permit this venerable form of gambling.

Chapter 12, *Data Privacy Issues and GDPR*, written by **Sean McGuinness and Katie Fillmore**, evaluates the emerging issues of data privacy law in a casino context. The authors alert the reader to the broad application to U.S. companies and casinos of the General Data Protection Regulation (GDPR) of the European Union. This regulation, in addition to the regulation of data privacy by state law, creates compliance problems for casinos, which value the information they can obtain from their gambling patrons.