

RECAP

- Lottery and Games of Chance
 - Consideration
 - Chance
 - Prize

CONSIDERATION

- RECAP - Primary Theories
 - **Valuable Consideration** - parting of something of marketable value, usually money.
 - **Contract Consideration** - consideration sufficient to create a binding obligation or agreement.
 - **Promoter Benefit**
 - WIS STATS §945(5)(b) 1. "Consideration" in this subsection means anything which is a commercial or financial advantage to the promoter or a disadvantage to any participant, but does not include any advantage to the promoter or disadvantage to any participant caused when any participant learns from newspapers, magazines and other periodicals, radio or television where to send the participant's name and address to the promoter.

CONSIDERATION

- **CONSIDERATION + CHANCE + PRIZE = Games of Chance or Lottery**

CONSIDERATION

▲ CONSIDERATION + CHANCE + PRIZE = Sweepstakes

CONSIDERATION


- In some states, an alternative free method of entry will eliminate the element of consideration for a gambling analysis.
 - The free method must have "Equal Dignity" with methods associated with a purchase
 - Equal dignity" means that there is equality among entrants with regard to four aspects of the sweepstakes:
 - (i) method of entry,
 - (ii) opportunity to win,
 - (iii) claiming prizes, and
 - (iv) prizes awarded

CHANCE

- Dominant Factor – Predominance Test – American Test
 - This is the prevailing test used by most state courts and the federal courts when assessing the existence of the gambling element of chance, and is sometimes referred to as the "American Test" or the "Predominance Test."
 - Under this test, one must envision a continuum with pure skill on one end and pure chance on the other. The element of chance is met if chance predominates over skill in determining the outcome of the contest, even if the activity requires some skill. In theory, an activity crosses from skill to chance exactly in the middle of the continuum. On the continuum, games such as chess would be almost at the pure skill end, while traditional slot machines would be at the pure chance end of the continuum. Between these ends, there are many games that contain both skill and chance. In this area, there is always legal risk because it is a subjective assessment as to where on the continuum a game that is part skill and part chance lies.

CHANCE

- **Gambling Instinct**
 - In a minority of states, the relative predominance of skill versus chance is irrelevant. In these states, courts merely look at the nature of an activity to determine whether it appeals to one's "gambling instinct." If an activity appeals to one's "gambling instinct," it is prohibited. Because this test is as subjective, and arguably more so, than the predominance test, court decisions vary widely in its application to particular games.



CHANCE

- **Material Element or Any Chance**
 - In a few states, the relative predominance of skill versus chance is irrelevant. These states prohibit any payment for the opportunity to win something based on a game where chance has any role in determining the outcome. At times, older court opinions assessed games based on appealing to one's "gambling instinct," when any element of chance determined the outcome of an event.


CHANCE

- **Supreme Court of Alabama – Opinion of the Justices**
 - American Test
 - English Test


CHANCE

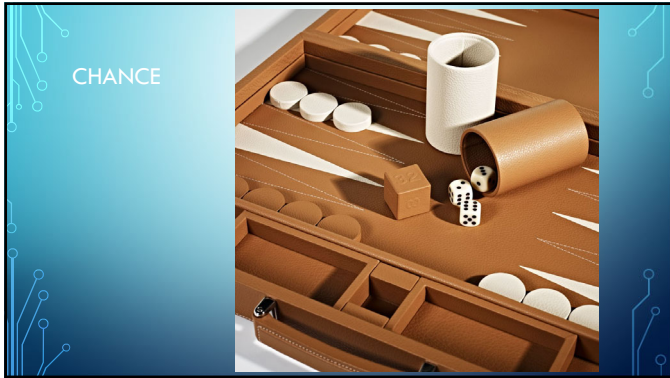
- Dominant Factor Revisited
 - Though many states use the "dominant factor test" many courts in those states have come to different conclusions regarding the analysis of the same games or events. For example, (i) both Massachusetts and Kansas have used the predominance test to assess the element of chance, yet the states disagree on the classification for the "crane game"; (ii) both Alabama and New Jersey have used the predominance test to assess the element of chance, yet the states disagree on the classification for backgammon; and (iii) both Nevada and North Dakota have used the predominance test to assess the element of chance, yet the states disagree whether skill or chance predominates in a hole-in-one golfing contest.
 - How do you explain these differences?

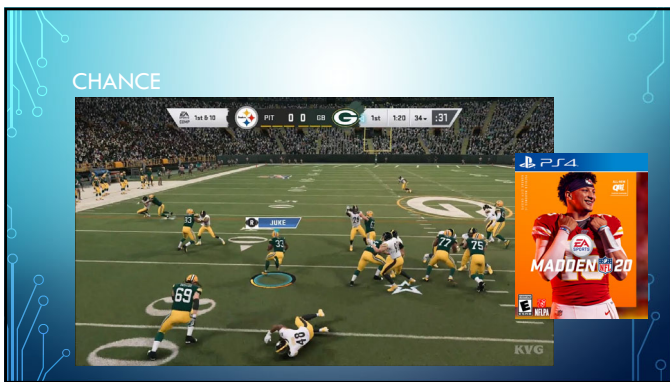
CHANCE



CHANCE

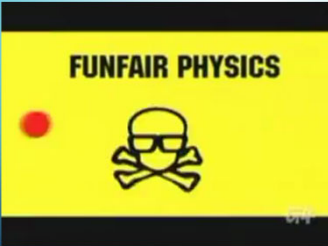








CHANCE

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<https://www.youtube.com/watch?v=JeijJ-RqLVc>

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CHANCE

- Bob and Ray play chess and bet each other \$100 each on who will win...



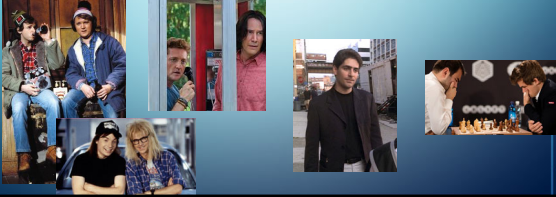
CHANCE

- Bob and Ray play chess and bet each other \$100 each on who will win.
- They bet against each other with Michael, who will take \$110 from each of them and pay the winner \$210, keeping \$10 for his services.



CHANCE

- Bob, Doug, Bill, Ted, Wayne and Clark also want to bet on the chess game between Bob and Ray. Bob, Doug, and Clark bet on Ray through Michael. Wayne, and Bill bet on Bob through Michael.
- Are Bob, Doug, Bill, Ted, Wayne and Clark's bets skill wagers?



CHANCE

- Client Alex T. wants to put coin operated networked trivia machines in bars with a game show theme.
- Players pay \$5 to enter an hourly round of trivia games.
- Each hour, the player with the highest score nationally wins \$100, to be paid out by the sponsoring bar.
- Client Alex T. is asking for a clean opinion, can it be provided?
- What risk reduction measures would you suggest?

NAMED GAMES

- NRS 463.0152 "Game" and "gambling game" defined. "Game" or "gambling game" means any game played with cards, dice, equipment or any mechanical, electromechanical or electronic device or machine for money, property, checks, credit or any representative of value, including, without limiting the generality of the foregoing, faro, monte, roulette, keno, bingo, fan-tan, twenty-one, blackjack, seven-and-a-half, big injun, klondike, craps, poker, chuck-a-luck, Chinese chuck-a-luck (dai shu), wheel of fortune, chemin de fer, baccarat, pai gow, beat the banker, panguingui, slot machine, any banking or percentage game or any other game or device approved by the Commission, but does not include games played with cards in private homes or residences in which no person makes money for operating the game, except as a player, or games operated by qualified organizations that are registered by the Chair pursuant to the provisions of chapter 462 of NRS.

GAMES CHARACTERISTICS

- TX Sec. 47.02. GAMBLING. (a) A person commits an offense if he:
 - (1) makes a bet on the partial or final result of a game or contest or on the performance of a participant in a game or contest;
 - (2) makes a bet on the result of any political nomination, appointment, or election or on the degree of success of any nominee, appointee, or candidate; or
 - (3) plays and bets for money or other thing of value at any game played with cards, dice, balls, or any other gambling device.

PRIZE CHARACTERISTICS

- FL Advisory Legal Opinion - AGO 91-03
 - If the prize is made up in whole or in part by entry fees, then the entry fees are deemed to be stakes for wagering and thus the event is a gambling event.

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CONSIDERATION CHANCE AND PRIZE - QUESTIONS

US GAMBLING LAWS IN GENERAL

- In the United States, federal and state laws share concurrent jurisdiction over gaming activities.
- With the exception of sports wagering, federal laws generally assist states in enforcing state gambling prohibitions regarding interstate and foreign gaming that are offered in a state.
- States are often the primary source of legal authority with regard to most forms of gaming other than sports wagering.





US GAMBLING LAWS IN GENERAL

- With regard to online gaming, U.S. courts have deemed a bet or wager to occur in both the jurisdiction in which the bettor is located and the jurisdiction where the bet is recorded or offered.

A small map of the United States with a red arrow pointing from the West Coast to the East Coast, illustrating the concept of a bet occurring in both jurisdictions.

BOOKMAKING

- Varies from state-to-state
 - Accepting and recording wagers
 - Holding stakes
 - Distributing stakes
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BASICS

- SPEEDWORLD is a large gaming aftermarket car equipment show in Las Vegas
 - SPEEDWORLD is only open to industry participants and the fee for a badge to enter the show is \$150
 - SPEEDWORLD covers the entire Las Vegas Convention Center, and has over 2300 exhibitors
 - The Eddleman company makes performance car parts and has a drawing for a new Eddleman Tri-Scroll Supercharger kit with about \$8,000. To enter, show attendees just drop a business card in a tumbler and at the end of the show a name is drawn for the prize. Presence is not necessary to win.
 - The show promoter calls and asks you if this is an issue, what do you tell the promoter?

BASICS

- Hugh Mefner owns a magazine and media company called Play Dude
 - Hugh's magazine, like so many has fallen on hard times as people don't buy magazines like they used to.
 - Hugh was approached by Bocat, a white label online casino provider to operate a Play Dude casino online
 - Bocat believes that it can sell an online version of Play Dude via subscription at different subscription levels of \$50, \$150, and \$500 a month. The print magazine is usually \$5.00 an issue. Along with a monthly subscription, online subscribers will receive a free credit for Catbucks (the virtual currency of Bocat) that is consistent with the user's subscription level. Online subscribers will be able to play online casino games using the Catbucks and will be able to cash them out for U.S.D. at any time.
 - Hugh is skeptical and calls you for advice.

BASICS

- McDougal's restaurant contacts you about a new promotion they would like to run to help stimulate business. The promotion works as follows:
 - For each \$1 spent at McDougals, patrons receive an entry into the McDougals weekly drawing.
 - Three potential winners (called finalists) are picked each week
 - The finalists must present themselves in person at McDougals to compete in a 1 question math quiz. The first finalist to submit the right answer to the math quiz wins \$500. The math questions are designed to be solvable quickly, such as $2 + 4 + 5 \times 6 =$
 - McDougal thinks it is a great idea and will encourage visitorship and that since the contest is decided by a math question it is clearly not decided by chance

BASICS

- Ron's bar has a game called Ron's Super Bar Dice
 - For \$1 donation into a donation glass, a patron can shake and roll 4 dice simultaneously on the bar top
 - If a patron rolls 4 sixes they win 90% of the money in the donation glass
 - If a patron rolls a 1 a 2 a 3 and a 4, they win 50% of the money in the donation glass
 - Recently Ron called to ask if you think this is an issue?

BASICS

- Wizzo's Math Contests is a traditional math contest where contestants pay a \$100 fee to solve a math question within a week.
- The way it works is contestant's sign up at least 24 hours before the contest. After all contestants are signed up, the game begins by allowing contestants to download a PDF file containing a math problem
- The first person to submit the correct answer with a verifiable proof wins a cash prize of at least \$2000.

