

**2022 Update**  
**for Students and Teachers**

***Gaming Law and Gambling Law:***  
***Cases, Materials, and Problems***

**Second Edition**

**Robert M. Jarvis**

**J. Wesley Cochran**

**Ronald J. Rychlak**

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**Note to Users**

As explained in the casebook’s Preface, the research for the casebook closed on July 1, 2020. This Update highlights significant developments that occurred during the period July 2, 2020-July 1, 2022. The discussion is keyed to the casebook’s pages. Readers with questions or comments are encouraged to contact us at the e-mail addresses listed in the casebook’s Preface.

## CHAPTER 1: INTRODUCTION (pages 3-82)

### Page 3: “A. Overview”

As the casebook explains at page 4, paragraph (b), numerous gambling measures were scheduled to appear on the November 2020 ballot. In the end, four passed: Colorado (increasing the size of permissible bets at casinos); Maryland (legalizing sports betting); Nebraska (permitting racetracks to offer casino games); and South Dakota (legalizing sports betting).

In November 2021, voters in New Jersey liberalized the state’s charitable gaming laws but turned down a proposal to allow sports betting on local college games and teams. Voters in Texas, meanwhile, approved raffle selling at rodeos.

In November 2022, voters in Arkansas will be asked to reverse their decision to allow one casino in conservative Pope County. *See Arkansas Repeal Authorization for Casino in Pope County Initiative* (2022), [BALLOTPEDIA](https://ballotpedia.org/Arkansas_Repeal_Authorization_for_Casino_in_Pope_County_Initiative_(2022)), at [https://ballotpedia.org/Arkansas\\_Repeal\\_Authorization\\_for\\_Casino\\_in\\_Pope\\_County\\_Initiative\\_\(2022\)](https://ballotpedia.org/Arkansas_Repeal_Authorization_for_Casino_in_Pope_County_Initiative_(2022)). Voters in California will vote on Proposition 26 (described at pages 40-41 of this Update), which, if passed, will allow Indian tribes and racetracks to offer sports betting and give tribes the right to have craps and roulette at their casinos.

For an interesting article that looks at how gambling laws and policy are made, see Sheila Simon, *A Stacked Deck: The Ethics of Making Laws About Gambling*, 2021 U. ILL. L. REV. 1795.

**Page 12: “Fife v. Scientific Games Corp.”**

In 2020, the district court granted the plaintiffs’ motion to substitute Donna Reed for Sheryl Fife as class representative. *See Fife v. Scientific Games Corp.*, 2020 WL 4933959 (W.D. Wash. 2020). Scientific Games had sought to have the case dismissed on the ground that Fife’s refusal to continue as class representative meant the lawsuit had been abandoned.

In 2021, the court denied Scientific Games’ motion to compel arbitration or transfer the case to Nevada. *See Reed v. Scientific Games Corp.*, 2021 WL 2473930 (W.D. Wash. 2021). In December 2021, Scientific Games’ appeal to the Ninth Circuit was stayed to give the parties time to try to work out a settlement. As of the close of the Update period, the parties remained in negotiations.

**Page 18, Note 6: “Activities Constituting Gambling”**

In *Jackson National Life Insurance Company v. Crum*, 25 F.4th 854 (11th Cir. 2022), the Eleventh Circuit asked the Georgia Supreme Court to advise it whether the selling of viatical life insurance policies (*i.e.*, sales of life insurance policies to strangers with no insurable interest in the policyholder’s life) constitutes illegal gambling under Georgia law. The Georgia Supreme Court had not responded to the Eleventh Circuit’s request by the time of this Update. In a separate case raising the same issue under Delaware law, the Delaware Supreme Court advised the Eleventh Circuit that such sales do violate Delaware law. *See Estate of Malkin by Guarnero v. Wells Fargo Bank, NA*, 2022 WL 2285884 (11th Cir. 2022).

**Page 20: “D. Pros and Cons”**

For a further discussion of the “A, B, Cs of gambling,” see Earl L. Grinols & David B. Mustard, *Does Problem Gambling Increase Crime?*, 2021 U. ILL. L. REV. 1745 (finding, in a study of 20,615 Ontario, Canada residents, a statistically significant relationship between increased gambling and increased crime).

**Page 53, Note 6: “Gambling Courts”**

For a further discussion, see Scott J. Frederick & Cheryl B. Moss, *The Shuffled Deck: Nevada’s Gambling Treatment Diversion Court and Future Expansion of Gambling Courts in the United States*, 12 UNLV GAMING L.J. 191 (2022).

**Page 54, Note 7: “Compulsive Gambling”**

In *Roe v. Skillz, Inc.*, 858 F. App’x 240 (9th Cir. 2021), the Ninth Circuit denied the plaintiff’s request to pursue her lawsuit against a mobile betting app company by using a fictitious name. The plaintiff had requested anonymity to keep her employer from finding out about her compulsive gambling and having others “weaponize” her addiction against her. According to the Ninth Circuit, the plaintiff’s needs were outweighed by the prejudice the defendant would suffer and the public’s right to know her identity. Do you agree? For a further look at how the legal

system views compulsive gambling, see Stacey A. Tovino, *An Update on Gambling Disorder, Neuroscience, and the Law*, 15 U. ST. THOMAS J. L. & PUB. POL'Y 186 (2021).

**Page 58: “E. Police Powers”**

As pointed out in the casebook, a state’s gaming/gambling laws must conform to federal law. Likewise, a local gaming/gambling ordinance must conform to state law. *See Sutter’s Place, Inc. v. California Gambling Control Commission*, 2022 WL 2128059 (Cal. Ct. App. 2022) (invalidating San Jose city ordinance that authorized more gaming tables than permitted by California state law). If a local government has the power to regulate gaming/gambling, it must abide by the terms of its own ordinances. *See Park v. City of Sacramento*, 2020 WL 6156411 (Cal. Ct. App. 2020) (Sacramento city ordinance did not authorize city officials to reinstate cardroom’s revoked license).

**Page 60: “Monarch Content Management LLC v. Arizona Department of Gaming”**

In 2020, the Ninth Circuit affirmed the decision in the casebook. *See Monarch Content Management LLC v. Arizona Department of Gaming*, 971 F.3d 1021 (9th Cir. 2020).

**Page 70, Note 1: “Gambling in Hawaii”**

In *Alm v. Eleven Products Direct Sweepstakes Machines*, 501 P.3d 298 (Haw. 2021), the Hawaii Supreme Court ordered the government to return 77 seized gambling devices to the defendants. While acknowledging Hawaii’s strict anti-gambling laws, the court found that the government failed to comply with the deadlines in the state’s civil forfeiture laws.

**Page 72, Note 5: “Federal Regulation of Gaming/Gambling”**

As explained in the casebook, the federal government has broad powers to regulate gaming/gambling. This includes defining what constitutes illegal gambling and punishing the various crimes (*e.g.*, money laundering, racketeering, tax evasion) that often accompany illegal gambling. In *United States v. Li*, 2022 WL 1740416 (2d Cir. 2022), the defendant was sentenced to 30 months in prison for helping the operator of an illegal casino threaten the operator of another illegal casino. The defendant insisted, unsuccessfully, that he had merely served as a language interpreter between the two operators.

Also during the Update period, two more federal appellate courts ruled that criminal defendants can be ordered to refrain from legal gaming. See *United States v. Andrews*, 861 F. App’x 113, 118 (8th Cir. 2021) (district court did not exceed its authority in prohibiting defendant “from participation in any form of gambling [while on supervised release, including] on-line gambling, charitable gambling, wagering, pull tabs, lottery, and lottery scratch-off games.”); *United States v. Budzynski*, 981 F.3d 499, 502 (6th Cir. 2020) (“[T]he district court did not abuse

its discretion when it modified Budzynski’s probation to prohibit her from entering gambling establishments. She had been convicted of supplemental security income fraud and theft of public money, to the tune of over \$48,000. Instead of prison, she was sentenced to two years’ probation and ordered to pay restitution. She became late in her modest monthly payments, and then it turned out that she frequented gambling casinos. Preventing her from gambling obviously serves to preserve her ability to meet the restitution obligation resulting from her fraud, and thus is clearly related to both the deterrence and rehabilitation goals of probation.”).

**Page 73, Note 8: “Federal Taxation of Gaming/Gambling”**

In March 2021, the IRS decided that casinos are not required to treat their ordinary and necessary business expenses as “losses from wagering transactions.” As a result, such costs are not limited to “wagering gains,” as they are for players. *See* IRS Chief Counsel Advice 2021-11012 (Mar. 19, 2021), *available at* 2021 WL 1050990 (interpreting the Tax Cuts and Jobs Act of 2017).

**Page 74: “F. Career Opportunities”**

Although many people view gaming law/gambling law as a newer legal practice area, America’s first reported gaming/gambling case was decided by the General Court of Virginia in 1741. *See* Robert M. Jarvis, *Senior v. Morris: America’s First Reported Gambling Case*, 26 GAMING L. REV. 203 (2022).

**Page 79, Note 2: “Legal Malpractice”**

For two recent criminal gambling cases in which the defendants argued, without success, that they had been found guilty because their lawyers had failed to properly represent them, see *United States v. Silveira*, 997 F.3d 911 (9th Cir. 2021) (illegal sports betting operation—defendant convicted of money laundering); *Smith v. United States*, 542 F. Supp. 3d 755 (M.D. Tenn.), *certificate of appealability denied*, 2021 WL 7710212 (6th Cir. 2021), *cert. denied*, 142 S. Ct. 2665 (2022) (illegal dice game—defendant convicted of robbery).

**CHAPTER 2: LOTTERIES (pages 83-133)**

**Page 83: “A. Overview”**

**1) “Used for Public Purpose”**

As the casebook explains at page 83, lotteries were used in colonial America and the early days of the Republic to help fund colleges, government buildings, and public roads. During COVID, many states tried to encourage their residents to get vaccinated by holding “vaccine lotteries.” See, e.g., Sarah Mervosh, *Want to Win \$1 Million?: In Ohio, You Need Luck and a Covid Vaccination*, N.Y. TIMES, May 27, 2021, at A7. According to a University of Colorado study, these efforts failed to increase vaccination rates. See Sarah Erickson, *None of the 19 State-Led Vaccine Lotteries Led to Increased Vaccinations, New CU Denver Study Finds*, CU DENVER NEWS, Oct.

15, 2021, at <https://news.ucdenver.edu/none-of-the-19-state-led-vaccine-lotteries-led-to-increased-vaccinations-new-cu-denver-study-finds/>.

## 2) “Mississippi’s State Lottery”

As the casebook explains at pages 83-84, Mississippi is the most recent state to approve a state lottery, having done so in 2018. In the year leading up to the bill’s passage,

Jonathan Carr registered more than fifty domain names with some iteration of the name Mississippi Lottery. The newly created Mississippi Lottery Corporation accused Carr of cybersquatting—i.e., registering the names in bad faith so that he could sell them to the Lottery for a profit. Carr countered with a claim of reverse domain-name hijacking, asserting the Lottery had violated his ownership rights to the domain names, which he contends he registered in good faith to promote his religious opposition to gambling and to provide resources to those with gambling addictions.

*Carr v. Mississippi Lottery Corporation*, 314 So. 3d 108, 109 (Miss. 2021). In a test case involving five of the domain names (<mslottery.com>, <mississippilottery.com>, <mslottery.us>, <mississippilottery.us>, and <mississippilottery.org>), a Mississippi state trial judge ordered Carr to turn over the names to the Mississippi Lottery. *Id.* The Mississippi Supreme Court dismissed

Carr’s appeal because it did not consider the trial court’s ruling to be a final appealable order. *Id.* at 112.

## 2) “Alabama’s Efforts to Establish a Lottery”

As the casebook explains at page 84, Alabama is one of only five states that does not have a lottery. During the Update period, supporters continued, without success, to try to pass a lottery bill. *See* Erin Davis, *Gambling Legislation Fails to Pass Through Alabama Legislature, Again*, WTVY NEWS, Apr. 4, 2022, at <https://www.wtv.com/2022/04/05/gambling-legislation-fails-pass-through-alabama-legislature-again/>. Had their efforts been successful, the revenues would have been used to support education.

### Page 88: “Crazie Overstock Promotions, LLC v. State”

In 2021, the North Carolina Supreme Court affirmed the decision in the casebook. *See Crazie Overstock Promotions, LLC v. State*, 858 S.E.2d 581 (N.C.), *rehearing denied*, 859 S.E.2d 633 (N.C. 2021). The court also found there was no reason to remand the case to the trial court, as the appellate court had done, because the plaintiff, whose reward program clearly constituted an illegal sweepstakes, was not entitled to any relief. In a subsequent decision with different parties but nearly identical facts (the underlying game had been slightly tweaked), the court came to the same conclusion. *See Gift Surplus, LLC v. State ex rel. Cooper*, 868 S.E.2d 20 (N.C. 2022).

**Page 111: “D. Lottery Litigation”**

As the casebook explains, lottery litigation can be divided into three categories: “player-versus-lottery,” “player-versus-player,” and “non-player-versus-lottery.” Many such cases were decided during the Update period, although none was particularly notable. The U.S. Supreme Court, however, did finally terminate Christopher Granton’s constitutional attack on the Washington State Lottery, which the Ninth Circuit had found frivolous, by denying his petition for certiorari. *See Granton v. Washington State Lottery*, 2020 WL 8513908 (9th Cir. 2020), *cert. denied*, 141 S. Ct. 2516 (2021).

**Page 127, Note 10: “Claiming Prizes Anonymously”**

In *South Carolina Lottery Commission v. Glassmeyer*, 857 S.E.2d 889 (S.C. 2021), the South Carolina Supreme Court held that an injunction permanently barring the petitioner from seeking the names, addresses, and telephone numbers of all lottery winners from “any” source was overly broad. It then remanded the case to the trial court for development of a fuller record.

**Page 133, Note 16: “Design Flaw”**

The 2022 movie *Jerry & Marge Go Large* (starring Bryan Cranston and Annette Bening) tells the story of a real-life couple who found a flaw in the design of the Michigan lottery and used their winnings to save their hometown (Ewart, Michigan).

### CHAPTER 3: CHARITABLE GAMING (pages 135-208)

#### Page 161, Note 5: “Forms of Bingo”

In *State v. Epic Tech, LLC*, 323 So. 3d 572 (Ala. 2020), the Alabama Supreme Court, relying on its 2014 decision in *Houston County Economic Development Authority* (cited in the Note), again held that Alabama law permits only the traditional form of caller bingo.

In *Shammy, Inc. v. Board of County Commissioners for Calvert County, Maryland*, 2021 WL 603245 (Md. Ct. Spec. App. 2021), the Maryland Court of Special Appeals held that instant bingo is legal in Maryland, but only when conducted by operators who hold a “Class NG beach license.”

#### Page 163: “D. Operational Compliance”

In *United States v. Masino*, 2021 WL 3235301 (11th Cir. 2021), a jury found ex-spouses Larry Masino and Dixie Masino guilty of using their Fort Walton Beach, Florida, charitable bingo hall as a money laundering center. The district court sentenced Larry Masino to one year in prison; Dixie Masino to five years of probation; and ordered the pair to forfeit \$5.8 million. On appeal, the Eleventh Circuit majority affirmed the trial judge’s decision to acquit the pair of wire fraud while leaving the rest of the jury’s verdict intact. Circuit Judge Hull penned a partial dissent (he would have affirmed the entire verdict).

In *Free v. Littlefield Corporation*, 2020 WL 7421751 (N.D. Fla. 2020), the plaintiff worked from 2011 to 2019 at a bingo hall in Pensacola, Florida. Her duties at the hall included selling cards, calling numbers, assisting players, serving as a cashier, and cleaning the facility. In 2018, her employer—the bingo hall owner—told her that it could no longer pay her because a recent change in Florida’s bingo laws required her to be treated as a volunteer member of the charities that rented the hall. The company also told her she could continue to keep any tips she collected.

Finding that Florida’s bingo laws had not changed, and that the bingo hall owner was misconstruing the Eleventh Circuit’s earlier decision to allow the government to prosecute the Masinos, see *United States v. Masino*, 869 F.3d 1301 (11th Cir. 2017), District Judge Wetherell denied the bingo hall owner’s motion for summary judgment and ruled that the plaintiff’s suit for unpaid wages could proceed.

In a subsequent case with identical facts involving a different bingo hall in Milton, Florida, Judge Wetherell ruled that the plaintiff was entitled to back wages. See *Johnson v. 5147 Dogwood Charitable Group, Inc.*, 2021 WL 4144768 (N.D. Fla. 2021).

**Page 163: “AmVets Post No. 2 v. Delaware Board of Charitable Gaming”**

In 2022, AmVets again got into trouble for conducting progressive jackpots. As a result, the Delaware Board of Charitable Gaming barred AmVets from hosting *any* charitable gaming activities for at least one year. In *Amvets Post No. 2 v. Delaware Board of Charitable Gaming*, 2022 WL 1412441 (Del. Super. Ct. 2022), the trial court granted AmVets’ request that it be

allowed to conduct charitable gaming events not involving progressive jackpots during the pendency of its appeal:

The Court finds that Appellant will suffer irreparable injury if the stay is not granted and thus no longer able to conduct charitable gaming activities. Appellant's counsel stated at oral argument that the penalties imposed by the Board will lead to the termination of employees of the Appellant, as well as a decrease in community engagement. The charitable organizations that receive donations from Appellant as a result of the charitable gaming activity will also suffer harm if the stay is not granted due to a decrease in donations by Appellant. The State acknowledged at oral argument that neither the State nor the public will suffer substantial harm if the stay is granted under the condition that Appellant refrains from conducting progressive jackpot games while the stay is in effect. Moreover, there is no reason to believe that Appellant has engaged in gaming for purposes other than raising money for charity. . . .

[T]he Court determines that the stay shall be granted under the condition that Appellant is prohibited from conducting progressive jackpot games while this stay is in effect.

*Id.* at \*1-\*2 (footnote omitted).

**CHAPTER 4: PARI-MUTUELS (pages 209-63)**

**Page 217: “Support Working Animals, Inc. v. DeSantis”**

In 2021, the Eleventh Circuit affirmed the decision in the casebook. *See Support Working Animals, Inc. v. Governor of Florida*, 8 F.4th 1198 (11th Cir. 2021).

**Page 240, Note 6: “Decoupling”**

In May 2021, Florida decoupled harness racing tracks, quarter-horse racing tracks, and jai alai frontons. As a result, these facilities no longer need to conduct their legacy operations to keep their cardrooms and slot machines. Thoroughbred tracks, however, remain coupled. *See Florida Senate Bill 8-A, available at <https://www.flsenate.gov/Session/Bill/2021A/8A>.*

**Page 240, Note 7: “Current Status of Dog Racing”**

Due to Florida’s 2018 vote to ban dog racing, which became effective on January 1, 2021, the dog racing industry continued to disappear during the Update period. By January 2023, only West Virginia, with two tracks, will continue to have such betting. Ironically, both tracks are propped up by casino subsidies (as mandated by state law). For a further discussion, see Gianna Dapra, *West Virginia Soon to be Lone Home to Greyhound Racing in the U.S.*, WTOV NEWS, May

2, 2022, at <https://wtov9.com/news/local/west-virginia-soon-to-be-lone-home-to-greyhound-racing-in-the-us>.

**Page 252, Note 4: “Horse Racing’s Ills”**

In 2020, the Sixth Circuit affirmed the district court’s dismissal of the Kentucky Derby lawsuit filed by the owners of Maximum Security. *See West v. Kentucky Horse Racing Commission*, 972 F.3d 881 (6th Cir. 2020).

**Page 252, Note 5: “Unsavory Characters”**

The 2020 horse doping criminal case described at page 253 continues to grind on. Jason Servis, who remains at the center of the scandal, is expected to go on trial sometime in 2023.

Partially in response to the scandal, Congress in December 2020 passed the Horseracing Integrity and Safety Act, 15 U.S.C. §§ 3051-3060. The law creates the Horseracing Integrity and Safety Authority, a “private, independent, self-regulatory, non[-]profit corporation” with the power to adopt uniform anti-doping and safety rules for the nation’s thoroughbred horse racing industry. *See id.* § 3052(a). In March 2022, a federal district judge in Texas ruled that the statute was constitutional. *See National Horsemen’s Benevolent and Protective Association v. Black*, 2022 WL 982464 (N.D. Tex. 2022), *appeal filed*, Case No. 22-10387 (5th Cir. Apr. 20, 2022). In June 2022, a federal district judge in Kentucky reached the same conclusion. *See Oklahoma v. United States*, 2022 WL 1913419 (E.D. Ky. 2022), *appeal filed*, Case No. 22-5487 (6th Cir. June 9, 2022).

**Page 253, Note 6: “Current Status of Horse Racing”**

For three interesting cases involving the horse racing industry decided during the Update period, see *Kriple v. California Horse Racing Board*, 2022 WL 1534604 (Cal. Ct. App. 2022) (rejecting, for failure to state a “viable claim,” horse trainer’s demand that court order the California Horse Racing Board to ban the use of whips during races and lengthen the state’s ban on the pre-race administration of anti-inflammatory drugs from 48 hours to 30 days); *Eferstein v. Kentucky Horse Racing Commission*, 2021 WL 5856337 (Ky. Ct. App. 2021) (plaintiffs’ race horses did not qualify for payments from the state’s race horse development fund because they did not meet the fund’s registration requirements); *Fipke v. California Horse Racing Board*, 269 Cal. Rptr. 3d 594 (Cal. Ct. App. 2020) (race stewards exceeded their statutory authority when they ordered horse owner who changed jockeys just before a race to pay both the replaced jockey and the substitute jockey).

**Page 254: “E. Jai Alai Frontons”**

In November 2021, the jai alai fronton in Dania Beach, Florida, closed. See Ron Hurtibise, *Dania Beach Jai Alai Will Shut Down for Good Nov. 28*, S. FLA. SUN-SENTINEL, Sept. 15, 2021, at 3 (Local & State). As a result, the Magic City Casino fronton in Miami, Florida (<https://www.jaialaiworld.com/>) now is the only active fronton in the United States.

**CHAPTER 5: SPORTS BETTING (pages 265-398)**

**Page 268: “Club Gallistico de Puerto Rico, Inc. v. United States”**

In 2021, the First Circuit affirmed the decision in the casebook. *See Hernandez-Gotay v. United States*, 985 F.3d 71 (1st Cir.), *cert. denied sub nom. Ortiz-Diaz v. United States*, 142 S. Ct. 336 (2021). Subsequently, a similar challenge to Section 12616 was rejected by the Ninth Circuit. *See Linsangan v. United States*, 2021 WL 6103047 (9th Cir. 2021). In 2022, a new challenge to Section 12616 was instituted by a resident of the Northern Mariana Islands. *See Salas v. United States*, Case No. 1:22-cv-00008 (D. N. Mar. I.) (complaint filed May 27, 2022). *See also* Bryan Manabat, *Salas Sues US Over Cockfighting Ban*, MARIANAS VARIETY NEWS & VIEWS (Micronesia), June 2, 2022, at [https://www.mvariety.com/news/salas-sues-us-over-cockfighting-ban/article\\_62865516-e1a9-11ec-85e1-c3643acf01a4.html](https://www.mvariety.com/news/salas-sues-us-over-cockfighting-ban/article_62865516-e1a9-11ec-85e1-c3643acf01a4.html).

In *Hinds v. State*, 627 S.W.3d 803 (Tex. 2021), the Texas Supreme Court held that the state’s ban on cockfighting does not violate either the Establishment Clause or the Takings Clause of the U.S. Constitution.

**Page 293, Note 11: “Dog Fighting”**

For another recent case involving dog fighting, see *State v. Seven Pit Bull Dogs*, 2021 WL 5861239 (Conn. Super. Ct. 2021) (ordering seven pit bulls used for fighting to be forfeited to the state).

**Page 317, Note 3: “Current Status of Sports Betting”**

Since the casebook went to press, states have continued to chart their own paths forward with respect to sports betting. Currently, such betting is legal in 30 states and the District of Columbia. For more information, see, e.g., the American Gaming Association’s *Interactive Map: Sports Betting in the U.S.*, which can be found at <https://www.americangaming.org/research/state-gaming-map/>; Mary M. Shaffrey, *Where Sports Betting Legislation Stands in 2022: Assessing the Winners & Losers*, GAMING TODAY, July 1, 2022, at <https://www.gamingtoday.com/news/sports-betting-legislation/>. See also Ernest Goss & Peyton Miller, *Sports Betting’s Impact on Casino Gambling: Cannibalization or Expansion?*, 2021 U. ILL. L. REV. 1731 (finding that the growth of sports betting has not negatively affected casinos).

**Page 319, Note 5: “Congressional Regulation of Sports Betting”**

Congress has not taken any action with respect to sports betting since the casebook went to press. It continues, however, to study the idea of banning sports betting on college games. See, e.g., John Brennan, *NCAA Makes Case to Senators to Ban Betting on College Sports*, SPORTS HANDLE, July 22, 2020, at <https://sportshandle.com/ncaa-makes-case-to-senators-to-ban-betting-on-college-sports/>.

**Page 320, Note 7: “Gambling and the NCAA”**

Although the NCAA remains firmly opposed to sports betting, the ground is shifting rapidly beneath its feet. In June 2021, the U.S. Supreme Court invalidated the NCAA’s ban on colleges providing benefits to student-athletes that exceed the cost of tuition, books, room, and board. *See NCAA v. Alston*, 141 S. Ct. 2141 (2021). In response, the NCAA was forced to hurriedly adopt a policy allowing student-athletes to cash in on their fame by signing Name, Image, Likeness (“NIL”) deals (by this time, Florida’s-first-in-the-nation NIL law already had gone into effect). One month later, the “Power 5” college football conferences began a massive realignment shift when the University of Oklahoma and the University of Texas announced plans to jump from the Big 12 to the SEC. In the meantime, the NCAA’s transfer portal has turned many college players into free agents. For a further discussion, see Ross Dellenger, *The Fight Over the Future of College Sports is Here: ‘It Needs to Implode,’* SPORTS ILLUS., Jan. 20, 2022, at <https://www.si.com/college/2022/01/20/ncaa-future-power-5-football-basketball-money>.

These developments have put enormous pressure on the country’s biggest colleges to find new revenue sources. As a result, many now are looking at the gaming industry. In September 2020, the University of Colorado became the first school to sign a deal with the industry. *See* Matthew Waters, *Colleges Can Now Sign Sports Betting Deals? University Of Colorado Partners with PointsBet*, LEGAL SPORTS REP., Sept. 8, 2020, at <https://www.legalsportsreport.com/44057/sports-betting-deals-for-colleges-are-ok/> (describing the school’s five-year sponsorship agreement with the Australian sportsbook PointsBet).

**Page 355, Note 7: “Gambling by Professional Athletes”**

In a July 2021 Instagram post, Anna Kane, the estranged wife of Evander Kane, at the time a left winger on the NHL’s San Jose Sharks (he now plays for the Edmonton Oilers), accused Kane of betting on Sharks games and “throwing games with bookies to win money.” Kane denied the charges but again admitted he had a gambling problem (in January 2021, he filed for personal bankruptcy due to his gambling habit). In September 2021, the NHL cleared Kane of any wrongdoing. *See* Des Bieler, *Investigation Finds No Evidence that Sharks’ Evander Kane Bet on NHL Games*, WASH. POST, Sept. 22, 2021, at <https://www.washingtonpost.com/sports/2021/09/22/evander-kane-bet-exonerated/>.

Since the casebook went to press, Tampa Bay Buccaneers quarterback Tom Brady has been at the center of two sports betting stories. In February 2021, just before Super Bowl LV, the “Over/Under” for Brady to rush was set at half a yard. Brady joked with teammates that they should each put up \$1 million, bet the Over, and gain six yards at the first opportunity. By protecting these yards for the rest of the game, Brady figured they easily could fund their off-season plans. *See* John Breech, *Tom Brady’s Hilariously Brilliant Plan to Win Nearly \$2 Million Betting on Super Bowl Prop*, CBS SPORTS, Feb. 9, 2021, at <https://www.cbssports.com/nfl/news/tom-bradys-hilariously-brilliant-plan-to-win-nearly-2-million-betting-on-super-bowl-prop/> (reminding readers that the NFL forbids players from making such bets).

Subsequently, in March 2022, Brady’s announcement that he was coming out of retirement (after just six weeks) changed the betting lines for the 2022-23 NFL season and drastically

improved the Buccaneers' odds of winning the Super Bowl (from 60-1 to 25-1). Westgate SuperBook, a Las Vegas sportsbook operator, immediately called for an investigation. See Nick Selbe, *Sportsbook Calls for Investigation into Bucs Bets Placed Before Tom Brady's Return*, SPORTS ILLUS., Mar. 15, 2022, at <https://www.si.com/nfl/2022/03/15/sportsbook-investigating-bets-tom-brady-retirement-buccaneers-super-bowl-odds>.

**Page 357, Note 11: “NFL’s Views on Gambling”**

For a further look at the increasing willingness of the NFL to do business with the gaming industry, see Joe Drape & Tiffany Hsu, *Calling a Reverse, the N.F.L. Embraces Ads for Gambling*, N.Y. TIMES, Sept. 16, 2021, at B8.

**Page 373, Note 2: “eSports”**

For a further discussion, see Jack Bland, *Gambling on Video Games: The Global Esports Betting Market and the Dawn of Legalized Esports Gambling in the United States*, 29 U. MIAMI INT’L & COMP. L. REV. 1 (2022); Frank A. DiGiacomo & Joseph F. Caputi, *Esports: The Billion Dollar Industry Worth Gambling On*, 45 SETON HALL LEGIS. J. 607 (2021); *Special Issue: Esports*, 25 GAMING L. REV. 413-87 (2021).

In *Mai v. Supercell Oy*, 2021 WL 4267487 (N.D. Cal. 2021), the court dismissed a putative class action challenging the legality of the defendant’s loot boxes for failure to state a claim.

**Page 379: “White v. Cuomo”**

In 2022, the New York State Court of Appeals reversed the decision in the casebook. *See White v. Cuomo*, 2022 WL 837573 (N.Y. 2022). In an opinion by Chief Judge DiFiore, the court’s majority found that fantasy sports contests are games of skill and not games of chance. As such, they do not constitute gambling under the New York State Constitution. The majority also found that fantasy sports contests are prize contests and not bets or wagers on future contingent events.

The decision was 4-3. The dissenters, led by Judge Wilson, found the skill/chance test irrelevant given the New York State Constitution’s broad definition of gambling, which the dissenters characterized as activities that “impoverish[], distract[], or even corrupt[] New York’s people.” *Id.* at \*17.

**Page 397, Note 7: “Fantasy Sports—Further Discussion”**

In *Olson v. Major League Baseball*, 29 F.4th 59 (2d Cir. 2022), the Second Circuit affirmed the dismissal of a lawsuit brought by a group of fantasy baseball contestants. According to the plaintiffs, their results had been skewed by the cheating scandals involving the Boston Red Sox and the Houston Astros (described in the *Oliver* case at page 369 of the casebook). Like the district court, the Second Circuit found that Major League Baseball did not owe any duties to the plaintiffs.

## CHAPTER 6: COMMERCIAL CASINOS (pages 399-562)

### Page 399: “A. Overview”

#### 1) “Taxes Paid by Casinos”

As the casebook explains at page 402, casinos annually pay \$10.1 billion in taxes. For casino tax cases decided during the Update period, see, e.g., *Matter of Kansas Star Casino, L.L.C.*, 502 P.3d 1073 (table), 2022 WL 262407 (Kan. Ct. App. 2022) (dispute over amount of property taxes owed by casino); *Anne Arundel County v. PPE Casino Resorts Maryland, LLC*, 2021 WL 5071889 (Md. Ct. Spec. App. 2021) (same); *Jazz Casino Company, L.L.C. v. Bridges*, 309 So. 3d 741 (La. Ct. App. 2020), *writ granted in part and judgment rev'd in part*, 309 So. 3d 729 (La. 2021) (casino had to pay taxes on hotel rooms it owned or operated and used as player comps).

#### 2) “Gambling in the Northern Mariana Islands”

As the casebook explains at pages 402-03, in 2014 the Northern Mariana Islands, a U.S. territory in the South Pacific, authorized Imperial Pacific International, a Hong Kong company, to build a massive casino on Saipan to help the territory’s economy. Since the casebook closed, the project has remained at a standstill and has become embroiled in even more lawsuits. For a detailed look at the project, see Robert M. Jarvis, *Gambling in the Northern Mariana Islands*, 26 GAMING L. REV. \_\_\_\_ (2022) (forthcoming).

### 3) “Stanley Ho and the Building of Macau”

As the casebook explains at page 404, Macau became the world’s leading casino destination largely through the pioneering efforts of Stanley Ho (1921-2020). For a further look at Ho’s career, see Pedro Cortés & António Lobo Vilela, *Uncle Stanley, The Dancing King of Gambling Who Promised and Delivered the Moon*, 26 GAMING L. REV. 145 (2022).

#### Page 430, Note 1: “Eminent Domain”

See also Eric Beal, Note, *With White Gloves: Eminent Domain in the Gaming Industry*, 12 UNLV GAMING L.J. 317 (2022).

#### Page 432, Note 5: “Commercial Casinos in Massachusetts”

Since the casebook closed, the Mashpee Wampanoag Tribe’s plan to build a casino in “Region C” has continued to stall. See Philip Marcelo, *Newly Affirmed, Mashpee Wampanoag Tribe Looks at Casino Plans with Fresh Eyes*, ASSOCIATED PRESS, Jan. 9, 2022, at <https://www.wbur.org/news/2022/01/09/mashpee-wampanoag-casino-plans> (explaining that the tribe’s new chairman is not sold on the idea of a casino).

In the meantime, a group of developers has proposed creating a new “Region D” and placing a casino in the city of Leominster, which is halfway between Boston (where the Encore casino is located) and Springfield (where the MGM casino is located). See *Massachusetts*

*Developers Want to Rewrite State Gaming Permission, Create New Gaming Opportunity*, MASS. NEWS, June 23, 2022, at <https://darik.news/massachusetts/massachusetts-developers-want-to-rewrite-state-gaming-permission-create-new-gaming-opportunity/618875.html> (explaining that “Region D” would be carved out of existing “Region A”).

**Page 432, Note 6: “Commercial Casinos in Florida”**

An effort to change Florida’s constitution to permit existing cardrooms to become casinos failed to gain enough signatures by the February 1, 2022, deadline to make it onto the state’s November 2022 ballot. See *Florida Casino Gaming Expansion Initiative (2022)*, BALLOTPEDIA, at [https://ballotpedia.org/Florida\\_Casino\\_Gaming\\_Expansion\\_Initiative\\_\(2022\)](https://ballotpedia.org/Florida_Casino_Gaming_Expansion_Initiative_(2022)). See also *Advisory Opinion to Attorney General re Limited Authorization for Casino Gaming*, 2022 WL 1210831 (Fla. 2022) (allowing the state’s attorney general to withdraw as moot her challenge to the initiative).

**Page 435: “C. Licensing”**

For casino licensing decisions handed down during the Update period, see, e.g., *Cherokee Nation Businesses, LLC v. Gulfside Casino Partnership*, 632 S.W.3d 284 (Ark. 2021) (fight over procedures to be used to award Pope County, Arkansas’s sole casino license); *Swallow v. California Gambling Control Commission*, 292 Cal. Rptr. 3d 893 (Cal. Ct. App. 2022) (state

gaming commission had the authority to revoke and non-renew casino applicant's license but overstepped its authority when it fined the applicant \$13.67 million for unproven misconduct).

**Page 457: “D. Operations”**

As the casebook points out, casinos are businesses and encounter the same operational headaches as any other type of business. In *Empress Casino Joliet Corporation v. Averus, Inc.*, 189 N.E.3d 68 (Ill. App. Ct. 2020), an Illinois casino suffered a fire that caused \$80 million in damages. The casino claimed the fire was due to the negligence of the contractors it had hired to renovate its buildings. The court disagreed and ruled that none of the contractors was responsible for the fire.

**Page 480, Note 4: “Casino Technology”**

For a further discussion, see Mark Lipparelli et al., *Casinos and Disruptive Interactive Technology*, 24 GAMING L. REV. 653 (2020). See also Adam Satariano, *Gambling Apps Know a Lot About You*, N.Y. TIMES, Mar. 24, 2021, at B1.

**Page 481, Note 5: “Smoking Bans”**

Since the casebook closed, casinos have continued to fight against the imposition of smoking bans, fearing that such regulations will hurt their business. In June 2022, however, a

report prepared by C3 Gaming, a Las Vegas consulting company, concluded that smoking bans have not negatively affected casinos that have adopted them. *See* Michael Schaus, *There's a Reason Smoking is Still Allowed in Casinos*, NEV. INDEP., June 19, 2022, at <https://thenevadaindependent.com/article/theres-a-reason-smoking-is-still-allowed-in-casinos> (this article provides a link to the report). *See also* Madyson B. Bathke, Note, *Don't Roll the Dice on Respiratory Health: How COVID-19 Can Spark Change in Casino Smoking Laws*, 12 UNLV GAMING L.J. 151 (2021).

**Page 481, Note 6: “Self-Exclusion Programs”**

In *Metis TPS, LLC v. California Department of Public Health, Office of Problem Gambling*, 2021 WL 805403 (Cal. Ct. App. 2021), Tommy Ngo won \$1.29 million at the Commerce Casino while playing baccarat on September 21, 2017. Nearly a decade earlier (May 21, 2008), however, Ngo had signed a self-exclusion form that provided that any future gambling winnings would be forfeited to California to support its problem gambling programs. Finding that the form was valid and still in effect, the California Court of Appeal ordered Ngo's winnings forfeited to the state's Office of Problem Gambling.

**Page 482, Note 8: “Customer-Casino Lawsuits”**

During the Update period, courts decided numerous lawsuits filed by disgruntled customers against casinos. *See, e.g., Lacost v. Boot Hill Casino & Resort*, 499 P.3d 512 (table), 2021 WL

5409684 (Kan. Ct. App. 2021) (casino was not liable to patron who tripped on snow in its parking lot); *Root v. Coast Hotels & Casinos, Inc.*, 495 P.3d 530 (table), 2021 WL 4317795 (Nev. Ct. App. 2021) (patron who was banned from various casinos was not entitled to recover the rewards points he was unable to play); *Eddy v. Treasure Bay V.I., Corp.*, 2020 WL 8020081 (V.I. Super. Ct. 2020) (patron failed to prove casino began hassling him after he started winning at its craps table). See also *Young v. Nevada Gaming Control Board*, 473 P.3d 1034 (Nev. 2020) (casino ordered to redeem \$30,000 in chips presented by non-patron); *Seeley v. Caesars Entertainment Corporation*, 2021 WL 1037130 (N.J. App. Div. 2021) (attorney, who was at casino for a deposition, could sue casino as a business invitee for slip-and-fall injury he sustained in casino's bathroom).

**Page 483, Note 9: “Employee-Casino Lawsuits”**

For employee-casino cases decided during the Update period, see, e.g., *Vélez Quiles v. Mayaguez Resort & Casino*, 2022 WL 1656943 (P.R. Ct. App. 2022) (ordering reinstatement of bartender who was fired for using comps given to him by the casino's customers as tips); *Armstrong v. Treasure Island Hotel/Casino*, 493 P.3d 381 (table), 2021 WL 3828719 (Nev. Ct. App. 2021) (ordering further proceedings to determine extent to which casino was liable for work injury sustained by slot supervisor); *Fox v. DGMB Casino, LLC*, 2020 WL 4745281 (N.J. App. Div. 2020) (partially reinstating discrimination, hostile work environment, and retaliation claims filed by casino's former director of security).

**Page 483, Note 10: “Impact of COVID on Commercial Casinos”**

In July 2020, just after the casebook went to press, Justice Alito criticized Nevada for giving the casino industry what he felt was unwarranted and unconstitutional preferential treatment:

The Constitution guarantees the free exercise of religion. It says nothing about the freedom to play craps or blackjack, to feed tokens into a slot machine, or to engage in any other game of chance. But the Governor of Nevada apparently has different priorities. Claiming virtually unbounded power to restrict constitutional rights during the COVID-19 pandemic, he has issued a directive that severely limits attendance at religious services. A church, synagogue, or mosque, regardless of its size, may not admit more than 50 persons, but casinos and certain other favored facilities may admit 50% of their maximum occupancy—and in the case of gigantic Las Vegas casinos, this means that thousands of patrons are allowed.

That Nevada would discriminate in favor of the powerful gaming industry and its employees may not come as a surprise, but this Court’s willingness to allow such discrimination is disappointing. We have a duty to defend the Constitution, and even a public health emergency does not absolve us of that responsibility.

*Calvary Chapel Dayton Valley v. Sisolak*, 140 S. Ct. 2603, 2603-04 (2020) (Alito, J., dissenting).

For other COVID-related cases involving commercial casinos decided during the Update period, see, e.g., *Cooper v. Majestic Mississippi, LLC*, 2022 WL 1460335 (N.D. Miss. 2022) (former blackjack and dice dealer was excused from having to mitigate his damages by finding new employment due to COVID's impact on the casino industry); *Martin v. Penn National Gaming, Inc.*, 2022 WL 1093516 (S.D. Ind. 2022), *appeal pending*, Case No. 22-1662 (7th Cir. filed Apr. 21, 2022) (dismissing as frivolous patron's claim that he caught COVID in the casino's nightclub); *AC Ocean Walk, LLC v. American Guarantee and Liability Insurance Company*, 2022 WL 2254864 (N.J. App. Div. 2022) (casino's business interruption insurance policy did not cover COVID-related losses); *Archer v. Harlow's Casino Resort & Spa*, 335 So. 3d 613 (Miss. Ct. App. 2022) (COVID excused casino's failure to timely file an answer to patron's bad faith and fraud complaint arising from a lost \$500 ticket). See also *In re: Player's Poker Club, Inc.*, 636 B.R. 811 (Bankr. C.D. Cal. 2022) (cardroom's decision to file for bankruptcy was not done in bad faith given COVID's impact on its revenues). For a further discussion, see *Special Issue: Global Casino Reopenings*, 24 GAMING L. REV. 518-67 (2020).

**Page 506, Note 1: “Kazuo Okada”**

As the casebook explains at page 507, paragraph (d), after Steve Wynn left Wynn Resorts, the company settled with his former partner, Kazuo Okada, for \$2.6 billion. When Okada and his law firm could not agree on the firm's fee (the firm had taken the case on a contingency basis), an arbitration panel awarded the firm \$50 million. In *Bartlit Beck LLP v. Okada*, 25 F.4th 519 (7th Cir. 2022), the Seventh Circuit upheld the award.

**Page 507, Note 4: “Administrative Action Against Steve Wynn”**

In *Nevada Gaming Commission v. Wynn*, 507 P.3d 183 (Nev. 2022), the Nevada Supreme Court reversed a trial court judge and held that the state’s gaming commission still has disciplinary jurisdiction over Wynn, even though he no longer has any ties to the gaming industry.

**Page 508, Note 6: “Ferris v. Wynn Resorts Limited—Case Status”**

The *Ferris* case continues to be litigated. A trial date has not been set. The court still has not decided whether the lawsuit can proceed as a class action.

**Page 508, Note 8: “Discrimination Against Minorities by the Gaming Industry”**

See also Sebastian O. Ross, Note, *A “Historic Westside” Story: Las Vegas Black History, Gaming Policy Effects on Black Employment, and Gaming Companies Leaving Money on the Table*, 12 UNLV GAMING L.J. 287 (2022).

**Page 540, Note 4: “Card Counting”**

For a movie about card counting, see *The Card Counter* (2021), which stars Oscar Isaac in the title role as a man (“William Tell”) who learns to count cards while serving time in a military prison.

**Page 544, Note 11: “Casino Security”**

In *Morrison v. Horseshoe Casino*, 157 N.E.3d 406 (Ohio Ct. App. 2020), the Ohio Court of Appeals affirmed the dismissal of the plaintiff’s false arrest and detention claim. Based on another patron’s report that she had been approached by a Black man with a gun, the plaintiff was detained by the casino’s security staff (consisting largely of off-duty Cleveland Police Department officers) while his car was searched. The plaintiff was released after the search failed to turn up a weapon of any kind.

**Page 560, Note 4: “Trump Plaza Hotel and Casino”**

As the casebook explains, the Trump Plaza Hotel and Casino closed in 2014 and never reopened. In February 2021, it finally was demolished. See Tracey Tully, *Implosion Reduces the Trump Era in Atlantic City to Dust and Debris*, N.Y. TIMES, Feb. 18, 2021, at A21. A plan to hold an auction to raise money for the Boys and Girls Club of Atlantic City, with the winner being allowed to push the detonation button, reached a high bid of \$175,000 but then was scuttled out of safety concerns. The club still got its money, which was donated by financier Carl Icahn. *Id.*

**Page 562, Note 6: “Casino Bankruptcies—Further Look”**

For another case involving a bankrupt casino, see *Sussman v. Diamondhead Casino Corporation*, 2020 WL 6875205 (Del. Super. Ct. 2020) (rejecting the casino’s defenses to its investors’ demands for repayment).

**CHAPTER 7: SHIPBOARD CASINOS (pages 563-670)**

**Page 609, Note 2: “Ozark”**

In April 2022, the hit Netflix television series *Ozark* ended after four seasons. For an interesting article about the series and the region’s gambling history, see Sara Halverson & Nathan Bechtold, *Truth Lies in Fiction: Ozark’s Floating Casino Echoes the Past & Might Predict the Future*, SHORE MAG., May 2022, available at [https://www.lakeexpo.com/boating/the\\_lake/truth-lies-in-fiction-ozarks-floating-casino-echoes-the-past-might-predict-the-future/article\\_782dcd18-aa8c-11eb-b957-6b84c30a5b0d.html](https://www.lakeexpo.com/boating/the_lake/truth-lies-in-fiction-ozarks-floating-casino-echoes-the-past-might-predict-the-future/article_782dcd18-aa8c-11eb-b957-6b84c30a5b0d.html).

**Page 609, Note 3: “Expert Witnesses”**

For a further discussion, see Robert M. Jarvis, *The Use of Expert Witnesses in Gambling Cases*, 12 UNLV GAMING L.J. 1 (2021).

**Page 644, Note 2: “Maritime Torts”**

In *Morrison v. Royal Caribbean Cruises, Ltd.*, 2020 WL 5440580 (S.D. Fla. 2020), the plaintiff, having consumed three glasses of wine, was injured when she tripped over a two-foot-tall metal ashtray in the casino of the defendant’s cruise ship (*Enchantment of the Seas*). In denying the cruise line’s motion for summary judgment, the court held that the plaintiff’s claim was governed by federal maritime law. Although the court expressed doubt that the plaintiff would be able to prevail at trial, it found that she had done just enough to avoid having her case dismissed on the pleadings. Throughout discovery, the plaintiff kept changing her explanation as to why she did not see the ashtray.

**Page 663: “3. Applicable Law in the Absence of Maritime Law”**

In *Riverboat Corporation of Mississippi v. Davis*, 2022 WL 2070949 (Miss. 2022), the Mississippi Supreme Court reversed the trial court’s decision to reopen a personal injury case against a riverboat casino on the ground that the casino had committed litigation fraud. Both courts relied on Mississippi state law and neither opinion mentions federal maritime law.

**CHAPTER 8: INDIAN CASINOS (pages 671-838)**

**Page 718: “State of Texas v. Ysleta del Sur Pueblo”**

In 2022, the U.S. Supreme Court vacated the decision in the casebook and remanded the parties’ dispute to the Fifth Circuit for further proceedings. *See Ysleta Del Sur Pueblo v. Texas*, 142 S. Ct. 1929 (2022). In an opinion by Justice Gorsuch, the Court held that the federal Restoration Act prohibits only those gambling activities that are prohibited by Texas’ gambling laws. Chief Justice Roberts, joined by Justices Alito, Kavanaugh, and Thomas, dissented. In their view, the Fifth Circuit correctly determined that under the Restoration Act, all of Texas’ gambling laws (prohibitory and regulatory) apply on tribal land.

**Page 741, Note 3: “IGRA and Native Alaskans”**

In *Native Village of Eklutna v. U.S. Department of the Interior*, 2021 WL 4306110 (D.D.C. 2021), the court, in a lengthy opinion, held that IGRA does not apply to Native Alaskans:

Because Alaska Native tribes have been governed by different acts of Congress—from the Alaska Native Allotment Act to the Alaska Native Claims Settlement Act—than tribes in the Lower 48 for over one hundred years[,], a neutral application of the general Indian lands test necessarily looks different in Alaska than it does in

the Lower 48. That is not arbitrary; rather, it reflects the fact that Congress has decided that a different scheme should govern federal-native relations in Alaska.

*Id.* at \*7.

**Page 744, Note 7: “Inter-Tribal Competition”**

As the casebook explains, tribes tend to compete fiercely with one another for casino customers. For additional cases, see, e.g., *Kalispel Tribe of Indians v. U.S. Department of the Interior*, 999 F.3d 683 (9th Cir. 2021) (rejecting tribe’s effort to stop another tribe from building a nearby casino); *United Auburn Indian Community of Auburn Rancheria v. Newsom*, 472 P.3d 1064 (Cal. 2020) (same). See also *Yavapai-Apache Nation v. La Posta Band of Diegueno Mission Indians*, 2022 WL 1025893 (Cal. Ct. App. 2022) (repayment dispute between two tribes over money loaned by the plaintiff tribe to fund construction of the defendant tribe’s casino).

**Page 745, Note 8: “Indian Land”**

In *Cayuga Nation v. Tanner*, 6 F.4th 361 (2d Cir. 2021), *cert. denied*, 142 S. Ct. 775 (2022), the Second Circuit held that “ancient reservation land” purchased by the tribe on the open market qualifies as Indian land. The fact that the tribe currently exercises no governmental authority over the land was deemed irrelevant.

**Page 773: “F. Class III Gaming”**

As explained in the casebook, the compacting process lies at the heart of Class III gaming. For cases decided during the Update period raising compacting issues, see, e.g., *Seneca Nation of Indians v. New York*, 988 F.3d 618 (2d Cir. 2021) (state and tribe could settle their differences over compact’s terms by submitting their dispute to binding arbitration); *Yocha Dehe Wintun Nation v. Newsom*, 830 F. App’x 549 (9th Cir. 2020) (state could not be ordered to go after third party cardrooms that tribes claimed were violating their compacts’ exclusivity provisions); *Pauma Band of Luiseno Mission Indians of the Pauma & Yuima Reservation v. California*, 973 F.3d 953 (9th Cir. 2020) (state did not engage in bad faith during compact negotiations).

**Page 815, Note 6 (first three paragraphs): “Seminole Tribe-State of Florida New Compact”**

In April 2021, after years of dickering, the Seminoles and the State of Florida signed a new, 30-year compact that, in addition to allowing the tribe to add craps and roulette at its casinos, places the tribe in charge of all sports betting in Florida and authorizes it to take mobile sports bets (*i.e.*, bets placed by a player who is not physically on the Seminoles’ land). In exchange, the tribe has agreed to increase its annual payments to the State from \$300 million to \$500 million per year for the first five years of the compact (further upward adjustments are expected in years 6-30).

In August 2021, the U.S. Department of the Interior, while not approving the compact (due to its view that the terms are not rich enough for the tribe—other observers believe the state got shortchanged), allowed it to go into effect. In November 2021, however, U.S. District Judge

Friedrich, in a lawsuit filed by a Florida pari-mutuel company that claims its business will be hurt if the Seminoles are able to exercise sole control over sports betting in Florida, ruled that the compact violates IGRA due to its authorization of mobile betting. *See West Flagler Associates v. Haaland*, 2021 WL 5492996 (D.D.C.), *stay pending appeal denied*, 2021 WL 9031913 (D.D.C. 2021). The case currently is on appeal to the D.C. Circuit (a decision is not expected until mid-2023). *See West Flagler Associates v. Haaland*, Case No. 21-5265 (D.C. Cir. filed Nov. 24, 2021). A similar citizens' lawsuit (*Monterra MF, LLC v. Haaland*) was deemed moot by Judge Friedrich. *See West Flagler Associates*, 2021 WL 5492996 at \*12, *appeal pending*, Case No. 22-5022 (D.C. Cir. filed Jan. 25, 2022). A third lawsuit claiming that Florida's governor lacks the legal authority needed to carry out the compact was rejected by a different federal judge. *See West Flagler Associates Ltd. v. DeSantis*, 568 F. Supp. 3d 1277 (N.D. Fla.), *appeal dismissed*, 2021 WL 7209340 (11th Cir. 2021).

In the meantime, an effort by DraftKings and FanDuel to place a constitutional amendment before Florida's voters that would negate the tribe's control of sports betting under the new compact failed to gain enough signatures to make it onto the November 2022 ballot. *See Florida Sports Betting Initiative (2022)*, BALLOTPEDIA, at [https://ballotpedia.org/Florida\\_Sports\\_Betting\\_Initiative\\_\(2022\)](https://ballotpedia.org/Florida_Sports_Betting_Initiative_(2022))

**Page 815, Note 6 (final paragraph): "Tribes and Sports Betting"**

As the casebook explains, many tribes across the country are pushing for sportsbooks. In November 2022, Californians will vote on Proposition 26. If approved, Proposition 26 will: "(i)

legalize sports betting at American Indian gaming casinos and licensed racetracks in California; (ii) tax profits derived from sports betting at racetracks at 10%; and (iii) legalize roulette and dice games, such as craps, at tribal casinos.” See *California Proposition 26, Legalize Sports Betting on American Indian Lands Initiative (2022)*, BALLOTPEDIA, at [https://ballotpedia.org/California\\_Proposition\\_26,\\_Legalize\\_Sports\\_Betting\\_on\\_American\\_Indian\\_Lands\\_Initiative\\_\(2022\)](https://ballotpedia.org/California_Proposition_26,_Legalize_Sports_Betting_on_American_Indian_Lands_Initiative_(2022)).

**Page 834, Note 3: “Tribal Sovereign Immunity”**

The extent to which tribal gaming activities are protected by tribal sovereign immunity remains a hotly debated subject. See, e.g., *Sipp v. Buffalo Thunder, Inc.*, 505 P.3d 897 (N.M. Ct. App. 2021), *petition for cert. granted*, Case No. 2022-NMCA-015 (N.M. Feb. 8, 2022) (business invitee could sue tribe due to limited waiver provision in tribe’s gaming compact); *Aces v. Marston*, 287 Cal. Rptr. 3d 327 (Cal. Ct. App. 2021), *petition for cert. filed*, Case No. 21-1480 (U.S. May 24, 2022) (former contractor permitted to sue various tribal casino officials for malicious prosecution).

**CHAPTER 9: INTERNET CASINOS (pages 839-936)**

**Page 844: “B. The iGaming Market”**

For a case involving a challenge to a patent for a remote gaming system, see *Fanduel, Inc. v. Interactive Games LLC*, 966 F.3d 1334 (Fed. Cir. 2020). For more about the emerging use of cryptocurrencies in iGaming transactions, see Samuel Hoy Brown VII, Note, *Gambling on the Blockchain: How the Unlawful Internet Gambling Enforcement Act Has Opened the Door for Offshore Crypto Casinos*, 24 VAND. J. ENT. & TECH. L. 535 (2022).

**Page 854, Note 2: “Jay Cohen’s Hypothetical”**

The missing page numbers for the article that appears at the end of this Note (at the bottom of page 856) are 3 (start of the article) and 11 (pinpoint cite).

**Page 868: “New Hampshire Lottery Commission v. Barr”**

In 2021, the First Circuit affirmed the decision in the casebook. See *New Hampshire Lottery Commission v. Rosen*, 986 F.3d 38 (1st Cir. 2021) (holding that the federal Wire Act only applies to sports bets). For a further discussion, see, e.g., Walter T. Champion, *Dueling D.O.J. Opinions Fight for the Soul of E-Gambling in the Wake of New Hampshire Lottery Commission v. Rosen*, 12 UNLV GAMING L.J. 97 (2021).

**Page 888, Note 2: “Sheldon Adelson”**

In January 2021, Las Vegas casino mogul Sheldon Adelson died at the age of 87. For a look at his career, see Robert D. McFadden, *Sheldon Adelson, 1933-2021: Casino Mogul Who Lavished Cash on G.O.P.*, N.Y. TIMES, Jan. 13, 2021, at A1.

**Page 910, Note 2: “Private Cause of Action Under UIGEA”**

In *Lawson v. Iaderosa*, 2020 WL 6317605, at \*4 (Ill. App. Ct. 2020), the Illinois Court of Appeal, agreeing with previous court decisions (including *In re Baum*, cited in the Note), held that a private cause of action does not exist under UIGEA.

**Page 919, Note 1: “PokerStars”**

In 2020, the Kentucky Supreme Court reinstated the trial court’s \$870 million judgment against PokerStars. See *Commonwealth ex rel. Brown v. Stars Interactive Holdings (IOM) Ltd.*, 617 S.W.3d 792 (Ky. 2020). The decision was 4-3. The dissenters, led by Justice VanMeter, argued that under Kentucky law, the government is not a “person” authorized to file gambling recovery lawsuits. For a further discussion, see Behnam Dayanim & Jeremy Gordon, *Kentucky Strikes Back: The Case That Flutter Can’t Seem to Escape*, 25 GAMING L. REV. 190 (2021).

**Page 920, Note 2: “Isai Scheinberg”**

As the casebook reports, the last Black Friday defendant to plead guilty was Isai Scheinberg, the founder of PokerStars. In September 2020, he was sentenced to time served and ordered to pay a \$30,000 fine. After the hearing, Scheinberg told reporters:

I am pleased that Judge Kaplan has determined today not to impose a prison sentence in my case. PokerStars played an important role in creating today’s global regulated online poker industry by running an honest and transparent business that always treated its players fairly.

I am particularly proud that in 2011, when PokerStars exited the US, all of its American players were made whole immediately. Indeed, PokerStars reimbursed millions of players who were owed funds from other online companies that could not or did not repay those players.

Erin-Marie Gallagher, *Pokerstars’ Isai Scheinberg Avoids Prison Sentence as Judge Issues Fine*, SBCAMERICAS, Sept. 24, 2020, at <https://sbcamericas.com/2020/09/24/pokerstars-isai-scheinberg-avoids-prison-sentence-as-judge-issues-300000-fine/>.

**Page 933, Note 5: “Historical Horse Races”**

In 2020, the Kentucky Supreme Court held that betting on historical horse races is not authorized by the commonwealth’s pari-mutuel laws. *See Family Trust Foundation of Kentucky, Inc. v. Kentucky Horse Racing Commission*, 620 S.W.3d 595 (Ky. 2020) (this decision is the appeal after remand of *Appalachian Racing, LLC v. Family Trust Foundation of Kentucky*, 423 S.W.3d 726 (Ky. 2014), cited in the Note).