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Casino Gambling is Hot: Gambling Debt Collection is Hot

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Abstract
Gambling on credit, considered a vice by some, is not judicially collectible based upon the Statute of Anne. This common law statute prevents the collection of gambling losses, unless expected by state statute. This article reviews and updates the findings of an unenforceability of gambling debt study conducted in 1989 just prior to the rapid expansion of gambling in the United States.

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Larry Strate, Gaming, Gambling, Casino

Casino gambling is hot: Gambling debt collection is not

by Larry A. Strate

Gambling on credit, considered a vice by some, is not judicially collectible based upon the Statute of Anne. This common law statute prevents the collection of gambling losses, unless excepted by state statute. This article reviews and updates the findings of an unenforceability of gambling debt study conducted in 1989 just prior to the rapid expansion of gambling in the United States.

An unprecedented and unpredicted decade of socially acceptable gambling culminated in 1994.[1] The catapult of high visibility and acceptability of gambling as the nation's favorite recreational pastime also spotlighted problem areas[2] including, according to one author, "gambling on credit" as one of three major problems facing the U.S. gambling industry[3]

In sharp contrast to the current social acceptance of gambling has been the existence of a vintage common law statute, the Statute of Anne. This historic statute has become a part of the public argument that one can prevent gambling losses by preventing their collection; 49 of the 50 states have adopted the Statute of Anne which precludes the judicial collection of gambling debts.[4]

The critical difference between the acceptability of gambling and the enforcement of gambling debts is explained in a Texas case: "Even if gambling legislation in Texas were evidence sufficient to warrant judicial notice of a shift in public policy with respect to legalized gambling, such a shift would not be inconsistent with a continued public policy disfavoring gambling on credit."[5]

The unenforceability of gambling debts in this country was the subject of a study completed in 1989 by the International Association of Gaming Attorneys,[6] just prior to the most rapid growth period of casino gambling in the United States.

Would this decade of growth and the public acceptance produce

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any changes in the public conscience as reflected by changing statutes, or through new case law decisions? If change were to occur, would it be among the 27 states which permit casino gambling?

This 1997 update of that study found moderate change in new statutes, but not new case law. Most statutory change exempted charitable and Indian gambling. It still appears that only a few states are friendly toward the foreign forum approach. All states in the domestic forum approach recognize the full faith and credit clause of the U.S. Constitution.

1990s saw experiments

History may view the 1990s as the world's great experiment with casino gambling.[7] The great experiment brought into public view a convenience activity that only a decade ago was a limited destination service, i.e., legalized gambling in Atlantic City, New Jersey, and the state of Nevada. It was only six years ago that there was gaming in only a handful of jurisdictions. Class 3 casinos were available in a handful of states: New Jersey, Nevada, and Mississippi. Casinos operate or are authorized to operate in 27 states and 95 percent of all Americans are supposed to live within a three or four-hour drive of one by the year 2000.[8]

Now casino gambling has proliferated to nearly every pueblo, from Connecticut to California, from Washington to Florida, and all states in between, with the exception of Hawaii and Utah. While the public eye watched this energetic economic boon for governments and private industry, the public conscience grappled with the rapid metamorphosis of an unacceptable activity, gambling, to acceptable entertainment and the current politically correct term, gaming.

One author has described gaming and its success in different terms, "There is so much money to be made in the gambling industry that casinos do not need to cross moral and ethical boundaries ...gambling on credit, ...has sown mistrust, resentment and anger against the U.S. gambling industry."[9]

The current expression of the public conscience regarding gambling on credit can be found in the legal writings of the state statutes and in case law.

In sharp contrast with the expansive growth and emergence of a nationally accepted recreation activity, every state in the Union, with the exception of Louisiana, has a common vintage statute identified as the "Statute of Anne," one of the many which are a part of the body of the Common Law of England.

Statute influenced all states

Dubbed "the most important development in English gambling law prior to the American Revolution,[10] its main objective could be viewed as the prevention of gaming on credit.[11] The statute originated in seventeenth century England[12] and is a rule holding gambling debts unenforceable. Such an

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ingrained and well-established public policy as a part of the statutes and case law is resilient to change. The Statute of Anne has impacted upon every state because of its "prohibitions" regarding the collection of gaming debts. The wording of the statute is self-explanatory:

> That all notes, bills, bonds, judgments, mortgages, or securities or conveyances whatsoever given, granted, drawn or entered into, or executed by any person or persons whatsoever, where the whole, or any part of the consideration of such conveyances, or securities shall be for any money, or other valuable thing whatsoever, or by betting on the sides or hands or such; as do game at any of the games aforesaid, or for the reimbursing or repaying any money knowingly lent, or advanced at the time and place of such play, to any person or persons so gaming or betting as aforesaid, of that shall, during such play, *so play or bet shall be utterly void, frustrate and of non effect, to all intents and purposes whatsoever.* [emphasis added][13]

Even both states which have abrogated the common law, i.e., New Jersey and Nevada, still preclude the collection of all other forms of gambling debts. In Nevada, a gambling debt evidenced by a credit instrument held by an unrestricted licensee[14] or certain checks in New Jersey[15] held by casinos are legally collectible.

In every state, including Nevada and New Jersey, gaming contracts have been determined to be illegal as inconsistent with the interests of the community or at variance with the laws of morality.[16]

Policy statements are rare

Only three states have gambling public policy statements. The first is Nevada with its "Public Policy of State Concerning Gaming."[17] Nevada's public policy statement was the result of a series of years of off-again, on-again, gambling, legal since the 1800s outlawed in 1919, legalized again in 1931.

The second state is Colorado. Colorado's public policy statement is under the title of "Legislative Declaration" printed in 1993.[18]

The third state is New Jersey where the statement is under the Casino Control Act.[19] One of the most revealing sections, which illustrates the presence of the Statute of Anne even in New Jersey, is in section 8: "Since the public has a vital interest in casino operations in Atlantic City and has established an exception to the general policy of this state concerning gaming for private gain..."

The several states have indexed matters regarding gambling, contracting to gamble, or engaging in betting endeavors between criminal or civil statutes. But, whether located in one part or the other, the prohibitions remain, either as criminal sanctions, civil remedies, or the inability to judicially enforce such a gaming contract.

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Another expression of public conscience is in the respective states' case decisions which are viewed as either involving either a foreign forum or a domestic forum.

Courts in the individual states may constitutionally refuse to enforce a cause of action in each sovereign state if the cause of action arises out-of-state and would violate an actual strong public policy in the state. This is known as the "foreign forum approach." This approach used by a casino may be determinative as illustrated in the following case: "Even if gambling legislation in Texas were evidence sufficient to warrant judicial notice of a shift in public policy with respect to legalized gambling, such a shift would not be inconsistent with a continued public policy disfavoring gambling on credit."[20] There are numerous case decisions which also reflect the positions expressed by the statutes with regard to gaming transactions, gambling debts, and the collectibility of those debts.

Debts are collectible

The contrary is also true. If a state court has recognized by statute or case law that certain gambling debts are collectible in state court, they may enforce such a cause of action. A casino can bring an original action against a patron in the state where the casino is located or by obtaining personal jurisdiction over the nonresident patron, or via the long-arm statute.[21]

The domestic forum approach has a distinct advantage that supersedes any domestic public policy argument. That advantage is explained by an appellate court case in Michigan. Recently in that state[22] the appellate court, even though enforcement of gambling debts is contrary to public policy in Michigan, was required to enforce Nevada's judgment against the defendant on the Full Faith and Credit Clause of the federal Constitution. It was well established that in Michigan enforcement of gambling debts is contrary to public policy. However, in the present case, "we must treat as irrelevant our state's public policy and our courts' long standing refusal to enforce gambling debts. We are dealing with a fait accompli, a foreign judgment."[23]

The Full Faith and Credit Clause of the U.S. Constitution is an enforcement mechanism to guarantee state decisions. The clause and its authorizing statute, 28 U.S.C. S 1738 (1948), ensure that the enforcement of a judgment in a sister state is not dependent on that forum's public policy.

With the eruption of the acceptability of casino gaming in 27 states, and multiple forms of gambling in 48 of the 50 states, it would seem logical for an increase in credit play.

According to one author, "The amount of casino credit written off in Nevada as bad debt is staggering in absolute terms, and is increasing in what may be the nascent stages of an exponential rise which will possibly have a considerable impact on the industry's bottom line. Between 1984

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and 1993, the cumulative amount of bad debt expenses by Nevada casinos was $811,976,817."[24]

Still others suggest that credit gambling, both in real and relative terms, suggests that people are spending more than they can afford. This is bolstered by the fact that problem gamblers addicted to gambling are alleged to constitute 5 to 7 percent of their customer base.[25] Another author has specifically identified "gambling on credit" as one of three serious problems, "where gambling tables gambling on credit have sown mistrust, resentment and anger against the U.S. gambling industry."[26] "Because of credit, you have the possibility of breeding two of the biggest problems gambling faces -- compulsive gambling and skimming."[27] While most states with legal gambling allow credit, Iowa is an exception.[28] While many of the Native American casinos do not allow credit play, there are some who do.[29]

Bad debt expenses rise

In addition to the problem of overextending on credit is the problem of not wanting to pay. This idea is not a new one, and history seems replete with stories that indicate extra-judicial or non-judicial methods of collection have been extremely successful for casino businesses before the adoption of the Gaming Acts in New Jersey and Nevada, as in *Flamingo Resort, Inc.*[30] Prior to the collection acts, recovery had been limited to self-help procedures. In the past there have been allegations that some collection procedures exceeded socially acceptable behavior:[31]

> In better ordered times, a man with gaming debts paid up immediately or repaired to a French coastal resort and introduced himself to the effects of a service revolver fired into the head at close range. Nowadays, things are less satisfactory: indeed... the Rendezvous Casino Club at the Hilton Hotel has deemed it necessary to sue Prince Abdulaziz Al Sudairy, a member of the Saudi Arabian royal family, for a six-year-old debt.[32]

Collections are high

Debt collection statistics remain confidential on an individual basis.[33] Although comfort may be taken in the apparently high collection rate of casino credit, it's being estimated by some authors as 92 percent and others as high as 95 percent. The amount of bad debt expenses on an annual basis, in absolute terms, is staggering, and in relationship to the period of time, on the rise.[34]

The International Association of Gaming Attorneys conducted a state by state survey in 1989 of courts unlikely to enforce gambling debts.[35] It concluded that the courts of the following states and the District of Columbia were unlikely to enforce gaming debts arising out of state-authorized casinos: Alabama, Connecticut, Colorado, Florida, Georgia, Illinois, Kansas, Louisiana, Missouri, Ohio, Texas, Virginia, and Wyoming.

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In addition, the following states had early case law (pre-1950) which prohibits the enforceability of foreign gaming debts: Kentucky, Mississippi, North Carolina, Oklahoma, Rhode Island and South Carolina.

California has case law suggesting both that it would and would not assist in the enforcement of gaming debts.

Arkansas, Delaware, Massachusetts and Vermont have early case law which would assist in attempting to enforce gaming debts.

Courts in the following states have no published decisions addressing the issue: Alaska, Arizona, Hawaii, Idaho, Indiana, Iowa, Maine, Minnesota, Montana, Nebraska, New Hampshire, New Mexico, North Dakota, Oregon, South Dakota, Tennessee, Utah, Washington, West Virginia, and Wisconsin.

The 1997 survey update was limited to the 27 states that currently permit casino gambling.

Common law is basis

The English Common Law has been adopted as the basis of jurisprudence in all the states of the union with the exception of Louisiana, where the civil law prevails in civil matters.[36] Thus, every state in the union adopted the Statute of Anne (except Louisiana), which prevents the collection of gambling debts. While 27 states permit casino gambling, only 13 states permit the collection of some form of gambling debts.

This study concludes that as of 1997, 10 of the 27 states remain unlikely to enforce gaming debts arising out of state-authorized casinos: Connecticut, Kansas, Louisiana, Mississippi, Missouri, New Mexico, Oregon, Rhode Island, South Carolina, South Dakota, and Wisconsin.

California's most recent case law suggests still that it would and would not assist in the enforcement of gaming debts, and in the most recent [1997] cases, the same courthouse in two different courtrooms reinforced this.

Courts in the following six states have no published decisions addressing the issue: Arizona, Idaho, Indiana, Iowa, Minnesota, Montana, North Dakota, and Washington.

Only moderate change was observed from 1989 to 1997 among the three categories of states "unlikely to enforce gambling debts," states with "no published decisions," and states "likely to enforce" gambling debts.

In the "unlikely to enforce gambling debts" category, four states were involved; Colorado and Illinois moved out to "likely to enforce," and New Mexico and South Dakota moved from "no published decisions" into "unlikely to enforce." Four states, Iowa, Montana, Oregon and Wisconsin, moved from the "no published decisions" to "likely to enforce."

The "likely to enforce" category includes the nine statutory exceptions enacted during the time covered in this study as well as the three states that already would have been "likely to enforce

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Table 1
Gambling debt enforceability status, 1989 and 1997

1989	1997
States unlikely to enforce gambling debts	
Connecticut	Connecticut
Colorado	
Illinois	
Kansas	Kansas
Louisiana	Louisiana
Missouri	Missouri
	Mississippi
	New Mexico
Rhode Island	Rhode Island
South Carolina	South Carolina
	South Dakota
	Wisconsin
No published decisions	
Arizona	Arizona
Idaho	Idaho
Indiana	Indiana
Iowa	
Minnesota	Minnesota
Montana	
New Mexico	
North Dakota	
South Dakota	
Washington	Washington
Wisconsin	
States likely to enforce gambling debts	
	Colorado
	Illinois
	Iowa
Maryland	Maryland
Minnesota	
Michigan	Michigan
	Montana
Nevada	Nevada
New Jersey	New Jersey
New York	New York
	Oregon
	Wisconsin
State would/would not enforce gambling debts	
California	California

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gambling debts" because of their case decisions, Maryland, Michigan, and New York.

The following states have enacted statutory exceptions to the Statute of Anne: Colorado (social gambling), Illinois (riverboat gambling), Iowa (Chapter 99B compliance, pari-mutual wagering, state lottery, or excursion boat gambling and gambling on Indian lands), Minnesota (pari-mutual wagering, state lottery, and Indian gaming activities), Nevada (for credit instruments), New Jersey (for checks cashed in conformity with the act), Montana (raffles), Oregon (charitable bingo games), and Wisconsin (gambling permitted under Ch. 561-569, and gaming on Indian lands).

Only seven states have changed their statutes since Nevada and New Jersey did in 1984 and 1977, and it has taken a decade and a half or more for any other state to grant statutory exceptions.

The wait for change of enforcing gaming contracts based upon the Nevada and New Jersey historical time frames could be several more years in the offing, according to the survey update. Waiting too long may negate the need for statutory change. At least one author has predicted that the new gaming boom may be short-lived in some regions:[37] "Throughout history, every society that has allowed casinos to cater to local customers has eventually outlawed gambling."[38]

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