



GAMING IN THE COURTS: Key Decisions from Nevada

By Jennifer Roberts

.....
Gaming law is one of those niche practice areas that requires specialized knowledge about the regulatory system in Nevada. What also makes it unique is that it is one of those areas of law with little case law to serve as guidance. In other words, gaming cases just don't appear that frequently within the court system. However, in Nevada, there have been several key court decisions over the years that have really shaped the gaming legal field into what it is today. This article will provide a brief synopsis some of those key rulings. As with any list, there may be some important precedent that is not included, but such an absence certainly does not diminish its role in shaping gaming law.
.....

Nevada Tax Commission v. Hicks, 73 Nev. 115, 310 P.2d 852 (1957). Nevada legalized gaming in 1931 and was the only state to have legal commercial casino gaming until New Jersey permitted casinos in Atlantic City in 1976.¹ The Nevada Gaming Control Board (the "Board") was created in 1955, while the Nevada Gaming Commission was created in 1959. The Nevada Tax Commission oversaw gaming regulation and licensing before the Nevada Gaming Commission came into existence.

In this case, the Nevada Tax Commission suspended the gaming license of Hicks and another particularly because Hicks was determined to have been loaned money from Jake Lansky, the brother of reputed organized crime member, Meyer Lansky. The decision was appealed to the district court, which ruled in favor of Hicks and placed an injunction against carrying out the Tax Commission's order of suspension. The Tax Commission appealed. In reversing the decision of the district court, the Nevada

Supreme Court concluded that “[i]t is not the province of the courts to decide what shall constitute suitability to engage in gambling in this state.” The Court further recognized that suitability determinations of the Tax Commission required “specialized experience and knowledge.” Therefore, the Court left the suitability determination to the Tax Commission, rather than the courts.

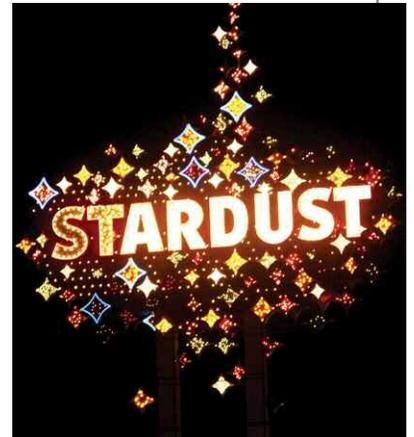
Las Vegas Hacienda, Inc. v. Gibson, 77 Nev. 25, 359 P.2d 85 (1961). This case is often cited as the key court case that specified what constitutes gambling in Nevada, even though it does not rely on an analysis of the combined elements of consideration, chance, and prize. Here, a business offered the public a chance to win \$5,000 upon payment of a 50-cent entry fee and shooting a hole in one at golf. Gibson paid the entry fee and shot the hole in one. The business refused to pay and took the position that the agreement to pay the winnings could not be enforced because it was a gambling contract (at the time, gambling debts were not enforceable). The Court distinguished participation in a gambling event as requiring a wager, which means that each person in the gambling contract “has a chance to gain and takes a risk of loss.” On the other hand, in a non-gambling transaction, if the person making the offer doesn’t have the opportunity to win it back but loses it if the offer is accepted and performed, then it is a prize and subject to enforceability under normal contract terms. In other words, without both sides having a chance to gain, it is neither a wager nor a gambling event.

The *Las Vegas Hacienda* case is still relevant today, having been relied upon by the Nevada Attorney General’s office in its memorandum on daily fantasy sports.²



Berman v. Riverside Casino Corp., 247 F. Supp. 243 (D. Nev. 1964). In the late 1960’s, the Nevada Gaming Control Act was amended to recognize the emergence of corporations and business structures in gaming operations. The Berman case acknowledged the corporate construct that stockholders are not individually liable for actions of a company in gaming.

The Rosenthal Cases: *State v. Rosenthal*, 93 Nev. 36, 559 P.2d 830 (Nev. 1977); *Rosenthal v. State ex. rel Gaming Comm’n*, 96 Nev. 959, 620 P.2d 874 (Nev. 1980); *Rosenthal v. State*, 514 F. Supp. 907 (D. Nev. 1981); *State v. Rosenthal*, 107 Nev. 772, 819 P.2d 1296 (Nev. 1991). In his Foreword to this issue of the Nevada Gaming Lawyer, Mr. Boyd mentioned taking over the Stardust because of skimming concerns. Most people are familiar with the Hollywood version of Frank “Lefty” Rosenthal, portrayed as the fictitious Ace Rothstein by Robert DeNiro in the movie *Casino*. In actuality, it was the Stardust (not the Tangiers) that was taken over by the Boyd Group as discussed more fully in Paul Bible’s article in this issue, *The Stardust Skim*. Clearly, Mr. Rosenthal had a penchant for challenging the Nevada gaming industry. As a result of this litigation, several



legal constructs were established or confirmed. The courts confirmed that gaming is a privileged industry, recognized that powers of the Nevada Gaming Control Board and Nevada Gaming Commission are “comprehensive,” and noted that “[c]ourt intrusion is limited.” Several of the Rosenthal decisions analyzed due process requirements and procedures, but it was highlighted that rules of evidence need not apply in a suitability determination hearing. The decisions also resulted in recognizing that members of the Nevada Gaming Control Board and Nevada Gaming Commission are immune from civil liability. Finally, the legality of Nevada’s List of Excluded Persons, also known as the “Black Book,” was upheld.

Uston v. Hilton Hotels Corp., 448 F.Supp. 116 (D. Nev. 1978). Ken Uston was a notorious card counter and a local Las Vegas casino exercised its common law right to trespass him from the casino. The Court concluded there was no actionable claim for such an exclusion from a casino, even though card counting is not illegal.

State v. Glusman, 98 Nev. 412, 651 P.2d 639 (1982). The defendant owned a retail dress store within a shopping area that was part of the overall resort hotel casino “campus” or establishment. The store did not have any gaming and was not located

within the casino area. However, the Nevada Gaming Control Board called the store owner forward to have him go through the suitability process. The defendant challenged the authority of the Nevada Gaming Control Board to exercise such authority, contending that it was overbroad since the dress store had nothing to do with gaming. The



Court declared it a reasonable exercise of the Nevada Gaming Control Board's power to require a business owner that shares premises with a gaming establishment to apply for a suitability determination by the Nevada Gaming Commission. The Court noted, however, that the business owner should not be required to pay the costs for such a suitability investigation.

Along with statutory authority, this case is often used as the foundation for attorneys and in-house counsel to include terms in agreements, leases, etc., that a non-gaming contracting party may, at any time, be required to be found suitable by the Nevada Gaming Commission.

Resnick v. Nevada Gaming Comm'n, 104 Nev. 607, 52 P.2d 229 (1988). In this case, the plaintiff was called forward as a key employee of the Dunes Hotel and Casino. Prior to his hearing, he sought a copy of his investigative report prepared by the Nevada Gaming Control Board. The Court upheld the process of not releasing the investigative report and confirmed that the full licensing process must occur to make a challenge ripe (or, more precisely, discovery is limited to licensees in a disciplinary proceeding).

Sengel v. IGT, 116 Nev. 565, 2 P.3d 258 (2000). This is a seminal case for patron disputes involving gaming devices/slot machines because it validates the contract term of "malfunction voids all pay and play" and confirms that it is the internal function of the slot

machine through the random number generator process that dictates the outcome of play. Further, the case upholds the "any evidence" standard for challenging most decisions from the Nevada gaming authorities.

Hampe v. Foote, 118 Nev. 405, 47 P.3d 438 (2002). Although this case has been overturned on other grounds, the Court confirmed that there is an absolute privilege for letters of complaint submitted to the Nevada gaming authorities. Therefore, civil liability cannot arise from such communications.

Oregon Restaurant and Lodging

Ass'n v. Perez, 816 F.3d 1080 (9th Cir. Feb. 23, 2016). This is the most recent key court decision affecting Nevada gaming. This ruling from the Ninth Circuit Court of Appeals comes after many challenges involving the tip-pooling policy at the Wynn Las Vegas (and a few other casinos in Las Vegas). This case is discussed in more detail in Dora Lane's article in this issue, Tip Pooling Policies Can Land Nevada Casinos In Court.

Although gaming law practice is primarily focused on statutes, regulations, and ordinances, the courts have played an important function in many key developments in Nevada gaming law.

Jennifer Roberts is the Associate Director of the International Center for Gaming Regulation at the University of Nevada, Las Vegas, which focuses on research, training and education, and resources for gaming regulatory best practices around the world. She was previously a partner in two major law firms before creating her own boutique law firm, Roberts Gaming Law, Ltd. Her legal practice focused on gaming law, including gaming licensing, compliance, and gaming law development, as well as federal, state, and local liquor laws, as well as land use and zoning; business licensing and compliance; and regulatory and administrative law. She teaches gaming law at both the William S. Boyd School of Law at UNLV and the S.J. Quinney College of Law at University of Utah.

¹ See Casino Gaming in New Jersey, State of New Jersey Casino Control Commission, at <http://www.nj.gov/casinos/home/gamingnj/index.html>

² Memorandum, Legality of Daily Fantasy Sports Under Nevada Law (Oct. 16, 2015)

