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# Caught in the Intersection Between Public Policy and Practicality: A Survey of the Legal Treatment of Gambling-Related Obligations in the United States

Joseph Kelly\*

## I. INTRODUCTION AND HISTORICAL ROOTS

This article offers a survey of the law and practice of gambling debt enforcement and recovery in the United States. Two historical sources of law influence modern gambling debt enforcement and recovery. The English common law interpretation of the *Statute of Anne* is the first historical source;<sup>1</sup> the second tradition traces its roots to classical Rome.<sup>2</sup> Both of these centuries-old traditions either severely limited or absolutely prohibited the enforcement of gambling debts.

England's *Statute of Anne*, enacted in 1710, prohibited the enforcement of gambling debts<sup>3</sup> and provided for a recovery action by

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<sup>1</sup> An Act for the Better Preventing of Excessive and Deceitful Gaming, 1710, 9 Ann. c. 14, §§ 1, 2, 4 (Eng.) [hereinafter *Statute of Anne*].

<sup>2</sup> See SHELDON AMOS, THE HISTORY AND PRINCIPLES OF THE CIVIL LAW OF ROME 175-76 (1883).

<sup>3</sup> The Statute's first section states that all notes, securities, and so forth, executed after May 1, 1711, for consideration of gambling or betting debts are void. *Statute of Anne*, *supra* note 1, § 1. The statute reads:

[F]rom and after the first day of *May* one thousand seven hundred and eleven, all Notes, Bills, Bonds, Judgments, Mortgages or other Securities or Conveyances whatsoever, given, granted, drawn or entred 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, won by gaming or playing at Cards, Dice, Tables, Tennis, Bowls or other Game or Games whatsoever, or by betting on the Sides or Hands of such as do game at any of the Games aforesaid, or for the reimbursing or repaying any Money knowingly lent, or advanced for such gaming or betting as aforesaid, or lent or advanced at the Time and Place of such Play, to any Person or Persons so gaming or betting as aforesaid, or that shall, during such Play, so play or bett, shall be utterly void, frustrate, and of none Effect, to all Intents and Purposes whatsoever; any Statute, Law, or Usage to the contrary thereof in any wise notwithstanding . . . .

the losing gambler,<sup>4</sup> or any other person on the gambler's behalf, for gambling debts already paid.<sup>5</sup> The most interesting portion of the statute lies in its recovery provisions. The statute permitted a bettor who lost ten pounds sterling or more to recover his loss and costs of litigation if he brought an action within three months.<sup>6</sup> If the bettor failed to sue within three months, any other person could sue to recover the bettor's losses; however, any such recovery was split equally with the parish poor where the wager occurred.<sup>7</sup> The independence of the United States rendered the *Statute of Anne* relevant, but not controlling. Therefore, each individual state was given the freedom to choose whether to apply the statute and its principles. Nevertheless, the *Statute of Anne* has become part of the law in a number of the states via case law or statute.

The second legal tradition relevant to modern gambling debt enforcement comes from classical Rome. Roman law generally prohibited the enforcement of gambling debts; however, it provided exceptions for bets on "manly" athletic sports, such as the javelin, wrestling, and chariot racing, where "the subject of contention was valour."<sup>8</sup> Roman law placed limits on the amount of bets according to the bettor's class status.<sup>9</sup> Some U.S. jurisdictions continue to recognize an exception for wagering based upon skill and allow their courts to reduce the amount of the debt to a reasonable amount for the debtor.

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*Id.* While the *Statute of Anne* was silent on an action by a winner, *Blaxton v. Pye*, 2 K.B. 309 (1766), barred an action by a winner to enforce a gaming debt.

<sup>4</sup> The recovery provision states:

[A]ny Person . . . who shall . . . by playing at Cards, Dice, Tables, or other Game or Games whatsoever, or by betting on the Sides or Hands of such as do play any of the Games aforesaid, lose to any . . . Person . . . so playing or betting in the whole, the Sum or Value of ten Pounds, and shall pay or deliver the same or any Part thereof, the Person . . . losing and paying or delivering the same, shall be at Liberty within three Months then next, to sue for and recover the Money or Goods so lost, and paid or delivered or any Part thereof, from the respective Winner . . . thereof, with Costs of Suit, by Action of Debt . . . .

*Statute of Anne*, *supra* note 1, § 2.

<sup>5</sup> The third party recovery provision of the *Statute of Anne* states:

[A]nd in case the Person or Persons who shall lose such Money or other Thing as aforesaid, shall not within the Time aforesaid, really and *bona fide*, and without Covin or Collusion, sue, and with Effect prosecute for the Money or other Thing, so by him or them lost, and paid or delivered as aforesaid, it shall and may be lawful to and for any Person or Persons, by any such Action or Suit as aforesaid, to sue for and recover the same, and treble the Value thereof, with Costs of Suit, against such Winner or Winners as aforesaid; the one Moiety thereof to the Use of the Person or Persons that will sue for the same, and the other Moiety to the Use of the Poor of the Parish where the Offence shall be committed.

*Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> AMOS, *supra* note 2, at 175-76.

<sup>9</sup> *Id.* at 176.

The law surrounding gaming historically has been influenced and shaped by competing “philosophical, theological, social, and economic” beliefs.<sup>10</sup> Those who oppose gambling point to immorality and the negative impacts on society.<sup>11</sup> Those who support legalized gambling focus on the community’s need to create economic activity and tax revenue,<sup>12</sup> and on an individual’s freedom to make moral decisions.<sup>13</sup> Modern gambling debt enforcement law is a balancing act: weighing legal tradition, conflicting moral ideals, and economic need. The influence of historical tradition and morality can still be seen in modern gaming law. The weight allocated to these factors varies, usually depending on the degree of legalization of gambling in the jurisdiction. This article discusses the way in which different states have decided to balance these often-competing interests.

United States law concerning the enforcement of gambling debts arises under three different factual scenarios, each with different legal ramifications. The first situation arises when the casino is located and the gambler is domiciled in the same state—“In-State Enforcement.” The second and third situations arise when the gambler is not domiciled in the state where the debt was incurred. In this situation, the winning party, such as a casino, can choose to pursue one of two courses: either 1) sue the gambler in the state where the debt was made, and then seek to enforce the judgment where the gambler is domiciled—“Registration of a Sister-State Judgment”; or 2) sue the gambler directly in the gambler’s home state—“Direct Litigation.” The following is a discussion of the laws that are applicable to each of these situations.

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10 Anthony N. Cabot & William Thompson, *Gambling and Public Policy*, in CASINO GAMING: POLICY, ECONOMICS AND REGULATION 17, 18 (Anthony N. Cabot ed., 1996).

11 See Mark G. Tratos, *Gaming on the Internet III: The Politics of Internet Gaming and the Genesis of Legal Bans or Licensing*, 610 PLI/Pat 711, 752 (2000) (“[M]uch of the revulsion about gambling from the Christian community relates back to the casting of lots which the Bible recorded that the Roman soldiers did in an attempt to win the robe of Christ.”); Ronald J. Rychlak, *Lotteries, Revenues and Social Costs: A Historical Examination of State-Sponsored Gambling*, 34 B.C. L. REV. 11, 13 (1992) (“[T]he cost [of lotteries] has been shouldered by the impoverished, people prone to compulsive behavior, children and victims of gambling-related crimes.”); Erika Gosker, Note, *The Marketing of Gambling to the Elderly*, 7 ELDER L.J. 185, 187 (1999) (“[S]ome believe that society has convinced the public that people can obtain and even deserve money without working to earn it.”).

12 See NAT’L GAMBLING IMPACT STUDY COMM’N, FINAL REPORT, at 6-2 (1999) available at <http://govinfo.library.unt.edu/ngisc.indes.html> [hereinafter NGISC FINAL REPORT] (“[G]ambling revenues have proven to be a very important source of funding for many tribal governments, providing much-needed improvements in the health, education, and welfare of Native Americans on reservations across the United States.”); Tratos, *supra* note 11, at 752 (“[G]ambling proponents . . . identify its direct significant socioeconomic benefits.”); Gosker, *supra* note 11, at 187 (“[S]tate and local governments view casino gambling as a source of revenue because it attracts tourists, creates jobs, and generates taxes.”).

13 Cabot & Thompson, *supra* note 10, at 18 (“Societies that emphasize personal freedoms and individual choices are more likely to adopt permissive policies on gambling.”).

## II. IN-STATE ENFORCEMENT

Gambling can take a nearly infinite number of forms, and each State generally has the freedom to decide whether to legalize any form of gambling. The type of gambling that a state has chosen to legalize impacts its gambling debt enforcement or recovery body of law. Although there is no perfect way to group the enforcement strategies that have developed among the states, some categorization is helpful to the discussion. This section splits up the United States into three broad categories according to the type of gambling that each state has legalized: states with only limited legal gambling and no casinos, states with state-licensed casinos, and states with Native American Casinos. In general, states that have not legalized casinos retain strict laws forbidding the enforcement of gambling debts, while those that have legalized casinos have slowly relaxed such prohibitions. It took Nevada over fifty years after the legalization of casinos to finally legalize the collection of gambling debts. For states that have only recently legalized casinos, most during the 1990s, this process has just begun.

## A. States with Limited Legal Gambling (No Casinos)

Forty-eight states in the United States have some form of legal gambling; however, only twenty-eight allow casinos.<sup>14</sup> Thus, twenty states legalize limited forms of gambling. For example, thirty-eight states and the District of Columbia have a state-sanctioned lottery.<sup>15</sup> Many states also allow other types of limited gambling, such as: bingo, video poker, and horse or dog track betting.<sup>16</sup> This section focuses on those states that historically have had a strong public policy against gambling, yet have legalized some limited forms. In these states, the obvious starting point is an examination of which parts of the *Statute of Anne* have been retained as law. Modernly, three parts of the *Statute of Anne* remain relevant: 1) the rule that gambling debts are void; 2) the provision that allows a loser to recover losses; and 3) the provision that allows a third party to recover the losses of gamblers.<sup>17</sup>

Most of these states have retained the first section of the *Statute of Anne*, declaring all gambling debts void through specific

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<sup>14</sup> NGISC FINAL REPORT, *supra* note 12, at 1-1, 2-6.

<sup>15</sup> *Lottery Industry Leaders Name Michigan Lottery As One of the 10 Most Efficient in the United States*, PR NEWSWIRE, Mar. 18, 2002.

<sup>16</sup> At the time of the NGISC report, stand-alone electronic gambling devices, such as video poker, were legal in seven states, betting on horse races was legal in forty-three states, and betting on greyhound dog races was legal in fifteen states. *Id.* at 2-4, 2-11.

<sup>17</sup> See *supra* notes 1, 3-5.

statutory provisions.<sup>18</sup> Some of these states have even retained the prohibition, notwithstanding the legality of gambling in that state. In *Kentucky Off-Track Betting, Inc. v. McBurney*,<sup>19</sup> the defendant was indebted to an off-track operator for almost \$390,000 in checks exchanged for a promissory note.<sup>20</sup> After paying eighty-four thousand dollars, the defendant stopped making payments on the debt and the off-track operator sued.<sup>21</sup> The defendant claimed that Kentucky law rendered gambling debts unenforceable.<sup>22</sup> The court agreed and refused to recognize the balance of the debt.<sup>23</sup> The court rejected the contention that Kentucky had impliedly repealed the prohibition by encouraging betting on horse races via simulcast and by legalizing a lottery and charitable gambling.<sup>24</sup>

In Virginia, all gambling debts are void pursuant to “[t]he public policy of the Commonwealth expressed through statutory provisions . . . since 1740 . . . .”<sup>25</sup> In *Hughes v. Cole*,<sup>26</sup> the Virginia Supreme Court refused to enforce an alleged oral agreement among North Carolina residents, which resulted in the purchase of a nine million dollar Virginia lottery ticket.<sup>27</sup> Subsequently, North Carolina decisions suggested that the agreement was unenforceable because it violated North Carolina public policy;<sup>28</sup> however, North Carolina left the issue of enforcement to the Virginia courts.<sup>29</sup> The Virginia Supreme Court then concluded that under

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<sup>18</sup> *E.g.*, ALA. CODE § 88-1-150 (2001); CONN. GEN. STAT. § 52-553 (1991); D.C. CODE ANN. § 16-1701 (2001); FLA. STAT. ANN. § 849.26 (West 2001); GA CODE ANN. § 13-8-3(a) (2001); 720 ILL. COMP. STAT. 5/28-7 (2002); KY. REV. STAT. ANN. § 372.010 (Banks-Baldwin 2001); MINN. STAT. § 541.21 (2001); MISS. CODE ANN. § 87-1-1 (2001); N.J. STAT. ANN. § 2A:40-1 (West 2000); N.C. GEN. STAT. § 16-1 (2001); OHIO REV. CODE ANN. § 3763.01 (West 2001); 73 PA. CONS. STAT. § 2031 (West 2002); R.I. GEN. LAWS § 11-19-17 (2001); S.D. CODIFIED LAWS § 53-9-2 (Michie 2001); TENN. CODE ANN. § 29-19-101 (2001); VA. CODE ANN. § 11-14 (Michie 2001); WASH. REV. CODE ANN. § 4.24.090 (West 1988); W. VA. CODE ANN. § 55-9-1 (Michie 2000); WIS. STAT. ANN. § 895.055 (West 2001); WYO. STAT. ANN. § 1-23-106 (Michie 2001).

<sup>19</sup> 993 S.W.2d 946 (Ky. 1999).

<sup>20</sup> *Id.* at 947.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.* The Kentucky statute states:

Every contract, conveyance, transfer or assurance for the consideration, in whole or in part, of money, property or other thing won, lost or bet in any game, sport, pastime or wager, or for the consideration of money, property or other thing lent or advanced for the purpose of gaming, or lent or advanced at the time of any betting, gaming, or wagering to a person then actually engaged in betting, gaming, or wagering, is void.

KY. REV. STAT. § 372.010 (Banks-Baldwin 2001).

<sup>23</sup> *Kentucky Off-Track Betting*, 993 S.W.2d at 947.

<sup>24</sup> *Id.* at 948-49. Two dissenting judges, however, accepted this argument. *Id.* at 949-50.

<sup>25</sup> *Resorts Int'l Hotel, Inc. v. Agresta*, 569 F. Supp. 24, 25 (E.D. Va. 1983).

<sup>26</sup> 465 S.E.2d 820, 835 (Va. 1996).

<sup>27</sup> *Id.*

<sup>28</sup> *Id.* at 826 (quoting *Cole v. Hughes*, 442 S.E.2d 86, 90 (N.C. Ct. App. 1994)).

<sup>29</sup> *Hughes*, 465 S.E.2d at 826.

Virginia law, any such agreement would be unenforceable, though not illegal.<sup>30</sup>

The validity of the first part of the *Statute of Anne*, voiding all gambling contracts, clearly continues in Virginia. One court has suggested that the debtor recovery provision may also be operative.<sup>31</sup> *Rahmani v. Resorts International Hotel, Inc.*,<sup>32</sup> involved a Virginia citizen's attempt to recover nearly four million dollars in gambling losses at two New Jersey casinos over the course of thirteen years.<sup>33</sup> The court, sitting in diversity, dismissed her action holding that New Jersey law applied and did not provide for such recovery.<sup>34</sup> In dicta, the court noted the result would have been the same under Virginia law,<sup>35</sup> concluding that the Virginia law permitting the recovery of gambling losses applies only to intra-state losses.<sup>36</sup> The court further opined that if a Virginia gambler could recover for out-of-state losses pursuant to the Virginia statute, "it would have the perverse effect of encouraging Virginians to gamble, albeit out-of-state."<sup>37</sup>

Perhaps the most unusual gambling debt case occurred in Wisconsin, where gambling contracts were void.<sup>38</sup> In 1990, Robert Gonnely cashed three checks totaling nearly twenty-four thousand dollars at a Kennel Club in order to place bets at the Kennel Club's dog races.<sup>39</sup> When the State attempted to prosecute Gonnely for issuing worthless checks, his only defense was that the checks were gaming contracts, and therefore, void.<sup>40</sup> The Wisconsin Court of Appeals upheld the trial court's order dismissing the criminal complaint because checks issued for gaming purposes are unenforceable.<sup>41</sup> Although the gambler was twenty thousand dollars richer, the court did not comment as to whether this was a desirable outcome, and noted that its "task is simply to ascertain the legislative intent of the statutes. If another result is deemed wiser, it is for the people—through the legislature—and not for this court to fashion one."<sup>42</sup>

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<sup>30</sup> *Id.* at 827 ("At the heart of the problem is Code § 11-14, which provides in pertinent part that '[a]ll . . . contracts whereof the whole or any part of the consideration be money or other valuable thing won . . . at any game . . . shall be utterly void.'").

<sup>31</sup> *Rahmani v. Resorts Int'l Hotel, Inc.*, 20 F. Supp. 2d 932 (E.D. Va. 1998).

<sup>32</sup> *Id.* at 934.

<sup>33</sup> *Id.* at 933-34.

<sup>34</sup> *Id.* at 935.

<sup>35</sup> *Id.* at 935-36.

<sup>36</sup> *Id.* at 936-37.

<sup>37</sup> *Id.*

<sup>38</sup> WIS. STAT. ANN. § 895.055 (West 2001).

<sup>39</sup> *State v. Gonnely*, 496 N.W.2d 671, 672 (Wis. Ct. App. 1992).

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> *Id.* at 675. In 1997, the Wisconsin legislature amended its *Statute of Anne* provision, effectively taking specified forms of legal gambling out of the void debt classification. WIS. STAT. ANN. § 895.055(3). Minnesota has achieved a similar result through case law.

Many states have adopted the recovery provisions of the *Statute of Anne*.<sup>43</sup> These states allow a gambler to recover losses typically within three to six months of the date of the wager.<sup>44</sup> Some states have also adopted the third party recovery provisions of the *Statute of Anne*, allowing any person to sue in place of the loser if the loser does not sue within the permitted period.<sup>45</sup> Often, the third party is allowed to recover treble damages; however, the state may require one-half of the recovery be given to the government or to a specific fund, such as the county educational fund, as was required by the *Statute of Anne*.<sup>46</sup>

In only a few recent cases has a plaintiff, either the debtor or a third party, sued to recover gambling losses pursuant to the *Statute of Anne*; most of these cases have been in South Carolina. Between 1991 and 2000, video poker machines were legal in South Carolina.<sup>47</sup> These machines were the basis for several successful suits for recovery under the South Carolina recovery provision, which “varies very little in substance” from the original *Statute of Anne*.<sup>48</sup> These lawsuits addressed four main issues: 1) the correct

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In *State v. Stevens*, 495 N.W.2d 513 (Minn. Ct. App. 1999), the appellate court dismissed the prosecution of theft by check, based on checks written to purchase pool tabs. The court stated, “Because Stevens’ checks were void as to the saloon and the youth hockey association, a designated recipient of pull tab proceeds, it was legally impossible for Stevens to defraud them. Legal impossibility is a defense to the substantive crime with which Stevens was charged.” *Id.* at 515.

<sup>43</sup> *E.g.*, ALA. CODE § 8-1-150 (2001); ARK. CODE ANN. § 16-118-103 (Michie 2001); CONN. GEN. STAT. § 52-553 (1991); D.C. CODE ANN. § 16-1702 (2001); GA. CODE ANN. § 13-8-3(b) (2001); KY. REV. STAT. ANN. § 372.020 (Banks-Baldwin 2001); MD. ANN. CODE art. 27, § 243 (2001); MASS. GEN. LAWS ANN. ch. 137, § 1 (West 2001); MICH. COMP. LAWS § 750.315 (2001); MISS. CODE ANN. § 87-1-5 (1991); MO. ANN. STAT. § 434.030 (West 1992); MONT. CODE ANN. § 23-4-131 (2001); N.J. STAT. ANN. § 2A:40-5 (West 2001); N.M. STAT. ANN. § 44-5-1 (Michie 2001); OHIO REV. CODE ANN. § 3763.02 (West 2001); OR. REV. STAT. § 30.740 (1999); S.C. CODE ANN. § 32-1-10 (Law. Co-op. 2001); S.D. CODIFIED LAWS § 21-6-1 (Michie 2001) (In 1990, South Dakota modified its law so that § 21-6-1 did “not apply to authorized gaming and lotteries.” S.D. CODIFIED LAWS § 42-7B-55 (Michie 2001)); TENN. CODE ANN. § 28-3-106 (2001); VA. CODE ANN. § 11-15 (Michie 2001) (a Virginia court has stated this section is to be liberally interpreted concerning gambling. *McIntyre v. Smyth*, 62 S.E. 930 (Va. 1908)); W. VA. CODE § 55-9-2 (2001).

<sup>44</sup> *E.g.*, ALA. CODE § 8-1-150 (six months); ARK. CODE ANN. § 16-118-103 (ninety days or three months); CONN. GEN. STAT. ANN. § 52-554 (West 1991) (three months); D.C. CODE ANN. § 16-1702 (three months); GA. CODE ANN. § 13-8-3(b) (six months); KY. REV. STAT. ANN. § 372.020 (five years); MASS. GEN. LAWS ANN. ch. 137, § 1 (three months); MICH. COMP. LAWS § 750.315 (three months); N.J. STAT. ANN. § 2A:40-5 (six months); OHIO REV. CODE ANN. § 3763.02 (six months); S.C. CODE ANN. § 32-1-10 (three months); S.D. CODIFIED LAWS § 21-6-1 (six months); TENN. CODE ANN. § 28-3-106 (ninety days or three months); VA. CODE ANN. § 11-15 (three months); W. VA. CODE § 55-9-2 (three months).

<sup>45</sup> *E.g.*, D.C. CODE ANN. § 16-1702; GA. CODE ANN. § 13-8-3; KY. REV. STAT. ANN. § 372.040; N.J. STAT. ANN. § 2A:40-6; OHIO REV. CODE ANN. § 3763.04.

<sup>46</sup> *E.g.*, D.C. CODE ANN. § 16-1702; KY. REV. STAT. ANN. § 372.040.

<sup>47</sup> The state referendum banning video poker machines as of July 1, 2000, was upheld by the South Carolina Supreme Court in *Joytime Distributors and Amusement Co. v. State*, 528 S.E.2d 647 (S.C. 1999). For a discussion of the legal debate surrounding video poker machines in South Carolina, see Harriet P. Luttrell, *Video Poker: A Survey of Recent Developments Surrounding the Legal and Moral Debate*, 51 S.C. L. REV. 1065 (2000).

<sup>48</sup> *Berkebile v. Outen*, 426 S.E.2d 760, 763 (S.C. 1993).



burden of proof;<sup>49</sup> 2) how to apply the statute of limitations;<sup>50</sup> 3) whether a party suing in place of a losing gambler was acting in a collusive fashion;<sup>51</sup> and 4) whether the Video Games Machines Act impliedly repealed the *Statute of Anne* remedies.<sup>52</sup>

In *Rorrer v. P.J. Club, Inc.*,<sup>53</sup> the South Carolina Court of Appeals upheld a jury verdict awarding over twenty thousand dollars to the husband of a compulsive gambler.<sup>54</sup> The trial judge had also awarded treble damages pursuant to a South Carolina statute.<sup>55</sup> The basic issue on appeal was whether the trial court correctly applied the preponderance of the evidence standard in awarding treble damages, instead of the more difficult clear and convincing evidence standard.<sup>56</sup> The appellate court affirmed, concluding that the higher standard was unnecessary because the purpose of the statute was to protect the family of the compulsive gambler.<sup>57</sup>

The issue regarding application of the statute of limitations was addressed in *Ardis v. Ward*.<sup>58</sup> In that case, the plaintiff, Bill Ardis, sued for actual damages plus treble damages on behalf of Delores Ardis, who lost a total of nearly thirty thousand dollars over ninety-three different occasions on the defendant's video poker machines.<sup>59</sup> Each individual loss exceeded the statutory loss-limit of fifty dollars.<sup>60</sup> Mr. Ardis sued because the statute of limitations on Delores's action had run after three months.<sup>61</sup> The supreme court remanded the case and allowed Mr. Ardis to pursue

49 *Rorrer v. P.J. Club, Inc.*, 556 S.E.2d 726 (S.C. Ct. App. 2001).

50 *Ardis v. Ward*, 467 S.E.2d 742 (S.C. 1996).

51 *Mullinax v. J.M. Brown Amusement Co.*, 485 S.E.2d 103 (S.C. Ct. App. 1997), *aff'd*, 508 S.E.2d 848 (S.C. 1998).

52 *Justice v. The Pantry*, 496 S.E.2d 871 (S.C. Ct. App. 1998), *aff'd*, 518 S.E.2d 40 (S.C. 1999). The South Carolina *Statute of Anne*-type remedies provide:

In case any person who shall lose such money or other thing as aforesaid shall not, within the time aforesaid, really and bona fide and without covin or collusion sue and with effect prosecute for the money or other things so by him or them lost and paid and delivered as aforesaid, it shall be lawful for any other person, by any such action or suit as aforesaid, to sue for and recover the same and treble the value thereof . . . .

S.C. CODE ANN. § 32-1-20 (Law. Co-op. 2001).

53 556 S.E.2d 726.

54 *Id.* at 730.

55 *Id.* at 728 n.2.

56 *Id.* at 730.

57 *Id.* at 731.

58 467 S.E.2d 742 (S.C. 1996); *accord* *Montjoy v. One Stop of Abbeville, Inc.*, 478 S.E.2d 683 (S.C. 1996).

59 *Ardis*, 467 S.E.2d at 743.

60 *Id.*

61 *Id.* The South Carolina recovery provision provides:

Any person who shall . . . lose to any person or persons so playing or betting, in the whole, the sum or value of fifty dollars[, can sue] within three months . . . [to] recover the money or goods so lost and paid or delivered or any part thereof from the respective winner or winners thereof, with costs of suit . . . .

S.C. CODE ANN. § 32-1-10 (Law. Co-op. 1991).

the claim because a third party suit is not limited by the three month period.<sup>62</sup>

In *Mullinax v. J.M. Brown Amusement Co.*,<sup>63</sup> the South Carolina appellate court reversed a trial court's dismissal of a wife's attempt to recover for her husband's gambling debts.<sup>64</sup> The trial court dismissed the action because it found the suit was "brought in a collusive fashion," in violation of the South Carolina third party recovery statute.<sup>65</sup> The appellate court explained that the statute's intent was to prevent the gambler from receiving some benefit from the suit.<sup>66</sup> However, Mrs. Mullinax's situation was exactly what the statute intended to address: the financial ruin of a family due to the compulsive gambling of one spouse.<sup>67</sup> The fact that Mr. Mullinax helped his wife prepare for the suit by providing information and documentation did not overcome this policy and make the suit collusive.<sup>68</sup>

In *Justice v. The Pantry*,<sup>69</sup> the plaintiff filed lawsuits for the recovery of gambling debts incurred by his mother and sister at video poker machines.<sup>70</sup> The appellate court reversed the trial court's decision that the Video Games Machines Act impliedly repealed the recovery statutes.<sup>71</sup> Similarly, in *McCurry v. Keith*,<sup>72</sup> the appellate court concluded that recovery of losses was allowed, irrespective of the legality of the gambling.<sup>73</sup> Interestingly, a subsequent appellate decision in the case reduced the plaintiff's recovery, using her winnings as a set off.<sup>74</sup>

Not all states have legislation mirroring the *Statute of Anne*. For instance, North Carolina has no statute that allows losers to sue to recover gambling losses.<sup>75</sup> In *State v. Hair*,<sup>76</sup> the North Car-

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<sup>62</sup> *Ardis*, 467 S.E.2d at 744.

<sup>63</sup> 485 S.E.2d 103 (S.C. Ct. App. 1997), *aff'd*, 508 S.E.2d 848 (S.C. 1998).

<sup>64</sup> *Mullinax*, 485 S.E.2d at 104.

<sup>65</sup> *Id.* at 105.

<sup>66</sup> *Id.* at 106.

<sup>67</sup> *Id.* at 107.

<sup>68</sup> *Id.* On remand, the jury took less than two hours to reach a verdict in favor of the defense. It seems that the jury refused to believe that the gambler had the seventy thousand dollars he claimed to have lost. See *Video Gambling Company Wins Losses Lawsuit*, POST & COURIER (Charleston, S.C.), Jan. 31, 1999, at B3.

<sup>69</sup> 496 S.E.2d 871 (S.C. Ct. App. 1998), *aff'd*, 518 S.E.2d 40 (S.C. 1999).

<sup>70</sup> *Justice*, 496 S.E.2d at 872.

<sup>71</sup> The South Carolina Supreme Court declined to review the appellate court's decision that the Video Games Machines Act did not impliedly repeal S.C. CODE ANN. § 32-1-20—South Carolina's *Statute of Anne* provisions. *Justice v. The Pantry*, 518 S.E.2d 40, 41 n.1 (S.C. 1999).

<sup>72</sup> 439 S.E.2d 861 (S.C. Ct. App. 1994).

<sup>73</sup> *Id.* at 862.

<sup>74</sup> *McCurry v. Keith*, 481 S.E.2d 166 (S.C. Ct. App. 1997) (setting off the plaintiff's recovery by \$5,000, from \$8,560 to \$3,560).

<sup>75</sup> *State v. Hair*, 442 S.E.2d 163, 166 (N.C. Ct. App. 1994) ("Furthermore, one who pays a gambling debt owed to another, may not subsequently attempt to recover that which he has paid.")

<sup>76</sup> *Id.* at 163.

olina Court of Appeals overturned a portion of a criminal judgment requiring a defendant convicted of bribery to make restitution in the amount of a gambling debt.<sup>77</sup> The court noted that because North Carolina had no provision for civil recovery, a restitution order was inappropriate.<sup>78</sup>

## B. States with State-Licensed Casinos

Nevada, New Jersey, Michigan, and Puerto Rico have large, land-based casinos,<sup>79</sup> while Colorado and South Dakota have small-scale, land-based casino operations.<sup>80</sup> Iowa, Indiana, Illinois, Mississippi, and Missouri have legalized riverboat gambling.<sup>81</sup> Louisiana has both land-based and riverboat casinos.<sup>82</sup> Every state has developed its own body of law to balance the historical public policy against gambling with the practical need for legal businesses to be able to recover on credit instruments. This section discusses the bodies of law that have developed in several of the states that have legalized casino gambling.

### 1. States With Large Land-Based Casinos

#### a. Nevada

Nevada legalized gambling in 1931,<sup>83</sup> but it did not legalize the enforcement of gambling debts until 1983.<sup>84</sup> During the intervening fifty-two years, its courts wrestled with issues related to the *Statute of Anne*. For instance, in 1950, a casino sued a debtor's estate to collect eighty-six thousand dollars in unpaid checks relating to gambling debts.<sup>85</sup> The court considered whether the affirmative defense of unenforceability of gambling debts was still valid in light of the case law since 1872.<sup>86</sup> The court recognized that gambling conditions in Nevada had changed,<sup>87</sup> and analyzed the relevance of the *Statute of Anne* to Nevada law.<sup>88</sup> It noted that while portions of the *Statute of Anne* were clearly inap-

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<sup>77</sup> *Id.* at 164.

<sup>78</sup> *Id.* at 165-66.

<sup>79</sup> AM. GAMING ASS'N, STATE OF THE STATES: THE AGA SURVEY OF CASINO ENTERTAINMENT, *Economic Impact*, available at [http://www.americangaming.org/survey2001/economic\\_impact/TMP971869896.htm](http://www.americangaming.org/survey2001/economic_impact/TMP971869896.htm) [hereinafter AGA SURVEY]; Welcome to Puerto Rico, *Tourist Information*, at <http://welcome.topuertorico.org/tinfo.shtml> (last visited Mar. 22, 2002).

<sup>80</sup> AGA SURVEY, *supra* note 79.

<sup>81</sup> NGISC FINAL REPORT, *supra* note 12, at 2-7. Although Michigan, Indiana, and Illinois have casinos, the author could not find any reported litigation concerning the enforcement of gambling debts in these states.

<sup>82</sup> AGA SURVEY, *supra* note 79.

<sup>83</sup> *Id.*

<sup>84</sup> 1983 NEV. STAT. § 335, now codified as NEV. REV. STAT. § 463.368 (2001).

<sup>85</sup> *West Indies, Inc. v. First Nat'l Bank of Nev.*, 214 P.2d 144, 145 (Nev. 1950).

<sup>86</sup> *Id.* at 146 (citing *Scott v. Courtney*, 7 Nev. 419 (Nev. 1872)).

<sup>87</sup> *West Indies*, 214 P.2d at 149.

<sup>88</sup> *Id.* at 151-54.

plicable to contemporary Nevada law, this did not necessitate invalidating the entire statute unless the provisions were non-severable.<sup>89</sup> Prior case law had deemed section 1 of the *Statute of Anne* the law of Nevada,<sup>90</sup> and the court concluded that this section could be severed from the other outdated portions of the *Statute of Anne*.<sup>91</sup> Furthermore, the legalization of gaming in 1931, and subsequent legislation, did not repeal by implication the first section of the *Statute of Anne*.<sup>92</sup>

Today, Nevada enforces gambling debts when credit instruments, such as markers or checks, are cashed at a casino.<sup>93</sup> The Nevada legislature made this change for two reasons. First, the gaming collection rate, generally about ninety-five percent, had “dipped below 90% for the first time in history.”<sup>94</sup> Second, Nevada lost a major case regarding taxation of gaming debts “removing [the] benefit of having gaming debts remain unenforceable.”<sup>95</sup> The Ninth Circuit ruled that unpaid casino receivables should be treated and taxed as income, even though the debts were legally unenforceable.<sup>96</sup>

Under recent laws, a casino may enforce gambling debts by immediately filing suit on any enforceable credit instrument and the underlying debt.<sup>97</sup> While regulations for the issuing of credit to a patron are stringent, failure to follow the regulations does not invalidate the credit instrument.<sup>98</sup> Rather, such violations result in disciplinary action by the Gaming Control Board.<sup>99</sup> An example of a credit instrument is a marker signed by the patron, which may be undated and issued to a nonaffiliated company “so that the

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<sup>89</sup> *Id.*

<sup>90</sup> *Id.*

<sup>91</sup> *Id.*

<sup>92</sup> *Id.*

<sup>93</sup> LIONEL SAWYER & COLLINS, NEVADA GAMING LAW 245 (Anthony N. Cabot ed., 2d ed. 1995) [hereinafter NEVADA GAMING LAW].

<sup>94</sup> *Id.* at 246.

<sup>95</sup> *Flamingo Resort, Inc. v. United States*, 664 F.2d 1387, 1390-91 (9th Cir. 1982).

<sup>96</sup> *Id.*

<sup>97</sup> NEVADA GAMING LAW, *supra* note 93, at 248.

<sup>98</sup> Anthony N. Cabot, *Casino Collection Lawsuits: The Basics*, GAMING LAW REVIEW vol. 4 No. 4, at 325 (2000).

<sup>99</sup> *Id.* Violation of the laws or regulations concerning debt collection practices are taken very seriously by the Nevada Gaming Control Board. In August 1998, the Board fined the Mirage Hotel and Casino, alleging that it violated South Korean law. The Mirage collected over five hundred thousand dollars from Korean gamblers in violation of a Korean law which required government permission to take over ten thousand dollars from South Korea. *Mirage, Tropicana Pay Off Fines*, LAS VEGAS REV.-J., Aug. 21, 1998, at 2D. The Mirage paid a \$350,000 fine and agreed to “develop written policies on the collection of Korean debts, in consultation with lawyers in that country.” *Id.* Litigation by the woman who collected the money, and who claims she was wrongfully terminated by the Mirage, was not settled until August 2001. Dave Berns, *Fired Marketing Executive Settles with MGM Mirage*, LAS VEGAS REV.-J., Aug. 8, 2001, at 1D.

patron does not have to expose his gaming to his banker or spouse.”<sup>100</sup>

The casinos have an additional weapon to use against patrons who refuse to pay their debts: the unpaid markers may be handed over to the district attorney for possible criminal prosecution.<sup>101</sup> One Illinois debtor, who owed fifty thousand dollars in markers, pled guilty after being extradited to Nevada and “agreed to make restitution.”<sup>102</sup> Another gambler from Texas escaped prosecution only by filing bankruptcy.<sup>103</sup>

In *Nguyen v. State*,<sup>104</sup> the Nevada Supreme Court denied relief to a gambling debtor accused of criminal conduct for violating Nevada’s bad check law.<sup>105</sup> Nguyen signed markers at three casinos, then left Nevada without paying the debts incurred.<sup>106</sup> Eventually, he entered a plea agreement whereby he pled guilty to passing a bad check, but reserved the right to appeal the issue of whether Nevada’s bad check law applied to casino markers.<sup>107</sup> The appellate court had little difficulty concluding that the marker was the equivalent of a check.<sup>108</sup> It rejected Nguyen’s contention that a marker was not a check, but instead, a written reflection of a loan agreement.<sup>109</sup> The court also found that “intent to defraud was circumstantially demonstrated by his failure to pay the full amount due within the statutory period, and by the return of the instruments from his bank with the notation ‘Account Closed.’”<sup>110</sup>

Eight months prior to *Nguyen*, a federal district court reached the same result. In *Fleeger v. Bell*,<sup>111</sup> a gambler accumulated a Nevada debt of over \$180,000 in unpaid markers, and was eventu-

<sup>100</sup> See NEVADA GAMING LAW, *supra* note 93, at 252.

<sup>101</sup> In Clark County, Nevada, a casino can refer “dishonored Markers” to the “Bad Check Collections Unit (‘BCU’) of the District Attorney’s Office in Clark County, Nevada. The BCU is a diversionary program, designed to encourage individuals who wrote bad checks to pay them because of the threat of prosecution without actually incarcerating them.” *Desert Palace, Inc. v. Baumblit*, Nos. 00-5058, 00-5064, 2001 U.S. App. LEXIS 17683, at \*6 (2d Cir. Aug. 6, 2001). In *Desert Palace*, the casino referred the unpaid markers to the BCU after the debtor filed for bankruptcy. The United States Court of Appeals affirmed a district court order that Caesars had acted improperly and its “actions constituted a deliberate violation of the automatic stay, entitling Baumblit to actual damages.” *Id.* at \*14.

<sup>102</sup> John G. Edwards, *Prosecutors Pursue Bad Casino Markers, Unpaid Gambling Debts Are the Same As Worthless Checks in the Eyes of the District Attorney’s Office*, LAS VEGAS REV.-J., July 28, 1997, at 2D.

<sup>103</sup> *Id.*

<sup>104</sup> 14 P.3d 515, 520 (Nev. 2000).

<sup>105</sup> *Id.* at 516.

<sup>106</sup> *Id.* at 517.

<sup>107</sup> *Id.*

<sup>108</sup> *Id.* at 518.

<sup>109</sup> *Id.*

<sup>110</sup> *Id.* at 519.

<sup>111</sup> 95 F. Supp. 2d 1126, 1128 (D. Nev. 2000).

ally arrested in Texas.<sup>112</sup> He later filed a class action complaint alleging that the markers were “IOUs,” rather than negotiable checks.<sup>113</sup> The judge disagreed and granted the defendant’s motion to dismiss.<sup>114</sup> On appeal, the Court of Appeals for the Ninth Circuit gave significant weight to the intervening Nevada Supreme Court conclusion in *Nguyen* that a marker is a check, and affirmed the district court decision.<sup>115</sup>

There is a major distinction between a casino suing on a credit instrument and a patron’s contractual claim against a casino. Patrons who wish to file suit against a casino must first proceed via an administrative hearing.<sup>116</sup> This distinction is based on both practical and historical concerns. Should a patron claim that a casino owes him money, the Gaming Control Board “with its specialized knowledge of the gaming industry, can better judge the evidence.”<sup>117</sup>

#### b. New Jersey

Prior to New Jersey’s legalization of casinos in 1976,<sup>118</sup> its courts had to determine whether gambling debts legally incurred in another jurisdiction were enforceable. The New Jersey Supreme Court faced this question in *Caribe Hilton Hotel v. Tolland*,<sup>119</sup> and held that gambling debts incurred at a licensed and regulated Puerto Rican casino could be enforced against a New Jersey resident.<sup>120</sup> The court recognized a long-standing hostility by New Jersey courts toward the enforcement of gambling debts.<sup>121</sup> However, it noted that the subsequent legalization of

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<sup>112</sup> *Id.*

<sup>113</sup> *Id.* at 1129.

<sup>114</sup> *Id.* at 1133. Fleegeer’s complaint alleged violations of the Fair Debt Collection Practices Act, common law false arrest, and various civil rights violations, as well as violation of Nevada gaming regulations. *Id.* at 1129.

<sup>115</sup> *Fleegeer v. Bell*, No. 00-15942, 2001 U.S. App. LEXIS 25491, at \*7 (9th Cir. Nov. 26, 2001).

<sup>116</sup> See NEVADA GAMING LAW, *supra* note 93, at 245.

<sup>117</sup> *Id.*

<sup>118</sup> AGA SURVEY, *supra* note 79.

<sup>119</sup> 307 A.2d 85 (N.J. 1973).

<sup>120</sup> *Id.* at 89.

<sup>121</sup> *Id.* at 86. During the nineteenth and twentieth centuries, New Jersey public policy “condemned gambling.” The court stated:

By a comprehensive statute enacted February 8, 1797, gaming in all forms was declared to be an indictable offense; contracts and security arrangements having their origin in any form of gambling were declared void; money paid by a loser to a winner might be recovered in an action in debt and if the loser failed to sue, a third person might do so and if successful retain one-half the recovery, the balance to pass to the State. The plaintiff in such an action might have the aid of a court of equity to compel discovery under oath.

*Id.* (citations omitted). New Jersey law has retained both the provision voiding gambling debts and the debt recovery provision of the *Statute of Anne*. The code provides that, “[a]ll wagers, bets or stakes made to depend upon any race or game, or upon any gaming by lot or chance, or upon any lot, chance, casualty or unknown or contingent event” are unlawful in

bingo and lotteries, and sister-state judicial decisions, which recognize such debts, evidenced a change in New Jersey public policy that no longer allowed the state to bar recovery of a legal gambling debt incurred in another jurisdiction.<sup>122</sup> The court reasoned that differences in states' policies "should not be considered sufficient to lead a forum court to deny relief where a claim is based upon the divergent law of . . . [an]other jurisdiction."<sup>123</sup>

After the legalization of casinos, the New Jersey courts confronted questions related to the liability of casinos to patrons when a casino had breached a statutory duty. In *GNOC Corp. v. Aboud*,<sup>124</sup> the plaintiff casino sued a gambler for twenty-eight thousand dollars in unpaid gambling debts.<sup>125</sup> The gambler counterclaimed for losses of \$250,000 plus punitive damages, alleging that the casino encouraged him to lose money by serving him alcohol.<sup>126</sup> New Jersey has a dram-shop statute, which imposes liability on certain entities that serve alcohol to intoxicated individuals.<sup>127</sup> The casino filed two summary judgment motions arguing that, as a matter of law, the casino is not responsible for the employees who served Aboud while he was intoxicated.<sup>128</sup> In denying summary judgment, the court stated:

In sum, a casino has a duty to refrain from knowingly permitting an invitee to gamble where that patron is obviously and visibly intoxicated and/or under the influence of a narcotic substance. Here there are allegations of patent and overt inebriety coupled with the consumption of a powerful narcotic medication prescribed by physicians summoned by and paid for by the casino itself. While under the influence of drugs or alcohol, one suffers a deficit, to varying degrees, of cognitive faculties such as the power to reason sensibly, to appreciate the danger of activities engaged in, and/or to exercise sound judgment.<sup>129</sup>

One issue mentioned in a footnote in *Aboud*, but not fully discussed,<sup>130</sup> was whether a violation of the New Jersey Casino Control Act<sup>131</sup> by a casino should permit a private cause of action by a gambler. In *Miller v. Zoby*,<sup>132</sup> a debtor's estate sued a casino jun-

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New Jersey. N.J. STAT. § 2A:40-1 (2001). Furthermore, any person who loses any money or goods resulting from a violation of § 2A:40-1, may file a civil action and sue to recover the money or goods paid out to the winner within six months after payment. N.J. STAT. ANN. § 2A:40-5.

<sup>122</sup> *Toland*, 307 A.2d at 89.

<sup>123</sup> *Id.*

<sup>124</sup> 715 F. Supp. 644 (D.N.J. 1989).

<sup>125</sup> *Id.* at 648.

<sup>126</sup> *Id.*

<sup>127</sup> *Id.* at 653-54 (citing N.J. ADMIN. CODE tit. 19, § 50-1 (1988)).

<sup>128</sup> *Aboud*, 715 F. Supp. at 646.

<sup>129</sup> *Id.* at 655.

<sup>130</sup> *Id.* at 653 n.130.

<sup>131</sup> N.J. STAT. §§ 5:12-1 to -190 (2001).

<sup>132</sup> 595 A.2d 1104 (N.J. Super. Ct. App. Div. 1991).

ket operator for having improperly extended credit, resulting in gambling losses totaling \$267,000.<sup>133</sup> The court dismissed for failure to state a claim upon which relief could be granted.<sup>134</sup> Upon appellate review of the dismissal, the court concluded that “the Legislature was satisfied to rely on the elaborate regulatory sanctions provided in the Act and not on private enforcement to police the general credit practices of the casinos. “The key to the inquiry is the intent of the Legislature.”<sup>135</sup>

The decision in *Aboud*, which allowed a private right of action against a casino for the breach of a statute, and the decision in *Miller*, which did not allow a private right of action for the breach of a different statute, both required clarification regarding which statutes could give rise to a private right of action. *Greate Bay Hotel & Casino v. Tose*<sup>136</sup> explained and attempted to reconcile these two cases.

In *Tose*, the casino sued for unpaid gambling debts totaling over one million dollars, and Tose counterclaimed to recover over three million dollars which he claimed to have lost between 1983 and 1987, while gambling in Atlantic City.<sup>137</sup> The counterclaim relied on *Aboud*, alleging that the casino continued to serve him alcohol after he was clearly intoxicated.<sup>138</sup>

The district court granted the casino’s motion for summary judgment, holding the casino could recover its damages in full.<sup>139</sup> On Tose’s counterclaim, the court held that he could recover under his theory, but that he was limited to those losses that were incurred within the six-year statute of limitations.<sup>140</sup> In response, the casino argued that because Tose was an overall winner during those six years, he should be barred from recovering at all.<sup>141</sup> The court did not agree.<sup>142</sup> It concluded that the application of such a “net winner theory” would produce inequitable results.<sup>143</sup> As a result, only Tose’s counterclaim remained for trial by a jury.<sup>144</sup> The jury was instructed “to make separate findings of liability for each

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<sup>133</sup> *Id.*

<sup>134</sup> *Id.* at 1106.

<sup>135</sup> *Id.* at 1108 (quoting *Middlesex City Sewerage Auth. v. Sea Clammers*, 453 U.S. 1, 13 (1981)).

<sup>136</sup> 34 F.3d 1228 (3d Cir. 1994). At a congressional hearing, Tose estimated his gambling losses at between forty to fifty million dollars. Laurence Arnold, *Telling of \$50M Losses, Ex-Eagles Owner Rocks Gambling Panel*, RECORD (Northern N.J.), July 1, 1999, at L7.

<sup>137</sup> *Tose*, 34 F.3d at 1228.

<sup>138</sup> *Id.*

<sup>139</sup> *Id.* at 1229.

<sup>140</sup> *Id.*

<sup>141</sup> *Id.*

<sup>142</sup> *Id.*

<sup>143</sup> *Id.*

<sup>144</sup> *Id.*



of seven dates on which Tose allegedly gambled while visibly intoxicated and lost money.”<sup>145</sup>

At the first trial, the jury found for the casino on four dates, but it could not reach a unanimous verdict on the other three, and declared a mistrial regarding those dates.<sup>146</sup> At the second trial, the casino was successful.<sup>147</sup> Interestingly, the trial court hinted that, but for *Aboud*, it would have granted the casino’s motion for summary judgment because New Jersey law did not permit a private cause of action for a gambler in this area.<sup>148</sup> Tose filed an appeal pro se.<sup>149</sup>

On appeal, the casino argued that in light of the decision in *Miller*, *Aboud* should be reexamined.<sup>150</sup> Nevertheless, the court determined that *Miller* and *Aboud* are not inconsistent; while *Miller* established that no private cause of action exists for violations of the Casino Control Act, *Aboud* established that a cause of action is permitted when there is another statute upon which to rely.<sup>151</sup> The intent of the legislature to impose liability in the latter case was clear because the legislature had addressed the issue specifically.<sup>152</sup>

*Aboud*, *Miller*, and *Tose* were also relied upon in a tort case. In *Hakimoglu v. Trump Taj Mahal Associates*,<sup>153</sup> the debtor sued in tort to recover over two million dollars in gambling debts, alleging he was visibly intoxicated at the time he gambled in the defendant’s casino.<sup>154</sup> The defendant counterclaimed for seven hundred thousand dollars in unpaid counterchecks and moved to dismiss the plaintiff’s claim, alleging that New Jersey law did not permit

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<sup>145</sup> *Id.* (quoting *Tose v. Greate Bay Hotel & Casino, Inc.*, 819 F. Supp 1312, 1314 (D.N.J. 1993)).

<sup>146</sup> *Tose*, 34 F.3d at 1229.

<sup>147</sup> *Id.*

<sup>148</sup> *Tose*, 819 F. Supp. at 1316-1317. The court held that the case was controlled by *Aboud*, stating:

The court acknowledges that *Aboud* is the law of this case and that pursuant to the law of the case doctrine the issue will not be relitigated . . . . To the extent that the *Aboud* cause of action is viewed as implied by the regulation limiting service of alcohol to inebriated patrons, or by any other statute or regulation governing casino operations, it runs afoul of the general notion that private causes of action are not ordinarily implied from regulatory enactments absent some indication of legislative intent . . . . The New Jersey Appellate Division has already ruled that even a direct casino violation of the Casino Control Act does not create a private right of action. The case for an implied cause of action is even weaker where, as here, there is no direct regulation barring the conduct which is alleged to create liability – permitting an inebriated patron to gamble.

*Id.* at 1316 n.8 (citations omitted).

<sup>149</sup> *Tose*, 34 F.3d at 1235 n.13.

<sup>150</sup> *Id.* at 1232 n.7.

<sup>151</sup> *Id.*

<sup>152</sup> *Tose*, 819 F. Supp. at 1316 n.8.

<sup>153</sup> 876 F. Supp. 625, 627 (D.N.J. 1994), *aff’d*, 70 F.3d 291 (3d Cir. 1995). The complaint alleged negligence, intentional or malicious conduct, and unjust enrichment which the “plaintiff . . . [had] collapsed . . . into a single theory of dram-shop liability.” *Id.* at 629.

<sup>154</sup> *Id.* at 627.

such a cause of action.<sup>155</sup> The defendant also moved to strike the plaintiff's affirmative defense of intoxication.<sup>156</sup> After considering the cases discussed above, the court stated that neither dram-shop liability, nor the Casino Control Act, supported an implied tort law cause of action for recovery of gambling losses incurred while intoxicated.<sup>157</sup> The Court of Appeals for the Third Circuit affirmed the dismissal and stated, "[W]e predict that the New Jersey Supreme Court would not permit recovery on claims such as those asserted by the plaintiff . . . ."<sup>158</sup>

### c. Puerto Rico

Like Nevada and New Jersey, Puerto Rico has legal, regulated casinos.<sup>159</sup> Puerto Rico is also similar to Nevada and New Jersey in that it allows the enforcement of legally incurred gambling debts through court actions. In Puerto Rico, a "person who loses in a game or a bet which is not prohibited is civilly liable."<sup>160</sup> Civil recovery of a gambling debt is limited in Puerto Rico by the "good father" principle, which was originally found in the Spanish Code.<sup>161</sup> Puerto Rico does not allow any type of action to recover winnings or debts in games of chance that are not legal within the territory.<sup>162</sup> Nevertheless, a person may recover bets on illegal games if there is evidence of fraud or the debtor is a minor or incapacitated.<sup>163</sup>

In *Posadas de Puerto Rico, Inc. v. Radin*,<sup>164</sup> a gambler appealed from summary judgments entered against him in two legally and factually similar cases. The gambler received fifteen thousand dollars in credit from each of two hotel casinos, and the casinos sued when the gambler refused to pay the debts.<sup>165</sup> The court affirmed the lower court decision, which awarded the two casinos thirty thousand dollars plus collection expenses.<sup>166</sup>

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<sup>155</sup> *Id.* at 627, 629.

<sup>156</sup> *Id.* at 637.

<sup>157</sup> *Id.* at 631. Judge Rodriguez issued an order denying motion for reargument on May 11, 1992. *Id.* at n.4.

<sup>158</sup> *Hakimoglu*, 70 F.3d at 294. The dissent argued, "From New Jersey's perspective, requiring casinos to protect gamblers from losses flowing from their excessive service of alcohol would probably also be in the public interest." *Id.* at 298. New Jersey would likely recognize a cause of action against a casino. *Id.* at 299.

<sup>159</sup> Welcome to Puerto Rico!, *Tourist Information*, at <http://welcome.topuertorico.org/tinfo.shtml> (last visited Mar. 22, 2002).

<sup>160</sup> 31 P.R. LAWS ANN. § 4774 (1991).

<sup>161</sup> *Id.* The "good father" principle allows a trial court to reduce or eliminate the debt if it is more than a good father could pay. *Id.*

<sup>162</sup> *Id.* § 4771.

<sup>163</sup> *Id.*

<sup>164</sup> 856 F.2d 399, 400 (1st Cir. 1988).

<sup>165</sup> *Id.*

<sup>166</sup> *Id.*

In his appeal, the gambler advanced two arguments. First, he argued the judgments should be overturned because the trial court judge did not conduct evidentiary hearings to determine whether the gambler's debts should be reduced under the good father defense.<sup>167</sup> The court concluded that the appellant did not present any issues at the summary judgment hearing that were not considered by the trial court, and an evidentiary hearing is not mandated when the only remaining issue is an issue of law for the court to decide.<sup>168</sup> The court also pointed out that the parties brought the good father defense to the trial judge's attention on two different occasions, and the judge had expressly rejected the defense as meritless.<sup>169</sup>

The gambler's second argument was that genuine issues of material fact existed as to whether the gambler was under duress when he signed the markers.<sup>170</sup> The court rejected this argument because the only evidence supporting it was an affidavit stating that the gambler was forced to sign the credit agreements.<sup>171</sup> The court held that the language of the affidavit was too vague and conclusory to successfully oppose the motions for summary judgment.<sup>172</sup> Therefore, it appears that Puerto Rico will enforce legally incurred gambling debts, and the Court of Appeals for the First Circuit will uphold state or territorial laws that allow for the enforcement of gambling debts.

## 2. States With Small Scale, Land-Based Casinos

### a. Colorado

Colorado allows gambling in three historic mining towns.<sup>173</sup> The amount of any single wager, however, is limited to five dollars, and it only allows three types of casino games: poker, blackjack, and slot machines.<sup>174</sup> This limited gambling was authorized by the voters in a constitutional amendment initiated and passed by Colorado citizens.<sup>175</sup> Other forms of limited gambling are also permitted, including charitable bingo games or raffles,<sup>176</sup> a state

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<sup>167</sup> *Id.*

<sup>168</sup> *Id.*

<sup>169</sup> *Id.*

<sup>170</sup> *Id.* at 401.

<sup>171</sup> *Id.*

<sup>172</sup> *Id.*

<sup>173</sup> The Colorado Division of Gaming, Colorado Department of Revenue, Colorado Gaming Questions and Answers, at <http://www.gaming.state.co.us/dogfaq.htm> (last visited Mar. 22, 2002).

<sup>174</sup> *Id.*

<sup>175</sup> INTERNATIONAL CASINO LAW 17 (Anthony N. Cabot et al. eds., 3d ed. 1999) [hereinafter INT'L CASINO LAW].

<sup>176</sup> COLO. REV. STAT. § 12-9-105 to -107 (2001); Colorado Department of Revenue, Other Colorado Wagering Activities, at <http://www.gaming.state.co.us/> (last visited Mar. 26, 2002).

lottery,<sup>177</sup> and horse and dog racing.<sup>178</sup> Colorado prohibits casinos from extending credit to players.<sup>179</sup>

Unlike many states that invalidate gaming debts pursuant to the *Statute of Anne*, Colorado depends on nineteenth century case law that prohibits enforcement actions because they are a waste of judicial resources.<sup>180</sup> Nevertheless, more recent case law indicates that enforcement may be possible for legally incurred “social” gaming debts. In *Houston v. Younghans*,<sup>181</sup> the Colorado Supreme Court was asked to enforce a debt arising from a poker game between friends.<sup>182</sup> Such social gambling is specifically excluded from Colorado’s gambling prohibition.<sup>183</sup> The court found that, because the debt was not incurred as part of “professional” gambling under Colorado law, the debt was enforceable.<sup>184</sup>

#### b. South Dakota

South Dakota began allowing limited casino gaming in the town of Deadwood in November 1989; by 2001, there were forty operating casinos.<sup>185</sup> Blackjack, poker, and slot machines are the only forms of gaming that are legal,<sup>186</sup> and the state limits the amount of any single bet to one hundred dollars.<sup>187</sup> South Dakota also established strict controls on check cashing at casinos,<sup>188</sup> and does not allow casinos or casino employees to extend credit for gambling.<sup>189</sup>

With the exception of debts incurred for authorized gaming and lotteries, gambling debts remain void.<sup>190</sup> In *Bayer v. Burke*,<sup>191</sup> the court interpreted the statute narrowly when it granted summary judgment on behalf of a bettor who signed promissory notes

<sup>177</sup> The Colorado Lottery, at [www.coloradolottery.com/home.cfm](http://www.coloradolottery.com/home.cfm) (last visited Mar. 26, 2002).

<sup>178</sup> COLO. REV. STAT. § 12-47.1-815 (2002); COLO. REV. STAT. § 12-60-510 (1996); Colorado Division of Racing Events, Colorado Department of Revenue, at [http://www.state.co.us/gov\\_dir/revenue\\_dir/racing\\_dir/coracing.html](http://www.state.co.us/gov_dir/revenue_dir/racing_dir/coracing.html) (last visited Mar. 26, 2002).

<sup>179</sup> INT’L CASINO LAW, *supra* note 175.

<sup>180</sup> *Eldred v. Malloy*, 2 Colo. 320, 321-22 (1874) (“The courts of this territory have enough to do without devoting their time to the solution of questions arising out of idle bets made on dog and cock fights, horse races, the speed of ox trains, the construction of railroads, the number on a dice or the character of a card that may be turned up.”).

<sup>181</sup> 580 P.2d 801 (Colo. 1978).

<sup>182</sup> *Id.*

<sup>183</sup> COLO. REV. STAT. § 18-10-102(2)(d); *Younghans*, 580 P.2d at 802-03.

<sup>184</sup> *Younghans*, 580 P.2d at 803.

<sup>185</sup> AGA SURVEY, *supra* note 79.

<sup>186</sup> Commission on Gaming, South Dakota Department of Commerce and Regulation, Frequently Asked Questions, at <http://www.state.sd.us/dcr/gaming/frequent.htm> (last visited Mar. 22, 2002). This restriction also applies to the state’s nine Native American casinos. *Id.*

<sup>187</sup> S.D. CODIFIED LAWS § 42-7B-14 (Michie 2001).

<sup>188</sup> S.D. ADMIN. R. 20:18 app. A § 525 (2002).

<sup>189</sup> S.D. CODIFIED LAWS § 42-7B-45.

<sup>190</sup> *Id.* §§ 42-7B-47, 53-9-2.

<sup>191</sup> 338 N.W.2d 293, 293-94 (S.D. 1983).

for over two hundred thousand dollars.<sup>192</sup> The creditor argued that the consideration for the notes was not a wager, but instead was an agreement not to sue the bettor on outstanding debts for other losses; the court did not agree.<sup>193</sup> The court reasoned that, while forbearance of suit is adequate consideration, the threatened suit concerned a contract that was void because the sole basis of the contract was gambling.<sup>194</sup>

Along with voiding all gambling debts, South Dakota law also continues to retain recovery provisions similar to section 2 of the *Statute of Anne*. Gamblers can recover gambling losses from the person with whom the bet was made, or from the proprietor of the place where the bet was made, if the gambler pursues a cause of action within six months.<sup>195</sup> If the gambler does not pursue an action within six months, the state's attorney will pursue an action for the benefit of the gambler's spouse and children, or if the gambler is not married, for the benefit of the public schools.<sup>196</sup> These recovery provisions do not apply to losses incurred in authorized casinos.<sup>197</sup>

### 3. States With Casinos Connected to Water

#### a. Iowa

In 1989, Iowa legalized riverboat casinos on navigable waters,<sup>198</sup> and now has ten riverboat casinos.<sup>199</sup> Although personal checks are lawful for certain forms of gambling, casinos cannot accept credit cards in exchange for coins, tokens, or any other form of credit.<sup>200</sup> In fact, Iowa law criminalizes the collection of gambling debts.<sup>201</sup> Currently, there are no cases in Iowa where attempts have been made to collect gambling debts. Nevertheless, it is interesting to examine the treatment of credit cards and cash machines in or near casinos.

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<sup>192</sup> *Id.* at 293.

<sup>193</sup> *Id.* at 294.

<sup>194</sup> *Id.*

<sup>195</sup> S.D. CODIFIED LAWS § 21-6-1 (Michie 2001).

<sup>196</sup> *Id.* § 21-6-2.

<sup>197</sup> *Id.* § 42-7B-55.

<sup>198</sup> Trudy D. Fountain, *Rolling Down the Mississippi From Minnesota to Louisiana and out the High Seas - Riverboat Gambling and Cruise Ship Gambling*, 89 ALI-ABA 79, 82 (2001).

<sup>199</sup> Iowa Racing and Gaming Commission, State of Iowa Licensed Facilities, at [http://www3.state.ia.us/irgc/licensees\\_map2.htm](http://www3.state.ia.us/irgc/licensees_map2.htm) (last modified Dec. 31, 2001). Iowa also has two greyhound dog racing facilities, one horse racing facility, and three Native American casinos. *Id.*; Iowa Racing and Gaming Commission, Indian Gaming, at [www3.state.ia.us/irgc/Indian.htm](http://www3.state.ia.us/irgc/Indian.htm) (last visited Mar. 21, 2002).

<sup>200</sup> IOWA CODE § 99B.17 (2002); *Id.* § 99F.9(6).

<sup>201</sup> IOWA CODE § 725.18. This section states, "Any person who knowingly offers, gives or sells the person's services for use in collecting or enforcing any debt arising from gambling, whether or not lawful gambling, commits an aggravated misdemeanor." *Id.*

In November 1998, the Iowa Racing and Gaming Commission (IRGC) began eliminating cash dispensing credit card machines in casinos.<sup>202</sup> Previously, the legislature had debated a ban on the machines, but never finalized its decision.<sup>203</sup> In order to effectuate its ruling, the IRGC denied new credit card cash machine contracts and declined to renew existing contracts.<sup>204</sup> In January 1999, the IRGC accelerated the process by requiring the removal of all credit card machines by the end of February 1999.<sup>205</sup> Included in this ban were Com-Check machines.<sup>206</sup> At that time, the regulation did not affect Automated Teller Machines in casinos because they gave access to only limited amounts of cash.<sup>207</sup>

The IRGC's decision was overturned by a trial judge in January 2000, because "This court remains convinced the IRGC exceeded its authority by enacting a rule that amended existing Iowa law . . . ." The Iowa Legislature had already spoken on the issue of casino credit and chose to stop short of banning such cash advances.<sup>208</sup> The judge also noted that the IRGC's rule would discourage Iowa tourism because gamblers would choose to visit states with less stringent gambling credit rules.<sup>209</sup>

#### b. Mississippi

Mississippi legalized dockside casino gambling in 1990.<sup>210</sup> At common law, all gambling debts were unenforceable.<sup>211</sup> However, Mississippi has passed laws creating two exceptions: patron claims against casinos and enforcement of proper credit instruments.

Mississippi has passed laws allowing patrons of licensed casinos to enforce claims against the casino.<sup>212</sup> Like Nevada, Mississippi requires the exhaustion of administrative remedies in virtually every contractual claim by a patron against a casino.<sup>213</sup>

<sup>202</sup> Robert Dorr, *Panel Curtails Cash Advances in Iowa Casinos*, OMAHA WORLD-HERALD, Nov. 20, 1998, at 1, available at 1998 WL 5527299.

<sup>203</sup> *Id.*

<sup>204</sup> *Id.*

<sup>205</sup> Greg Smith, *Regulators Restrict Use of Credit at Casinos*, ASSOCIATED PRESS, Jan. 22, 1999.

<sup>206</sup> *Id.* These machines scan the gambler's credit card, the gambler inputs how much money he or she wanted to spend on gambling tokens, the gambler receives a receipt, and the receipt could be taken to the teller to receive cash. *Id.*

<sup>207</sup> Dorr, *supra* note 202.

<sup>208</sup> *Judge Throws Out ATM Ban in Casinos*, ASSOCIATED PRESS NEWSWIRE, Jan. 20, 2000 (quoting Polk County District Judge Robert Hutchinson).

<sup>209</sup> *Id.*

<sup>210</sup> Mississippi Gaming Commission, About MGC, History, at <http://www.mgc.state.ms.us/main-about.html> (last visited Mar. 22, 2002).

<sup>211</sup> *Grand Casino Tunica v. Shindler*, 772 So. 2d 1036, 1038 (Miss. 2000).

<sup>212</sup> MISS. CODE ANN. § 75-76-157 to -165 (2002).

<sup>213</sup> *Thomas v. Isle of Capri Casino*, 781 So. 2d. 125, 127 (Miss. 2001) (upholding, albeit "reluctantly," a trial court's denial of relief to a player who claimed a jackpot); NEVADA GAMING LAW, *supra* note 93, at 252.

Patrons must first litigate their claims before the Mississippi Gaming Commission, whose decisions are appealable to Mississippi state courts.<sup>214</sup> Judicial review of Commission decisions is highly deferential. Courts will uphold any Mississippi Gaming Commission decision unless: it violates a constitutional provision; it is outside the Commission's jurisdiction; it was rendered using unlawful procedures; no evidence supports the decision; or the decision was arbitrary or capricious.<sup>215</sup> The Commission's violation of one of these factors must also prejudice a petitioner's substantial rights.<sup>216</sup>

Gambling debts evidenced by credit instruments are excluded from the general unenforceability rule.<sup>217</sup> These debts may be enforced directly through Mississippi's legal process.<sup>218</sup> However, Mississippi courts will only enforce gaming credit instruments if the extension of credit was proper under the Mississippi Gaming Commission rules.<sup>219</sup> Another interesting feature of Mississippi law is the "Exclusion List." This exclusion list is not voluntary, and the regulations put an affirmative duty on a casino to report and exclude any person on the list. Thus, a question of casino liability arises when a casino fails to fulfill its statutory duties. All licensed casinos have a duty "to inform the Executive Director in writing of the names of the persons such licensee reasonably believes meet the criteria for placement on an Exclusion List."<sup>220</sup> When it is determined that the person is a candidate for exclusion, a petition is filed.<sup>221</sup> Notice must be given to the person to be excluded, who has the opportunity to refute the allegations at a hearing conducted by the Commission and reviewable by the courts.<sup>222</sup> This list is distributed to all licensed gambling estab-

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214 MISS. CODE ANN. § 75-76-167 to -173.

215 *Grand Casino Tunica*, 772 So. 2d at 1040.

216 *Id.*

217 MISS. CODE ANN. § 75-76-157 ("gaming debts not evidenced by a credit instrument are void and unenforceable . . .").

218 *Id.* § 75-76-175.

219 INT'L CASINO LAW, *supra* note 175, at 88.

220 MISS. GAMING COMM'N REG. III(V)(1). The regulation states:

The Executive Director may place a person on the exclusion list pending a hearing if such person has:

- (a) Been convicted of a felony in any jurisdiction, of any crime of moral turpitude or of a crime involving Gaming;
- (b) Violated or conspired to violate the provisions of the Act relating to involvement in gaming without required licenses, or willful evasion of fees or taxes;
- (c) A notorious or unsavory reputation which would adversely affect public confidence and trust in gaming; or
- (d) His name [is] on any valid and current exclusion list from another jurisdiction in the United States.

*Id.*

221 *Id.* III(V)(4).

222 *Id.*

ishments, which then have an affirmative duty to eject or exclude all persons on the list.<sup>223</sup>

### c. Missouri

Missouri voters approved a referendum to legalize riverboat gambling by a sixty-three percent majority in 1992.<sup>224</sup> However, implementation of the new law was not a smooth process. Critics pointed out that the new law did not exclude convicted felons from obtaining gaming licenses, and argued that the Tourism Commission was not the proper agency to promulgate regulations simply because gambling would presumably be a significant tourist attraction.<sup>225</sup> The Missouri Gaming Commission was created in 1993 to address these concerns. After several challenges arising from the Missouri constitution, Missouri now permits riverboat gambling, including gambling at casinos built in artificial basins located within one thousand feet of the Mississippi or Missouri rivers.<sup>226</sup>

The original Missouri referendum placed a loss limit of five hundred dollars per person, per excursion, on wagers placed at riverboat casinos.<sup>227</sup> This provision was codified by the state legislature and became part of the riverboat casino regulations promulgated by the Missouri Gaming Commission.<sup>228</sup> However, a problem arose with the definition of “excursion,” which was defined as any time “gambling games may be operated on an excursion gambling boat whether docked or during a cruise.”<sup>229</sup> Under this definition, games can be operated continuously on boats that are permanently docked, circumventing the five hundred dollar per excursion loss-limit.<sup>230</sup> The Commission’s solution was to put the responsibility back on casinos by requiring licensees to ensure that gamblers do not lose more than the five hundred dollar limit.<sup>231</sup>

Missouri law also allows a person to permanently exclude oneself from casino gambling.<sup>232</sup> If the excluded person enters a

<sup>223</sup> *Id.* III(V)(1).

<sup>224</sup> Mo. Gaming Comm’n, *The History of Riverboat Gambling*, at <http://www.mgc.state.mo.us/history.htm> (last visited Mar. 22, 2002).

<sup>225</sup> *Id.*

<sup>226</sup> *Id.* (detailing the history of gambling legalization in Missouri, including constitutional challenges, voter referenda, and the development of the “boat in a basin” laws).

<sup>227</sup> *Id.*

<sup>228</sup> MO. ANN. STAT. § 313.805 (West 2001); MO. CODE REGS. ANN. tit. 11, § 45-6.040 (2002).

<sup>229</sup> Mo. Gaming Comm’n, *supra* note 224.

<sup>230</sup> *Id.*

<sup>231</sup> MO. CODE REGS. ANN. tit. 11, § 45-6.040.

<sup>232</sup> MO. ANN. STAT. § 313.813; *see also* Stephanie S. Maniscalco, *Gambling Addict Suits vs. Casinos Are Foreseen: ‘Self-Exclusion’ Program May Create Duty*, 15 MO. LAW. WKLY. 1409 (Dec. 17, 2001) (“The List of Disassociated Persons . . . includes more than 3,500 names.”).



casino, that person may be subject to criminal trespass charges.<sup>233</sup> Plaintiffs' lawyers have suggested that if a casino does not catch a self-excluded person, they may be subject to liability, but this concept has not been tested in Missouri courts.<sup>234</sup>

Missouri has a modern version of the *Statute of Anne* whereby gamblers may recover wagering losses.<sup>235</sup> However, there have been no reported cases in which a gambler has attempted to recover wagers since the legalization of riverboat gambling in 1992, so it is not clear whether a court will continue to apply the statute to legal gambling within the state.<sup>236</sup> It is clear from the riverboat gaming statutes that casinos cannot extend credit for the purpose of gambling. Casinos are not permitted to take anything of value other than money in exchange for gambling tokens or chips.<sup>237</sup> Violation of this provision subjects the casino to a misdemeanor.<sup>238</sup>

#### 4. Louisiana: The State With Both Land-Based and Water-Related Casinos

Louisiana law retains elements of Roman law. Specifically, Louisiana law provides as follows: "The law grants no action for the payment of what has been won at gaming or by a bet, except for games tending to promote skill in the use of arms, such as the exercise of the gun and foot, horse and chariot racing."<sup>239</sup> The Louisiana statute goes on to say, "In all cases in which the law refuses an action to the winner, it also refuses to suffer the loser to reclaim what he has voluntarily paid, unless there has been, on the part of the winner, fraud, deceit, or swindling."<sup>240</sup>

Despite these laws, Louisiana courts allow casinos and their assigns to recover what other jurisdictions would consider to be gambling debts. In *TeleRecovery of Louisiana, Inc. v. Major*,<sup>241</sup> a Louisiana appeals court held that as assignee for two casinos, a collection agency could bring an action to recover sixty-five thousand dollars from six checks received in exchange for the

<sup>233</sup> MO. ANN. STAT. § 313.813.

<sup>234</sup> Maniscalco, *supra* note 232. Plaintiffs' lawyers have raised this question, "If gambling debts are not enforceable in Missouri and someone is advanced money by an ATM, is there a challenge to enforceability of these transactions?" *Id.*

<sup>235</sup> MO. ANN. STAT. § 434.030 (West 1992). This section states, "Any person who shall lose any money or property at any game, gambling device or by any bet or wager whatever, may recover the same by a civil action." *Id.*

<sup>236</sup> In *State v. Small*, 24 S.W.3d 60, 66-67 (Mo. Ct. App. 2000), the Missouri Appellate Court denied relief to an attorney who sued casinos under section 434.030. *Id.* However, the court did not address section 434.030 because it was able to dispose of the case on other grounds. *Id.*

<sup>237</sup> MO. ANN. STAT. § 313.830(6).

<sup>238</sup> *Id.*

<sup>239</sup> LA. CIV. CODE ANN. art. 2983 (West 2001). The amount may be reduced if the trial judge finds it excessive. *Id.*

<sup>240</sup> *Id.* art. 2984.

<sup>241</sup> 734 So. 2d 947 (La. Ct. App. 1999).

equivalent value of chips because the transaction did not create a gambling debt.<sup>242</sup> The court reasoned that the statutes were irrelevant because no debt was incurred.<sup>243</sup> The court went so far as to state that whether the subsequent use of the chips was legal was irrelevant because, after receiving the chips, the defendant could have immediately cashed them.<sup>244</sup> The purchase of chips was a separate transaction that was legal and enforceable.<sup>245</sup>

Like Nevada, in Louisiana the State may prosecute a gambler for writing a bad check. In *State v. Dean*,<sup>246</sup> the defendant wrote twenty-one thousand dollars worth of bad checks, and the State charged him with writing worthless checks.<sup>247</sup> In a motion to quash, the defendant argued that because public policy prohibited civil enforcement of gambling debts, it also prohibited criminal punishment for the same conduct.<sup>248</sup> When the trial court denied his motion, the defendant pled guilty, but reserved the right to appeal the denial of the motion to quash.<sup>249</sup> The appellate court had little difficulty affirming the conviction, even though it was a case of first impression.<sup>250</sup> The court emphasized that the riverboat casino was a legitimate business allowed by the legislature.<sup>251</sup> It opined that it would be an absurd result to say that a patron of a legal business was free to defraud it, and then rely on the nature of the business to escape punishment.<sup>252</sup> The court also noted that concerns underlying the prohibition of civil enforcement—for example, the protection of habitual gamblers—did not apply in the criminal context because addicts of all kinds are criminally punished for the illegal acts that they commit.<sup>253</sup>

A debtor was also unsuccessful in *Players Lake Charles, LLC, v. Tribble*,<sup>254</sup> where the casino allegedly threatened criminal prosecution unless she signed a promissory note for six payments totaling over thirty thousand dollars.<sup>255</sup> The court held the markers

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<sup>242</sup> *Id.* at 948, 951.

<sup>243</sup> *Id.* at 950-51.

<sup>244</sup> *Id.* at 950.

<sup>245</sup> *Id.*

<sup>246</sup> 748 So. 2d 57 (La. Ct. App. 1999).

<sup>247</sup> *Id.* at 58.

<sup>248</sup> *Id.*

<sup>249</sup> *Id.*

<sup>250</sup> *Id.* at 59.

<sup>251</sup> *Id.* at 60.

<sup>252</sup> *Id.*

<sup>253</sup> *Id.* at 59-60. The defendant was sentenced to two years of hard labor (suspended), five years of probation, restitution of nine thousand dollars, and other penalties. *Id.* at 58-61. For a critical analysis of the Louisiana decision, see Tiffany Cashwell, Casenote, *A Continuing Debate: Public Policy and Welfare Versus Economic Interests Regarding Enforcement of Gambling Debts in State v. Dean*, 46 LOY. L. REV. 299 (2000).

<sup>254</sup> 779 So. 2d 1058, 1059 (La. Ct. App. 2001).

<sup>255</sup> *Id.*

that the defendant signed were not gambling debts because she could have used the chips for non-gambling purposes.<sup>256</sup>

### C. States with Native American Casinos

In any debt collection matter involving a Native American casino it is essential to first examine the terms of the relevant Tribal-State compact; a compact is mandatory for any Class III gaming.<sup>257</sup> In 1995, the Mashantucket Pequots passed the "Debt Collection Law," which established procedures for payment of casino debts.<sup>258</sup> Pursuant to the procedures, if the debtor does not pay the marker, the marker is presented to the bank.<sup>259</sup> If the bank account has insufficient funds, the debtor is contacted.<sup>260</sup> If the debtor refuses to pay, litigation will be initiated in the tribal court.<sup>261</sup> Once a tribal court judgment is entered, often by default, enforcement is sought by bringing suit in the state where the debtor resides.<sup>262</sup> An emerging issue in tribal gaming is whether gambling debts incurred at reservations are enforceable in state courts; such judgments have been enforced in Connecticut and New York.<sup>263</sup>

Connecticut has allowed enforcement of tribal gaming debts in its state courts. In *Mashantucket Pequot Gaming Enterprises v. Kennedy*,<sup>264</sup> a Connecticut court concluded that the provisions of the tribal-state compact took precedence over Connecticut statutes that did not allow the enforcement of gambling debts.<sup>265</sup> More specifically, the court focused on the issue of whether federal law should preempt state law in the context of Indian Gaming.<sup>266</sup> The court determined that the issue should be resolved according to "principles of federal preemption under the Supremacy Clause of the United States Constitution."<sup>267</sup> In finding that the gaming debts are enforceable despite state law to the contrary, the court

<sup>256</sup> *Id.* at 1060.

<sup>257</sup> 25 U.S.C. § 2710(d)(1)(C) (2001). Class III gaming is defined in the negative as "all forms of gaming that are not class I gaming or class II gaming." *Id.* § 2703(8). However, subsection (7)(B) explains that class II gaming does *not* include "any banking card games" or slot machines, thus by implication, these types of games would qualify as class III gaming. *Id.* § 2703(7)(B).

<sup>258</sup> Patrice H. Kunesh, *Enforcement of Gaming Debts Beyond Tribal Court*, LEGAL NEWS (Mashantucket Pequot Tribal Nation), June 2001, at 1.

<sup>259</sup> *Id.* at 1-2.

<sup>260</sup> *Id.*

<sup>261</sup> *Id.* at 2.

<sup>262</sup> *Id.*

<sup>263</sup> The Pequots claim they have also been successful in enforcing gambling debts with judicial decisions in Massachusetts, Rhode Island, Maine, Florida, Pennsylvania, and New Jersey. Kunesh, *supra* note 258, at 1.

<sup>264</sup> No. 116860, 2000 Conn. Super. LEXIS 679 (Conn. Super. Ct. Mar. 14, 2000).

<sup>265</sup> *Id.* at \*19.

<sup>266</sup> *Id.* at \*12.

<sup>267</sup> *Id.*

avored a liberal reading of Connecticut law so as to enhance tribal sovereignty.<sup>268</sup> Accordingly, the court held that a state policy against gaming cannot preempt an act of Congress.<sup>269</sup>

In *Mashantucket Pequot Gaming Enterprise v. DiMasi*,<sup>270</sup> a Connecticut court recognized a tribal gaming judgment under the principle of comity.<sup>271</sup> Then, in *Mashantucket Pequot Gaming Enterprise v. Renzulli*,<sup>272</sup> the defendant was issued two markers totaling five thousand dollars.<sup>273</sup> When the markers were returned for insufficient funds, the tribe attempted to contact the defendant in order to collect upon the debt, however, the defendant refused to respond to any correspondence.<sup>274</sup> Persuaded by the fact that the Connecticut courts, pursuant to that state's compact with the Pequots, enforced tribal court decisions "under the principle of comity,"<sup>275</sup> the New York trial court enforced the tribal court judgment.<sup>276</sup>

In *CBA Credit Services v. Azar*,<sup>277</sup> Native American casino employees encouraged casino patron Azar, who had already lost fourteen thousand dollars, to accept four thousand dollars in black jack chips on credit.<sup>278</sup> After losing these additional chips, Azar was asked by the casino to complete a credit document and write a check to pay for the chips.<sup>279</sup> The check was returned due to insufficient funds and the casino assigned its collection claim to a collection agency.<sup>280</sup> Minnesota law, which the parties agreed was controlling, provides a specific exception from its general prohibition on the collection of gambling debts pursuant to gaming conducted under the Indian Gaming Regulatory Act.<sup>281</sup> The specific exception provides that a "holder in due course [with] no notice of the illegality of the obligation," is not barred from collecting on the debt.<sup>282</sup> Because the court found that the assignee was aware that

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<sup>268</sup> *Id.* at \*14-15.

<sup>269</sup> *Id.* at \*13, 22-23. "The legislative history of IGRA reveals that Congress intended the Tribal-State compact to be *the exclusive means* for states to exercise regulatory control and jurisdiction over gaming activities on Indian lands." *Id.* at \*19 (emphasis added).

<sup>270</sup> CV 990117677S, 1999 Conn. Super. LEXIS 2584, \*1 (Conn. Super. Ct. Sept. 23, 1999).

<sup>271</sup> *Id.* at \*2, 14.

<sup>272</sup> 188 Misc. 2d 710 (N.Y. Sup. Ct. 2001).

<sup>273</sup> *Id.* at 711.

<sup>274</sup> *Id.*

<sup>275</sup> *Id.* at 712-13.

<sup>276</sup> *Id.* at 710-11.

<sup>277</sup> 551 N.W.2d 787 (N.D. 1996).

<sup>278</sup> *Id.* at 788.

<sup>279</sup> *Id.* at 790.

<sup>280</sup> *Id.*

<sup>281</sup> *Id.* at 789; see also Indian Gaming Regulatory Act, 25 U.S.C. §§ 2701-21 (2001); MINN. STAT. ANN. § 541.21 (West 2000).

<sup>282</sup> 551 N.W.2d at 790 (citing *State v. Stevens*, 459 N.W.2d 513, 514-15 (Minn. Ct. App. 1990)).

Azar's checks had been dishonored, it held the debt was unenforceable.<sup>283</sup>

### III. REGISTRATION OF A SISTER-STATE JUDGMENT

The Full Faith and Credit Clause of the U.S. Constitution requires that "Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State."<sup>284</sup> In *Fauntleroy v. Lum*,<sup>285</sup> the U.S. Supreme Court interpreted the Full Faith and Credit Clause as restricting a state's examination of a sister state judgment to whether the sister state had jurisdiction over either the person or the subject matter at issue.<sup>286</sup> In other words, a court cannot revisit the merits of the substantive issues of the underlying case.<sup>287</sup> Therefore, while public policy in many U.S. jurisdictions prohibits the enforcement of gambling debts, these jurisdictions have uniformly concluded that once a sister state has rendered judgment on a gambling debt, the Full Faith and Credit Clause mandates enforcement of that judgment.<sup>288</sup>

In a gaming debt collection case much depends, of course, on which state's law applies. In *Harrah's Club v. Van Blitter*,<sup>289</sup> a

<sup>283</sup> *Azar*, 551 N.W.2d at 790.

<sup>284</sup> U.S. CONST., art. IV, § 1.

<sup>285</sup> 210 U.S. 230 (1908).

<sup>286</sup> *Id.* at 237.

<sup>287</sup> *Id.*

<sup>288</sup> See, e.g., *Hilton Int'l Co. v. Arace*, 394 A.2d 739, 744 (Conn. Super. Ct. 1977) ("The public policy of Connecticut cannot prevail against the command of the federal constitution."); *Boardwalk Regency Corp. v. Hornstein*, 695 So. 2d 471 (Fla. Dist. Ct. App. 1997) ("Florida courts are obligated by the Full Faith and Credit Clause to recognize judgments which have been validly rendered in the courts of sister states, including those based on gambling debts."); *Kramer v. Bally's Park Place, Inc.*, 535 A.2d 466, 469 (Md. App. 1988) ("[T]he relevant judicial opinions and statutes do not represent a public policy so strongly opposed to gambling or gambling debts that it overrides the *lex loci contractus* principle."); *Claridge at Park Place, Inc. v. Matellian*, No. 95-1748, 1996 Mass. Super. LEXIS 540, at \*4 (Mass. Super. Ct. Apr. 22, 1996) (holding that although Massachusetts law did not allow the enforcement of legal gambling debts, Massachusetts must recognize sister-state judgments concerning gambling debts); *Int'l Recovery Sys., Inc. v. Gabler*, 527 N.W.2d 20, 22 (Ct. App. Mich. 1995) (holding that state public policy was irrelevant to the registration of sister-state judgments due to the Full Faith and Credit Clause); *San Juan Hotel Corp. v. Greenberg*, 502 F. Supp. 34, 36 (E.D.N.Y. 1980) (allowing New York enforcement of a Puerto Rican judgment); *MGM Desert Inn, Inc. v. Holz*, 411 S.E.2d 399, 402 (N.C. Ct. App. 1991) (concluding that although enforcement of gambling debts is clearly against North Carolina public policy, U.S. Supreme Court precedent rendered the Full Faith and Credit Clause virtually free from exceptions); *Hotel Ramada of Nev., Inc. v. Thakkar*, No. 03A019103CV00113, 1991 WL 135471, at \*3 (Tenn. Ct. App. July 25, 1991) (stating that there are only three exceptions to the requirement of registering sister-state judgments: lack of jurisdiction, fraud upon the foreign court, and violation of state public policy, however, Tennessee public policy does not preclude the enforcement of gambling debts incurred in a jurisdiction where gaming is legal); *Coghill v. Boardwalk Regency Corp.*, 396 S.E.2d 838, 839 (Va. 1990) (holding that after the United States Supreme Court decision in *Fauntleroy v. Lum*, Virginia could not reexamine the judgment of a sister state).

<sup>289</sup> No. Civil R-86-21 BRT, 1988 U.S. Dist. LEXIS 18348 (D. Nev. Feb. 16, 1988), *aff'd*, 902 F.2d 774 (9th Cir. 1990).

gambler tried to make California the forum state because gambling debts are not enforceable under California law.<sup>290</sup> Van Blitter had lost approximately \$265,000 on a gambling spree, which she claimed was the result of her husband's affairs with geishas.<sup>291</sup> First, Van Blitter argued that Harrah's breached its duty of fairness when it failed to control her gambling, and then exacerbated this breach by providing her with complimentary accommodations encouraging her to gamble further, after it became clear that she was an unsuccessful player.<sup>292</sup> Second, Van Blitter argued that Harrah's collection attempts were a breach of its contractual obligations because an unidentified Harrah's employee had orally agreed that the casino would not collect the debts.<sup>293</sup>

Van Blitter commenced litigation in federal district court in California, requesting a declaration that her gambling debts were unenforceable.<sup>294</sup> In response, Harrah's filed a complaint in federal court in Nevada to enforce Van Blitter's debts.<sup>295</sup> The California action was subsequently transferred to the Nevada federal court.<sup>296</sup> Although the two actions were consolidated for trial, they remained separate in identity.<sup>297</sup> The Nevada federal District Court granted both Van Blitter's and Harrah's motions for summary judgment.<sup>298</sup> The final order stated:

- (1) Toshi Van Blitter is given and granted judgment against Harrah's club [in the California action], a corporation, with the force and effect that the negotiable instruments which are the subject matter of this action (the twenty instruments drawn upon Van Blitter's checking account number . . . are not enforceable *in the State of California*).
- (2) Harrah's Club, a corporation, is given and granted judgment against Toshi Van Blitter [in the Nevada action] for the sum of Two Hundred Sixty Five Thousand Dollars (\$265,000), together with interest thereon at the rate of twelve percent (12%) per annum from April 25, 1984. . . .<sup>299</sup>

The Court of Appeals explained that the summary judgment in favor of Van Blitter did "not address the enforceability in California of a Nevada judgment on the instruments or on the obligation they represent under the principles of full faith and credit."<sup>300</sup>

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290 *Harrah's Club v. Van Blitter*, 902 F.2d 774, 776 (9th Cir. 1990).

291 1988 U.S. Dist. LEXIS, at \*2.

292 *Id.* at \*4.

293 *Id.* at \*4-5.

294 *Van Blitter*, 902 F.2d at 775.

295 *Id.*

296 *Id.*

297 *Id.*

298 *Id.* at 775-76.

299 *Id.* at 776 (quoting the Nevada District Court's final order of judgment).

300 *Van Blitter*, 902 F.2d at 776 (emphasis removed).

Thus, Harrah's registered the Nevada judgment for enforcement in the U.S. District Court for the Eastern District of California.<sup>301</sup>

Van Blitter then filed a motion in that court to bar enforcement of the Nevada judgment, claiming that it contradicted the previous summary judgment, which held that her gambling debts were unenforceable in California.<sup>302</sup> When the federal court in California rejected her argument, Van Blitter appealed to the Court of Appeals for the Ninth Circuit.<sup>303</sup> She argued that because she had obtained a judgment, which held that her debts were unenforceable in California, enforcement of a Nevada judgment on those debts was also barred.<sup>304</sup> The court found this argument "wholly without merit," and awarded Harrah's double costs and attorney fees as a penalty for the "frivolous appeal."<sup>305</sup>

Regardless of whether the state's public policy prohibits the enforcement of gambling debts, the Full Faith and Credit Clause of the U.S. Constitution requires all states to enforce judgments from sister states so long as the state had proper personal jurisdiction over the defendant. Thus, it seems that one seeking to enforce a gambling debt should first obtain a judgment in the state where the debt was legally incurred, and then seek to enforce that judgment in the debtor's state.

#### IV. DIRECT LITIGATION

In some circumstances, courts may enforce a gambling debt when a casino brings an action directly in the debtor's home state, instead of first obtaining a judgment in the state where the gambling debt was legally incurred. In *Intercontinental Hotels v. Golden*,<sup>306</sup> the defendant incurred twelve thousand dollars in gambling debts at a Puerto Rican casino where gambling was legal.<sup>307</sup> The casino sued the defendant in New York.<sup>308</sup> The appellate court reversed the trial court judgment allowing recovery, holding that state public policy prohibited the enforcement of gambling debts, even those incurred legally.<sup>309</sup> The dissent argued for the enforcement of the debt, reasoning that judicial process should not be denied to one seeking to enforce a gambling debt when the debt was valid where incurred. The dissent opined that state public

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<sup>301</sup> *Id.*

<sup>302</sup> *Id.*

<sup>303</sup> *Id.*

<sup>304</sup> *Id.*

<sup>305</sup> *Id.* at 776-77.

<sup>306</sup> 233 N.Y.S.2d 96 (N.Y. Sup. Ct. 1962), *rev'd*, 238 N.Y.S.2d 33 (N.Y. App. Div. 1963), *rev'd*, 203 N.E.2d 210 (N.Y. 1964).

<sup>307</sup> *Intercontinental Hotels*, 233 N.Y.2d at 97.

<sup>308</sup> *Id.*

<sup>309</sup> *Intercontinental Hotels*, 238 N.Y.S.2d at 38-39.

policy does not absolutely prohibit gaming, as evinced by the existence of legal horse racing and bingo.<sup>310</sup>

The highest court of New York reversed the appellate court, and reinstated the decision of the trial court.<sup>311</sup> The court's decision emphasized the evolving opinion in New York which "indicate[s] that the New York public does not consider authorized gambling a violation of 'some prevalent conception of good morals [or], some deep-rooted tradition of the common weal.'"<sup>312</sup> The court further opined that this changing attitude was particularly true of legal gambling, where enforcement would not create moral problems because the state still prohibited gambling.<sup>313</sup> Moreover, the court held that it could apply Puerto Rican law, which allows a court to use its discretion to reduce excessive gambling debts.<sup>314</sup> Finally, the court emphasized the immorality of allowing New York citizens to keep their winnings from legal gambling, but avoid responsibility should they lose.<sup>315</sup>

Other courts have adopted the reasoning of *Intercontinental Hotels*. For example, in *Robinson Property Group v. Russell*,<sup>316</sup> the Tennessee appellate court reversed a trial court summary judgment on behalf of the debtor, who allegedly owed over twenty-three thousand dollars to a casino in Mississippi where gambling is legal.<sup>317</sup> The appellate court determined that the cash advancements were for gambling purposes rather than a loan.<sup>318</sup> The court further noted that in Mississippi, gambling debts are enforceable if incurred legally.<sup>319</sup> The court cited the Full Faith and Credit Clause of the U.S. Constitution, and stressed that full faith and credit should be given not only to sister-state judgments, but also to the public acts of each state.<sup>320</sup> Adopting the reasoning of *Intercontinental Hotels*, the court stated:

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<sup>310</sup> *Id.* at 42 (Stevens, J., dissenting).

<sup>311</sup> *Intercontinental Hotels*, 203 N.E.2d at 214.

<sup>312</sup> *Id.* at 213 (quoting *Loucks v. Standard Oil Co.*, 120 N.E. 198, 202 (1918)) (alteration in original).

<sup>313</sup> *Id.* Occasionally, a New York decision will erroneously cite the intermediate appellate reasoning in *Intercontinental Hotels*, and ignore the reasoning of New York's highest court. For example, in *People v. World Interactive Gaming Corp.*, 185 Misc. 2d 852 (N.Y. 1999), the state obtained an injunction against a New York Internet gambling company, essentially for stock fraud and related matters. In dicta, the court stated that New York's constitution "contains an express prohibition against any kind of gambling not authorized by the state legislature. The prohibition represents a deep-rooted policy of the state against unauthorized gambling." *Id.* at 846 (citations omitted). This comment ignored the reasoning by New York's highest court on public policy.

<sup>314</sup> *Intercontinental Hotels*, 203 N.E.2d at 213.

<sup>315</sup> *Id.*

<sup>316</sup> No. W2000-00331-COA-R3-CV, 2000 WL 3313137 (Tenn. Ct. App. Nov. 22, 2000).

<sup>317</sup> *Id.* at \*1.

<sup>318</sup> *Id.* at \*2.

<sup>319</sup> *Id.* at \*3.

<sup>320</sup> *Id.* at \*4.



We too find that it would be a great injustice if Tennesseans could reap the benefits of gambling in states where it is legal when they are successful, but seek shelter in Tennessee courts when they lose. As a result, we conclude that there is nothing in the Mississippi laws in question that outrages the public policy of Tennessee. Therefore, the gaming contract between the parties is enforceable in Tennessee.<sup>321</sup>

The reasoning of *Intercontinental Hotels* has also been applied to the registration of judgments from foreign countries. In *Aspinall's Club Ltd. v. Aryeh*,<sup>322</sup> a licensed London casino obtained a default judgment against a New York debtor.<sup>323</sup> When the casino attempted to collect on the judgment in a New York Court, Aryeh argued that New York public policy prohibited enforcement of the debt.<sup>324</sup> Even though the court was not compelled to enforce the judgment under the Full Faith and Credit Clause, the court granted the club's motion, in part, based on the reasoning of *Intercontinental Hotels*.<sup>325</sup> The court explained, "Gambling in legalized and appropriately supervised forms is not against this state's public policy."<sup>326</sup>

Some states, however, have not extended the reasoning of *Intercontinental Hotels* and *Arace* to the direct litigation of a foreign debt. In *Casanova Club v. Bisharat*,<sup>327</sup> the Connecticut Supreme Court affirmed summary judgment for a bettor who failed to pay a gambling debt incurred while wagering at a licensed London casino.<sup>328</sup> The casino argued that Connecticut should reexamine its public policy in light of its state-sanctioned lottery and judicial decisions in other states allowing the enforcement of legal out-of-state gambling debts.<sup>329</sup> While the court recognized that the state had legalized some forms of gambling, none of these statutes al-

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<sup>321</sup> *Id.*

<sup>322</sup> 86 A.D.2d 428 (N.Y. App. Div. 1982).

<sup>323</sup> *Id.* at 431.

<sup>324</sup> *Id.*

<sup>325</sup> *Id.* at 433.

<sup>326</sup> *Id.*

<sup>327</sup> 458 A.2d 1 (Conn. 1983).

<sup>328</sup> *Id.* at 1-2. A similar result was reached in *Condado Aruba Caribbean Hotel, N.V. v. Tickel*, 561 P.2d 23 (Colo. Ct. App. 1977), where the Colorado Appellate Court refused to enforce a \$14,500 gambling debt incurred in Aruba, where gambling is legal. *Id.* at 24.

<sup>329</sup> The court said the result would have been different had the casino sought to enforce a British judgment for the gambling debt. *Casanova Club*, 458 A.2d at 4 (citing *Hilton International Co. v. Arace*, 394 A.2d 739, 742-44 (Conn. Super. Ct. 1977)). In addition, the court indicated that the result in *Casanova Club* may have been different:

[If the casino had] properly invoked the statutory proviso that protects the validity of any negotiable instrument held by any person who acquired the same for value and in good faith without notice of illegality in the consideration. Although in its appellate brief the plaintiff maintains that there could be no notice of illegality to taint the negotiability and enforceability of the checks, the [plaintiff did not raise absence of notice in any of its pleadings] in the trial court.

*Casanova Club*, 458 A.2d at 3 (internal quotations omitted).

lowed the extension of credit; thus, the state public policy had not truly changed.<sup>330</sup> In addition, the court acknowledged that the Second Restatement on the Conflict of Laws could support the enforcement of legally obtained gambling debts.<sup>331</sup> However, the court indicated that it lacked the factual basis to apply the criteria in the Restatement.<sup>332</sup> Thus, the court held that gambling debts, however obtained, are unenforceable in Connecticut.<sup>333</sup>

Likewise, the Virginia courts have refused to allow suits to recover gambling debts, even if incurred in a state where such gambling is legal. In *Resorts International Hotel, Inc. v. Agresta*,<sup>334</sup> the plaintiff sued on a ten thousand dollar note resulting from a failure to pay legal New Jersey gambling debts.<sup>335</sup> The court concluded that even though the gambler did not attempt to defend the action, the laws and public policy of Virginia will not permit suits to recover gambling debts.<sup>336</sup>

In Texas, gambling debts remain unenforceable.<sup>337</sup> Texas has also refused to allow direct litigation of a gambling debt, even though the debt was legally incurred in another jurisdiction. One Texas gambler, George J. Aubin, appears to have learned to use his state's unwillingness to enforce gambling debts to his advantage. In 1969, Aubin was sued for failure to pay on promissory notes issued to him by Louis Hunsucker.<sup>338</sup> Viewing the promissory notes as gambling debts, the court ruled that they were unen-

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<sup>330</sup> *Id.* at 4.

<sup>331</sup> *Id.* The Restatement Second of Conflict of Laws provides:

Law Governing in Absence of Effective Choice by the Parties

(1) The rights and duties of the parties with respect to an issue in contract are determined by the local law of the state which, with respect to that issue, has the most significant relationship to the transaction and the parties under the principles stated in § 6.

(2) In the absence of an effective choice of law by the parties (see § 187), the contracts to be taken into account in applying the principles of § 6 to determine the law applicable to an issue include:

(a) the place of contracting,

(b) the place of negotiation of the contract,

(c) the place of performance,

(d) the location of the subject matter of the contract, and

(e) the domicile, residence, nationality, place of incorporation and place of business of the parties. "These contracts are to be evaluated according to their relative importance with respect to the particular issue."

(3) If the place of negotiating the contract and the place of performance are in the same state, the local law of this state will usually be applied, except as otherwise provided in §§ 189-199 and 203.

RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 188 (1971).

<sup>332</sup> *Casanova Club*, 458 A.2d at 5.

<sup>333</sup> *Id.* The court noted, however, that if the casino had first obtained a judgment in Great Britain, the court would have permitted recovery based on *Arace*. *Id.* at 4.

<sup>334</sup> *Resorts Int'l Hotel, Inc. v. Agresta*, 569 F. Supp. 24 (E.D. Va. 1983).

<sup>335</sup> *Id.* at 25.

<sup>336</sup> *Id.* at 26.

<sup>337</sup> *Carnival Leisure Indus., Ltd. v. Aubin*, 938 F.2d 624 (5th Cir. 1991), *remanded to* 830 F. Supp. 371 (S.D. Tex. 1993); *rev'd*, 53 F.3d 716 (5th Cir. 1995).

<sup>338</sup> *Aubin v. Hunsucker*, 481 S.W.2d 952, 953 (Tex. App. 1972).

forceable under Texas law.<sup>339</sup> Then, in 1987, Aubin accrued twenty-five thousand dollars in gambling debts while vacationing in the Bahamas.<sup>340</sup> When he refused to honor the drafts, the casino commenced litigation in the U.S. District Court for the Southern District of Texas.<sup>341</sup>

While granting the casino's summary judgment motion,<sup>342</sup> the trial court did not make a determination as to whether the debts were legal under Bahamian law.<sup>343</sup> The Court of Appeals for the Fifth Circuit reversed the trial court.<sup>344</sup> The court stated that Texas statutes permitting some forms of gambling would "hardly introduce a judicially cognizable change in public policy with respect to gambling generally."<sup>345</sup> Furthermore, even if legislation had changed, "such a shift would not be inconsistent with a continued public policy disfavoring gambling on credit."<sup>346</sup>

On remand, the trial court opined that public policy against enforcing the debt, relied on by the appellate court, had changed. The court stated, "Asserting a sweeping public policy against gambling is anachronistic. If there really was a policy, it is totally defunct."<sup>347</sup> The trial court then employed a different strategy to find Aubin liable for the debts. Determining that the instruments issued by the casino were negotiable instruments and not gambling debts, the court found Aubin liable under a theory of fraud because he "never intended to honor the drafts."<sup>348</sup>

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<sup>339</sup> *Id.* at 957.

<sup>340</sup> *Carnival*, 938 F.2d at 624.

<sup>341</sup> *Id.*

<sup>342</sup> *Id.*

<sup>343</sup> *Id.* at 625 n.2. The Court of Appeal stated:

The district court looked solely to Texas law and made no determination of Bahamian law. Neither party challenges the district court's choice of Texas law in this case. We therefore do not rule on the question of whether the law of the Bahamas should have been applied or whether its application would require enforcement of Aubin's debt. Neither party has provided evidence (or requested judicial notice) as to Bahamian law or as to whether gambling is legal or whether gambling debts are legally enforceable in the Bahamas. It is noteworthy, however, that the Texas Supreme Court has stated that where collection of the gambling debt entails the cashing of a check (inferentially of a Texas resident) on a Texas bank, Texas courts apply Texas law.

*Id.* (citations omitted).

<sup>344</sup> *Id.* at 626.

<sup>345</sup> *Id.* at 625.

<sup>346</sup> *Id.* at 626. Judge Vela concurred in what he considered a most inequitable result, stating, "The result here may be legally justified, however it sends out a poor message to would be gamblers. Go on credit and the House takes the risk. Aubin had profited from a similar exception in *Aubin v. Hunsucker*, and once again avoids an obligation which was knowingly made." *Id.* at 627 (Vela, J., concurring) (citation omitted).

<sup>347</sup> *Carnival Leisure Indus., Ltd. v. Aubin*, 830 F. Supp. 371, 374 (S.D. Tex. 1993).

<sup>348</sup> *Id.* at 375-77. The court added:

Seasoned gamblers are shrewd manipulators. They know which debts are enforceable. An anachronistic public policy and misguided case law that forbid legal casinos from lawfully collecting commercial instruments and the debts arising from them will eventually force collection efforts underground. While it may save moralistic posturing, it may cost knee-caps.

Once again, the Court of Appeals reversed,<sup>349</sup> stating:

For us to allow recovery against Aubin on an otherwise unenforceable gambling debt under a theory of fraud, when in fact the only real allegation of misrepresentation was that Aubin signed the markers knowing they were unenforceable in his home state (by operation of law), would require that we recognize an exception to Texas public policy that does not exist.<sup>350</sup>

In Illinois, the law is unclear whether a legal gambling debt incurred in another state can be directly sued upon within the state. In *Resorts International, Inc., v. Zonis*,<sup>351</sup> a federal court sitting in diversity refused to allow recovery of a twenty-five thousand dollar gambling debt in an action brought by a New Jersey casino, irrespective of whether Illinois or New Jersey law was applicable.<sup>352</sup> The court held that Illinois public policy precluded recovery regardless of which state's law was applicable.<sup>353</sup>

The federal court's reasoning in *Zonis* was criticized by the Illinois Appellate Court in *Cie v. Comdata Network, Inc.*<sup>354</sup> In *Cie*, the plaintiff used the defendant's services for cash advances on a credit card to bet on races at Illinois race tracks and to gamble at a Nevada casino.<sup>355</sup> The court held that the cash advance was not an unlawful gambling enterprise because the transaction between the plaintiff and defendant was not a wager.<sup>356</sup> The court found further support for its holding in a 1991 statutory change that eliminated previous lender liability for loan money that the lender knew would be used for gambling.<sup>357</sup> While the court specifically rejected the analysis in *Zonis*,<sup>358</sup> the Illinois Supreme Court has not yet addressed the question.

Unlike the mere registration of sister-state judgments, recovery through direct lawsuits on out-of-state gambling debts is less certain. Some states clearly allow direct lawsuits, some clearly do not, and in at least one there is no clear answer. Because of this uncertainty, it is safer for a creditor—looking to recover on a debt incurred in another state—to first seek a judgment in the state where the debt was incurred.

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*Id.* at 377-78.

<sup>349</sup> *Carnival Leisure Indus., Ltd. v. Aubin*, 53 F.3d 716, 720 (5th Cir. 1995).

<sup>350</sup> *Id.* at 719.

<sup>351</sup> 577 F. Supp. 876 (N.D. Ill. 1984).

<sup>352</sup> *Id.* at 877.

<sup>353</sup> *Id.*

<sup>354</sup> 656 N.E.2d 123 (Ill. App. Ct. 1995).

<sup>355</sup> *Id.* at 125.

<sup>356</sup> *Id.*

<sup>357</sup> *Id.* at 126 (citing 720 ILL. COMP. STAT. 5/28-7(a) (1994)).

<sup>358</sup> *Id.* at 129.

## V. CONCLUSION

The enforceability of a gambling debt depends on the laws of the particular state in which one is attempting to enforce the debt. All states in the Union, influenced by the historical traditions against gambling, have started from the premise that gambling debts are unenforceable. Nevertheless, over time states have begun a slow process of legalizing gambling, which will eventually lead to the enforcement of gambling-related debts. In general, it appears that the greater the extent of legalized gambling in a state, the more likely it is that the state has changed its laws to allow enforcement. Each state has found different ways to handle the costs and benefits of legalized gambling. Additionally, the Full Faith and Credit Clause of the U.S. Constitution requires every state to enforce a judgment from a sister state, regardless of the underlying merits of the case. Thus, as long as the gambling debt was legally made and the proper procedures were used, every state in the Union should enforce the debt.

The appendix to this article provides an international survey of gambling debt enforcement law, which is interesting to compare and contrast to the U.S. system. Other countries have found different solutions to the problem of gambling related debts, and have confronted issues that have yet to be litigated in the United States.

## Appendix: An International Survey of Gambling Debt Enforcement Law

### I. INTRODUCTION

This appendix provides an international survey of the enforcement of gambling debts. Like U.S. law, gambling debt enforcement laws of many other countries have been influenced by the *Statute of Anne* and Roman law. This appendix is intended to provide additional context and issues for discussion in the U.S. debate over the treatment of gambling debts; it is not an exhaustive analysis of the laws of each of these countries. Any person who wishes to enforce a gambling debt in a foreign country should, of course, first consult with counsel licensed in that country.

### II. GREAT BRITAIN

#### A. England

England has a long tradition of prohibiting the extension of credit for gaming. The *Statute of Anne*, passed in 1710, voided all financial agreements where gaming or wagering was an element of the consideration for the contract.<sup>359</sup> The statute also voided all agreements to repay gaming debts.<sup>360</sup> While the *Statute of Anne* remains the cornerstone of British law concerning gaming debt enforcement, Parliament's subsequent passage of a number of gaming acts has expanded and defined the practice of gambling debt enforcement. The Gaming Acts that remain relevant to modern British law were passed in 1835, 1845, 1892, and 1968.<sup>361</sup>

The Gaming Act of 1835 changed the status of contracts that arose from gaming.<sup>362</sup> Rather than the contracts being completely void, as under the *Statute of Anne*, the contracts were considered to have been given for illegal consideration.<sup>363</sup> A contract that is given for illegal consideration is neither enforceable by the original parties to the contract, nor enforceable by a third party pur-

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<sup>359</sup> An Act for the Better Preventing of Excessive and Deceitful Gaming, 1710, 9 Ann. c. 14, §§ 1, 2, 4 (Eng.) [hereinafter *Statute of Anne*].

<sup>360</sup> *Id.*

<sup>361</sup> See Gaming Act, 1968, c. 65, Pt. II, § 16(4) (Eng.). The Gaming Act of 1968 reaffirms the validity of the previous Gaming Acts, but preempts the application of the acts to the practice of accepting checks in exchange for tokens to be used for gaming or other casino purchases.

<sup>362</sup> Gaming Act, 1835, 5 Will. 4, c. 41, § 1 (Eng.).

<sup>363</sup> *Ladup Ltd. v. Shaikh*, 1983 Q.B. 225, at Judgment 1 ¶ 25 (McCowan, J.).

chaser if he or she has notice of the nature of the debt.<sup>364</sup> This change protected innocent third party purchasers because a third party who purchased the note without notice of the nature of the debt could enforce the contract.<sup>365</sup>

The Gaming Act of 1845 reaffirmed the invalidity of gaming debts expressed in the *Statute of Anne* stating, "all contracts or agreements, whether by parole or in writing, by way of gaming or wagering, shall be null and void."<sup>366</sup> Nevertheless, the Act repealed the recovery provisions of the *Statute of Anne*, thereafter prohibiting such suits.<sup>367</sup> However, the 1845 Act contains an important exception reminiscent of Roman law. The 1845 Act specifically excludes any wagers on a "lawful game, sport, pastime, or exercise."<sup>368</sup> The Gaming Act of 1892 enlarged the scope of the 1845 Act by providing that any promise to pay on a contract "rendered null and void by the Gaming Act of 1845" was void.<sup>369</sup>

English courts strictly interpreted the Gaming Act of 1845 to void contracts that arose from gambling activities. In *Hill v. William Hill (Park Lane) Ltd.*,<sup>370</sup> a bettor lost money and the matter was reported to a committee of Tattersalls.<sup>371</sup> The bettor was then informed that if payments were not made, the bettor would be posted as a defaulter, which would effectively prevent him from further gambling on horse racing.<sup>372</sup> The basic issue faced by the *Hill* court was whether the decision in *Hyams v. Stuart King*,<sup>373</sup> which allowed recovery by a party who agreed to forgo suit in exchange for repayment of a debt, should be followed.<sup>374</sup> Four Law Lords in *Hill* found in favor of the bettor and overruled *Hyams* largely based their decisions on the *Hyams* dissent.<sup>375</sup> Particularly persuasive was the dissent's analysis of the clear language and legislative history of the Gaming Act of 1845.<sup>376</sup>

English courts have also interpreted the *Statute of Anne* and the Gaming Acts of 1835, 1845, and 1892, strictly in an attempt to

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<sup>364</sup> *Id.*

<sup>365</sup> *Id.*

<sup>366</sup> Gaming Act, 1845, 8 & 9 Vict., c. 109, § 18 (Eng.).

<sup>367</sup> *Id.*

<sup>368</sup> *Id.*

<sup>369</sup> Gaming Act, 1892, 55 Vict., c. 9, § 1 (Eng.). The 1892 Act also made it illegal for casinos to charge fees or commissions as a prerequisite for allowing patrons to gamble. *Id.*

<sup>370</sup> [1949] A.C. 530 (Eng. C.A.).

<sup>371</sup> *Id.* at 531. The committee of Tattersalls governs the settlement of bets when a situation arises that is not covered by a particular betting rule. For example, "bets on horseracing are historically governed by 'Tattersalls' Rules of Betting.'" Cheltenham Festival 2002, Betting Rules: Tattersalls' Rules, available at [http://www.cheltenham-festival-betting.com/betting\\_rules1.htm](http://www.cheltenham-festival-betting.com/betting_rules1.htm).

<sup>372</sup> *Hill*, [1949] A.C. at 531.

<sup>373</sup> 2 K.B. 696 (1908).

<sup>374</sup> *Hill*, [1949] A.C. 544.

<sup>375</sup> *Hyams*, 2 K.B. at 711-23.

<sup>376</sup> *Id.* at 712-13.

eliminate schemes that seek to circumvent the prohibition on extensions of credit. An example of a scheme to circumvent prohibitions on the extension of credit may be found in *C.H.T. Ltd. v. Ward*.<sup>377</sup> In *Ward*, the Crockfords Club operated a legal poker club.<sup>378</sup> Gamblers purchased chips on their club accounts, which could then be used either for betting or for purchasing food and drinks at the club.<sup>379</sup> A winning bettor could either receive cash when redeeming his chips, or deposit the winnings in his account for future use.<sup>380</sup> Losers were billed weekly.<sup>381</sup> In *Ward*, the defendant failed to pay, and the club sued to recover the debt. The Crockfords Club argued that the chips were a loan made in a form of private currency, and not subject to the prohibition against extension of credit.<sup>382</sup> The court rejected this argument as illogical, holding that gamblers sought to win money, not chips, and that chips were not private currency, but a convenient symbol for accepted public currency.<sup>383</sup> Thus, the agreements between the Club and its patrons were unenforceable.

Parliament strengthened the prohibition against extending credit for gaming when it passed section 16 of the Gaming Act of 1968 (“the Act”).<sup>384</sup> The Act prohibits any gaming license holder or employee of a license holder from making loans or extending credit for the purposes of “(a) enabling any person to take part in the gaming, or (b) in respect of any losses incurred by any person in the gaming.”<sup>385</sup> However, section 16 of the Act does allow casinos to accept checks in exchange for gaming tokens if certain criteria are satisfied.<sup>386</sup> Under the Act, a licensed casino is allowed to accept a check on the conditions that it is not postdated, it is exchanged for either cash or tokens,<sup>387</sup> and it is presented for pay-

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<sup>377</sup> 2 Q.B. 63 (Eng. C.A. 1965).

<sup>378</sup> *Id.* at 65.

<sup>379</sup> *Id.* at 64.

<sup>380</sup> *Id.*

<sup>381</sup> *Id.* at 65.

<sup>382</sup> *Id.* at 79.

<sup>383</sup> *Id.*

<sup>384</sup> Gaming Act, 1968, c. 65, Pt. II, § 16(1) (Eng.).

<sup>385</sup> *Id.*

<sup>386</sup> *Id.* § 16(2).

<sup>387</sup> *Id.* § 16(1)-(2). Section 16(1) provides:

[W]here gaming to which this Part of this Act applies takes place on premises in respect of which a licence under this Act is for the time being in force, neither the holder of the licence nor any person acting on his behalf or under any arrangement with him shall make any loan or otherwise provide or allow to any person any credit, or release, or discharge on another person's behalf, the whole or part of any debt,—

- (a) for enabling any person to take part in the gaming, or
- (b) in respect of any losses incurred by any person in the gaming.

*Id.* § 16(1). Section 16(2) reads:

Neither the holder of the licence nor any person acting on his behalf or under any arrangement with him shall accept a cheque and give in exchange for it cash or



ment within two banking days.<sup>388</sup> In 1986, the Act was amended to allow a gambler to exchange his or her winnings for that day for checks the gambler cashed at the casino earlier that same day.<sup>389</sup> The gambler may also write one large check and redeem it for all other checks written that same day, so long as the one check covers all the previously cashed checks.<sup>390</sup> In 1997, the Act was again amended to allow a gambler to purchase tokens using a debit card.<sup>391</sup>

Allowing gaming licensees to cash checks under the Act has had important consequences for the growth of gaming in England and the development of British gambling debt enforcement law. The growth of gaming in England to a billion dollar industry is at least partly attributable to the exemption that allows licensees to cash patrons' checks.<sup>392</sup> More importantly, for this discussion, the exemption has raised questions regarding when check cashing becomes an extension of credit, and whether licensees can reduce gamblers' debts by compromising checks that have been previously cashed.

In *R. v. Crown Court at Knightsbridge, ex parte Marcrest, Ltd.*,<sup>393</sup> the court dealt with the issue of when check cashing constitutes an extension of credit.<sup>394</sup> In *Marcrest*, the appellate court upheld a lower court decision to revoke the casino's gaming license for repeated violations of gaming regulations, including the unlawful extension of credit.<sup>395</sup> The casino granted unlawful credit in several ways: by accepting house check forms that were never deposited; by sending checks to the licensee's head office in order to maintain the fiction of compliance with section 16(3); by accepting "sham" checks from patrons whose previous checks were dishonored and the casino management knew that checks from

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tokens for enabling any person to take part in the gaming unless the following conditions are fulfilled, that is to say—

(a) the cheque is not a post-dated cheque, and

(b) it is exchanged for cash to an amount equal to the amount for which it is drawn, or is exchanged for tokens at the same rate as would apply if cash, to the amount for which the cheque is drawn, were given in exchange for them . . . .

*Id.* § 16(2).

<sup>388</sup> *Id.* § 16(3). Section 16(3) states:

Where the holder of a license under this Act, or a person acting on behalf of or under any arrangement with the holder of such a licence, accepts a cheque in exchange for cash or tokens to be used by a player in gaming to which this Part of this Act applies, or a substitute cheque, he shall not more than two banking days later cause the cheque to be delivered to a bank for payment or collection.

*Id.*

<sup>389</sup> Gaming Act, 1968, c. 65, Pt. II, § 16(2A)(a) (Eng.) (amended 1986).

<sup>390</sup> *Id.*

<sup>391</sup> *Id.* (amended 1997).

<sup>392</sup> Neil Fagan, *Enforcement of Gaming Debts in Britain*, 8 N.Y.L SCH. J. INT'L & COMP. L. 7, 14 (1986).

<sup>393</sup> 1 All E.R. 1148 (Eng. C.A. 1983).

<sup>394</sup> *Id.* at 1155.

<sup>395</sup> *Id.* at 1157-58.

those patrons would not be honored on first presentation; by marking house checks with a bank where the casino knew the gambler did not maintain an account; and by giving gamblers credit at the tables.<sup>396</sup> The casino's practices were in clear violation of the language and intent of section 16, which "is to protect punters against themselves . . . [because] [t]hey are not to be given by the casinos so much rope that they may eventually hang themselves, figuratively or otherwise."<sup>397</sup>

Especially interesting is the court's discussion of what constitutes a "sham" check. The court explained that in order for a document to be a "sham" both parties must have intended the document not to create the legal rights and obligations that it purports to create.<sup>398</sup> Marcrest's dealings with its customers constituted a "sham" because neither the casino, nor the gambler believed the checks would be honored on first presentation.<sup>399</sup> Rather, the function of the checks was to memorialize a debt to the casino.<sup>400</sup>

*Marcrest* also dealt with the issue of whether acceptance of a check for less than the value of a dishonored check gives rise to a gambling debt in violation of section 16.<sup>401</sup> As the court explained, customers who gamble with cash, or trade cash for chips, do not incur a debt with the casino because, once the customer loses the chips, he or she owes the casino no further obligation.<sup>402</sup> A debt can only lawfully arise when a customer cashes a check in exchange for cash or tokens, and the check is subsequently dishonored, leaving the gambler in debt to the casino.<sup>403</sup> On this issue, the court stated, "[W]hen the cheque is given by the customer to enable him to take part in the gaming, and is subsequently dishonoured, then prima facie a debt has been incurred in respect of losses in the gaming."<sup>404</sup>

Section 16 has been interpreted to require that once a debt is incurred as a result of a dishonored check, a casino must seek full payment of the amount of the check. The casino is placed in the position of a creditor, in violation of section 16, if it allows the gambler to pay in installments, or it agrees to compromise the debt for a lesser amount.<sup>405</sup> This interpretation of section 16 places casinos in a difficult position because they cannot negotiate

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<sup>396</sup> *Id.* at 1153.

<sup>397</sup> *Id.* at 1154.

<sup>398</sup> *Id.*

<sup>399</sup> *Id.*

<sup>400</sup> *Id.*

<sup>401</sup> *Id.*

<sup>402</sup> *Id.* at 1154-55.

<sup>403</sup> *Id.* at 1155.

<sup>404</sup> *Id.*

<sup>405</sup> *Id.*

a settlement for anything less than the full amount of a dishonored check.<sup>406</sup> The solicitors in *Marcrest* argued that under this interpretation, casinos would suffer serious losses, which could be mitigated by a compromise of the bad debts.<sup>407</sup> The court was somewhat sympathetic; nevertheless, it upheld the strict interpretation of section 16 because encouraging licensees to limit patron losses is consistent with the policy of the statute.<sup>408</sup>

On a practical level, this interpretation of section 16 requires licensees who accept checks that are later dishonored to seek a court judgment on the entire amount of the dishonored check. Only after receiving judgment on the entire amount can the licensee negotiate a compromise of the judgment.<sup>409</sup> While trial courts will apply the rules discussed above, there appears to be some flexibility in gambling debt enforcement.

For example, in 1991, Ritz Casino Limited sued international arms dealer Adnan Khashoggi for £3.2 million plus interest for dishonored checks cashed at hotel casinos during a period of extensive gaming in 1986.<sup>410</sup> Khashoggi defended against the suit by claiming the debt was unenforceable because the casino allowed him to continue gaming by illegally extending credit.<sup>411</sup> The parties settled the case for an undisclosed sum, and Khashoggi's counsel said that Khashoggi "withdraws any suggestion that the Ritz acted improperly or in contravention of the Gaming Act 1968."<sup>412</sup> The judge in the case appeared relieved that he did not have to hear the case, stating that he was "very happy to hear that [the case had settled] because it seemed to me pre-eminently an action which was better compromised on acceptable terms than fought to a finish. It had quite a few complexities and wrinkles."<sup>413</sup> Despite the litigation, Khashoggi continues to be a welcome casino patron, but the casino is no longer willing to cash his checks.<sup>414</sup>

Although the extension of credit is illegal in England, foreign judgments on gambling debts may be enforced, provided the debts were legally incurred in the foreign jurisdiction.<sup>415</sup> Courts interpret the Gaming Acts of 1845 and 1892 as applying only to gaming

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<sup>406</sup> *Id.*

<sup>407</sup> *Id.*

<sup>408</sup> *Id.*

<sup>409</sup> Fagan, *supra* note 392, at 17.

<sup>410</sup> *Ritz Casino Ltd. v. Khashoggi*, (Eng. Mar. 26, 1996) (LEXIS Country & Region, United Kingdom, UK cases, combined courts), at Judgment 1 ¶ 1 (Thorpe, L.J.).

<sup>411</sup> Mike Taylor, *Khashoggi Settles his Pounds 8m Gambling Debt with Casino*, BIRMINGHAM POST, June 6, 1998, available at 1998 WL 22710784.

<sup>412</sup> *Id.*

<sup>413</sup> *Id.*

<sup>414</sup> *Casino Refuses to Gamble in the Game of PR*, BELFAST NEWS LETTER, June 4, 1998, available at 1998 WL 27604391.

<sup>415</sup> See generally Fagan, *supra* note 392, at 18-19.

that is unlawful in England.<sup>416</sup> Therefore, English courts will accommodate foreign law by enforcing judgments that are lawful in those jurisdictions.<sup>417</sup> In order to enforce a foreign judgment in English courts, creditors must show that the English courts have jurisdiction over the debtor.<sup>418</sup> The courts have jurisdiction when: 1) the debtor has been served with legal process within the United Kingdom; 2) the debtor is domiciled or an “ordinary resident” in the United Kingdom; 3) the breach of the gaming contract was committed within the jurisdiction of the English courts; or 4) the debtor voluntarily submits to the English court’s jurisdiction.<sup>419</sup> Creditors most often assert the second and third bases for jurisdiction, and it is clearly advantageous to pursue a U.K. resident in English courts because it is likely the debtor will have assets in the country.<sup>420</sup>

While the Gaming Act of 1968’s prohibition against extending credit for gaming remains in effect, there is some indication of changing policy. The 2001 Gambling Review Report, produced by the Department for Culture, Media and Sport, recommended that Parliament relax the prohibition by making “all gambling debts” legally enforceable.<sup>421</sup> According to the Report, such a change in policy would eliminate anomalies, such as the enforceability of debts arising from spread betting and the “palpable error rule.”<sup>422</sup> Until Parliament makes changes similar to those recommended in the Gaming Review Report, English gaming debt enforcement law will remain complex.

## B. Scotland

In Scotland, “the common law . . . on gaming and wagering differs greatly from the common law of England. In Scotland it is settled law that wagering agreements, being ‘sponsiones ludicrae,’

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<sup>416</sup> *Id.* at 19.

<sup>417</sup> *Id.*

<sup>418</sup> *Id.*

<sup>419</sup> *Id.*

<sup>420</sup> *Id.* Creditors may also seek injunctions in English courts against the assets of debtors. These injunctions freeze the debtor’s assets within the country so the creditor can enforce any judgment granted by English courts. *Id.* at 22-23.

<sup>421</sup> Gambling Review Body, Department for Culture, Media and Sport, *Gambling Review Report* § 26.25 (July 2001), available at [http://www.culture.gov.uk/PDF/gambling\\_review\\_chapter26.pdf](http://www.culture.gov.uk/PDF/gambling_review_chapter26.pdf).

<sup>422</sup> *Id.* The “palpable error rule” allows a licensee to deny payment of winnings when an employee makes a mistake in the betting transaction. *Id.* This rule has led to inequities such as the case of a bettor who won £259,000 but was unable to collect because the sportsbook manager did not make a photographic record of the bet. Richard Colbey, *A Debt of Dishonour: Gambling Liabilities Are Not Legally Recoverable*, *GUARDIAN* (London), Nov. 28, 1998, available at 1998 WL 18679969. The bettor was prevented from pursuing his action in court under the Gaming Act of 1845. *Id.* The decision by the court was somewhat anomalous because the bettor would have been able to recover had his bet been part of a betting pool or had he bet against a point spread. *Id.*

are matters with which the court ought not to occupy itself.”<sup>423</sup> The courts’ refusal to hear gambling debt cases under this doctrine has resulted in harsh outcomes. In *County Properties and Developments Ltd. v. Harper*,<sup>424</sup> the Sheriff’s Court faced a casino seeking to recover an alleged overpayment of two thousand pounds on a winning wager.<sup>425</sup> The casino argued that laws, such as the Gaming Act of 1968, involved constables and local authorities in gaming matters, and therefore, it is inconsistent to say the matter is “beneath the dignity of the courts’ consideration.”<sup>426</sup> While the court was impressed with the casino’s argument, it refused to enforce the debt.<sup>427</sup>

An even harsher result was reached in *Ferguson v. Littlewoods Pools, Ltd.*<sup>428</sup> In that case, five members of a football pool reportedly won £2.3 million, only to have a pool agent abscond with the money.<sup>429</sup> When the winners sued the pool organizers, the defendant argued that the doctrine of *sponsio ludicra* applied.<sup>430</sup> Lord Coulsfield agreed that the doctrine barred the action and dismissed the case.<sup>431</sup> The plaintiffs reportedly appealed to the Court of Five Judges, but could not afford to continue; the matter was resolved in a confidential settlement that did not require Littlewoods to make any financial payment.<sup>432</sup>

In a ruling that is “thought to be the first of its kind in Scotland,”<sup>433</sup> the Glasgow Court of Session enforced a wagering debt in *Robertson v. Anderson*.<sup>434</sup> The plaintiff’s suit alleged that her best friend had promised to split a bingo jackpot with her.<sup>435</sup> Lord Carloway, convinced that there was an oral agreement, questioned the continuing validity of the *sponsio ludicra* defense.<sup>436</sup> He concluded that betting had become so prevalent in the country, with the state even sponsoring a lottery, that the rule no longer

423 *Hill v. William Hill (Park Lane)*, [1949] A.C. 530, 567-68 (Eng. C.A.) (citing *Robertson v. Balfour*, 1938 Sess. Cas. 207).

424 1989 S.C.L.R. 597.

425 *Id.* at 599.

426 *Id.* at 598.

427 *Id.* at 599.

428 9 Scots L. Times 309 (Outer House Ct. of Sess. 1996), available at 1996 WL 1104215.

429 *Id.* at 310; Bruce Mckain, *Littlewoods Asks Judge to Follow Tradition and Reject Syndicate’s Claim Over Gambling Debt; Five Sue After £2.3m Jackpot Loss*, HERALD (Glasgow), Mar. 15, 1996, at 9.

430 *Ferguson*, 9 Scots L. Times. at 310.

431 *Id.* at 314, 315.

432 Hector L. MacQueen, *Football Pools and Sponsiones Ludicrae*, SCOTS L. NEWS, available at <http://www.law.ed.ac.uk/sln/index.asp?page=13>.

433 Bruce Mckain, *Bingo Winner Ordered to Share; Judge Awards £54,000 to Friend*, HERALD (Glasgow), May 16, 2001, at 5.

434 *Robertson v. Anderson*, at ¶ 73 (Outer House Ct. of Sess. May 15, 2001), available at <http://www.scotcourts.gov.uk/opinions/CAR0905.html>.

435 *Id.* ¶¶ 18-19.

436 *Id.* ¶¶ 71-72.

seemed valid.<sup>437</sup> While he suggested a reconsideration of *sponsio ludicra*, Lord Carloway based his decision on the fact that the agreement was not a gambling contract but a collateral agreement.<sup>438</sup> Lord Carloway awarded the plaintiff half the winnings and interest at eight percent from the date the prize was won.<sup>439</sup>

Scottish law, unlike English law, completely prevents courts from addressing gambling claims. However, recent decisions suggest that Scottish courts may soon move away from strict prohibition towards a rule favoring enforcement.

### III. AUSTRALIA

Traditionally casinos would negotiate payment arrangements with defaulting foreign gamblers hailing from Far Eastern countries, such as Hong Kong, Singapore, Malaysia, and Indonesia.<sup>440</sup> However, it has recently become customary for casinos to utilize private investigators to find and take legal action against defaulting gamblers.<sup>441</sup> This practice is ordinarily used only when negotiations for payments fail.<sup>442</sup> Interestingly, the courts have determined that if a gambler uses a check at an Australian casino, and the check was drawn by a Hong Kong resident, on a Hong Kong bank, the jurisdiction would not be Australia, where the gambling took place, but rather Hong Kong.<sup>443</sup>

It has been reported that the Burswood Casino, in Western Australia, recently initiated proceedings to sue six Malaysians to recover over one million dollars (Austl.) in gambling debts, as well as a seventh Malaysian "highroller," who alone owes over two million dollars (Austl.), including interest.<sup>444</sup> The largest individual debt exclusive of interest, \$2.05 million (Austl.), was reportedly settled when a Malaysian Member of Parliament agreed to pay in installments.<sup>445</sup> After legal proceedings were initiated, one of the remaining defendants, a lawyer from Klang, was reportedly mak-

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<sup>437</sup> *Id.* ¶ 71.

<sup>438</sup> *Id.* ¶¶ 71-72.

<sup>439</sup> *Id.* ¶ 73; Hector L. MacQueen, *Sponsiones Ludicae and Bingo Winning Agreements*, SCOTS L. NEWS, available at <http://www.law.ed.ac.uk/sin/index.asp?page=111>.

<sup>440</sup> Neville D'Cruz, *Casino Takes Legal Action Against Malaysians*, MALAY. GEN. NEWS, July 1, 1998.

<sup>441</sup> Ruth Mathewson, *Casinos Hunt HK Punters Over Huge Gambling Debts*, S. CHINA MORNING POST, June 14, 1998, at 3.

<sup>442</sup> *Id.*

<sup>443</sup> *Id.*

<sup>444</sup> D'Cruz, *supra* note 440; Peter Klinger, *Casino Bid to Recoup \$2M from High Roller*, AUSTRALASIAN BUS. INTELLIGENCE: THE W. AUSTRALIAN, Jan. 11, 2001, at P3, available at 2001 WL 2300888.

<sup>445</sup> *Australian Casino Drops Plan to Sue Malaysian MP*, AAP NEWSFEED, June 11, 1998.

ing arrangements to settle his debt of up to one million dollars (Austl.).<sup>446</sup>

In Australia, two recent cases, which made their way through the courts simultaneously, both involved gamblers seeking to recover monies lost while gambling.<sup>447</sup> In both cases the gamblers claimed that they were problem gamblers and that the casinos should be held liable for their losses. The state of the law remains in flux on this issue, given that the two cases had opposite outcomes.

In *Am. Express Int'l v. Famularo*,<sup>448</sup> an unsuccessful gambler sought to avoid paying \$88,300.97 (Austl.) to American Express (AMEX).<sup>449</sup> When AMEX sued him for that amount, Famularo not only counter-claimed against AMEX, but also cross-claimed against the hotel where he had gambled.<sup>450</sup> The gambler allegedly obtained cash advances on his AMEX card, totaling \$67,777.50 (Austl.), on 226 occasions.<sup>451</sup> The hotel and AMEX had a contract, which prohibited the hotel from allowing credit card use for gambling purposes, and placed a burden on the hotel to ensure that cash advances obtained by AMEX customers would not be used for gambling.<sup>452</sup> The agreement also provided that the merchant was required to follow all applicable laws.<sup>453</sup> The hotel had allegedly failed to comply with the Liquor Act of 1982, which states that it is a "condition of a hotelier's license that the licensee is not to provide a cash advance in the hotel, or permit or suffer a cash advance to be provided in the hotel on behalf of the licensee."<sup>454</sup>

The counter-claim against AMEX was dismissed because AMEX had no notice of the wrongful conduct.<sup>455</sup> However, the gambler did succeed at trial on his cross-claim allegations that the hotel's conduct constituted misrepresentation and unconscionable practice pursuant to the Trade Practices Act.<sup>456</sup> Specifically, the gambler claimed, and the court agreed, that he was a pathological

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<sup>446</sup> D'Cruz, *supra* note 440.

<sup>447</sup> *Am. Express Int'l v. Famularo*, No. DCC1516 BG-G1, slip op. (D.N.S.W. Feb. 19, 2001) (on file with Chapman Law Review); *Reynolds v. Katoomba RSL All Serv. Club Ltd.* (1999) 81-545 A. Tort R. 63,545 (D.N.S.W.), *aff'd*, *Reynolds v. Katoomba RSL All Serv. Club Ltd.*, No. CA 41030/99 (N.S.W. Ct. App. May 2, 2001), (LEXIS, International Materials, Australia, New South Wales Unreported Judgments).

<sup>448</sup> *Famularo*, No. DCC1516 BG-G1.

<sup>449</sup> *Id.* at 1.

<sup>450</sup> *Id.*

<sup>451</sup> *Id.*

<sup>452</sup> *Id.* at 3-4.

<sup>453</sup> *Id.* at 4.

<sup>454</sup> *Id.*; *see also* Liquor Act, 1982, N.S.W. ACTS § 20(4A) (2001).

<sup>455</sup> *Famularo*, No. DCC1516 BG-G1, at 4-7.

<sup>456</sup> *Id.* at 41. The Trade Practices Act provides compensation to the victim of unconscionable activity. *Id.* at 3 ("Section 51AB(1) of the Trade Practices Act 1974 (Cth) provides: (1) A corporation shall not, in trade or commerce, in connection with the supply or possible supply of goods or services to a person, engage in conduct that is, in all the circumstances, unconscionable.").

gambler, and that the hotel knew of his condition.<sup>457</sup> The court accepted the uncontradicted expert psychiatric testimony of Dr. Clive Allcock that the gambler had serious problems with controlling his gambling, which were exacerbated by the gambler's use of alcohol.<sup>458</sup> The gambler also proved to the court's satisfaction that hotel personnel told him that he could use cash advances from a credit card to gamble.<sup>459</sup> In fact, the hotel installed the AMEX machine in the gaming area of the hotel *at the gambler's request*.<sup>460</sup> The court held that the hotel acted with knowledge and with intent to breach its agreement with AMEX, and to break the law.<sup>461</sup>

The *Famularo* court was successful in distinguishing an earlier case, *Reynolds v. Katoomba RSL All Services Club Ltd.*<sup>462</sup> Reynolds, a casino patron, sued the Katoomba Club for negligence and unconscionable actions related to the his gambling losses.<sup>463</sup> Specifically, Reynolds's cause of action was based on an agreement between the parties to prevent Reynolds from gambling at the club. Reynolds alleged that he was addicted to gambling and had specifically asked the Katoomba Club to refuse to allow him to gamble on credit, or allow his checks to be cashed.<sup>464</sup> After several months of honoring the agreement, Katoomba started allowing Reynolds to gamble on credit.<sup>465</sup> Ultimately, over a four-year period, Reynolds gambled and lost \$56,968.83 (Austl.).<sup>466</sup>

The trial court found that Reynolds was a problem gambler, that the manager of the Katoomba Club should have been aware of that fact, and that the club cashed Reynolds checks knowing he would use the money for gambling.<sup>467</sup> Nevertheless, the trial judge concluded that Reynolds had free will, and should be held responsible for his actions.<sup>468</sup> Most importantly, the trial court concluded that the Katoomba Club owed no duty to the gambler. The court noted that no case had ever found a duty of care under such circumstances, and declined to do so itself.<sup>469</sup>

The court in *Famularo* distinguished *Reynolds* on two grounds. First, in *Famularo*, the hotel made misrepresentations

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<sup>457</sup> *Id.* at 26, 31-35.

<sup>458</sup> *Id.* at 34.

<sup>459</sup> *Id.* at 19-20.

<sup>460</sup> *Id.* at 16-17.

<sup>461</sup> *Id.* at 41.

<sup>462</sup> *Reynolds v. Katoomba RSL All Serv. Club Ltd.* (1999) 81-545 A. Tort R. 63,545 (D.N.S.W.).

<sup>463</sup> *Id.*

<sup>464</sup> *Id.* at 63,547.

<sup>465</sup> *Id.* at 63,548.

<sup>466</sup> *Id.* at 63,545.

<sup>467</sup> *Id.* at 63,549.

<sup>468</sup> *Id.*

<sup>469</sup> *Id.* at 63,549-50.



to the effect that the disputed cash advances were permitted.<sup>470</sup> Second, in *Famularo*, the cash advances were illegal under the express provisions of the Liquor Act.<sup>471</sup> The court ruled in favor of AMEX, against the gambler who, in turn, was awarded judgment against the hotel for almost the same amount.<sup>472</sup>

The *Reynolds* case was appealed, and the appeal was decided after *Famularo*.<sup>473</sup> The *Reynolds* appellate court (*Reynolds II*) was less sympathetic to the gambler. On appeal, Spigelman, C.J., stated bluntly:

Save in an extraordinary case, economic loss occasioned by gambling should not be accepted to be a form of loss for which the law permits recovery. I make allowance for an extraordinary case, without at the present time being able to conceive of any such case. . . . The interest sought to be protected is the avoidance of a risk of loss of money through gambling. That risk, when it came to pass, was entirely occasioned by the Appellant's own conduct. It is not an interest, which, in my opinion, the law should protect.<sup>474</sup>

Powell, J., distinguished *Famularo* on the ground that in *Famularo* there was no allegation of negligence.<sup>475</sup> Rather, *Famularo* involved misleading conduct in violation of the Trade Practices Act and a breach of the Liquor Act.<sup>476</sup> Additionally, Giles, J., also writing for the appellate court in *Reynolds II*, stressed that the casino owed no duty of care to the patron because it exercised no control over him.<sup>477</sup>

One remarkable gambling debt case now before the courts is that of Craig Rosendorff, who allegedly lost over four million dollars (Austl.) betting on credit with the Western Australian Totalisator Agency Board ("TAB").<sup>478</sup> In 1999, Rosendorff reportedly sued the TAB, alleging that it had allowed him to use a private betting room and place bets on credit, which he would then pay off each Thursday.<sup>479</sup> Rosendorff's claim is reportedly based on the

<sup>470</sup> *Am. Express Int'l v. Famularo*, No. DCC1516 BG-G1, slip op., at 37 (D.N.S.W. Feb. 19, 2001) (on file with Chapman Law Review).

<sup>471</sup> *Id.* at 30-31.

<sup>472</sup> *Id.* at 46. The court ordered Famularo to pay American Express \$88,300.77 and costs, and for the hotel to pay Famularo \$85,043.44 plus costs, including those incurred in his suit against AMEX. *Id.* at 46-47.

<sup>473</sup> *Reynolds v. Katoomba RSL All Serv. Club Ltd.*, No. CA 41030/99 (N.S.W. Ct. App. May 2, 2001), (LEXIS, International Materials, Australia, New South Wales Unreported Judgments).

<sup>474</sup> *Id.* at Spigelman, C.J. opinion.

<sup>475</sup> *Id.* at Powell, J. opinion.

<sup>476</sup> *Id.*

<sup>477</sup> *Id.* at Giles, J. opinion.

<sup>478</sup> *Lawyers Discover Compulsive Gambling*, ROLLING GOOD TIMES ONLINE, Feb. 12, 1999, at <http://www.rgtonline.com/h-articles/newspage2/A3128.html> (last visited Mar. 11, 2002).

<sup>479</sup> *Id.*

illegality of advancing credit for gambling purposes.<sup>480</sup> Reportedly, a significant issue in the case was whether Rosendorff would have to prove that every one of the five hundred thousand bets was made on credit, that no cash was advanced, and that bets were not made from any accumulated winnings.<sup>481</sup> Early in 2000, the Western Australian Supreme Court reportedly held that Rosendorff did not have to provide details on each and every bet.<sup>482</sup> At oral argument, Justice Geoffrey Miller reportedly opined that if Rosendorff were to be cross-examined on each bet, the trial could take two years.<sup>483</sup> This preliminary decision was reportedly crucial to the continued viability of Rosendorff's claim because in the opinion of one lawyer who represents gamblers, "Gamblers have notoriously poor memories when it comes to remembering what was said or done and when. They appear to live in a hazy and unreal world where the facts are whatever is convenient for the moment."<sup>484</sup>

It is clear that gambling debts are enforceable in Australia. The question of casino liability for problem gamblers, however, remains uncertain given the conflicting decisions in *Famularo*, *Reynolds*, and the current case involving Rosendorff, the issue of casino liability still needs to be settled.

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<sup>480</sup> *Id.* (quoting attorney Kevin Dundo who claimed the TAB activity violated section 33 of the TAB Act). Section 33 of the TAB Betting Act states:

The following provisions apply in relation to betting through the Board:

- (a) the Board, or any of its officers, agents or employees shall not accept a bet unless made—
  - (i) by the deposit of the amount of the bet in cash at a totalisator agency; or
  - (ii) by letter sent through the post or by telegram or telephone message received at a totalisator agency,
 in accordance with the provisions of this Act;
- (b) the Board, or any of its officers, agents or employees shall not accept any bet that is made by letter or by telegram or telephone message or any horse race unless—
  - (i) the person making the bet has, before the beginning of the race meeting at which the horse race is to be held, established with the Board in accordance with this Act, a credit account sufficient to pay the amount of the bet and has maintained the account up to the time of making the bet and the bet is charged against that account; or
  - (ii) alternatively, in the case of a bet made by letter or telegram, the amount of the bet is forwarded through the post with the letter or payment thereof is arranged by telegram in accordance with this Act;

Totalisator Agency Board Betting Act, 1960, No. 50, § 33 (W. Austl.).

<sup>481</sup> WA: *Jeweller Allowed to Bet Millions on Credit, Court Told*, AAP NEWSFEED, July 25, 2000. TAB's lawyer said, "the TAB kept no records of credit betting, since whether a client paid cash when a bet was placed was not recorded. Any records that were kept were destroyed after eight weeks." *Id.*

<sup>482</sup> *Id.*; Mairi Barton, *Claim on TAB Passes Hurdle*, AUSTRALASIAN BUS. INTELLIGENCE, Aug. 25, 2000 at 13.

<sup>483</sup> WA: *Jeweller Allowed to Bet Millions on Credit, Court Told*, *supra* note 481.

<sup>484</sup> Richard Brading, *Gambling Litigation - The Last Word in Loss-Chasing*, presented at the Gambling Studies Conference (November 2000) (lecture notes on file with Chapman Law Review).

## IV. AUSTRIA

Austria generally defines gambling and wagering contracts as "contract[s] in which the hope of an uncertain advantage is promised and accepted."<sup>485</sup> The Austrian Civil Code distinguishes seven types of gambling and wagering contracts.<sup>486</sup> The code also provides that the political laws of Austria determine what types of games are permissible and which are forbidden.<sup>487</sup> These political laws also codify the manner in which those persons carrying on forbidden games, or who cheat in games, are to be punished.<sup>488</sup>

Generally, debts incurred as a result of entering into wagering and gambling contracts are not enforceable in court.<sup>489</sup> This is not to say that bets are non-binding on the parties who enter into them. Bets that are fair and permissible under the law are binding insofar as they are paid to or deposited with the winner.<sup>490</sup> Bets that are won as a result of fraudulent behavior, however, are null and void.<sup>491</sup> Rescission, a common form of contract remedy, normally available in Austrian contracts when "the value of the property exchanged differs by more than one-half," is not available for gambling and wagering contracts.<sup>492</sup>

The Austrian Civil Code exempts several forms of gaming contracts, subjecting them instead to the general law of contracts. These include drawing lots to settle disputes,<sup>493</sup> and state lotteries.<sup>494</sup> The code also includes several types of contracts that would perhaps not traditionally be considered "gambling" or "wagering."<sup>495</sup> Contracts of sale, and other contracts that involve the expectation of future, yet uncertain rights are classified as gambling or wagering contracts.<sup>496</sup> Annuities and insurance contracts are covered under the code, and thus, considered a type of gambling or wagering contract.<sup>497</sup>

In sum, Austrian laws seem to simultaneously embrace some of the more traditional notions of gambling enforcement, such as

<sup>485</sup> THE GENERAL CIVIL CODE OF AUSTRIA § 1267 (Paul L. Baeck trans., Oceana Publications 1972) [hereinafter GENERAL CIVIL CODE].

<sup>486</sup> The seven different types of gambling and wagering contracts are: bets, gambling, the drawing of lots, contracts of future sale, annuities, common maintenance contracts, and insurance contracts. Wilibald Posch, *Austria*, in 4 CONTRACTS 246 (Kluwer Law Int'l 1996).

<sup>487</sup> GENERAL CIVIL CODE, *supra* note 485, § 1272.

<sup>488</sup> *Id.*

<sup>489</sup> *Id.* § 1271.

<sup>490</sup> *Id.*

<sup>491</sup> *Id.* § 1270.

<sup>492</sup> *Id.* § 1268.

<sup>493</sup> *Id.* § 1273.

<sup>494</sup> *Id.* § 1274.

<sup>495</sup> The civil code also governs "general maintenance contracts" which are now deemed obsolete. Posch, *supra* note 486, at 246.

<sup>496</sup> GENERAL CIVIL CODE, *supra* note 485, §§ 1275-76. *See also* Posch, *supra* note 486, at 246-47.

<sup>497</sup> Posch, *supra* note 486, at 246-47.

providing no legal method for enforcing gambling debts, yet is unique because it includes types of contracts that are generally not considered to be bets or wagers in other countries. As is the case in most other countries around the globe, in order to best understand Austria's current gambling laws and attempt to predict their future, one must keep a keen eye on the country's political climate.

## V. BELGIUM

Belgian law generally regards a gaming debt as unenforceable because it is contrary to public policy and good manners.<sup>498</sup> A loser may not recover any monies paid under the law except when fraud, deceit, or cheating is found on the part of the winner.<sup>499</sup> In 1999, however, Belgian law was modified to allow the enforcement of authorized gaming contracts.<sup>500</sup> Authorized gaming includes horse racing and licensed betting on the results of competitive sports.<sup>501</sup> The Belgian Civil Code retains the Roman law tradition by providing for the enforceability of debts from games involving arm exercise, foot, horse or chariot racing, tennis, and similar games involving exercise and dexterity, provided that the enforcing court does not find the debt excessive.<sup>502</sup>

Belgian case law concerning the enforcement of gaming debts is extremely limited.<sup>503</sup> As a general rule, Belgian courts will enforce foreign judgments and apply foreign law only if they can do so without violating Belgium's international public policy.<sup>504</sup> International public policy encompasses domestic policies, which embody ethical, political, or economic policies fundamental to society.<sup>505</sup>

## VI. BRAZIL

Brazilian law states that gambling debts are unenforceable.<sup>506</sup> Additionally, any amount that has been voluntarily paid cannot be recovered unless payment was procured through deceit, the loser was a minor, or payment was prohibited by court order.<sup>507</sup>

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<sup>498</sup> Thibault Verbiest, *The Enforceability of Gaming Debts Under Belgian Civil Law 2* (unpublished manuscript, on file with Chapman Law Review).

<sup>499</sup> THE CONSTITUTION OF BELGIUM AND THE BELGIUM CIVIL CODE 334 (John H. Crabb trans., Fred B. Rothman & Co. 1982).

<sup>500</sup> Verbiest, *supra* note 498.

<sup>501</sup> *Id.* at 3.

<sup>502</sup> THE CONSTITUTION OF BELGIUM AND THE BELGIUM CIVIL CODE, *supra* note 499, at 334.

<sup>503</sup> Verbiest, *supra* note 498, at 4.

<sup>504</sup> *Id.* at 1.

<sup>505</sup> *Id.*

<sup>506</sup> C.C. art. 1477.

<sup>507</sup> *Id.*

Furthermore, Brazilian law provides that loans for gambling purposes are unenforceable.<sup>508</sup> There are, however, exceptions to this prohibition. First, the prohibition does not extend to a third-party purchaser acting in good faith.<sup>509</sup> Second, the prevailing view among Brazilian legal scholars is that gambling debts incurred legally outside Brazil, in jurisdictions such as Nevada and New Jersey, are enforceable.<sup>510</sup> Third, the statutory language has been interpreted to apply only to:

[C]redit granted at the actual moment of gaming and not either before or after the act of betting. Therefore, if the credit is granted to the patron either before or after he gambles, but not during his gambling, the resulting debt under this reasoning would not be unenforceable pursuant to Article 1478 of the Brazilian Civil Code.<sup>511</sup>

If a casino attempts to register a foreign judgment against a Brazilian resident, “*exequatur* proceedings,” which are established by the Supreme Court of Brazil, must be followed.<sup>512</sup> The casino must directly submit a petition, submit to a review of service of process, and file a cause of action with one of the Brazilian Supreme Court Justices in order to initiate an *exequatur* proceeding.<sup>513</sup> The enforceability of the debt is “subject to ‘public policy’ considerations (i.e. the ‘legality’ of the underlying obligation).”<sup>514</sup> In order to evade high costs and the low probability of success associated with the *exequatur* proceeding process, an action based on a negotiable instrument signed by a gambler to “a non-casino-affiliated company” might prove to be a more viable alternative.<sup>515</sup> The process applicable to negotiable instruments in most Latin American countries, such as Brazil, is precise and clearly codified, ultimately providing more certainty than the *exequatur* proceeding process.

## VII. CANADA

The legality of gambling and the enforcement of gambling debts varies by province or territory,<sup>516</sup> just as it does in the United States. In the four western provinces, the *Statute of Anne*

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<sup>508</sup> *Id.* art. 1478.

<sup>509</sup> Thomas J. Skola, *The Collection of Gaming Debts Outside the United States*, at [http://www.poliakoff.com/publications/article\\_archive/collection\\_gaming\\_debts.htm](http://www.poliakoff.com/publications/article_archive/collection_gaming_debts.htm) (last visited Jan. 28, 2002).

<sup>510</sup> *Id.*

<sup>511</sup> *Id.*

<sup>512</sup> *Id.*

<sup>513</sup> *Id.*

<sup>514</sup> *Id.*

<sup>515</sup> *Id.*

<sup>516</sup> *Boardwalk Regency Corp. v. Maalouf*, [1992] 88 D.L.R.4th 612, 614, available at 1992 D.L.R. LEXIS 1827.

and the English Gaming Acts of 1835 and 1845, are currently “in force as a result of the date of reception of English laws in 1870.”<sup>517</sup> In other provinces, such as New Brunswick, however, English statutes passed after 1660 “did not extend to the colony of which New Brunswick formed a part unless there was some provision in them to that effect.”<sup>518</sup> Yet in 1786, New Brunswick passed legislation in the spirit of the *Statute of Anne*, which voided all securities given for gaming, and allowed anyone “who lost more than 20 shillings within 24 hours,” or at one meeting to sue for lost monies within one month.<sup>519</sup> Nevertheless, recent Canadian cases have uniformly enforced gambling judgments obtained in the United States.<sup>520</sup>

In Ontario, courts will enforce gambling debts legally incurred in foreign jurisdictions, so long as such enforcement does not “violate conceptions of essential justice and morality.”<sup>521</sup> In *Boardwalk Regency Corp. v. Maalouf*,<sup>522</sup> the court allowed the enforcement of a New Jersey judgment against a Toronto businessman for nearly fifty thousand dollars (U.S.).<sup>523</sup> The court emphasized that the evidence overwhelmingly indicated that the parties intended to be bound and governed by New Jersey law.<sup>524</sup> The court then stated that the provisions of the Ontario Gaming Act were irrelevant, except as an indication of the province’s public policy.<sup>525</sup> The court stressed that recent events, such as allowing ten-dollar blackjack bets at the Canadian National Exhibition in 1991, indicate that gambling is no longer considered morally repugnant.<sup>526</sup>

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<sup>517</sup> Peter Bowal & Caroline Carrasco, *Taking a Chance on it: The Legal Regulation of Gambling*, 22(2) LAW NOW, Nov. 1997, at 28-30.

<sup>518</sup> *Velensky v. Hache*, [1981] 121 D.L.R.3d 747, 749, available at 1981 D.L.R. LEXIS 3466.

<sup>519</sup> *Id.* at 751.

<sup>520</sup> *E.g.*, *Horseshoe Club Operating Co. v. Bath*, No. C954434, 1997 A.C.W.S.J. LEXIS 155710, at \*4 (B.C. S. Ct. May 9, 1997) (recognizing a Nevada gambling judgment, relying on *Moulis v. Owen*, 1 K.B. 746 (1907), but stating that the English Gaming Act of 1845 would not have allowed an action based on the debt); *Golden Nugget Las Vegas Corp. v. Hooi*, No. C912325, 1992 A.C.W.J.S. LEXIS 31446 (B.C. S. Ct. Apr. 8, 1992) (enforcing a Nevada gambling judgment); *MGM Grand Hotel, Inc., v. Kiani*, No. 9703 09761, 1997 A.C.W.S.J. LEXIS 160440 (Ont. Ct. App. Nov. 6, 1997) (holding that a Nevada gambling judgment was enforceable rejecting the public policy defense).

<sup>521</sup> *Maalouf*, 88 D.L.R.4th at 615 (Lacourciere, J., concurring).

<sup>522</sup> *Id.* at 612.

<sup>523</sup> *Id.* at 624.

<sup>524</sup> *Id.* at 620.

<sup>525</sup> *Id.* Cf. Ontario Gaming Act, R.S.O. ch. 183, §1 (1980) (“Every . . . bill . . . the consideration for which . . . is money . . . won by gaming . . . shall be deemed to have been . . . drawn . . . for an illegal consideration.”); see also *id.* § 4 (gaming debts are not enforceable in court). Operating a common gaming house is a criminal offense pursuant to the Criminal Code, R.S.C. ch. C-46, §§ 197, 201(1) (1985) (Can.).

<sup>526</sup> *Maalouf*, 88 D.L.R.4th at 623. In addition, Judge Carthy favorably cited the reasoning of *Intercontinental Hotels Corp. v. Golden*, 203 N.E.2d 210, 212-13 (N.Y. 1964), concerning public policy. *Maalouf*, 88 D.L.R.4th at 624.

Judge Lacourciere in a concurring opinion, and Judge Arbour, in dissent, both used public policy, and the morality of gambling, to support their opposing conclusions.<sup>527</sup> In supporting the majority's decision, Judge Lacourciere argued that Canada should not shelter gamblers who run up debts in other countries; Canadian morality required debtors, even gambling debtors, to fulfill their obligations.<sup>528</sup> On the other hand, Judge Arbour stressed the social costs associated with gambling, its connection to crime, and the immorality of gambling.<sup>529</sup> Judge Arbour further noted that the New Jersey activities, if conducted in Ontario, would be criminal.<sup>530</sup> In essence, by permitting "recovery of a debt outside Ontario under circumstance that would be criminal under the same circumstances in Ontario . . . Ontario public policy . . . [must] yield to foreign law."<sup>531</sup>

In 1993, a Toronto lawyer lost over twenty thousand dollars (U.S.) at an Atlantic City casino.<sup>532</sup> When his countercheck was dishonored, the casino sued him in the Ontario Court of Justice.<sup>533</sup> The defendant argued that the *Maalouf* decision should be distinguished, as *Maalouf* involved registering a foreign judgment, whereas in his case the casino commenced direct litigation in the Canadian court.<sup>534</sup> The trial judge found the distinction unwarranted.<sup>535</sup> The judge opined that a person who gambles legally in a foreign county, with the intention of using the laws of Canada to avoid the debt, "richly deserves the courts contempt."<sup>536</sup> The judge further stated that if Ontario's Gaming Act could be used as the debtor requested, it would "spawn an evil more heinous than the one, ostensibly, it was intended to guard against."<sup>537</sup> The judge determined that the Gaming Act, should be narrowly construed, as societal opinion on gaming had changed, evidenced by the fact that Ontario would soon be opening its own casinos.<sup>538</sup>

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<sup>527</sup> *Maalouf*, 88 D.L.R.4th at 614-16 (Lacourciere, J., concurring), 627-32 (Arbour, J., dissenting).

<sup>528</sup> *Id.* at 618.

<sup>529</sup> *Id.* at 625-31.

<sup>530</sup> *Id.* at 631.

<sup>531</sup> *Id.*

<sup>532</sup> *Atlantic City Showboat, Inc. v. Smith*, No. 92-CU-48786, 1993 A.C.W.S.J. LEXIS 47765, at \*1 (Ont. Gen. Div. July 6, 1993).

<sup>533</sup> *Id.* at \*2.

<sup>534</sup> *Id.* at \*2-3.

<sup>535</sup> *Id.* at \*3.

<sup>536</sup> *Id.* at \*4.

<sup>537</sup> *Id.*

<sup>538</sup> *Id.* at \*3. In 1999, Ontario gaming laws were amended to permit casinos to extend credit to a player who filled out an exhaustive credit file. Ontario Gaming Control Act, R.R.O. ch. 385/99, § 29(1)-(4), (11), (12) (1999). A player must also sign a countercheck to the casino, which is then deposited if the credit is not repaid within thirty banking days. *Id.*

Quebec courts reached a similar result concerning the enforcement of a New Jersey judgment in *Auerbach v. Resorts International Hotel, Inc.*<sup>539</sup> In that case, the appellate court affirmed a trial court's decision to enforce a debt, notwithstanding the fact that Quebec laws would have barred enforcement.<sup>540</sup> The court stressed that the action would have been unenforceable under the civil code of lower Canada.<sup>541</sup> The court likewise affirmed the New Jersey judgment, as "it would be quite contrary to public order if Quebec became a refuge for gamblers who could keep winnings from a gaming or betting activity yet refuse to pay debts they had previously contracted and acknowledged by signing some cheque or credit note."<sup>542</sup>

In Quebec, an unusual, and apparently not illegal, method of providing credit for gambling has developed at the Montreal Casino, where loan sharks will lend money to players in casino restrooms.<sup>543</sup> Apparently, lending at ten percent for twenty-four hours is not a criminal offense in Quebec, and loan sharks only provide gamblers with casino tokens, not cash.<sup>544</sup>

Alberta will also enforce gambling judgments from the United States. In *MGM Hotel Inc. v. Kiani*,<sup>545</sup> a casino asked the court to enforce a Nevada default judgment.<sup>546</sup> Adopting the position taken in *Maalouf*, the Master granted summary judgment in favor of the casino, explaining that public policy could no longer bar relief, as gambling had become an accepted "indoor sport" in Alberta.<sup>547</sup> The result may have been different, however, if the Nevada casino had attempted to enforce a gambling debt directly in an Alberta court, without having first obtained a default judgment.

In *Financial Collection Agencies Ltd. v. Edenoste*,<sup>548</sup> a collection agency that was assigned the gambler's nineteen thousand

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<sup>539</sup> [1991] 89 D.L.R.4th 688, available at 1991 D.L.R. LEXIS 2159.

<sup>540</sup> *Id.* at 688.

<sup>541</sup> *Id.* at 690; see R.S.Q. ch. XVI, art. 2630 (2000).

Art. 2630. Where gaming and wagering contracts are not expressly authorized by law, the winning party may not exact payment of the debt and the losing party may not recover the sum paid.

The losing party may recover the sum paid, however, in cases of fraud or trickery or where the losing party is a minor or a person of full age who is protected or not endowed with reason.

*Id.*

<sup>542</sup> *Auerbach*, 89 D.L.R.4th at 693.

<sup>543</sup> Lynn Moore, *Loan Sharks Hunt for Prey in Quebec Casinos: Some Money-Lenders have been Banned from Gambling Sites, but Lending Cash is Not Illegal*, VANCOUVER SUN, Jan. 20, 1997, at B10.

<sup>544</sup> *Id.*

<sup>545</sup> No. 9703 09761, 1997 A.C.W.S.J. LEXIS 16440 (Ont. Ct. App. Nov. 6, 1997).

<sup>546</sup> *Id.* at \*1.

<sup>547</sup> *Id.* at \*12.

<sup>548</sup> No. 9203 23830, 1994 A.C.W.S.J. LEXIS 71704 (Alta. Q.B. June 7, 1994).



dollar gambling debt sued the gambler's estate.<sup>549</sup> The Master denied the plaintiff's motion for summary judgment, and referred the matter for trial based on the affirmative defense of champerty.<sup>550</sup> The court then explained why this collection agency agreement was atypical:

[I]n the normal course of business a collection agency would arrange to have legal proceedings commenced, and would look to the client to reimburse it for an amount disbursed in having the matter sued to judgment. Thereafter the collection agency would be entitled to some agreed commission on funds it actually collected. That is a totally different kind of arrangement from the one that was concluded between Gold Nugget and F.C.A. here, where F.C.A. took over the Gold Nugget claim entirely, undertook to be itself responsible for legal expenses, and agreed to pay Gold Nugget a certain percentage of funds collected. That sort of an arrangement appears to fit within the definition of a champertous agreement, and appears to involve officious intermeddling.<sup>551</sup>

In Manitoba, the English Gaming Act of 1835 was held by the Court of Appeals to be enforceable under Manitoban law, notwithstanding various constitutional challenges.<sup>552</sup> In *Red River Forest Products Inc. v. Ferguson*,<sup>553</sup> the respondent purchased a two hundred thousand dollar promissory note to satisfy a gambling debt.<sup>554</sup> The plaintiff argued that the Gaming Act of 1835 is not valid because it was not translated into both official languages, as is required by the Manitoba Act of 1870.<sup>555</sup> The trial court concluded that, while the Gaming Act is valid in Manitoba, the note was given for illegal consideration, and was therefore unenforceable.<sup>556</sup> The appellate court agreed, stating:

The purpose of the Gaming Act is an endeavor to regulate and prevent excessive gambling, and the primary objects of the statute are to declare every agreement, note, bill and other forms of security, the consideration for which is money won at gaming, to have been made or given for an illegal consideration, and to enable the loser of a wager to recover it back after it has been paid to the winner. It is not legislation the purpose and object of

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<sup>549</sup> *Id.* at \*2-4.

<sup>550</sup> *Id.* at \*22. The court cited Black's Law Dictionary to define champerty as: "a bargain by a stranger with a party to a suit, by which such third person undertakes to carry on the litigation at his own cost and risk in consideration of receiving, if successful, a part of the proceeds sought to be recovered." *Id.* at \*12.

<sup>551</sup> *Id.* at \*18.

<sup>552</sup> *Red River Forest Prod., Inc. v. Ferguson*, [1992] 98 D.L.R.4th 697, 698, available at 1992 D.L.R. LEXIS 2363.

<sup>553</sup> *Id.*

<sup>554</sup> *Id.* at 700.

<sup>555</sup> *Id.* at 699.

<sup>556</sup> *Id.*

which is directly concerned with bills of exchange or promissory notes.<sup>557</sup>

Ultimately, the appellate court rejected the plaintiff's appeal.<sup>558</sup>

#### VIII. FRANCE

French law concerning gaming and betting has evolved “from moral prohibition, through tolerance, to modern organization as a collective activity bringing income to the state.”<sup>559</sup> The drafters of the French Civil Code reluctantly welcomed this new “modern organization.”<sup>560</sup> The drafters' hostility concerning gaming is evident from the tone of the Civil Code, and from the existence of the high standard that is required before any action for recovery will succeed.<sup>561</sup> The Civil Code states, “The law does not allow an action for a debt at play or for the payment of a wager.”<sup>562</sup> Additionally, the Civil Code denies relief for any recovery of paid wagers providing, “In no case can the loser recover what he has voluntarily paid, unless there . . . [has] been on the part of the winner foul play, fraud, or cheating.”<sup>563</sup>

Consistent with the harsh standards of the Civil Code, the *Cour de Cassation*<sup>564</sup> has historically held that checks remitted to an authorized gambling casino are void, and therefore, the loser may still refuse to pay even if he wrote a check to the winner.<sup>565</sup> However, the *Cour de Cassation* has recently reversed its prior line of cases. Currently, checks remitted to authorized gambling casinos are valid, and thus, lenders have recourse against losers for the payment of the debts.<sup>566</sup> These recent decisions make it apparent that “modern organization” of gaming is slowly achieving acceptance in France, although the Civil Code, with its harsh tone and standards, is still in effect to this day.

#### IX. GERMANY

German casinos, like those of many other European nations, cannot extend credit.<sup>567</sup> German law concerning gambling debts is

<sup>557</sup> *Id.* at 717.

<sup>558</sup> *Id.* at 699.

<sup>559</sup> J. Schmidt-Szalewski, *France*, in 2 CONTRACTS 242 (Kluwer Law Int'l Supp. 25 Oct. 1999).

<sup>560</sup> *Id.*

<sup>561</sup> *Id.* See also C. CIV. §§ 1965-67, available at <http://www.napoleonseries.org/reference/political/code/book3/title12.cfm>.

<sup>562</sup> C. CIV. § 1965.

<sup>563</sup> *Id.* § 1967.

<sup>564</sup> *Cour de Cassation* refers to the highest court of ordinary jurisdiction in France.

<sup>565</sup> Schmidt-Szalewski, *supra* note 559, at 242.

<sup>566</sup> *Id.*

<sup>567</sup> Compare Joseph Kelly et al., *Germany*, in INTERNATIONAL CASINO LAW 379 (Anthony N. Cabot et al. eds., 3d ed. 1999) [hereinafter INT'L CASINO LAW], with Magdolna Kocsis, *Hungary*, in INT'L CASINO LAW *supra*, at 432 (“According to the Hungarian regula-

clear—they are unenforceable and if the losing party pays the debt, he may not recover any monies.<sup>568</sup> The relevant statute states:

[Non-binding obligation]

(1) No obligation is created by gaming or betting. What has been given by reason of the gaming or betting may not be demanded back on the ground that no obligation existed.

(2) These provisions apply also to an agreement whereby the losing party, for the purpose of satisfying a gaming debt or a bet, incurs an obligation towards the other party, particularly an acknowledgment of the debt.<sup>569</sup>

Moreover, German courts will not enforce a futures contract, because futures contracts are considered to be gaming contracts.<sup>570</sup>

The courts have also refused to register foreign gambling judgments. In *Societe Generale Alsacienne de Banque SA v. Koestler*,<sup>571</sup> the European Court of Justice held that Germany did not have to recognize gambling debts, even if they were legal in the country where the debt arose, so long as German law was applied in a nondiscriminatory manner.<sup>572</sup> In *Koestler*, the plaintiff was a French bank, which, on the instructions of the defendant, placed futures orders on the Paris stock exchange.<sup>573</sup> The defendant, a German resident, incurred a large overdraft with the bank as a result of the losses he incurred.<sup>574</sup> The court held that the obligations entered into by the defendant must be treated in the same way as debts arising out of a wagering contract.<sup>575</sup> The court further found that because Germany barred recovery by legal action of certain debts, such as debts arising out of wagering contracts, this cause was not actionable in court, even though it may have been actionable in the member state in which it occurred.<sup>576</sup>

In *LG Mönchengladbach*,<sup>577</sup> a German court refused to enforce a gambling debt judgment from the U.S. District Court for Nevada.<sup>578</sup> The German court suggested that the litigation should

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tions, casinos cannot grant credit to the gamblers.”), and Malgorzata Rogowicz-Angierman, *Poland*, in *INT’L CASINO LAW*, *supra*, at 454 (“In Poland casinos are not allowed to grant credits to their clients. Any claims with regard to the games are resolved by a casino manager, and in case of any further questions, by an appropriate court.”).

<sup>568</sup> 1 B.S. MARKESINI ET AL., *THE LAW OF CONTRACTS AND RESTITUTION: A COMPARATIVE INTRODUCTION* 726-27 (Clarendon Press 1997).

<sup>569</sup> § 762 BGB. German law allows for the enforcement of a lottery or raffle contract, only if it is approved by the government. *Id.* § 763.

<sup>570</sup> *Id.* § 764.

<sup>571</sup> 1978 E.C.R. 1971.

<sup>572</sup> *Id.* at 1981.

<sup>573</sup> *Id.* at 1978.

<sup>574</sup> *Id.*

<sup>575</sup> *Id.* at 1979.

<sup>576</sup> *Id.* at 1981.

<sup>577</sup> Landgericht Mönchengladbach, 34 O 87/93, Aug. 6, 1994, at 1374.

<sup>578</sup> *Id.*

have been commenced directly in Germany where the bettor could use the defense of compulsive gambling.<sup>579</sup> In conclusion, the court stated that it would be against fundamental principles of the German legal system to allow an entity to profit from a person's gambling problem.<sup>580</sup>

#### X. GREECE

Greece prohibits both the enforcement of gambling debts, and recovery actions by gamblers for sums already paid.<sup>581</sup> However, like many European nations, Greek law creates an exception for recovery of gambling-related sums paid on account of fraud by the winner.<sup>582</sup> According to Article 844 of the Civil Code, gambling debts do not constitute an enforceable obligation,<sup>583</sup> there are, however, exceptions. Greek legislation has made gambling debts related to certain permitted forms of gaming, such as football pools, enforceable.<sup>584</sup> Additionally, legal casinos may be exempted from the general prohibition against the enforcement of gambling debts if the debts have been legally verified.<sup>585</sup> The Greek government has reportedly begun to require casinos to "face some heavy house rules including forcing customers to show their tax returns as proof that they can afford to play" after the suicide of a businessman who ran up gambling debts in the amount of two billion drachma.<sup>586</sup>

#### XI. HONG KONG

Hong Kong decisions have determined that enforcement of a gambling debt incurred legally in another jurisdiction does not violate Hong Kong public policy. In *Wong Hon v. Sheraton Desert Inn Corp.*,<sup>587</sup> the defendant issued three checks for nearly \$2.5 million (U.S.) in return for twenty markers from the plaintiff's Las Vegas casinos.<sup>588</sup> The defendant's checks were dishonored.<sup>589</sup> The Court of Appeals affirmed the lower court's judgment against the

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<sup>579</sup> *Id.*

<sup>580</sup> *Id.*

<sup>581</sup> Michael P. Stathopoulos, *Hellas*, in 3 *CONTRACTS* 1, 31 (Kluwer Law & Taxation supp. 5 Sept. 1994).

<sup>582</sup> *Id.* at 241.

<sup>583</sup> John Andrews Anagnostaras & Harry Melvani, *Greece*, in *INT'L CASINO LAW*, *supra* note 567, at 422.

<sup>584</sup> Stathopoulos, *supra* note 581, at 241.

<sup>585</sup> Anagnostaras & Melvani, *supra* note 583, at 422 (citing casino Law No. 2206/1994 (art. 3.9)).

<sup>586</sup> Equivalent to about £4.3 million. *European Business: Can't Pay, Won't Pay, Mustn't Bet*, *DAILY TELEGRAPH* (London), Mar. 4, 1998, at 29, available at 1998 WL 3001355.

<sup>587</sup> 1995 HKC LEXIS 719 (Ct. App. July 14, 1995).

<sup>588</sup> *Id.* at \*6.

<sup>589</sup> *Id.*

defendant.<sup>590</sup> Specifically, the court disregarded the defendant's contention that the markers were not a loan.<sup>591</sup> The court noted that the transaction was valid pursuant to Nevada law and English authority.<sup>592</sup> Thus, there was no violation of the *Statute of Anne*, which is incorporated into Hong Kong law.<sup>593</sup> Lower courts have similarly concluded that loans to gamblers, in jurisdictions where they were legal, do not bar enforcement of the debt in Hong Kong. In its decision in *Wong Hon*,<sup>594</sup> for example, the trial court opined that Hong Kong law should not dictate the behavior of those outside of the nation.<sup>595</sup>

In *Las Vegas Corporation v. Lo Yuk Leung*,<sup>596</sup> a Nevada casino sued a Hong Kong citizen over unpaid gambling markers totaling nearly three million dollars (U.S.).<sup>597</sup> The debtor sought a stay of the casino's suit on the grounds that Nevada, rather than Hong Kong, was the proper venue for the action.<sup>598</sup> The court determined that this argument had no merit and was merely a delaying tactic.<sup>599</sup> When this argument was unsuccessful, the debtor then utilized three defenses in response to the casino's summary judgment motion.<sup>600</sup> These defenses included: there was no valid credit instrument, the Nevada law was unconstitutional, and that recovery would be against public policy.<sup>601</sup>

The judge dismissed any evidentiary conflicts as to whether the markers constituted valid credit instruments pursuant to Nevada law.<sup>602</sup> On the constitutionality issue, after hearing experts on both sides, the judge determined that the Nevada law was not in violation of the U.S. Constitution.<sup>603</sup> Perhaps the most interesting aspect was the judge's analysis of whether enforcement of the Nevada gambling debt would violate Hong Kong's public policy. While the court stated that gambling is generally unlawful in Hong Kong, it noted that there was some legal, and even government-sponsored, gambling.<sup>604</sup> Thus, it concluded that public policy did not make gambling per se illegal.<sup>605</sup>

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590 *Id.* at \*17.

591 *Id.* at \*8.

592 *Id.* at \*11, 14.

593 *Id.* at \*12-14.

594 1995 HKCU LEXIS 95 (S. Ct. H.K. Mar. 10, 1995).

595 *Id.* at \*4.

596 1997 HKCU LEXIS 959 (High Ct. H.K.1 Nov. 28, 1997).

597 *Id.* at \*1.

598 *Id.* at \*1-2.

599 *Id.* at \*7-8.

600 *Las Vegas Hilton, Corp. v. Lo Yek Leung*, 1998 HKCU LEXIS 40, at \*1 (High Ct. H.K. Admin. 1 Jan. 19, 1998).

601 *Id.*

602 *Id.* at \*7-8.

603 *Id.* at \*13.

604 *Id.* at \*18-19.

605 *Id.* at \*19.

The defendant also argued that the debt should not be enforced because he was a compulsive gambler.<sup>606</sup> The court rejected this defense, explaining that persons afflicted with many types of addictions are held responsible for their actions, and businesses do not have a duty to protect their patrons from themselves.<sup>607</sup> In conclusion, the judge stated that it would be extremely arrogant to refuse to enforce debts that were legally incurred in another nation.<sup>608</sup>

## XII. ISRAEL

Israeli law states that contracts are void if illegal, immoral, or against public policy.<sup>609</sup> The Israeli courts do not consider gambling to be against a law, morality, or public policy.<sup>610</sup> Israeli law has legalized some forms of gambling, including its national lottery.<sup>611</sup> Thus, so long as a gambling debt was legally incurred, it is enforceable.<sup>612</sup> However, Israeli law does not allow the enforcement of an illegal gambling debt.<sup>613</sup> Israel has retained the skill versus chance distinction from Roman law. The Israeli courts define unenforceable gambling contracts as “a gambling, lottery or betting contract under which a party may win some benefit, the winning being dependent on fate, guess-work or chance, rather than on understanding or ability, and which is not regulated or permitted by law.”<sup>614</sup>

Israeli courts have determined that foreign gambling debt judgments are not per se against Israeli public policy.<sup>615</sup> Should an Israeli citizen incur a gambling debt in a foreign jurisdiction, it will be enforced so long as the final judgment is from a country that will enforce an Israeli judgment.<sup>616</sup> Application for enforcement in Israel must be made no later than five years after the date of the foreign judgment, and the debtor must have had a reasonable opportunity to present his arguments.<sup>617</sup> Nevertheless, the courts retain a narrow residual discretion to refuse enforcement of foreign judgments.<sup>618</sup>

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<sup>606</sup> *Id.* at \*20.

<sup>607</sup> *Id.* at \*20-21.

<sup>608</sup> *Id.* at \*26.

<sup>609</sup> The Contracts (General Part) Law, 1973, 27 L.S.I. 122, (1972-73).

<sup>610</sup> *Id.*

<sup>611</sup> Avaraham Katz-Oz, *Words From the Chairman*, at [http://www.pais.co.il/new\\_pais/serve/Templates/english/words.asp?p\\_folderID=212](http://www.pais.co.il/new_pais/serve/Templates/english/words.asp?p_folderID=212) (last visited Mar. 23, 2002).

<sup>612</sup> 27 L.S.I. 122.

<sup>613</sup> *Id.*

<sup>614</sup> *Id.*

<sup>615</sup> Memorandum from Gil White, Attorney, Herzog, Fox & Neeman, to Joseph Kelly, Professor of Business Law, SUNY College Buffalo (Nov. 14, 2001) (on file with Chapman Law Review).

<sup>616</sup> *Id.*

<sup>617</sup> *Id.*

<sup>618</sup> *Id.*

## XIII. ITALY

Italian law does not allow an action to enforce debts arising from gambling or wagers, even if the debt is incurred while gambling legally.<sup>619</sup> Italy has retained the Roman law tradition. Wagers on sporting events and racing, by both participants and spectators, are exempt from the non-actionability rule.<sup>620</sup> Courts may reject or reduce claims for winnings on sporting events and races if the court considers the amount of the wager to be excessive.<sup>621</sup>

Italian law also does not allow the extension of credit for the purpose of gambling because such loans are against good morals.<sup>622</sup> Additionally, recovery actions are not permitted.<sup>623</sup> If bets are placed on state lotteries or contests sponsored by the state, a winner may file an action to claim winnings from the state.<sup>624</sup>

## XIV. JAPAN

Gambling is prohibited in Japan, and winners may not enforce gambling claims against losers because such claims are against public policy.<sup>625</sup> However, a gambler who loses may be able to recover his or her losses under a theory of restitution because the benefactor of the losses obtained the wagers illegitimately.<sup>626</sup>

Japan has a policy of recognizing and enforcing final judgments of foreign courts.<sup>627</sup> Ordinarily, foreign judgments that are contrary to public policy are not enforced in Japan, but this rule is not applied to transactional cases.<sup>628</sup> Therefore, money judgments from foreign courts will be enforced even if the judgment is based on "gambling or other immoral transactions."<sup>629</sup> It is reported that this rule allowed a casino to recover a gambling debt in a Japanese court when the defendant did not raise the public policy issue.<sup>630</sup>

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<sup>619</sup> C.C. 1933, *translated in* THE ITALIAN CIVIL CODE 132 (Oceana Publ'n, Ind. Aug. 2001).

<sup>620</sup> C.C. 1934, *translated in* THE ITALIAN CIVIL CODE, *supra* note 619.

<sup>621</sup> *Id.*

<sup>622</sup> P.H. MONATERI ET AL., *Italy*, in 3 CONTRACTS 126 (Kluwer Law Int'l Supp. 22 Jan. 1999).

<sup>623</sup> *Id.*

<sup>624</sup> *Id.*

<sup>625</sup> HIROSHI ODA, JAPANESE LAW 206 (Butterworths 1992).

<sup>626</sup> *Id.*

<sup>627</sup> 5 DOING BUSINESS IN JAPAN at 5-60 (Zentaro Kitagawa ed., 2001).

<sup>628</sup> *Id.* at 5-64.

<sup>629</sup> *Id.*

<sup>630</sup> *Id.* at 5-65 (citing *Las Vegas v. Chin*, 794 HANREI TIMES 246 (Tokyo Dist. Ct. Dec. 16, 1991)).

It must be cautioned that Japan's laws on conflicting judgments may lead to harsh results for parties seeking to enforce gambling debts through foreign court judgments. A Japanese debtor may sue in Japanese court to have his or her debt declared unenforceable as against public policy.<sup>631</sup> If a foreign judgment is rendered prior to the Japanese court's judgment, the foreign judgment will be enforced as *res judicata*.<sup>632</sup> However, if the party does not start an action to enforce the foreign court judgment prior to a Japanese court rendering a conflicting judgment, the Japanese judgment will protect the debtor from enforcement.<sup>633</sup>

#### XV. MALAYSIA

Malaysian courts have evidenced a willingness to enforce gambling debts incurred legally in another jurisdiction. In *Aspinall Curzon Ltd. v. Khoo Teng Hock*,<sup>634</sup> a gambler purchased chips at a licensed casino with a check and when he lost, he stopped payment on the check.<sup>635</sup> The casino sued him for the amount of the check in a British court, and then sought to register the British judgment in Singapore.<sup>636</sup> The defendant argued that the judgment should be unenforceable because it is against public policy in Great Britain.<sup>637</sup>

In dicta, the judge expressed criticism of the defendant's public policy defense stating, "[W]hat is public policy? . . . It is a very unruly horse, and when once you get astride it you never know where it will carry you. It may lead you from the sound law. It is never argued at all but only when other points fail."<sup>638</sup> The judge determined that the law of the country in which the contract was formed governs, in this case, Malaysia.<sup>639</sup> The court then held that the British judgment was enforceable because the contract was lawful under Malaysian law and did not violate Malaysian public policy.<sup>640</sup>

In another recent case, it was reported that a businessman, Datuk Sng Chee Hua, sought to set aside a British judgment for

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<sup>631</sup> *Id.* at 5-59.

<sup>632</sup> *Id.* However, the Japanese concept of *res judicata* is narrower than the American concept. *Res judicata* in Japan is "strictly limited to the immediate parties and the matters expressly contained in the formal disposition." *Id.* Therefore, Japanese law does not recognize the concept of collateral estoppel. *Id.*

<sup>633</sup> *Id.* at 5-69.

<sup>634</sup> 1991 MLJ LEXIS 147 (High Ct. Kuala Lumpur Feb. 18, 1991).

<sup>635</sup> *Id.* at \*5. Malaysian law permits the licensing of gaming houses. *Id.* at \*9-10, \*13.

<sup>636</sup> *Id.* at \*4-5.

<sup>637</sup> *Id.* at \*10-11.

<sup>638</sup> *Id.* at \*11-13 (citations omitted).

<sup>639</sup> *Id.* at \*10 (citing *Saxby v. Fulton*, 2 K.B. 208 (1909)).

<sup>640</sup> *Id.* at \*10, 13.



three hundred thousand pounds.<sup>641</sup> The gambler had reportedly wagered at Grosvenor Casino, a licensed London entity, and his check was dishonored.<sup>642</sup> The High Court reportedly rejected his argument that the enforcement of the debt was against public policy.<sup>643</sup> The debtor reportedly withdrew his appeal and, in a settlement recorded before the High Court, agreed to make installment payments over a stipulated period.<sup>644</sup>

## XVI. MEXICO

Mexican law does not permit the enforcement of a debt based on "forbidden gaming proceeds."<sup>645</sup> The Mexican Civil Code contains recovery provisions that are similar to the *Statute of Anne*. Under the Code, "Persons, or their heirs, who voluntarily pay a debt originating from a forbidden game are entitled to demand the return of fifty (50%) percent of what was paid. The remaining fifty (50%) percent shall not remain with the winner but shall be delivered to public charity."<sup>646</sup> This rule of unenforceability also serves to bar the enforcement of gambling debts converted into other forms, which would otherwise constitute a legally enforceable obligation.<sup>647</sup> Gaming debt losses from games that are not prohibited are enforceable "as long as the amount of the loss does not exceed one-twentieth of [the debtor's] assets. A cause of action provided under this Article shall be barred within thirty days."<sup>648</sup> Additionally, otherwise invalid "method[s] of chance" create legally recognized obligations when used to sell a dispute or divide a common asset.<sup>649</sup>

## XVII. THE NETHERLANDS

Modern Dutch law regards gaming and wagering contracts as unenforceable.<sup>650</sup> A loser may only claim restitution in instances

<sup>641</sup> *Businessman's 300,000 Pound Sterling Foreign Gambling Debt Settled*, MALAY. GEN. NEWS, Oct. 31, 2000.

<sup>642</sup> *Id.*

<sup>643</sup> *Id.*

<sup>644</sup> *RM1.7m Settlement Over Gambling Debt Recorded*, NEW STRAITS TIMES (Malay.), Nov. 1, 2000, at 15.

<sup>645</sup> C.C.D.F. art. 2764, translated in MEXICAN CIVIL CODE 631 (Abraham Eckstein & Enrique Zepeda Trujillo trans., West 1996) (Article 2764 "There is no cause of action under the law for a claim of forbidden gaming proceeds. The Penal Code shall set forth those games which are prohibited.").

<sup>646</sup> C.C.D.F. art. 2765, translated in MEXICAN CIVIL CODE, *supra* note 645.

<sup>647</sup> C.C.D.F. art. 2768, translated in MEXICAN CIVIL CODE, *supra* note 645.

<sup>648</sup> C.C.D.F. art. 2767, translated in MEXICAN CIVIL CODE, *supra* note 645 (Article 2767 "Whoever loses in a game or bet that is not forbidden shall be civilly obligated to pay, as long as the amount of the loss does not exceed one-twentieth (1/20) of his assets. A cause of action provided under this Article shall be barred within thirty (30) days.").

<sup>649</sup> C.C.D.F. art. 2771, translated in MEXICAN CIVIL CODE, *supra* note 645.

<sup>650</sup> Arthur S. Hartkamp & Marianne M. M. Tillema, *Netherlands*, in 3 CONTRACTS 1, 167 (Kluwer Law & Taxation supp. 4 June 1994).

of fraud.<sup>651</sup> Reminiscent of Roman law, a wagering debt incurred while betting on “games suitable for physical exercise”<sup>652</sup> is enforceable, but a judge may reduce or dismiss the claim if the amount is excessive.<sup>653</sup> Dutch law will, however, enforce a loan agreement, even if the lender was fully aware that the borrower intended to use the money for gambling.<sup>654</sup> Enforcement is only denied to a direct gambling contract; any other agreements connected to gambling contracts will be enforced,<sup>655</sup> but Dutch law prohibits credit gaming.<sup>656</sup> Despite the liberal enforcement rule for third party loans, the conversion of a direct gaming debt into a secondary obligation will not change the unenforceable nature of the debt.<sup>657</sup> Any person who does not violate house rules must be permitted entry into Dutch casinos.<sup>658</sup> Individuals may, however, voluntarily exclude themselves from all casinos nationwide.<sup>659</sup>

#### XVIII. RUSSIA

Since the demise of the Soviet Union, Russian law has been in a state of transition and uncertainty in many areas. It has been reported that Western creditors avoid suits in Russia partly “because of an unfavorable line of Arbitrazh court cases.”<sup>660</sup> Although the Russian Civil Code prohibits the enforcement of gambling debts,<sup>661</sup> licensed gambling is legal.<sup>662</sup> However, gambling claims based on fraud or extortion do receive legal protection.<sup>663</sup>

In a recent case, the Moscow Arbitrazh Court was faced with a contract in which one bank would purchase foreign currency from the other at a set price, and the other bank would later purchase the same quantity of currency at the Moscow Interbank Currency Exchange rate on a later date.<sup>664</sup> The court concluded

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<sup>651</sup> *Id.* (citing Civil Code art. 7A:1828).

<sup>652</sup> *Id.* (citing Civil Code art. 7A:1825).

<sup>653</sup> *Id.* (citing Civil Code art. 7A:1826).

<sup>654</sup> *Id.* (citing Civil Code art. 7A:1827).

<sup>655</sup> *Id.*

<sup>656</sup> Chris Hoogendoorn, *The Netherlands, in INT'L CASINO LAW, supra* note 567, at 451 (“Law does not allow credit gaming . . .”).

<sup>657</sup> Hartkamp & Tillema, *supra* note 650 (citing Civil Code art. 7A:1827).

<sup>658</sup> Hoogendoorn, *supra* note 656.

<sup>659</sup> *Id.*

<sup>660</sup> ‘Gaming’ Decisions May Bar Recovery in Russia on Bank Forward Contracts, *RUSS. & COMMW. BUS. L. REP.*, vol. 9 No. 15 (Nov. 18, 1998). The Arbitrazh Courts include the lower Moscow Arbitrazh Court and Appellate Division, the reviewing Federal Arbitrazh Courts, and the Supreme Arbitrazh Court, which is the court of last resort. Clifford Chance LLP, *Gaming Decision*, at <http://www.jura.uni-passau.de/fakultaet/lehrstuehle/Fincke/cliff2.htm> (last updated Sept. 30, 1998).

<sup>661</sup> GK RF art. 1062, *translated in*, *CIVIL CODE OF THE RUSSIAN FEDERATION* 481 (William E. Butler trans., 2d ed. 1997); Clifford Chance LLP, *supra* note 660.

<sup>662</sup> *Id.*

<sup>663</sup> *Id.*

<sup>664</sup> *Id.*

that this foreign currency transaction “represented a bet,”<sup>665</sup> as the obligations of one party depended upon a condition outside the parties’ control.<sup>666</sup> Therefore, the court held that the claims arising from the transactions were unenforceable under Article 1062 of the Civil Code of the Russian Federation.

However, the Federal Arbitrazh Court of the Moscow Circuit has reached the opposite conclusion on similar facts.<sup>667</sup> Given that Russian courts are not obligated to follow precedent,<sup>668</sup> uncertainty remains for Western creditors seeking to enforce questionable debts. What is clear, nonetheless, is that Russian law is hostile to the enforcement of gambling debts.<sup>669</sup>

### XIX. SINGAPORE

In Singapore, courts still follow British law, including the progeny of the *Statute of Anne*. Most important is section 18 of the Gaming Act of 1845, as incorporated into Singapore law in section 6 of its Civil Law Act.<sup>670</sup> In *Las Vegas Hilton Corporation v. Khoo Teng Hock Sunny*,<sup>671</sup> the plaintiff sued the defendant in Singapore to enforce gambling debts of over one million dollars (U.S.) from unpaid markers.<sup>672</sup> The court was concerned with three issues: where the contract to extend credit was made; whether Nevada or Singapore law should govern the contract; and if Nevada law governed, whether the contract was enforceable in Singapore.<sup>673</sup>

The court had little difficulty establishing that almost all credit discussions occurred in Nevada where the casino was located.<sup>674</sup> The court then applied the test of the “closest and most real connection” to determine the appropriate law to be applied.<sup>675</sup> The court concluded that Nevada law applied.<sup>676</sup> The court also stated that gambling was not per se illegal in Singapore.<sup>677</sup> It

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<sup>665</sup> *Id.*

<sup>666</sup> *Id.*

<sup>667</sup> GK RF art. 1062, translated in CIVIL CODE OF THE RUSSIAN FEDERATION, *supra* note 661.

<sup>668</sup> Clifford Chance LLP, *supra* note 660.

<sup>669</sup> GK RF art. 1062, translated in CIVIL CODE OF THE RUSSIAN FEDERATION, *supra* note 661.

<sup>670</sup> Sun Cruises Ltd. v. Overseas Union Bank Ltd., 1999 S.L.R. LEXIS 182, at \*6 (High Ct. May 31, 1999) (citing Civil Law Act Cap. 43, § 6 (1994)). Neither the Gaming Act, 1710, nor the Gaming Act, 1835, are part of the current law of Singapore. *Id.* at \*13.

<sup>671</sup> 1996 S.L.R. LEXIS 468 (High Ct. Aug. 3, 1996). For an analysis of public policy issues in this case, see Yeo Tiong Min, Comment, *Are Loans For International Gambling Against Public Policy?: Las Vegas Hilton Corporation t/a Las Vegas Hilton v. Khoo Teng Hock Sunny*, 1 SING. J. OF INT’L & COMP. L. 593 (1997).

<sup>672</sup> 1996 S.L.R. LEXIS at \*14.

<sup>673</sup> *Id.* at \*7.

<sup>674</sup> *Id.* at \*28.

<sup>675</sup> *Id.* at \*29.

<sup>676</sup> *Id.* at \*30.

<sup>677</sup> *Id.* at \*31.

noted that although gambling contracts were void, there was no law actually banning gambling in all forms.<sup>678</sup>

The court held that the transaction in question was not in violation of section 6 of the Civil Law Act because it was a loan.<sup>679</sup> The court cited to *Halsbury's Laws of England* as authority for the argument that loans are not governed by the prohibition.<sup>680</sup> The court held that when a gambling debt is incurred in a jurisdiction where gambling is legal, the debt is enforceable.<sup>681</sup>

The decision in *Las Vegas Hilton* has been confined to its facts by four subsequent Singapore decisions: *Star Cruise Services v. Overseas Union Bank Ltd.*,<sup>682</sup> *Sun Cruises Ltd. v. Overseas Union Bank Ltd.*,<sup>683</sup> *Star City Pty. Ltd. v. Tan Hong Woon*,<sup>684</sup> and *Quek Chiau Beng v. Phua Swee Pah Jimmy*.<sup>685</sup>

In *Star Cruise Services*, the plaintiff unsuccessfully sought to enforce a nine hundred thousand dollar (Sing.) debt. The defendant counterclaimed for \$9.1 million (Sing.), which he had paid the plaintiffs.<sup>686</sup> Several issues were presented to the court by the facts of the case, resulting in a forty-three-page decision.<sup>687</sup> The court determined that the fact that the gambling losses were called loans in the transaction documents was irrelevant, and merely a matter of semantics.<sup>688</sup> The gambling debts had been incurred on gambling cruises offered by Panamanian ships that had no destination.<sup>689</sup> The court noted that Panamanian law was substantially similar to Singapore law regarding gambling debts,<sup>690</sup> but determined that Singapore law should be applied.<sup>691</sup>

In exhaustive detail, a significant part of the opinion explained why the relevant British statute, section 18 of the Gaming

<sup>678</sup> *Id.* at \*40.

<sup>679</sup> *Id.* at \*33.

<sup>680</sup> *Id.* (citing 8 HALSBURY'S LAWS OF ENGLAND ¶ 607 (Butterworths 4th Ed. 1996)).

<sup>681</sup> *Id.* at \*34.

<sup>682</sup> 1999 S.L.R. LEXIS 181 (High Ct. Apr. 30, 1999).

<sup>683</sup> 1999 S.L.R. LEXIS 182 (High Ct. May 31, 1999).

<sup>684</sup> 2001 S.L.R. 95 (High Ct. May 21, 2001), *aff'd*, *Star City Pty. Ltd. v. Tan Hong Woon*, No. 600093 of 2001, slip op. (Ct. App. Feb. 25, 2002) (on file with Chapman Law Review).

<sup>685</sup> 2000 S.L.R. LEXIS 97 (High Ct. Nov. 24, 2000).

<sup>686</sup> *Star Cruise Serv.*, 1999 S.L.R. LEXIS 181, at \*17.

<sup>687</sup> *Id.*

<sup>688</sup> *Id.* at \*21.

<sup>689</sup> *Id.* at \*95-96.

<sup>690</sup> *Id.* at \*71. The court stated:

In Panama the core provision is embodied in art 1490 of the Civil Code. The material part of it provides that 'The law does not provide cause of action to recover what has been won in a game involving luck, stake at cards, or chance but the losing party may not repeat (sic) what he has voluntarily paid.' It means that although gaming is lawful, a gaming debt cannot be enforced and if paid cannot ordinarily be recovered. This is not surprising because of the way gaming transactions have been viewed almost universally.

*Id.* at \*82-83 (alteration in original).

<sup>691</sup> *Id.* at \*85.

Act of 1845, made gambling debts unenforceable for lack of consideration.<sup>692</sup> The court concluded that the 1845 Act, as interpreted by the courts, also barred derivative contract litigation because it was merely an attempt to circumvent the law.<sup>693</sup> The court stressed the importance of looking at the underlying purpose of a contract to determine whether it was a gaming contract.<sup>694</sup> It stated that if a debtor is given a loan and complete control of the funds, even if the loaning party knows it will be used for gambling, the loan will not be treated as a gambling debt.<sup>695</sup> However, if a lawyer attempts to make a gambling debt appear to be a legitimate loan, the court determined that the lawyer would be subject to discipline.<sup>696</sup> The court explained that section 6 does not prohibit gambling, nor does it prohibit the payment of gambling debts—gambling debts are debts of honor that should be paid—instead it merely prohibits the use of the courts to enforce such debts.<sup>697</sup>

In *Sun Cruises Ltd. v. Overseas Union Bank Ltd.*,<sup>698</sup> the court once again refused to enforce a five hundred thousand dollar (Sing.) gambling debt.<sup>699</sup> While the defendants pled various defenses, they were only successful on the argument based on section 6 of the Civil Law Act.<sup>700</sup> The court held that the five hundred thousand dollar (Sing.) cashier's order, given in exchange for gaming debts, was null and void, and the action on the cashier's check was an attempt to recover gambling winnings and was therefore void.<sup>701</sup>

Almost immediately after the *Star Cruise* and *Sun Cruises* cases were decided, a debtor who lost \$360,000 (U.S.) to a Las Vegas casino sought to reopen a judgment against him that had been decided on the basis of the earlier *Las Vegas Hilton* decision.<sup>702</sup> In *Poh Soon Kiat v. Hotel Ramada of Nevada t [sol] v. Tropicana Resort & Casino*,<sup>703</sup> the court recognized the *Star Cruise* and *Sun Cruises* decisions, but concluded that, even if it agreed with these decisions, it did not have the power to set aside the earlier judgment.<sup>704</sup>

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692 *Id.* at \*32.

693 *Id.* at \*49-50.

694 *Id.* at \*59.

695 *Id.* at \*69.

696 *Id.* at \*72.

697 *Id.* at \*81 (citing section 6 as the Singapore equivalent of the Gaming Act of 1845).

698 1999 S.L.R. LEXIS 182 (High Ct. May 31, 1999).

699 *Id.* at \*5.

700 *Id.* at \*13.

701 *Id.* at \*19.

702 1999 SLR LEXIS 216, at \*6-7 (High Ct. June 30, 1999).

703 *Id.*

704 *Id.* at \*8, 11, 18.

In *Quek Chiau Beng*, a gambler lost \$160,000 (Sing.) at an Australian casino.<sup>705</sup> The court, the same that had earlier adjudicated the *Sun Cruises* and *Star Cruise* cases, held that the claims were forbidden by Singapore law and could not be heard.<sup>706</sup> The court emphasized that, unlike the allegations in *Las Vegas Hilton Corp.*, the allegation in this case contained no indication that the transaction was a loan.<sup>707</sup> Finally, the court held that no action could have been brought in Australia, and the plaintiff, a junket operator, had no standing to litigate.<sup>708</sup>

In *Star City Pty. Ltd.*, the plaintiff sought to collect \$194,840 (Austl.) from the defendant for, what the casino characterized as, unpaid gaming loans.<sup>709</sup> The defendant traveled at the plaintiff's expense to a Sydney casino, and exchanged five house checks, each worth fifty thousand dollars (Austl.), for chip purchase vouchers that he then exchanged for chips.<sup>710</sup> In deciding the applicable law, the court concluded that section 5(2) of the Civil Law Act of Singapore was controlling.<sup>711</sup> The court determined that section 5(2) prohibits actions to recover gambling winnings, acting as a procedural bar to the plaintiff's action.<sup>712</sup> The court noted that the only real issue was whether the plaintiff sought recovery of gambling winnings.<sup>713</sup> The court then analyzed British cases in order to illustrate that British courts were hostile to attempts to circumvent English anti-gaming laws.<sup>714</sup> The court concluded there was no essential difference when a check was exchanged for chip purchase vouchers instead of for chips.<sup>715</sup> In its conclusion, the court cited a law review article that argued section 5 was not an attempt to ban immoral behavior, but an attempt to avoid the waste of judicial resources on such behavior.<sup>716</sup>

Early attempts to enforce gambling debts in Singapore were successful. However, modern Singapore courts have been uniformly unwilling to enforce those debts, regardless of how the underlying transactions were structured.

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<sup>705</sup> 2000 S.L.R. LEXIS 97 (High Ct. Nov. 24, 2000).

<sup>706</sup> *Id.* at \*17.

<sup>707</sup> *Id.* at \*14-15.

<sup>708</sup> *Id.* at \*17.

<sup>709</sup> 2001 S.L.R. LEXIS 95, \*7 (High Ct. May 21, 2001).

<sup>710</sup> *Id.* at \*6.

<sup>711</sup> *Id.* at \*26.

<sup>712</sup> *Id.* at \*12-13.

<sup>713</sup> *Id.* at \*13.

<sup>714</sup> *Id.* at \*13-23.

<sup>715</sup> *Id.* at \*23.

<sup>716</sup> *Id.* at \*26 (citing Yeo Tiong Min, *Loans for Extraterritorial Gambling and the Proper Law*: Loh Chee Song v Liew Yong Chian, 1998 SING. J. LEGAL STUD. 421, at 428-29).

## XX. SOUTH AFRICA

South African law is a mixture of Roman-Dutch, with influences from the British common law.<sup>717</sup> Gambling debts were historically considered *naturalis obligatio*, or debts of honor, which were legally unenforceable.<sup>718</sup> However, legislation, such as the National Gambling Act 33 of 1996 and the Lotteries Act 57 of 1997, has legalized gaming nationwide.<sup>719</sup> Subsequently, each of the provinces has also passed legislation making gaming debts legal and enforceable.<sup>720</sup> One issue that the courts have struggled with is whether a legal gambling debt in one province can be enforced in another province.<sup>721</sup>

In *Sea Point Racing CC v. Pierre de Villiers Berrange N.O.*,<sup>722</sup> the South African courts were faced with the question of whether a gambling debt from one province could be enforced in a sister province.<sup>723</sup> The plaintiff, who was a Cape Town-based bookmaker, was suing the estate of a decedent from another province for nearly four million rand in gambling debts.<sup>724</sup> A court *a quo* considered the issue of whether or not it could enforce the debt, and applied the Western Cape Gambling and Racing Law No. 4 of

<sup>717</sup> See generally WILLE'S PRINCIPLES OF SOUTH AFRICAN LAW 20-21, 27, 35-37 (Dale Hutchinson et al. eds., 8th ed. 1991).

<sup>718</sup> F. Willem Grosheide, *The Gentleman's Agreement in Legal Theory and in Modern Practice – the Dutch Civil Law Perspective* (1998), at <http://www.library.uu.nl/publarchief/jb/congres/01809180/15/b6.pdf> (last visited Mar. 26, 2002).

<sup>719</sup> BRSA § 13(1)(f) of National Gambling Act 33 of 1996; BRSA § 14(2)(i) of Lotteries Act 57 of 1997.

<sup>720</sup> See Marita Carnelley, Case Note, *Enforcement of Lawfully Incurred Gambling Debts*, DE REBUS 57 (May 2001).

All these Acts contain a provision that any gambling debt lawfully incurred is enforceable in a court of law, notwithstanding provisions of the common law or any other law to the contrary (Lotteries Act (s 65), National Gambling Act (s 18), Gambling and Betting Act 5 of 1997 (Eastern Cape) (s 87); Free State Gambling and Racing Act 6 of 1996 (s 95); Gambling and Betting Act (Gnuteng) 4 of 1995 (s 75); KwaZulu-Natal Gambling Act 10 of 1996 (s 92); Mpumalanga Casino and Gaming Act 5 of 1995 (s 87); Northern Cape Gambling and Racing Act 5 of 1996 (s 93(1)); Northern Province Casino and Gaming Act 4 of 1996 (s 91); North West Casino, Gambling and Betting Act 13 of 1994 (s 90(1)) and the Western Cape Casino and Racing Law 4 of 1996 (s 79(1)).

*Id.*

<sup>721</sup> Section 18 makes "gambling debts incurred by any person in the course of any gambling activity regulated by law . . . enforceable in a court of law." *Gaming Ass'n of South Africa (Kwa-Zulu Natal) v. Premier of Kwa-Zulu Natal*, 1997 (4) SALR 494, 501 (Natal Provincial).

<sup>722</sup> No. AR 774/99, slip op. (High Ct. Kwazulu-Natal Provincial Aug. 1, 2000) (on file with Chapman Law Review).

The learned judge in the court *a quo* found that the Western Cape Legislation only applied within the territory of that province and could not affect the law as it applies to this province. He found that the KwaZulu-Natal legislation could only regulate gambling within this province and could not purport to regulate gambling transactions elsewhere.

*Id.* at 3.

<sup>723</sup> *Id.* at 2.

<sup>724</sup> *Id.*

1996, which states: “Any debt lawfully incurred by a person . . . in the course of gambling shall . . . be enforceable in a court of law.”<sup>725</sup> However, that court found that the Western Cape Gambling Law could not affect the law that must be applied in the KwaZulu-Natal Province. The court then referred to the common law, which states that “a gambling debt is an obligation which is valid but not recoverable through the courts.”<sup>726</sup> That court dismissed the application with costs.<sup>727</sup> On appeal, the court pointed out that the lower court overlooked section 18 of the National Gambling Act.<sup>728</sup> Thereafter, the Kwazulu-Natal Division of the High Court of South Africa reversed the trial court, holding that gambling debts are enforceable throughout South Africa pursuant to the National Gambling Act.<sup>729</sup> Judgment was granted in favor of the plaintiff.<sup>730</sup>

## XXI. SPAIN

Traditionally, Article 1798 of the Spanish Civil Code did not allow gamblers to pursue an action to recover winnings or lost wagers unless there was fraud, or the gambler was a minor or incapacitated.<sup>731</sup> However, in 1995, the Supreme Court of Spain recognized a significant exception: if a gaming contract is entered legally, winnings are recoverable.<sup>732</sup> The court said that enforcing legal gambling debts was consistent with the Spanish Constitution’s principle of assuring the conduct of legal businesses.<sup>733</sup>

Article 1801 of the Spanish Civil Code requires a loser to pay legal gambling debts.<sup>734</sup> However, courts have discretion to either dismiss the suit or reduce the debt to the “extent it exceeds the wages of a prudent administrator.”<sup>735</sup> Spain will enforce gambling debts incurred in other countries if there is a treaty or judicial cooperation agreement between Spain and the country where the debt accrued.<sup>736</sup>

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<sup>725</sup> *Id.* (citing § 79(1) of Western Cape Gambling and Racing Law 4 of 1996).

<sup>726</sup> *Id.* at 3.

<sup>727</sup> *Id.*

<sup>728</sup> *Id.*

<sup>729</sup> *Id.* at 4.

<sup>730</sup> *Id.*

<sup>731</sup> C.C. art. 1798, *translated in* CIVIL CODE OF SPAIN 420-21 (Julio Romanach, Jr. trans., Lawrence Publ’g Co. 1978).

<sup>732</sup> E-mail from Ana Lemos, Co-founder and Former CEO of the Spanish Center for Legal Studies on Gaming, to Joseph Kelly, Professor of Business Law, SUNY College Buffalo (Sept. 4, 2001) (on file with Chapman Law Review).

<sup>733</sup> *Id.*

<sup>734</sup> “One who loses in a game or bet that is not prohibited is civilly liable.” C.C. art 1801, *translated in* CIVIL CODE OF SPAIN, *supra* note 731, at 421.

<sup>735</sup> *Id.*

<sup>736</sup> Lemos, *supra* note 732.



## XXII. SWITZERLAND

Switzerland traditionally did not allow the enforcement of debts, bills of exchange, or promissory notes that arose from gambling debts.<sup>737</sup> Even debts that were transferred to a third party in good faith were not enforceable.<sup>738</sup> Voluntary payments of gambling debts could be recovered if the payee acted unfairly when the debt was made, or if the gambler attempted to recover his or her money prior to actually placing a bet.<sup>739</sup> Switzerland also would not enforce foreign gambling debt judgments that creditors attempted to register in Swiss courts.<sup>740</sup>

It appears that the Swiss attitude toward enforcement of gambling debts is changing, as more casinos open in the country. In 1998, Switzerland amended its Code of Obligations so that debts legally incurred in authorized gaming establishments within Switzerland are enforceable.<sup>741</sup> Also, in late 2000, a Swiss court reportedly enforced a 1998 British judicial decision requiring a Swiss gambler to pay almost £770,000.<sup>742</sup>

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<sup>737</sup> Co art 513, translated in 1 SWISS CODE OF OBLIGATIONS 174 (Swiss-Am. Chamber of Comm. 1990)

<sup>738</sup> Co art 514, translated in 1 SWISS CODE OF OBLIGATIONS, *supra* note 379.

<sup>739</sup> *Id.*

<sup>740</sup> See Yves P. Piantino, *Recognition and Enforcement of Money Judgments Between the United States and Switzerland: An Analysis of the Legal Requirements and Case Law*, 17 N.Y.L. SCH. J. INT'L & COMP. L. 91, 119 n.157 (1997).

<sup>741</sup> Co art. 515a(D) (2001).

<sup>742</sup> *Sperrfrist 1200 Schonzeit fuer Zocker ist Vorbei Bundesgericht Laesst Betreuung eines Spielers zu*, Schweizerische Depeschagentur AG (SDA), Dec. 1, 2000.