

MISSISSIPPI

I. Definition of Gambling

1. Definition

"It is the character of the game, and not the skill or want of skill of the player, which brings it into or excludes it from the prohibition of the statute. The test to be applied in determining the character of the game is whether the element of skill predominates over the element of chance." MS Op. Att'y Gen. Allain, 1981 WL 40002 (October 26, 1981) (internal quotation omitted).

But certain games played for money, such as poker, are explicitly declared by statute to be gambling. MS ST § 75-76-5(k) (2009). In these situations, chance and skill are irrelevant, as the game is already declared to be illegal gambling. Slot machines are also defined as including both games of skill and games of chance. MS ST § 75-76-5(ff) (2009). Consideration and payoff are the only two elements required to find an illegal gaming machine; chance is not relevant under the statute. *Mississippi Gaming Com'n v. Henson*, 800 So.2d 110, 113 (Miss. 2001).

"Lottery" is defined to include certain activities in which chance predominates over skill. MS ST § 75-76-3(6)(b)(2009).

2. Exemptions

Prize, chance, and consideration are needed for a lottery. *Mississippi Gaming Com'n v. Treasured Arts, Inc.*, 699 So.2d 936, 938 (Miss. 1997).

Three-minute phone cards with scratch-off game sold for \$2 did not constitute a lottery where seller was paying long-distance company \$.66 per minute for minutes sold. Affidavit presented to court stating that usual long-distance rate was \$.45 was irrelevant. No consideration was being paid for the chance to win. Fact that free game piece could be obtained through mail enforced this conclusion. *Mississippi Gaming Com'n v. Treasured Arts, Inc.*, 699 So.2d 936, 938 (Miss. 1997).

Whether consideration is present is often a fact question. Ability to receive a free game piece by mail is relevant, but not conclusive. 094 MS Op. Att'y Gen. 725 (1994).

Poker tournaments, even though no consideration is paid to play, are illegal. 005 MS Op. Att'y Gen. 080 (2005). MS ST § 97-33-1(2009) prevents the playing of games. MS ST § 75-76-5(k)(2009) includes poker in the definition of game.

A game where \$.05 is deposited and a trivia question is asked, with money as a prize, is not gambling because skill, and not chance, is involved. *Rouse v. Sisson*, 199 So. 777, 780 (Miss. 1941).

II. Definition of Bookmaking

MS ST § 75-76-55(1)(a)(2009) legalizes bookmaking only to the extent a license for such is obtained. In the absence of such license, conducting a bookmaking business is chargeable under the federal Illegal Gambling Business Act as a violation of state law even though bookmaking is not specifically designated as a crime. *U.S. v. Stewart*, 205 F.3d 840, 842 (5th Cir. 2000).

III. Specific Gaming Device Definitions

“Slot amusement machine or machine means any mechanical device or contrivance which is operated, played, worked, manipulated, or used by inserting or depositing any coin, slug, token, or thing of value, in which may be seen any picture or heard any music, or wherein any game may be played, or any form of diversion had.” MS ST § 27-27-3(2009).

“Slot machine means any mechanical, electrical or other device, contrivance or machine which, upon insertion of a coin, token or similar object, or upon payment of any consideration, is available to play or operate, the play or operation of which, whether by reason of the skill of the operator or application of the element of chance, or both, may deliver or entitle the person playing or operating the machine to receive cash, premiums, merchandise, tokens or anything of value, whether the payoff is made automatically from the machine or in any other manner.” MS ST § 75-76-5(ff)(2009).

“Gaming device means any mechanical, electromechanical or electronic contrivance, component or machine used in connection with gaming or any game which affects the result of a wager by determining win or loss. The term includes a system for processing information which can alter the normal criteria of random selection, which affects the operation of any game, or which determines the outcome of a game. The term does not include a system or device which affects a game solely by stopping its operation so that the outcome remains undetermined” MS ST § 75-76-5(2009).

Illegal slot machines under MS ST § 97-33-7(2009) are those that "(1) are operated by coin, token, or other consideration, and (2) dispense a product with (3) the possibility of dispensing additional items at varying quantities." *Trainer v. State*, 930 So.2d 373, 380 (Miss. 2006). There must be a substantial element of chance. *Rouse v. Sisson*, 199 So. 777, 778 (Miss. 1941).

Cherry Master machine was gaming device because it rewarded additional playing time, which is something of value (prize) for gambling purposes. *Mississippi Gaming Com'n v. Henson*, 800 So.2d 110, 114-15 (Miss. 2001).

IV. Bucket Shop Laws

Commodities exchanges and boards of trade may be established. MS ST § 87-1-11(2009). Contracts for future delivery of commodities may only be made through such lawful boards. MS ST § 87-1-13 (2009). Transactions conducted on a legitimate exchange or board are declared lawful. MS ST § 87-1-15 (2009). Cotton sold before it is planted is not illegal gambling in

futures when it is intended to be delivered. *Austin v. Montgomery*, 336 So.2d 745, 749 (Miss. 1976).

Contracts for the sale of futures to be settled on public market quotations, and not made on a lawful board of exchange, are void. MS ST § 87-1-19 (2009). Contracts for future delivery are void where no actual intent to deliver is present. *Laird, Bissell & Meeds v. Capps*, 80 So.2d 49, 49-50 (Miss. 1955). Bucket shops are places where transactions made void by MS ST § 87-1-19 are entered into; bucket shops are prohibited. MS ST § 87-1-21 (2009). Violating these sections is a felony; the penalty is not more than 2 years in jail and not more than \$1000; but for a second offense, the penalty is in the court's discretion.

Buying or selling commodities for future delivery, without intent to ever deliver, is a misdemeanor. MS ST § 87-1-31 (2009). Dealing in futures contracts is a misdemeanor punishable by \$50 to \$500 and up to 3 months in county. MS ST § 87-1-33 (2009).

V. Prohibition of Games of Skill

1. Poker/Card Games

Poker is specifically listed as a gambling game under MS ST § 75-76-5(k)(2009). Betting on such games is prohibited by MS ST § 97-33-1(2009).

2. Dice

3. Billiards

4. Bowling

5. Darts

VI. Express Exemptions

1. Social

2. Charity

MS ST §§ 97-33-51 through 97-33-81(2009), 97-33-101 through 97-33-109(2009), and 97-33-201 through 97-33-203(2009) constitute the Mississippi Charitable Bingo Law. Charity bingo and raffles are not considered gambling games and are exempt from the criminal statutes. MS ST § 97-33-51 (2009). All proceeds must go to the charitable organization. Op. Att'y Gen. Evans (Jan. 18, 1991); 097 MS Op. Att'y Gen. 427 (1997).

The remaining provisions cover disposition of proceeds, Mississippi Gaming Commission authority, definitions, licensing, applicant requirements and investigations, special licenses for benefit of person or group, inspections, session limits (8 per week), prize limitations (\$7500 per session not including pull-tabs), general conduct of games, records, reporting requirements, examination of books and records by Gaming Commission and Tax Commission, penalties, pull-tab requirements, equipment and supplies licensing, financial interests, Charitable Bingo Fund,

annual reports, Commission powers and duties, enforcement, manufacturer/operator/distributor licensing, payments to commercial lessors, and related matters.

Bingo is not a lottery, so the old (now repealed) constitutional lottery prohibition did not invalidate this act. *Knight v. State ex rel. Moore*, 574 So.2d 662, 669 (Miss. 1990).

Class II bingo machines that look like slot machines, and where the player plays against certain odds, rather than against other players for a common pool, are not authorized under the charity bingo act. Op. Att'y Gen. Frilot (March 19, 1992).

3. Chucky Cheese

MS ST §§ 27-27-3 *et seq* impose taxes on amusement machines.

Pinball machines which do not return to the operator or player thereof anything but free additional games or plays shall not be deemed to be gambling devices. MS ST § 97-33-7(2009).

4. Commercial

See section X, regarding casino "cruises."

5. Lottery

A section of the Mississippi Constitution prohibited lotteries until the repeal of that section in 1992. MS Const. art 4, § 98(2009). Before the repeal, the state construed "lottery" narrowly when it decided to implement the Gaming Control Act. MS ST § 75-76-3(6)(2009).

Prize, chance, and consideration are needed for a lottery. *Mississippi Gaming Com'n v. Treasured Arts, Inc.*, 699 So.2d 936, 938 (Miss. 1997).

6. Horseracing & Other Pari-mutuel

Betting on shooting matches, yacht races, and horse races is illegal. MS ST § 97-33-27 (2009). Fine up to \$500.

VII. Specific Internet Prohibition

VIII. Gaming Crimes & Penalties for Unlawful Gaming

Municipalities have the power to prohibit bucket-shops, games, and gambling houses; the municipalities can also set the punishment for such. MS ST § 21-19-19 (2009). They may also regulate slot machines and other gambling devices, so long as those laws do not conflict with other state laws. MS ST § 21-19-33 (2009).

It is illegal to give stuff away in the form of a lottery to encourage voting. MS ST § 23-15-561 (2009).

Antique slot machines (25 years old) are exempt from criminal statutes as long as not used for gambling. MS ST § 27-27-12 (2009).

MS ST §§ 75-76-301 through 75-76-311 (2009) make the following illegal: slugs, counterfeit chips, cheating, devices assist players in predicting outcomes of games. Penalty for a first violation is not more than 2 years in jail, and not more than \$10,000. Subsequent violations are not more than 10 years in jail, and not more than \$10,000.

Any unlawful gambling place may be enjoined as a nuisance. MS ST § 95-3-25 (2009).

Slugs in coin-operated machines: Any person who shall operate slot machine or other receptacle designed to receive coins in connection with the sale of property or service, by means of a slug or any false coin or by any means, method, trick or device whatsoever not lawfully authorized, is guilty of a misdemeanor. Up to \$100 and up to 30 days in jail. MS ST § 97-21-11 (2009).

Manufacturing such slugs or other devices is punishable by up to \$500 and up to six months in jail.

Vagrancy: A person who maintains himself mostly through gambling is a vagrant. MS ST § 97-35-37 (2009).

Dog Fights: Wagering on, or encouraging wagering on, dog fights is a felony. MS ST § 97-41-19 (2009).

One to three years in jail and \$1000 to \$5000.

RICO: Gambling offenses can be used as predicate acts under the State's racketeering statute. MS ST § 97-43-3.

Betting: Playing any game for money or betting or wagering on any game is punishable by up to \$500. MS ST § 97-33-1 (2009). This section only prohibits gambling. Op. Att'y Gen. Ringer (Aug. 19, 1991). This does not apply to lawful gaming. Sporting events, like pool and foosball, have an element of skill, so are not prohibited under this section; but betting on them is still prohibited. Op. Att'y Gen. Ringer (Aug. 19, 1991). Wagering with public money results in a \$500 fine, 30 days in jail, and removal from office. MS ST § 97-33-3 (2009). A winning gambler convicted must also pay over the amount won as a fine. MS ST § 97-33-5 (2009).

"[G]ame or gambling game means any banking or percentage game played with cards, with dice or with any mechanical, electromechanical or electronic device or machine for money, property, checks, credit or any representative of value, including, without limiting the generality of the foregoing, faro, monte, roulette, keno, fan-tan, twenty-one, blackjack, seven-and-a-half, big injun, klondike, craps, poker, chuck-a-luck (dai shu), wheel of fortune, chemin de fer, baccarat, pai gow, beat the banker, panguingui, slot machine, or any other game or device approved by the commission." MS ST § 75-76-5(k).

Possession of gambling devices: Possession of slot machine or gambling devices is illegal. No property rights exist in such machines and they are subject to confiscation. MS ST § 97-33-7 (2009).

Misdemeanor; up to \$500 and up to 3 months jail. Upon second offense, prison not less than 6 months, nor more than 2 years.

Since no property right exists in illegal machines, there is no Due Process right to a hearing before it is confiscated and destroyed. *Trainer v. State*, 930 So.2d 373, 381-82 (Miss. 2006).

Gaming tables: Keeping or exhibiting any game or gaming table is a crime. MS ST § 97-33-9. Fine of \$25 to \$2000 and up to 2 months in jail.

Club Gaming: An association of persons, commonly known as a "club," cannot have any interest in any gambling tables, banks, or games. MS ST § 97-33-11 (2009).

Misdemeanor; up to \$500.

Owner Liability: Permitting an illegal game is prohibited. MS ST § 97-33-13 (2009). Fine from \$100 to \$2000.

Snitching: If a guest illegally gambles, and the keeper of the inn or other place does not turn him in, the keeper shall be liable for \$20 to \$100. MS ST § 97-33-15 (2009).

Forfeiture: Money and property used in connection with gaming is forfeit. MS ST § 97-33-17 (2009). Resisting seizure of property is punishable by a \$1500 fine and discretionary jail time. MS ST § 97-33-19 (2009).

Minors: Gambling with a minor or allowing one to gamble is illegal. MS ST § 97-33-21 (2009). Minimum \$300 and minimum 3 months jail. The penalty is enhanced if you know the person is a minor. MS ST § 97-33-23 (2009).

Pools: Buying or selling chances in a pool is illegal. MS ST § 97-33-25 (2009).

Pay up to \$500, and jail up to 90 days.

Horses: Betting on shooting matches, yacht races, and horse races is illegal. MS ST § 97-33-27 (2009). Fine up to \$500.

All gambling laws are remedial, not penal, and so are construed liberally against the violator. MS ST § 97-33-29 (2009); *U.S. v. Stewart*, 205 F.3d 840, 843 (5th Cir. 2000).

Lotteries: Conducting a lottery is punishable by up to 5 years in prison. MS ST § 97-33-31 (2009). Advertising a lottery is punishable by \$25 to \$100 and up to 3 months in jail. MS ST § 97-33-33 (2009). Editors and publishers or newspapers are held liable for lottery advertisements in the papers. MS ST § 97-33-35 (2009). Punishment is \$100 to \$1000 and 10 days to 3 months

in jail. News dealers distributing the papers are guilty of a misdemeanor punishable by not less than \$10 or not less than 10 days in jail or both. MS ST § 97-33-37 (2009). Selling lottery tickets is punishable by \$25 to \$100 or 10 to 60 days in jail. MS ST § 97-33-39 (2009). Buying a lottery ticket while in the state is punishable by \$5 to \$25 and up to 10 days in jail. MS ST § 97-33-41 (2009). An agent for a lottery faces a fine of \$100 to \$500 and 3 to 6 months in jail. MS ST § 97-33-47 (2009).

Raffles: Holding a raffle is punishable by up to \$20 and up to 1 month in jail. MS ST § 97-33-49 (2009).

IX. Statute of Anne/ Recovery of Debts

"Contracts, judgments, securities, conveyances made, given, granted, or executed, where the whole or any part of the consideration or foundation thereof shall be for money, or any valuable thing won, lost, or bet at any game or games, or on any horse-race, cock-fight, or at any other sport, amusement, or pastime, or on any wager whatever, or for the reimbursing or repaying any money knowingly lent or advanced for the purpose of such gaming or gambling, or to be wagered on any game, play, horse-race, cock-fight, or on any sport, amusement, pastime, or wager, shall be utterly void." MS ST § 87-1-1 (2009). This does not apply to legal games, such as bingo that is regulated by statute. *Frank v. Dore*, 635 So.2d 1369, 1374 (Miss. 1994). Any property, real or personal, conveyed in connection with gambling, shall instead vest in the wife and children of the conveyor/debtor. MS ST § 87-1-3 (2009).

The loser of any bet or wager, or his wife and children, may sue to recover the property lost and actually paid over. MS ST § 87-1-5 (2009). This does not apply to bets made in licensed gaming vessels. Neither does it apply to lawful bingo games. *Frank v. Dore*, 635 So.2d 1369, 1374 (Miss. 1994).

Except as permitted in other sections, gaming debts not evidenced by a credit instrument are void and unenforceable and do not give rise to any administrative or civil cause of action. MS ST § 75-76-157 (2009). Casinos must report patron payout disputes to the gaming commission; certain procedures must be followed. MS ST § 75-76-159 (2009). But failure to follow the statute will not necessarily result in recovery for the patron where the evidence shows that the patron did not actually win. *Mississippi Gaming Com'n v. Freeman*, 747 So.2d 231, 244-45 (Miss. 1999). When a dispute is decided in favor of a patron, the debt is enforceable and must be paid by the casino within 20 days. MS ST § 75-76-165. Credit instruments are valid in a licensed casino. MS ST § 75-76-175 (2009).

Violation of a patron's Due Process rights may result when the casino fails to follow the proper statutory steps for disputes. *Grand Casino Biloxi v. Hallmark*, 823 So.2d 1185, 1187-88 (Miss. 2002).

Failure to follow administrative rules regarding disputes will deprive court of ability to resolve matter (must exhaust administrative remedies). *Cook v. Mardi Gras Casino Corp.*, 697 So.2d 378, 380-81 (Miss. 1997).

Under the Mississippi Uniform Commercial Code, even a holder in due course of an instrument (check) is subject to the maker's defense of illegality. MS ST § 75-3-305 (2009). Comment 1 to the section says that illegality is most often a matter of gambling.

X. Lawful Commercial Casino Gaming

MS ST §§ 27-109-1 *et seq* regulate gaming on cruise ships and vessels (which need not actually float). No inland gaming is authorized, but permanent structures can be built to hold the "cruise ships." The result is "cruise ships" that look just like regular casino buildings, but that must be located next to navigable waters. Regulatory power is vested in the State Tax Commission and Mississippi Gaming Commission. The sections also address Tax Commission rulemaking power, license qualifications, vessel suitability, fees, penalties, and other matters.

Though one of the requirements is that the "vessels" have a minimum draft of six feet, this does not prevent them from being located in an area with less than six feet of water. *Concerned Citizens to Protect the Isles and Point, Inc. v. Mississippi Gaming Com'n*, 735 So.2d 368, 375-76 (Miss. 1999). The six-foot draft requirement does not apply when the casino is permanent (not really a vessel). MS ST §§ 27-109-1 (2009).

The Mississippi Gaming Control Act was created with the intention of licensing and regulating gaming in Mississippi. MS ST § 75-76-1 *et seq*. To this end, the Mississippi Gaming Commission is created. MS ST § 75-76-7 (2009).

The statutes in the Gaming Act regulate many aspects of the industry, including appointment of Commission board members, meetings, Executive Director position, creation of enforcement and investigation divisions, record maintenance, powers and duties of the director, policy decisions, commission authority over charitable gaming, investigations, commission rulemaking power, prohibition against teaching gaming-related skills in public schools, excluded persons list, commission control over internal fiscal affairs of casinos, financial reports, audits, winnings reporting requirements, sales of securities in licenses, list of acts requiring licensure, prohibited acts, transportation of gaming devices, supplier requirements, tournament and contest registration, gaming license qualifications, consequences of finding of unsuitability (not entitled to profit), application form and content, steps in application approval process, Tax Commission involvement, license issuance, fees, bonds, disclosed information confidentiality, permission for race betting, license posting, fees, authority of director to create list of approved gaming devices, physical presence requirement, objects which can be used to represent money, investigations, emergency orders, hearings, power to request court to hold person in contempt, court review of agency decisions, disposition of funds, work permits, employee records, full disclosure requirements, confidentiality of information, Attorney General ability to restrain violations of the

Gaming Act, penalties (civil and criminal), age requirements, license fee computation, application and license fees, license transfer, per-machine license fees, fee distribution, and other matters. MS ST §§ 75-76-1 to 75-76-199 (2009).

MS ST §§ 75-76-199 *et seq* regulate the relationship between business entities and casinos. Licenses can be issued to corporations and other entities, but these statutes contain many requirements concerning who must be individually licensed and disclose information. Subsidiaries, foreign companies, and penalties are among some of the many issues addressed. These sections continue through MS ST § 75-76-265 (2009). MS ST §§ 75-76-267 through 75-76-313 (2009) are miscellaneous provisions containing penalties, foreign gaming regulation, a certain cruise taxation exemption, a prohibition on officials gaining pecuniary benefits, and criminal acts.

The Secretary of State is encouraged to lease out as much state owned land as practicable. Submerged land and tidelands may be leased to casinos. MS ST § 29-1-107 (2009).

A company wishing to conduct legal gaming aboard a vessel or cruise ship must file its intent to do so with the Mississippi Gaming Commission. Gaming is then considered legal in the county (on vessels) unless within 30 days a petition is signed by a set number of voters in the area. If such petition is signed, a vote is then held in the county in which the gaming is desired to determine if it will be permitted. MS ST § 19-3-79 (2009).

Mississippi imposes a 3% tax on gambling winnings that are taxable under the Internal Revenue Code (above \$1199). No deductible income tax credit is given for paying this tax. MS ST § 27-7-901; MS ST § 27-7-903 (2009).