

Journal Information

Journal ID (publisher-id): jgi

ISSN: 1910-7595

Publisher: Centre for Addiction and Mental Health

Article Information

Product Information: By I. NelsonRose and Martin D.Owens (2005). Larchmont, NY: Mary Ann Liebert, Inc., 2005. ISBN 0-913113-360-0 (hardcover). Price (approx.) \$195 USD within the U.S.A. or \$225 USD outside of the U.S.A.

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Received Day: 29 Month: 06 Year: 2005

Publication date: April 2006

Publisher Id: jgi.2006.16.14

DOI: 10.4309/jgi.2006.16.14

Internet Gaming Law

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This article was not peer-reviewed.

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Competing interests: None declared. (Professor Rose and I have occasionally been on the same side of a case as expert witnesses, and once we were on opposite sides).

William N. Thompson (PhD, University of Missouri-Columbia) is professor of public administration at the University of Nevada-Las Vegas. He is an active researcher on gambling topics. His books include: *Gambling in America: An Encyclopedia of History, Issues, and Society* (2001); *Native American Issues: A Reference Handbook* (1996); *Casino Customer Service* (1992, 1996, with Michelle Comeau); *International Casino Law* (1991, 1999, with Anthony Cabot); *The Last Resort: Success and Failure in Campaigns for Casinos* (1990, with John Dombrink). He has served as a consultant to public and private organizations including The National Gambling Impact Study Commission, The President's Commission on Organized Crime; The Detroit Casino Study Commission, Lotto Quebec; The Manitoba Lottery Commission; The Netherlands Board of Gambling; several Native American tribes with gaming facilities; and commercial casinos.

The authors of *Internet Casino Law* start their work with the most vexing question of them all—is Internet gambling legal? The answer they offer at the conclusion of the first chapter is the answer we already know: “Yes.” “Well maybe yes.” “No.” “Well, maybe no.” “Yes—if, and, yes—but. No—if, and but, except for, and

considering whether.” And so it goes. That this type of answer is already our “gut” feeling subtracts nothing from the discussion. For in the pages of *Internet Gaming Law*, I. Nelson Rose and Martin D. Owens offer answers—all of the above answers, with critical commentary, their perceived observations and wit. In addition, there are thorough discussions of many of the 233 law cases cited, as well as scores of pieces of relevant legislation.

The 14 chapters include a discussion of the basic question above with a comprehensive review of the legal elements involved in the definition of “gambling.” Also included are a chapter reviewing specific postures by federal, state, and local venues on the regulation of on-line gambling, and another on the philosophical question: Is there a “right” to gamble? Chapter six follows with a focus upon state laws, chapter seven on federal laws, and chapter eight on Indian gaming laws. The latter offers a comprehensive review of the Indian Gaming Regulatory Act. The ninth chapter offers incisive commentary on U.S. federal jurisdiction over on-line gambling headquartered in foreign venues. Chapter 10 presents foreign venue law regarding on-line gambling operations, and is followed by a consideration of the multitude of means for transferring funds back and forth between players and operators. The 12th chapter looks at the roles of critical mediating persons including bankers, servers, and advertisers. The last two chapters offer fresh commentary on developing and emerging issues concerning Internet gaming sites.

Chapter 14 looks to the future. Here, case law and legislation is left behind for a discussion of technological advances that may preclude any prohibition of on-line gambling. However, the authors do point to advances that may allow venues to track Internet gaming within their geographical limits. They write “that technology will make Internet gambling quicker, more appealing, and allow easier access from smaller platforms and devices” (p. 271).

They pose prospects that physical gambling itself may face an inevitable demise. At least land-based casinos themselves will be consumed internally with virtual technologies appealing to their patrons. Their prediction has already seen the light of reality, for the Nevada legislature recently gave authorization for casinos to allow patrons to carry around hand-held betting computers as they wander the public areas of the casino.

In the final chapter, Rose and Owens also see every personal computer worldwide being a “slot” machine. Cable television connections will put a potential slot machine into every living room. Betting exchanges, trivia games, skill games, or fantasy leagues will challenge authorities, as these operations dodge the central elements found in the legal definition of “gambling.”

Looking at the changing role of government, the authors find little room for hope in

prohibitions. National borders cannot stop Internet penetration—that is, lacking the draconian methods of the totalitarian state. And small governments will always be attracted by revenues from operators within their midst—especially if the operators are beaming their products to outsiders. The authors spend their final pages supporting the idea that jurisdictions promote private self-regulation on a transnational global basis. They cite current models including the off-track betting operators, and a private group called Internet Corporation for Assigned Names and Numbers as well as NAFTA, MERCOSUR (South America's southern common market), and the World Trade Organization.

Collectively, the chapters provide an intensive look at the title topic, but when the Internet is not the specific focus of a paragraph, the reader finds a refresher course on everything that is important in gaming law: gambling debts, Indian gaming intricacies, advertising and gambling, etc.

I. Nelson Rose, a professor at Whittier Law School (Costa Mesa, California), became an important gambling scholar with the appearance of his 1980 law review article that expounded upon his now famous (infamous?) theory of three waves of gambling legalization in America ([Rose, 1980](#)). From 1979 until the 21st century, Rose described the Third Wave of legalization, and he boldly predicted the date on which the wave would crash upon the shore and we would have another trough of gambling activity. Once he gave a precise day in the year 2029.

In this book, he offers the view that the days of such predictions are over. The triumph of technology over gambling with the advent of the Internet suggests that an end to the gambling fever of today is just out of the question. The Third Wave is here to stay. The old adage that “necessity is the mother of invention,” has now been stood on its head. “Invention” is now “the mother of necessity.” As gambling machines come onto the scene, more people find that they “have to” use them, ditto for computerized gambling machines.

Rose continued his role as a scholar with his first major book, *Gambling and the Law* in 1986, and a lesser work *Blackjack and the Law*, in 2000. The latter book was intended to be the second edition of the first, but time constraints sometimes tell authors to “sum it up,” and move on. He participated as a co-author of *Casino Law Cases and Materials*. He has moved on well, being a consultant for every kind of gambling interest, as well as a featured speaker at every conference of renown in the gambling studies field.

Martin Owens is perhaps producing his first major publication effort directed towards gaming. He is a crucial partner in the book, for he lives the daily life of a lawyer-practitioner. He has been in the trenches, whilst Nelson often pontificates from the ivory tower.

This reviewer wishes to note the following. Rather than a being competitor for or with Anthony Cabot's series of books on Internet gambling, this book should be viewed as complimentary. The Cabot series and this text work well in tandem to give the gambling scholar as well as the gambling operator-practitioner essential wisdom to venture into the briar patch thicket that the authors identify in their initial chapter.

This law textbook is comprehensive, integrated, and written in one style, as opposed to the equally valuable Cabot series that instead presents chapters by different authors, most of which concentrate on specific venues. No person venturing into the thicket should leave home without both sets of books in their knapsack. But this review is directed to the Rose-Owens volume.

While not all of the book is direct legal analysis (we do get a good dose of Rose-style historical commentary and opinion), the authors tell the reader that their advice on Internet gambling does not constitute formal legal opinion. They offer that such advice must come from those familiar with a client's specific case situation. In this realm of law, those making policy— legislators and judges— can upset the apple cart of certainty in one fell swoop of dicta.

But to be honest, we should not expect authorities to soon bring clarity to the Internet gambling scene. There are simply too many forces already in place with too many conflicting viewpoints and cross intentions to expect clear-cut judicial rules to emerge soon. Nor can we expect legislation where it could actually be effective in the regulatory arena— especially legislation at some global level, in the United Nations, or by a multi-national treaty organization.

Books are fun, if they can be. The reader might think that no task could be as boring as plodding through a law text on the vagaries of Internet gaming. But this reader found the Rose-Owens volume to be an enjoyable read, and even at times, fun too.

References

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