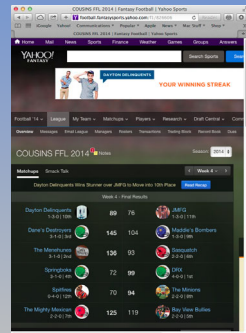


FANTASY SPORTS

Fantasy Sports

Fantasy sports are games where participants build a team of athletes that competes against other teams built by other participants based on the statistics generated by individual players or teams of a professional sport



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FANTASY SPORTS

Fantasy Sports

Example:

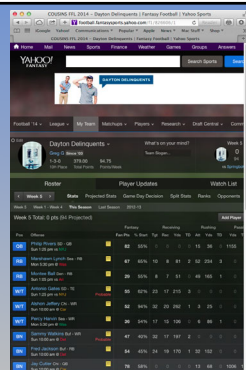


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FANTASY SPORTS

Fantasy Sports

Example:



10

FANTASY SPORTS

Fantasy Sports
Example:

FANTASY SPORTS

Fantasy Sports
Example:

FANTASY SPORTS

Fantasy Sports
Example:

FANTASY SPORTS

Video That May explain it in a bit more interesting way:

<https://youtu.be/4Pm2pkxbYYU>

(link in the description below)

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FANTASY SPORTS

Fantasy Sports

- The fantasy sports industry points to the UIGEA as proof that the federal government made the activity legal.
- The fantasy sports industry also identifies skill as the element that separates fantasy sports from games of chance.
 - Over the course of a season, the rotation of players and trading of players will have a greater influence on the outcome of the contest than the performance or non-performance of any athlete in a particular event.

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FANTASY SPORTS

Fantasy Sports

- UIGEA
 - Exempts fantasy sports contests with certain attributes from the definition of a bet under the act.

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THE UNLAWFUL INTERNET GAMBLING ENFORCEMENT ACT

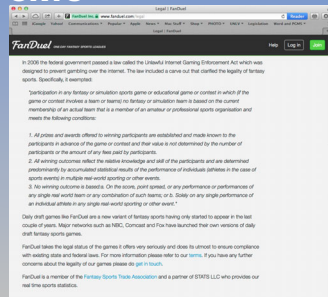
What are the parameters for the fantasy sports exemption?

- Bet or Wager (E) does not include...
 - (ix) participation in any fantasy or simulation sports game or educational game or contest in which (if the game or contest involves a team or teams) no fantasy or simulation sports team is based on the current membership of an actual team that is a member of an amateur or professional sports organization (as those terms are defined in section 3751 of title 29) and that meets the following conditions:
 - (I) All prizes and awards offered to winning participants are established and made known to the participants in advance of the game or contest and their value is not determined by the number of participants or the amount of any fees paid by those participants.
 - (II) All winning outcomes reflect the relative knowledge and skill of the participants and are determined predominantly by accumulated statistical results of the performance of individuals (athletes in the case of sports events) in multiple real-world sporting or other events.
- (iii) No winning outcome is based:
 - (a) on the score, pointspread, or any performance or performances of any single real world team or any combination of such teams; or
 - (b) solely on any single performance of an individual athlete in any single real-world sporting or other event.

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FANTASY SPORTS

Fantasy Sports • UIGEA



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UIGEA

What is the rule of construction?

- 31 U.S.C. 5361(b) Rule of construction.—No provision of this subchapter shall be construed as altering, limiting, or extending any Federal or State law or Tribal-State compact prohibiting, permitting, or regulating gambling within the United States.

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DAILY FANTASY SPORTS

Fantasy Sports

- Season long fantasy sports have been around for decades.
- However, they have not been very profitable as businesses because most of the revenue is earned before the season, then expenses occur throughout the season.
- The solution for increased revenue is Daily or Weekly Fantasy Sports.
 - Revenue or income can now be earned daily or weekly by operators.

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DAILY FANTASY SPORTS

Fantasy Sports

- Daily claims that the games are still determined by management skill, even though the only task is player selection (or draft).
- The goal of daily fantasy sports (DFS) is to increase the velocity of the games by simplifying and increasing the opportunity to spend money to play.

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FANTASY SPORTS

<https://www.draftday.com/rapid-fire-nfl/>

<http://www.savespasm.com/blog/drafting-points/2014/jan/24/what-side-do-you-super-draft-43/>

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DAILY FANTASY SPORTS

- THE NEVADA OPINION
- Analyzes daily fantasy sports

22

PASPA

Sec. 3702. Unlawful sports gambling

It shall be unlawful for -

- (1) a governmental entity to sponsor, operate, advertise, promote, license, or authorize by law or compact, or
- (2) a person to sponsor, operate, advertise, or promote, pursuant to the law or compact of a governmental entity, a lottery, sweepstakes, or other betting, gambling, or wagering scheme based, directly or indirectly (through the use of geographical references or otherwise), on one or more competitive games in which amateur or professional athletes participate, or are intended to participate, or on one or more performances of such athletes in such games.

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PASPA



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DAILY FANTASY SPORTS

- THE NEVADA OPINION
- Is it sports wagering?

25

DAILY FANTASY SPORTS

- THE NEVADA OPINION
- Is it skill gaming?

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DAILY FANTASY SPORTS

- THE NEVADA OPINION
- Is it a percentage game?

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DAILY FANTASY SPORTS

- THE NEVADA OPINION
- Are DFS contests legal in Nevada?

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DAILY FANTASY SPORTS

- THE NEVADA OPINION
- What is required to obtain a sports pool license?

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DAILY FANTASY SPORTS

- THE NEVADA OPINION
- What is required to obtain a sports pool license?

NRS 463.160 Licenses required; unlawful to permit certain gaming activities to be conducted without license; exceptions; separate license required for each location where operation of race book or sports pool conducted.

1. Except as otherwise provided in subsection 4 and [NRS 463.171](#), it is unlawful for any person, either as owner, lessee or employee, whether for hire or not, either solely or in conjunction with others:

(a) To deal, operate, carry on, conduct, maintain or expose for play in the State of Nevada any gambling game, gaming device, inter-casino linked system, mobile gaming system, slot machine, race book or [sports pool](#);

(b) To provide or maintain any information service;

(c) To operate a gaming salon;

(d) To receive, directly or indirectly, any compensation or reward or any percentage or share of the money or property played, for keeping, running or carrying on any gambling game, slot machine, gaming device, mobile gaming system, race book or [sports pool](#);

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DAILY FANTASY SPORTS

• THE NEVADA OPINION

• What is required to obtain a sports pool license?

NRS 463.140 Single establishment and to conduct more than one licensed operation, except upon certain agreements for sharing of revenue prohibited.

- Except as otherwise provided in this section:
 - All licenses issued to the same person, including a wholly owned subsidiary of that person, for the operation of any game, including a sports pool or race book, which authorize gaming at the same establishment must be merged into a single gaming license.
 - A gaming license may not be issued to any person if the licensee would result in more than one licensed operation at a single establishment, whether or not the profits or revenue from gaming are shared between the licensed operations.
- A person who has been issued a noncommercial gaming license for an operation described in subsection 1, 2 or 3 of [NRS 463.140](#) may establish a sports pool or race book on the premises of the establishment only after obtaining permission from the Commission.
- A person who has been issued a license to operate a sports pool or race book at an establishment may be issued a license to operate a sports pool or race book at a second establishment described in subsection 1 or 2 of [NRS 463.140](#) only if the second establishment is operated by a person who has been issued a noncommercial license for that establishment. A person who has been issued a license to operate a race book to sports pool at an establishment is prohibited from operating a race book or sports pool at:
 - An establishment for which a noncommercial license has been granted; or
 - An establishment in which only a noncommercial license has been granted for an operation described in subsection 1 or 4 of [NRS 463.140](#).
- A person who has been issued a license to operate a race book or sports pool shall not enter into an agreement for the sharing of revenue from the operation of the race book or sports pool with another person in consideration for the offering, placing or accepting of a book or other similar device not physically located on the licensed premises of the race book or sports pool, except:
 - An individual licensed to race book or sports pool;
 - The licensee of an establishment at which the race book or sports pool holds or obtains a license to operate pursuant to this section.
- This subsection does not prohibit an operator of a race book or sports pool from entering into an agreement with another person for the provision of shared services relating to advertising or marketing.
- Nothing in this section limits or prohibits an operator of an interactive linked system from placing and operating such a system on the premises of two or more gaming licenses and receiving, either directly or indirectly, any compensation or any percentage or share of the money or property placed there in the linked games in accordance with the provisions of this chapter and the regulations adopted by the Commission. An interactive linked system must not be used to link games other than slot machines, unless such games are located at an establishment that is licensed for games other than slot machines.
- For the purpose of this section, the operator of a race book or sports pool includes making the premises available for any of the following purposes:
 - Allowing persons to establish an account for wagering with the race book or sports pool;
 - Accepting wagers from patrons;
 - Allowing persons to place wagers;
 - Paying winning wagers to patrons; or
 - Allowing persons to withdraw cash from an account for wagering or to be issued a ticket, receipt, representation of value or other credit representing a withdrawal from an account for wagering that can be redeemed for cash.

whether by a transaction in person at an establishment or through mechanical means such as a kiosk or other similar device, regardless of whether that device would otherwise be considered associated equipment.

DAILY FANTASY SPORTS

• Media Attention Follows

DAILY FANTASY SPORTS

• DFS attracted significant attention.

• Please watch the following videos, they are far more entertaining than this lecture:

- Scott Van Pelt (ESPN) - <https://youtu.be/cEphiJlm-9k> (3 Min)
- John Oliver - <https://youtu.be/Mq785nJ0FXQ> (20 min)
- Daily Show - <https://youtu.be/QX6vey8b-1w> (4 min)

DAILY FANTASY SPORTS



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DAILY FANTASY SPORTS



<https://youtu.be/Mq785nJ0FXQ>

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FEDERAL WIRE ACT

- 18 USC §1084
 - (a) Whoever being engaged in the business of betting or wagering knowingly uses a wire communication facility for the transmission in interstate or foreign commerce of bets or wagers or information assisting in the placing of bets or wagers on any sporting event or contest, or for the transmission of a wire communication which entitles the recipient to receive money or credit as a result of bets or wagers, or for information assisting in the placing of bets or wagers, shall be fined under this title or imprisoned not more than two years, or both.

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FEDERAL WIRE ACT

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DAILY FANTASY SPORTS

- THE NEW YORK ACTION
 - The NY AG issued a cease and desist letter to Draft Kings and FanDuel.
 - Draft Kings and FanDuel filed for declaratory relief to prevent the AG from acting against them and they filed a TRO for the same.
 - The court in NY denied the TRO motion.
 - The AG filed for a preliminary injunction in response.

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DAILY FANTASY SPORTS

- THE NEW YORK ACTION
 - The parties entered into a tentative settlement agreement pending legislative action.
 - The NY Legislature enacted a licensing regime for DFS as a skill game

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NY FOLLOW UP

- An activist group sued the Governor of New York on the grounds that approving fantasy sports was an expansion of gaming, which is prohibited under the NY State Constitution
- The Supreme Court (court of initial jurisdiction) agreed.
- The Appellate Court agreed.
- The Highest State Court disagreed stating that the legislature was reasonable in defining DFS as a skill game and thus not gambling as other states had done the same.

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TEXAS OPINION

- The Texas Attorney General reviewed the following:
- You ask for an opinion on two questions involving fantasy sports leagues. Specifically, you ask whether
 - 1. [daily fantasy sports leagues such as DraftKings.com and FanDuel.com are permissible under Texas law, and
 - 2. [whether it is legal to participate in fantasy sports leagues where the house does not take a "rake" and the participants only wager amongst themselves.

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TEXAS OPINION

- Are DFS Games Skill Games?

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TEXAS OPINION

- Are DFS Games Skill Games?
- It is beyond reasonable dispute that daily fantasy leagues involve an element of chance regarding how a selected player will perform on game day. The participant's skill in selecting a particular player for his team has no impact on the performance of the player or the outcome of the game. In any given week:
 - a selected player may become injured or be ejected and not play in all or a portion of the game—such as an injury to a third-string quarterback causing a team to rotate three different players at quarterback in one half or a batter charging the mound after getting hit by a pitch and getting corrected and then ejected
 - a selected player may perform well or perform poorly against the opponent that week, perhaps due to weather conditions—such as a defensive tackle diving on a football after a blocked field goal attempt, only to allow the other team to recover the ball and score the game-winning touchdown
 - a selected player's performance may be impacted by the state of the game equipment (say, the underinflation of a football or the presence of cork inside a baseball bat) or facilities (such as the air conditioning system in a basketball arena failing, causing the star player for a team aptly named "Heat" to suffer temperature induced leg cramps and be carried off the court);
 - a selected player's performance may be impacted by a call of refereeing officials such as a catch that all individuals not wearing stripes believe to constitute a touchdown being ruled an incompletion with instant replay.

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TEXAS OPINION

- Are DFS Games Skill Games?
- The list goes on. All of these random circumstances, especially if they occur after the participants' selections are locked in, amount to chance and do not involve any skill on the part of the participant. Chance happens, especially on game day. "That's why they play the game." Based on the facts you ask us to assume, the argument that skill so predominates that chance is minimal is nonetheless an admission that chance is an element and partial chance is involved. Accordingly, odds are favorable that a court would conclude that participation in daily fantasy sports leagues is illegal gambling under section 47.02 of the Penal Code

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TEXAS OPINION

- Are DFS Exempted Bona-fide Contests of Skill?
- Two providers of daily fantasy sports leagues nonetheless contend that participation in such leagues is not gambling because the statutory exception to the definition of "bet" excludes "an offer of a prize, award, or compensation to the actual contestants in a bona fide contest for the determination of skill"

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TEXAS OPINION

- Are DFS Exempted Bona-fide Contests of Skill?
- We noted that the Practice Commentary to the statute indicated the actual-contestant exclusion "is intended to exclude only awards and compensation earned by direct participation in the contest-the pole-vaulter's cup, the pro football player's salary-not the receipt of a wager made on its outcome." We concluded that, although the "exclusion may embrace athletes actually competing in the sporting events you refer to, it does not embrace those who pay entry fees for a chance to win a prize from forecasting the outcome of the events."³³ Moreover, the other types of contests in the actual-contestant exclusion (speed, strength, or endurance or to the owners of animals, vehicles, watercraft, or aircraft) inform the nature of what the Legislature means with the term "skill." Following this office's 1994 opinion, the Illinois Attorney General recently concluded that Illinois's similar statutory actual-contestant exclusion does not apply to participants of daily fantasy sports leagues.

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TEXAS OPINION

- Are DFS Exempted Bona-fide Contests of Skill?
- Subsection 47.01(l)(B) [*the bona-fide contest of skill exemption*], and our interpretation of it, remains unchanged. For example, if a person plays in a golf tournament for an opportunity to win a prize, he or she is within the actual contestant exclusion to the definition of betting. If instead the person does not play in that tournament but wagers on the performance of an actual contestant, he or she is gambling under Texas law. To read the actual-contestant exception as some suggest would have that exception swallow the rule.

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TEXAS OPINION

- Result
- Fan Duel exits the Texas market
- Draft Kings stays in the Texas market and files a declaratory relief action...

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FAN DUEL LETTER

- Background
 - Texas AG issues an opinion that DFS is illegal gambling in Texas
 - Texas AG agrees not to prosecute Fan Duel if it ceases operation and notifies law enforcement before it offers DFS to Texas residents
 - Fan Duel pulls out
 - Draft Kings does not pull out of Texas, but rather sues the State of Texas and court proceedings will commence in due course
 - Fan Duel sees Texas as a big market that its rival is monopolizing
 - Fan Duel re-enters the Texas market

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FAN DUEL LETTER

- The Letter
 - No claim that DFS is legal, to the contrary they agree to refrain from stating that such wagering is legal to avoid deceptive trade practice risks.

In connection with re-entering, however, FanDuel Group intends to adhere to stringent self-imposed restrictions. FanDuel Group will avoid any deceptive trade practices by:

1) Refraining from any physical in-state direct marketing of FanDuel, and any intentional marketing directed to Texas residents that makes claims about the legality of paid contests in Texas; and

2) Providing disclaimers in its Terms of Use and marketing materials that state: FanDuel makes no representation that participation in paid entry fantasy sports contests is lawful under Texas state law.

FanDuel Group further intends to refrain from seeking any widespread press or publicity concerning its Texas activities, other than on its own sites, apps, or social media feeds.¹

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ILLINOIS STATUTES

Sec. 28-1. Gambling. (a) A person commits gambling when he or she: (1) knowingly plays a game of chance or skill for money or other thing of value, unless excepted in subsection (b) of this Section;

...

(12) knowingly establishes, maintains, or operates an Internet site that permits a person to play a game of chance or skill for money or other thing of value by means of the Internet or to make a wager upon the result of any game, contest, political nomination, appointment, or election by means of the Internet; This item (12) does not apply to activities referenced in items (4), (d.1), and (15) of subsection (b) of this Section.

(b) Participants in any of the following activities shall not be convicted of gambling:

(1) Agreements to compensate for loss caused by the happening of chance including without limitation contracts of indemnity or guaranty and life or health or accident insurance.

(2) Offers of prizes, award or compensation to the actual contestants in any bona fide contest for the determination of skill, speed, strength or endurance or to the owners of animals or vehicles entered in such contest.

(3) Pari-mutuel betting as authorized by the law of this State.

... Licensed activities

ILLINOIS STATUTES

Sec. 26-1. Gambling. (a) A person commits gambling when he or she: (1) knowingly plays a game of chance or skill for money or other thing of value, unless excepted in subsection (b) of this Section;

(12) knowingly establishes, maintains, or operates an internet site that permits a person to play a game of chance or skill for money or other thing of value by means of the internet or to make a wager upon the result of any game, contest, political nomination, appointment, or election by means of the internet. This item (12) does not apply to activities referenced in items (6), (6.1), and (15) of subsection (b) of this Section.

(b) **Participants** in any of the following activities shall not be convicted of gambling:

- (1) Agreements to compensate for loss caused by the happening of chance including without limitation contracts of indemnity or guaranty and life or health or accident insurance.
- (2) Offers of prizes, award or compensation to the actual contestants in any bona fide contest for the determination of skill, speed, strength or endurance or to the owners of animals or vehicles entered in such contest.
- (3) Pari-mutuel betting as authorized by the law of this State.
- ... Licensed activities

BECKER V. WU

Facts...

BECKER V. WU

Is either party in the business of betting or wagering?

BECKER V. WU

Is either party maintaining or operating on online game?

BECKER V. WU

Does the opinion make offering or maintaining DFS legal in Illinois?

QUESTIONS/DISCUSSION

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