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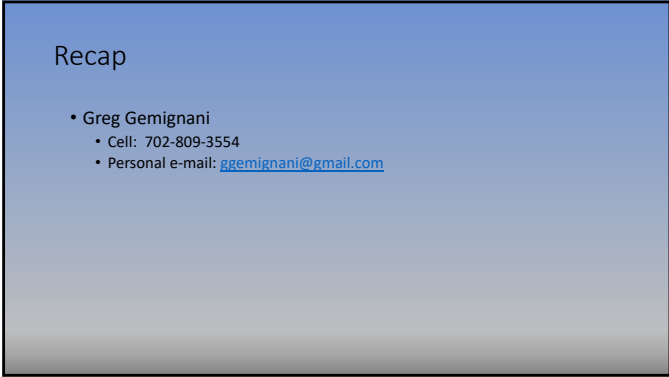
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THE BACKGROUND

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Fundamentals

- For those of you new to gaming law courses, what is gambling?  
(hint, this is an opportunity to participate)

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Fundamentals

- For those of you new to gaming law courses, what is gambling?  
(hint - this is an opportunity to participate)

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Fundamentals

- For those of you new to gaming law courses, can you identify some different types of gaming or gambling?

(hint - this is an opportunity to participate)

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Fundamentals

- For those of you new to gaming law courses, can you identify some different types of gaming or gambling?
  - Lotteries
  - Games of Chance
  - Sports Wagering
  - Pari-mutuel Wagering
  - Bookmaking

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Fundamentals

- Lotteries
  - Usually defined under U.S. law as a form of gambling where participants part with some valuable consideration for the opportunity to win a valuable prize where the award of such prize is based purely on chance.
- Games of Chance
  - Usually defined under U.S. law as a form of gambling where participants part with some valuable consideration for the opportunity to win a valuable prize where the award of such prize is based to some degree on chance.

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Fundamentals

Consideration  
Chance  
Prize

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Fundamentals

- Sports Wagering
  - Often defined as an activity where a patron risks some valuable consideration for the opportunity to win a valuable prize where the prize award is based on the outcome of a sporting event, athletic event or other event determined outside the control of the patron.
- Pari-mutuel Wagering
  - Often defined as an activity where a patron risks some valuable consideration for the opportunity to win a valuable prize funded by other patrons where the prize award is based on the outcome of a racing event, sporting event, athletic event or other event determined outside the control of the patron.

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Fundamentals

- Bookmaking
  - Accepting wagers on event (even an event of skill)
  - Recording wagers on an event (even an event of skill)
  - Holding stakes
  - Distributing stakes
- Example:
  - [https://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?lawCode=PEN&sectionNum=337a](https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=PEN&sectionNum=337a)

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## THE BASICS

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### Biological Gambling Instincts

- Research suggests that gambling instincts occur even in primates.
  - In 2005 researchers Michael Platt and Allison McCoy, from Duke University, published findings in the journal Nature Neuroscience that monkeys when presented with two targets that rewarded the monkey with juice, overwhelmingly chose the riskier target with a variable return (often less juice) than the target with a consistent reward of juice.
  - According to Platt, "Basically these monkeys really liked to gamble. There was something intrinsically rewarding about choosing a target that offered a variable juice reward, as if the variability in rewards that they experienced was in itself rewarding."

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### History

- Gaming has been around as long as people have been around.
- Archeological and historical evidence suggests gambling in some form occurred in most ancient cultures.

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History

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History

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History

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History

- When they came to the place of Skull, they crucified him and the criminals there, one on his right and the other on his left. [Then Jesus said, "Father, forgive them, they know not what they do."] They divided his garments by casting lots. Luke 23:32-34 Roman Catholic Bible
  - "Casting lots" appears in frequent religious texts




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History

- Gambling isn't new
- Gambling analysis, game mathematics and probability studies are recorded as early as the 16th century.




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History

- Gambling statutes and laws existed as far back as Roman times.
- Other cultures predating Roman culture likely had gaming laws and rules; however, the Romans left behind definitive proof and documentation.




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History

- What gaming issues do you think were of concern in Roman times?

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History

- Issues during Roman times:
  - Games and fairness
    - Distinguishing fair permitted wagering from unfair wagering
  - Integrity of wagering events
    - Sports/Athletic integrity
  - Problem gambling and gambling debts

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History

- At times, Roman law prohibited all forms of gambling other than betting on racing.
- Roman law prohibited the enforcement of gambling debts and allowed the family of gamblers to recover damages for losses.

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### History

- Wagering on chariot racing, horses, and athletic combat was common in Ancient Rome.



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### History

- At its height, Rome itself had 7 different race tracks. This was a popular sport and a popular wagering activity for Romans.



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### History



- As the Roman Republic and Empire spread, so did the Roman past times of gambling.

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## History

- An inscription on the mosaic of an African bath house says of a favorite horse: "Vincas, non vincas, te amamus, Polydoxe!": Win or lose we love you Polydoxes!



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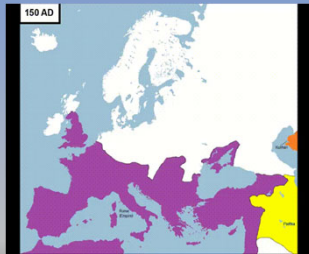
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## History



- As Roman influence receded, gambling was one of the cultural aspects of Roman life that endured beyond Roman rule

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## History

- The English adopted laws consistent with Roman laws for various forms of gaming, in particular horse racing and athletic combat



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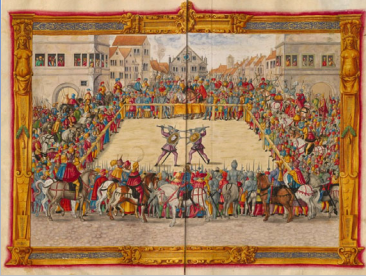
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- Gambling in the middle ages was divided in part by economic class. The rich indulged in wagering on horse racing, cock fighting or other blood sports, while the poor often engaged in dice games.

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Why is this relevant?

*I thought I was taking a tech and innovation centric course*

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The threads of history influence our past,  
present and future

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The threads of history influence our past,  
present and future

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History

- Roman law prohibits the collection of gaming debts and allows families to recover certain gambling losses
- In England, Statute of Anne adopts Roman law into formal statute to prohibit the collection of gaming debts and allowing families to recover property lost through gambling
- In 1864, the Nevada constitution adopts the laws of England at the time of statehood as the common law of the State of Nevada



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History

- Until the 1980s, Nevada common law held all gambling debts to be unenforceable



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The Basics

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Fundamentals

Consideration  
Chance  
Prize

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Consideration

- For those of you new to gaming law courses, what do you think qualifies as consideration for a gambling analysis?

(hint, this is an opportunity to participate)

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### Consideration

- The payment of money?
- The forfeiture of property?
- The forfeiture of opportunity?
- A change in position?
- A promise?
- Substantial effort?
- Minimal effort?
- Benefit to a promoter?
- Benefit to a third party?
- Benefit to any third party?

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### Consideration

- **Cudd v. Aschenbrenner**
  - Facts

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### Consideration

- **Cudd v. Aschenbrenner**
  - Facts
    - Contest at grocery store conducted by random drawing
    - Participants must fill in a form with name, address, and telephone number and receive a coupon with numbers on the edge
    - To be eligible to win, the coupon must be validated each week (except on Wednesdays when drawings are held).
    - Participants must be present to win
    - No purchase at any store is required

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Consideration

- **Cudd v. Aschenbrenner**
  - Operative Statute

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Consideration

- **Cudd v. Aschenbrenner**
  - Can anyone make arguments that the scheme is a gambling event?

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Consideration

- **Cudd v. Aschenbrenner**
  - Can anyone make arguments that the scheme is NOT a gambling event?

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Consideration

- **Cudd v. Aschenbrenner**
  - How did the Court decide the issue?

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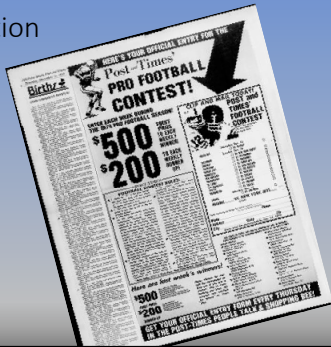
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Consideration




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Consideration

- **Seattle Times v. Tielsch**
  - Facts

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### Consideration

- Seattle Times v. Tielsch
  - Since 1939, and including 1970, the news paper has sponsored a contest called 'Guest-Guesser', the rules, entry forms and results of which are printed in plaintiff's newspaper
  - Football pick'em contest open to anyone over 12
  - The rules provide that entries may be made on facsimiles of the same dimensions as the printed coupons with the teams listed in exactly the same sequence
    - Squares for each team and ties must be drawn so that the square on the facsimiles line up exactly with those on the printed coupon. Reproductions made by duplicating devices, including carbon paper are not eligible.
  - No purchase of the paper is necessary to enter

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### Consideration

- Seattle Times v. Tielsch
  - Operative Law:
    - The state constitution forbids lotteries
    - Seattle city ordinance prohibits conducting a lottery
    - State law prohibits conducting a lottery, defined as "...a scheme for the distribution of money or property by chance, among persons who have paid or agreed to pay a valuable consideration for the chance, whether it shall be called a lottery, raffle, gift enterprise, or by any other name..."

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### Consideration

- Seattle Times v. Tielsch
  - Can anyone make an argument that the football contest is gambling?

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### Consideration

- Seattle Times v. Tielsch
  - Can anyone make an argument that the football contest is NOT gambling?

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### Consideration

- Troy Amusement v. Attenweiler
  - Facts

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### Consideration

- Troy Amusement v. Attenweiler
  - Facts
    - Theater owner runs a Bank Night promotion
    - The promotion allows anyone to sign up for a drawing (no purchase necessary)
    - A nightly drawing is held and the winner has 3 minutes to claim the prize from the time the winning number is announced both inside and outside the theater
    - If the winner is outside the theater, they are allowed in at no charge to collect the prize

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Consideration

- Troy Amusement v. Attenweiler
  - Facts
    - Theater owner runs a Bank Night promotion
    - The promotion allows anyone to sign up for a drawing (no purchase necessary)
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    - If the winner is outside the theater, they are allowed in at no charge to collect the prize

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Consideration

- Troy Amusement v. Attenweiler
  - Issue

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Consideration

- Troy Amusement v. Attenweiler
  - Issue
    - The court states that three essential elements of a lottery are (1) prize, (2) chance and (3) consideration. The first two elements being conceded, the question before that court was whether there was a consideration, moving from the recipients of the tickets, to the defendants.

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Consideration

- Troy Amusement v. Attenweiler
  - Can anyone make an argument that the bank night contest is gambling?

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Consideration

- Troy Amusement v. Attenweiler
  - Can anyone make an argument that the bank night contest is NOT gambling?

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Consideration

- Troy Amusement v. Attenweiler
  - What was the Court's holding?

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### Consideration

• Troy Amusement v. Attenweiler

It is only necessary that the person entering the competition shall do something or give up some right sufficient to comply with that requirement.

Nor does the benefit to the person offering the prize need be directly dependent upon the furnishing of a consideration. *Advertising and the sales resulting thereby, based upon a desire to get something for nothing, are amply sufficient as a motive.*

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### Consideration

• Troy Amusement v. Attenweiler

The plaintiff has asserted that if it is deprived of the right to operate the scheme it will lose thousands of dollars. Whose thousands of dollars does it lose that are paid in excess of what would be paid were the scheme not in operation? Manifestly, the money of the patrons who have been lured, by a hope of winning, to go to the picture house in larger numbers than if there were no prize offered

The element of advertisement and increased patronage is sufficient consideration flowing to the operator to bring the transaction within the condemnation of promoting and advertising a scheme of chance.

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### Consideration - Summation

• Primary Theories

- **Valuable Consideration** - parting of something of marketable value, usually money.
- **Contract Consideration** - consideration sufficient to create a binding obligation or agreement.
- **Promoter Benefit**
  - WIS STATS §945(5)(b) 1. "Consideration" in this subsection means anything which is a commercial or financial advantage to the promoter or a disadvantage to any participant, but does not include any advantage to the promoter or disadvantage to any participant caused when any participant learns from newspapers, magazines and other periodicals, radio or television where to send the participant's name and address to the promoter.

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### Hypotheticals – Part 1

- Ezra from rebgame.com calls
  - Rebgame is an online streaming site with head-to-head gaming content
  - Rebgame supports streaming content, which provides an ad based revenue model
  - Rebgame wants to offer a poker tournament with a cash prize as a promotion to get more users
  - Rebgame has three potential funding mechanisms for the tournament:
    - 1. Add based revenue for ads shown during game play on the border of the stream
    - 2. A nominal fee to enter the tournament (\$1 or \$2 from each player)
    - 3. Add based revenue from contestants, each contestant will watch a pre-determined number of ads to enter (add revenue from such views go to the site)

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### Hypotheticals – Part 2

- Ezra from EzraPics.com calls
  - Ezrapics.com is an AI based touting site (sells picks to sports games)
  - Ezrapics.com wants to generate more site traffic by holding a handicapping contest
  - The contest will pit all against Ezra, the site's AI sports game picker
  - The contestant with the highest score that is better than Ezra will win a cash prize
  - Ezrapics.com wants the prize to equal 80% of the entry fees
  - Ezrapics wants to know if this is an issue

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### Questions

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