

Gaming Debt Collection

For as long as there have been gaming debts, there have probably been customs and laws regarding debt collection. Research has indicated that at various times Roman laws prohibited the enforcement of gambling debts other than those incurred on wagers made on state sponsored events such as state sponsored chariot races.¹

In English law, gaming debt collection statutes date back at least as far back as the Statute of Anne in 1710.² The statute's first section stated the following:

From 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 Bowles 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

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² 9 Anne C. 14 §1. Available online at the Office of Public Sector Information, U.K. National Archives (available online at http://www.opsi.gov.uk/RevisedStatutes/Acts/apgb/1710/capgb_17100019_en_1)

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 or bett shall be utterly void frustate and of none Effect to all Intents and Purposes whatsoever Any Statute Law or Usage to the contrary therof in any wise notwithstanding . . .

Additionally, the second section of the statute provided a three month time period for bringing an action to recover gambling losses by the loser or a third person, and provided for the potential for treble damages recovery of the losses.³

The basic principles of the first section of the Gaming Act of the Statute of Anne entered into the laws of many states in the U.S. including gaming friendly states such as Nevada as the following court opinion illustrates:

Supreme Court of Nevada.

WEST INDIES, Inc.

v.

FIRST NAT. BANK OF NEVADA.

No. 3581.

Jan. 17, 1950.

Action by the West Indies, Inc., against the First National Bank of Nevada, a corporation, as administrator of the estate of Leonard H. Wolff, deceased, to recover payment of money won by plaintiff from deceased at gambling game of twenty one. The defendant moved for judgment on the pleadings on the ground that checks executed and delivered by deceased were executed for sole consideration of money won at gambling.

³ 9 Anne C. 14 §2. (Later repealed by by Betting and Gaming Act 1960 (c. 60), Sch. 6 Pt. I)

The Second Judicial District Court, Washoe County, Merwyn H. Brown, P. J., entered an order granting the defendant's motion for a judgment on the pleadings and entered judgment for the defendant and the plaintiff appealed.

The Supreme Court, Priest, District Judge, held that a gambling house or the proprietor thereof cannot maintain an action at law for the collection of money won at a duly licensed gambling game.

Judgment affirmed.

PRIEST, District Judge.

This is an appeal from a final judgment of dismissal of an action commenced in the Second Judicial District Court of Washoe County, after issue joined on the pleadings. Appellant was plaintiff and respondent was defendant in the trial court.

The complaint alleges that on October 23, 1948, decedent Leonard H. Wolff, drew three checks upon respondent in the respective amounts of \$7,000.00; \$29,000.00; and \$50,000.00, and sets out the checks in haec verba, and alleges that same were presented to respondent for payment on October 24, 1948, and dishonored; that Leonard H. Wolff died testate on October 23, 1948; that on November 22, 1948, the respondent was appointed by the Second Judicial District Court, administrator, cum testamento annexo, and on said date qualified, and is now qualified and acting as such administrator of the estate of the said Leonard H. Wolff; that on February 15, 1949, the appellant duly presented its claim to said administrator for the sums set out in said checks totaling \$86,000.00, which claim was rejected and refused of February 16, 1949, by an instrument in writing. Plaintiff prayed for judgment against the defendant as administrator of the estate of Leonard H. Wolff, in the sum of \$86,000.00 and for costs of suit, payable out of said estate in due course of administration.

Respondent answered and set up as an affirmative defense that the said checks had been given by decedent to plaintiff in payment of money theretofore won by plaintiff from defendant at the gambling game of twenty one and for no other purpose and that the sole consideration for the execution and delivery thereof was money theretofore won by plaintiff from decedent at said gambling game.

Plaintiff's reply admitted the allegations of the affirmative defense heretofore set out. Subsequent to the filing of its reply the plaintiff moved the court for an order permitting an amendment to the reply in such a manner as to show that at all times material to the action, appellant was regularly licensed by state authorities as by law provided and required, to operate the said game referred to. Without objection this proposed amendment was allowed.

Defendant then moved the court for the entry of judgment on the pleadings dismissing the action, upon the ground that if said checks were so executed and delivered, they were executed upon the sole consideration of money won at gambling. Upon stipulation of counsel the motion to dismiss was heard by Hon.

Merwyn H. Brown, Judge of the Sixth Judicial District Court. Upon presentation and argument the court entered an order granting the motion for judgment on the pleadings and accordingly entered judgment for defendant. From the judgment of dismissal plaintiff appeals.

At the argument herein counsel for the respective sides mentioned possible distinctions between actions based upon the checks or based upon the alleged indebtedness or otherwise founded, but upon being asked by the court whether or not it was the desire of counsel that the opinion should pass squarely upon the point of collectability by the gambling establishment of money won at a duly licensed game, each replied that he would like the opinion to determine squarely such question. There is therefore the one question presented here to this court, viz: May a gambling house or the proprietor thereof maintain an action at law for the collection of money won at a duly licensed game? We have thus limited the inquiry and have omitted from this determination the question of collectability of money by a patron of winnings from a duly licensed game. Such question is not presented here.

Appellant contends: That the earlier decisions of this court are not controlling being decided under other statutes declaratory of a different public policy; that the English common law, if adopted by Nevada, has been altered by statute; that since 1909 the public policy of this state has been substantially altered with reference to gambling; that licensed gambling is no longer a public nuisance or contrary to public policy, and that our gambling enactments are repugnant to the English statutes.

Respondent contends: That a portion of the common law known as the Statute of Anne, 9 Anne, c. 14, 4 Bac.Abr. 456, relevant to gambling has been effectually adopted by this state; that if not effectually adopted heretofore it is nevertheless an integral part of the law of this state; that the statute is severable and the adoption of a pertinent part is not dependent upon the adoption of the whole; that the law does distinguish in its regulatory power between useful callings and those that do not contribute to the economic good; that the statute is prohibitive rather than permissive; that an express clause in the act making such accounts collectible would have been ineffectual in the absence of a change of title; and that the social consequences of a change in the recognized law are great and that an intent to repeal by implication should not be imputed to the legislature in the absence of a clear showing.

The first pronouncement of this court upon this question was in *Scott v. Courtney*, 1872, 7 Nev. 419, in which case the court construed the statute of 1869, p. 119. From this statute we quote sections 1, 3, and 5.

Section 1. Each and every person who shall deal, play, carry on, open, or cause to be opened, or who shall conduct, either as owner or employee, whether for hire or not, except under a license as hereinafter provided, any game of faro, monte, roulette, lansquenette, rouge et noir, rondo or any banking game played with cards, dice, or any other device, whether the same be played for money, checks, credit, or any other representative of value, shall be guilty of a misdemeanor, and on conviction

thereof, shall be punished by a fine of not less than one thousand, nor more than three thousand dollars, or by imprisonment in the County Jail not less than three months nor more than one year, or by both such fine and imprisonment.

Sec. 3. Blank licenses shall be prepared by the County Auditor, which shall be signed, issued and accounted for, as is by law provided in respect to other county licenses. Each license delivered by the Sheriff, under this Act to any person, shall contain the name of the licensee, a particular description of the room in which the licensee desires to carry on the game licensed, and shall by its terms authorize the licensee to carry on one of the games mentioned in the first section of this Act, specifying it by name, in the room therein described, for the period of three months next succeeding the date of issuance of the license. The said license shall protect the licensee and his employer or employers^{FN1} against any criminal prosecution for dealing or carrying on the game mentioned in the room described during said three months, but not for dealing or carrying on any other game than that specified, or the specified game in an other place than the room so described; provided, that the licensee shall be entitled to deal, or play, or carry on two or more games in the same room, by paying a license for each game so dealt or carried on.

Sec. 5. All moneys received for licenses under the provisions of this Act, shall be paid, one half into the County Treasury and one half into the State Treasury, for general county and State purposes respectively.¹

In *Scott v. Courtney*, supra, suit was brought by the proprietor of a duly licensed game to collect money lost at such game. Without a declaration that Nevada had adopted any portion of the common law of England known as the Statute of Anne, heretofore referred to, for it appears that the question was never raised, the court nevertheless concluded, in reliance principally upon decisions of the state courts under similar statutes, that the so-called indebtedness was not collectible and that the action could not be maintained. The immunity clause in the statute, i. e. the declaration in section 3, that the said license shall protect the licensee and his employer or employers against any criminal prosecution for dealing and carrying on the game mentioned,¹ did obviously have certain and considerable persuasive force in leading the court to the conclusion that the license was by the statute limited and losses at such games were not collectible. This immunity feature of the law will be later discussed. The court said:

In the United States, wagering and gaming contracts seem to have met with no countenance from the courts, and consequently in nearly every state they are held illegal, as being inconsistent with the interests of the community and at variance with the laws of morality. ² Smith's Leading Cases, 343.¹

Section 9021 N.C.L. of 1929, provides as follows: **The common law of England, so far as it is not repugnant to, or in conflict with the constitution and laws of the United States, or the constitution and laws of this state, shall be the rule of decision in all the courts in this state.** This has been held to include the English

statutes in force at the time of the American Declaration of Independence. Ex parte Blanchard, 9 Nev. 101.

The next enactment of the Nevada legislature, affecting gambling was passed in 1879, Statutes of Nevada 1879, p. 114, and is entitled; An Act to Restrict Gaming, and to repeal all other Acts in relation thereto. From this statute we quote sections 1, 3, and 5.

Section 1. Each and every person who shall deal, play, carry on, or cause to be opened, or who shall conduct, either as owner or employee, whether for hire or not, except under a license, as hereinafter provided, any game of faro, monte, roulette, lansquenet, rouge-et-noir, rondo, keno, fantana, twenty-one, red-white-and-blue, red-and-black or diana, * * * or any banking percentage game, played with cards, dice or any other device, whether the same be played for money, checks, credit, or any other valuable thing or representative of value, shall be guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not less than one thousand nor more than three thousand dollars, or by imprisonment in the county jail not less than three months nor more than one year, or by both such fine and imprisonment.

Sec. 3. Blank licenses shall be prepared by the County Auditor, which shall be issued and accounted for as is by law provided in respect to other county licenses. Each license delivered by the Sheriff under this Act to any person shall contain the name of the licensee, a particular description of the room in which the licensee desires to carry on the game license, and shall by its terms authorize the licensee to carry on one of the games mentioned in the first section of this Act, specifying it by name in the room therein described, for the period of one month next succeeding the date of issuance of the license. The said license shall protect the licensee and his employer or employers against any criminal prosecution for dealing or carrying on the game mentioned in the room described during said one month, but not for dealing or carrying on any other game than that specified, or the specified game in any other place than the room do described; provided, that the licensee shall be entitled to deal or play, or carry on two or more games in the same room, by paying a license for each game so dealt or carried on.

Sec. 5. All moneys received for licenses under the provisions of this Act shall be paid, three-quarters into the county treasury, and one-quarter into the state treasury, for general county and state purposes respectively.

In *Evans v. Cook*, 11 Nev. 69, decided in 1876, and hence decided under the statute of 1869, defendant was sued under his statutory undertaking, posted to prevent levy of attachment upon one Hanley. Under the statutory undertaking, after collusive judgment against Hanley, who was totally insolvent, Evans brought suit against Cook and one Polleys. Polleys filed a demurrer. Cook having been deceived by Hanley, who had represented to Cook that he would defend and set up the defense that the entire consideration was a gambling debt, allowed default to be taken against him. Before judgment Cook then moved the court for an order to set

aside the default and for leave to defend on the merits, the motion being based upon the theory of excusable neglect. The affidavit in support of the motion to set aside the default on the ground of excusable neglect was unopposed, was filed before judgment, was comprehensive, and did effectually set up the fact of collusion between Evans and Hanley. The trial court denied the motion to set aside the default and subsequently entered judgment for plaintiff. Upon appeal defendant Cook contended among other things that the court erred in refusing to set aside the default and permit a defense in the action on the merits. The court in considering the alleged error, and taking as admitted by the failure of plaintiff to present any evidence in opposition to the affidavit of defendant Cook, that there had been fraud or collusion on the part of plaintiff, sets out that it was incumbent upon movent to show two things, viz:

1. Excuse for the neglect, and
2. Whether or not the proposed answer disclosed a meritorious defense.

The court then having concluded that there was excusable neglect, proceeded to a consideration of whether the proposed defense was meritorious, i. e. it proceeded to determine whether the proprietor of an establishment could maintain an action for money won by it at one of its duly licensed games. The court then held that there had been an adoption of the applicable portions of the Statute of Anne.

We have given this case serious and detailed attention by reason of the vigorous contention of appellant that the Statute of Anne so far as applicable to that situation, was not effectually adopted, by reason of the supposed adoption being dicta and not essential to a determination of the matter before the court. In support of this contention counsel cites, *14 Am.Jur. 291, Sec. 79, Note 4; 14 Am.Jur. 293, Sec. 79, Notes 7 and 8; Nichols v. St. Louis and S. F. Railway Co., 227 Ala. 592, 151 So. 347, 90 A.L.R. 842*. We have no quarrel with the proposition that if the pronouncement of adoption were dicta, such pronouncement could have no controlling force. However, how could the court determine whether or not the defense was meritorious without considering squarely the question of collectibility of an account representing winnings by the house at a duly licensed game? To determine this precise question the court held that a suit could not be maintained to collect such an account because of the adoption of the pertinent sections of the Statute of Anne. We do not understand this contention of appellant to indicate a belief that the court could have found the account to be uncollectible for other reasons, although such contention, quite logically, could lead to that result.

For the reasons given we have no doubt that the declaration by this court in *Evans v. Cook, supra*, to the effect that the applicable portions of the Statute of Anne, had been adopted, was essential to a determination of the action, and the court so holds.

In *Burke & Co. v. Buck*, 1909, 31 Nev. 74, 99 P. 1078, 22 L.R.A., N.S., 627, 21 Ann.Cas. 625, decided under the statute of 1879, the uncontroverted evidence showed that

Buck while playing roulette at a Goldfield saloon, endorsed and delivered a negotiable certificate of deposit of \$500.00 back to the house. Buck then notified John S. Cook and Co., the issuing corporation, that he had lost possession of same, without consideration and requested said company to refuse payment of said certificate. Judgment was for plaintiff, the gambling house proprietor, in the trial court and upon appeal reversed. The opinion refers approvingly to *Evans v. Cook*, supra, and approves the adoption of all parts not inconsistent, of the English Statute of Anne. Again there is a declaration as in *Scott v. Courtney*, supra, that the licensing of gambling is merely permissive, and serves to give immunity from criminal prosecution and nothing more.

In *Menardi v. Wacker*, 32 Nev. 169, 105 P. 287, 288, Ann.Cas.1912C, 710, it was held that A check given for a gambling debt is void under the law of this state, and, there being no valid obligation, there could be no lawful consideration for the security as a pledge. Citing *Burke & Co. v. Buck*, 31 Nev. 74, 99 P. 1078, 22 L.R.A.,N.S., 627, 21 Ann.Cas. 625.

Looking at the matter historically and by way of throwing light upon the question of legislative intent, it is deemed fitting to show that in or about the year 1909, the pendulum of public opinion had reached the extreme right, and from 1909 through 1915 a series of anti gambling statutes were enacted. Sufficient to conclude without going into great detail that this was a period of extreme conservatism in the public policy of the state with reference to gambling. This attitude was first manifested by a statute of 1909, p. 307, entitled; An Act prohibiting gambling, providing for the destruction of gambling property and other matters relating thereto. See also, Statutes of 1911, pages 423, 424, 426, 429, 432, 435, 440, and 441; Statutes of 1913, p. 235; and Statutes of 1915, pages 31 and 462.

Public opinion having changed again toward liberality the legislature enacted the so-called open gambling law in 1931. The statute is entitled: An Act concerning slot machines, gambling games, and gambling devices; providing for the operation thereof under license; providing for certain license fees and the use of the money obtained therefrom; prohibiting minors from playing and loitering about such games; designating the penalties for violations of the provisions thereof; and other matters properly relating thereto. Statutes of 1931, 165-169, Secs. 3302-3302.16, N.C.L. Supplement 1931-1941. From this statute we quote from three pertinent sections, viz:

Section 1. From and after the passage and approval of this act, it shall be unlawful for any person, firm, association or corporation, either as owner, lessee, or employee, whether for hire or not, to deal, operate, carry on, conduct, maintain, or expose for play, in the State of Nevada, any game of faro, monte, roulette, keno, fan-tan, twenty-one, black jack, seven-and-a-half, big injun, klondyke, craps, stud poker, draw poker, or any banking or percentage game played with cards, dice, or any mechanical device or machine, for money, property, checks, credit, or any representative of value; or any gambling game in which any person, firm, association or corporation keeping, conducting, managing, or permitting the same to

be carried on, receives, directly or indirectly, and compensation or reward, or any percentage or share of the money or property played, for keeping, running, carrying on, or permitting the said game to be carried on; or to play, maintain, or keep any slot machine played for money, for checks or tokens redeemable in money or property, without having first procured a license for the same as hereinafter provided; and provided further, that no alien, or any person except a citizen of the United States, shall be issued a license, or shall directly or indirectly own, operate or control any game or device so licensed.

Sec. 2. Third-Said license shall entitle the holder or holders, or his or their employee or employees, to carry on, conduct, and operate the specific slot machine, game or device for which said license is issued in the particular room and premises described therein, but not for any other slot machine, game or device than that specified therein, or the specified slot machine, game or device in any other place than the room and premises so described, for a period of three (3) months next succeeding the date of issuance of said license; provided, that the licensee shall be entitled to carry on, conduct and operate two or more slot machines, games or devices mentioned in section one of this act, in the same room, by paying the license herein provided for, for each slot machine, game or device and otherwise complying with the terms of this section.

Sec. 5. All moneys received for licenses under the provisions of this act shall be paid, twenty-five (25%) per cent to the state treasurer for general state purposes, and seventy-five (75%) per cent to the county treasurer of the county wherein the same is collected for general county purposes; provided, where the license is collected within the boundaries of any incorporated city or town the county shall retain twenty-five (25%) per cent of said moneys, and the incorporated city or town shall receive fifty (50%) per cent of said moneys so collected, and the same shall be paid into the treasury of said incorporated city or town for general purposes; provided further, where the license is collected within the boundaries of any unincorporated city or town that is under the control of the board of county commissioners under and by virtue of an act entitled 'An Act providing for the government of towns and cities of this state,' approved February 26, 1881, the county shall retain twenty-five (25%) per cent of said moneys, and fifty (50%) per cent of said moneys so collected shall be placed in the town government fund for general use and benefits of such unincorporated city or town.'

Section 5, above quoted, was amended in the legislative session of 1945, p. 492, but in a manner not material to the purpose for which the section is cited. In this statute of 1945, p. 492, a new section was added entitled 'Section 10e,' which section reads as follows:

Section 10e. The Nevada tax commission, before issuing a state gambling license shall charge and collect from each applicant a license fee equal to one (1%) per cent of all the gross revenue of such applicant exceeding three thousand dollars (\$3,000) quarterly.

No state gambling license shall be issued to any applicant until the license fee, if any, has been paid in full.ⁱ

The legislature of 1947 changed this section in certain details but no change of the statute is pertinent to this opinion except the fact that the percentage was increased from one per cent to two per cent.

See Statutes of Nevada of 1947, p. 734.

Appellant as a result of tireless and exhaustive research shows to the court that a great deal of the gambling law of England in force at the time of the American Declaration of Independence, is peculiarly applicable to that country because of the structure of their government. From this he argues that under our form of government and particularly in view of the liberality of our statutory enactments pertaining to this subject, from the year 1931, no part of the said Statute of Anne can now have any controlling force. In support of this position appellant shows:

That by Statute 33, Henry VIII c. 9, enacted A.D. 1541, in England, it was made unlawful to maintain a house or place of dicing, table or carding, or other gambling;

That by Section 12 of said Act all other gambling statutes were repealed;

That by Statute 10 and 11, Will. 3 C 17(c), enacted 1710, lotteries were declared common nuisances;

That under Statute 8, George 1, c. 22 S.S. 36, 37 enacted 1721, further penalties for conducting lotteries were provided and certain other enforcement provisions were provided;

That under Statute 9, George 1, c. 19, enacted 1722, certain prohibitions against foreign lotteries were provided;

That the said Statute of Anne was enacted for the purpose of implementing and enforcing the previous anti-gambling statutes;

That said statute contained a limitation or exception to its operation by express terms by provision that it should have no force or effect within His Majesties Royal Palaces, etc. M, and otherwise excepting the sovereigns;

That by Statute 4, George IV, c. 60, Secs., 1-18, a treasury lottery was authorized;

That by Section 2 of the Statute of Anne, any person who had lost at gaming, could within three months maintain an action of debt, and recover said sum with costs, and in the event the loser failed to commence such an action same might be maintained by any one for treble the amount lost plus costs;

That section 5 of said act provided for corporal punishment to a person winning by fraud;

That the Statute of Anne does not, as do the Nevada statutes, license gambling;

That said statute expressly permits unlicensed gambling in the royal palaces under certain conditions;

That said Statute of Anne permits unlicensed gambling by the royal family for ready money only,^í while the Nevada statutes permit gambling not only for money but for property, checks, credit, or any representative of value.^í

We understand that certain of the statutes of England, not here under investigation, but which cast light upon the gambling status and public policy of England at that particular time, are discussed only for these purposes.

Certain portions of the Statute of Anne that are at hopeless variance with the structure of government in America, were equally at hopeless variance at the time of the admission of Nevada to statehood. Admittedly, without attempting to define just which portions, certain portions of the Statute of Anne are not in harmony with the structure of government here, either national or state. But from this fact we cannot conclude that no part of the statute has been adopted unless the statute itself is totally inseparable, or non-severable. Apparently this question of severability has not been raised or urged in any of the gambling cases heretofore decided by this court. Such contention therefore merits careful consideration. 34 L.R.A. 341, footnote ní.

The determination of *Evans v. Cook*, supra, and *Burke v. Buck*, supra, elicited the declaration that the first section of the Statute of Anne had been adopted. The wording of the first section alone was required to sustain the conclusion reached. The first section of said statute reads as follows:

That all notes, bills, bonds, judgments, mortgages, or other securities or conveyances whatsoever given, granted, drawn, or entered 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 to game at any of the games aforesaid, or for the reimbursing or repaying any money knowingly 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 bet, shall be utterly void, frustrate, and of none effect, to all intents and purposes whatsoever.^í

The first section heretofore quoted, provides that gambling debts may not be collected at law; the second section that money lost at gambling and paid over may be recovered by the loser and the ninth section is a proviso declaring that nothing in the act shall prevent gambling at the palaces of St. James, or Whitehall when the sovereign is in residence and that such gaming shall be for ready money only.

The general law on the subject of statutes void or ineffectual in part, is clear:

* * * the adjudging of a certain portion of a statute to be unconstitutional does not affect any other portion, save and except so much thereof as is dependent upon that portion which is declared null and void. Ex parte Arascada, 44 Nev. 30, †189 P. 619, 621; Ex parte Goddard, 44 Nev. 128, 190 P. 916.

The first and second sections of the statute are entirely independent and severable. The first provides a shield for one who has lost at gambling but has not paid his losses, while the second provides a sword by which he may recover back what he has paid over. The first provides a defense and the second a remedy. It is difficult or impossible to conceive of a single transaction in which both sections could be invoked. The first section cannot be invoked if the gambling debt has been paid. The second section cannot be invoked if the gambling debt has not been paid. The first section is not dependent upon the ninth section. As heretofore stated the ninth section is a proviso to the effect that nothing in the act shall prevent gambling at certain palaces for ready money. The first section does not prohibit gambling at these palaces or elsewhere nor does it prohibit or require play for ready money only. On the other hand, the ninth section does not purport to legalize gambling debts but by its express terms requires that gambling at Whitehall and St. James palaces shall be for cash only. What has heretofore been stated as to the effect and severability of the first and second sections applies with equal force to the first and ninth. There could be no single transaction under which both sections could be invoked and either section can be dropped from the act without affecting the rights or defenses conferred by the other.

Only such portions of the common law as are applicable to our conditions, have been adopted as the law of this state. *Reno Smelting, Milling & Reduction Works v. Stevenson*, 20 Nev. 269, 21 P. 317, †4 L.R.A. 60, 19 Am.St.Rep. 364; †*Haggin v. International Trust Co.*, 69 Colo. 135, 169 P. 138, L.R.A.1918B, 710. In *Esden v. May*, 36 Nev. 611, 135 P. 1185, the court held that only those portions of the Statute of Anne are in force which are applicable to our conditions and not in conflict with our statutory law, and that particularly the Nevada statutes governing matters of practice control when in conflict with portions of the Statute of Anne. This court having held that not all of the sections of the Statute of Anne have been adopted, *Esden v. May*, supra, and having held on three occasions, *Evans v. Cook*, supra, *Burke v. Buck*, supra, and *Mendardi v. Wacker*, supra, that the first section of said statute is the law of this state, under the rule of stare decisis, the contention of appellant that the statute is non-severable can hardly meet with serious consideration. 21 C.J.S., Courts, § 187, p. 302. We are satisfied that there has been an effectual declaration of adoption of the first section of the Statute of Anne. We are not required to decide if more was adopted and without limiting such possibility we pass the matter for future determination in a proper case.

We are now confronted with the question of whether any of the gambling statutes enacted from the date 1931, have in legal effect repealed by implication the first section of the Statute of Anne. Such repeal would necessarily be by implication for there is nothing in any of the statutes repealing it directly, i. e. there is no provision

in any of the statutes to the effect that money won by the establishment at a licensed game may be collected by suit at law.

We have quoted the statutes rather fully and particularly to show that the present law was modeled after the earlier acts of 1869 and 1879, the principal changes being the imposition of a tax upon gross receipts, a grant to the state tax commission of certain regulatory powers, and the legal effect of operating with license. As heretofore mentioned a license under the act of 1869 shall protect the licensee and his employer or employers (employee or employees) against any criminal prosecution for dealing or carrying on the game mentioned * * *. The statute of 1879, p. 114 is of the same wording in this respect. Under the statute of 1931 p. 165, Said license shall entitle the holder or holders, or his or their employee or employees, to carry on, conduct, and operate the specific slot machine, game or device for which said license is issued * * *.

Appellant's contention for a repeal by implication is based particularly upon three points, viz;

1. That the use of the word 'checks' in the statute of 1931 impliedly authorizes suit to collect same.
2. That the statute of 1931 in omitting the immunity clause contained in the earlier statute did so with the intent of giving authority to the licensee to maintain an action for winnings of licensed games.
3. That if the repeal of the first section of the Statute *31 of Anne was not effected by the act of 1931 it nevertheless was effected by the act of 1945, p. 492, under the terms and provisions of which it is urged the state became a partner.

In all of the statutes under scrutiny, 1869, 1879, 1931, in which gambling under license is authorized, the word 'checks' appears. It is not new to the statute of 1931, which statute is clearly modeled from the other statutes. The first section deals with the unlawful and is prohibitive rather than permissive. In effect it declares that it is unlawful for all persons, natural or artificial, to carry on certain games of chance, enumerating them, for property of all kinds unless properly licensed. It cannot be legally inferred from this wording of the statute that the statute is a grant of authority to take checks in properly licensed games, and that there is a corollary power granted to maintain an action at law for the collection of such checks.

What is the legal significance of the omission of the immunity clause, that is, the clause in regard to immunity from criminal prosecution? The inclusion of the immunity clause in the earlier statutes was entirely unnecessary to protect a licensed gambling operator from criminal prosecution, for when a license tax is imposed upon a particular form of gambling or gambling device, one who pays the tax cannot be prosecuted for gambling, i. e. that which is contemplated by the license. State v. Moseley, 14 Ala. 390; †State v. Allaire, 14 Ala. 435; †Rodgers v. State, 26 Ala. 76; †Hawkins v. State, 33 Ala. 433; †Overby v. State, 18 Fla. 178; †Berry v. People, 36 Ill. 423; †State v. Duncan, 84 Tenn. 79; †Houghton v. State, 41 Tex.

136;†Miller & Co. v. Stropshire, 124 Ga. 829, 53 S.E. 335,†4 Ann.Cas. 574, 575, and note; 27 C.J. p. 1014, § 179, notes 59-50, 38 C.J.S., Gaming, § 82: 24 Am.Jur. p. 405, sec. 10, note 19.

It has been urged that the purpose of including such clause in the statutes of 1869 and 1879, was, as held in *Scott v. Courtney*, supra, to limit and restrict the effect of the license to simple protection of the persons *32 so engaged in gambling against criminal punishment, and that no omit such immunity clause from the statute of 1931, is in legal effect to remove the disability enunciated in *Scott v. Courtney*, supra. This could have been the intent but this possibility is surely discounted or discredited when one reflects that the effect of the license is still limited under the statute. Under the earlier statutes the license protected the licensee from criminal prosecution. Under the present statute the license shall entitle the holder or holders, or his or their employee or employees, to carry on, conduct and operate the specific slot machine, game or device for which said license is issued * * *. It is the opinion of the court that the substitution of another limiting clause for the former immunity clause cannot have the effect urged by counsel. Who can say but that the omission of the immunity clause was for the purpose of removing surplusage.

But to resolve this question of repeal by implication, we are not required to indulge in speculation, we can reach it very directly. We quote from 15 C.J.S., Commerce, § 12, p. 620, as follows:

Although the common law may be impliedly repealed by a statute which is inconsistent therewith, or which undertakes to revise and cover the whole subject matter, repeal by implication is not favored, and this result will be reached only where there is a fair repugnance between the common law and the statute, and both cannot be carried into effect.í

The statute of 1931 did not attempt to revise and cover the whole subject matterí, as evidenced by the fact that section 10201 N.C.L. of 1929, which was a law with reference to gambling effective January 1, 1912, was amended in 1941 p. 64: Sec. 10201, 1931-1941 N.C.L. Supplement.

In *Cunningham v. Washoe County*, 66 Nev. 60, 203 P.2d 611, 613, in which appellant contended for repeal of the common law by implication, Mr. Justice Badt *33 stated the law applicable to this action at bar in these words:

Nevada has by statute adopted the principles of the common law and has in a number of instances modified the common law by statutory enactment. That this may be done by way of constructive repeal of the common law (as in cases where a statute has revised the whole subject) or that it may be the result of the clear and unquestionable implication from legislative acts,í as maintained by appellant, we may concede to be true where such situations sufficiently appear. However to sustain a justification of the particular acts under this theory, where such acts are not authorized by the express terms of the statute under which the justification is made, we should have to find the plainest and most necessary implication in the

statute itself. This rule appears to be frankly admitted even in the authorities submitted by appellant.'

We now approach the question of liberal and strict construction.

The law makes a distinction between liquor and gambling industries and useful trades. In *State ex rel. Grimes v. Board of Commissioners*, 53 Nev. 364, 1 P.2d 570, 572, the court said:

We think the distinction drawn between a business of the latter character and useful trades, occupations, or businesses is substantial and necessary for the proper exercise of the police power of the state. Gaming as a calling or business is in the same class as the selling of intoxicating liquors in respect to deleterious tendency. The state may regulate or suppress it without interfering with any of those inherent rights of citizenship which it is the object of government to protect and secure.í

Statutes in derogation of the common law are to be strictly construed. Sutherland Statutory Constitution, Third Edition, Vol. 3, Art. 6202. * * * statutes granting special privileges to a group of persons who are in no particular need may be strictly construed against such beneficiaries.íSutherland Statutory Construction, Third Edition, Vol. 3, Art. 5503, Note 9. One of the best illustrations of such legislation is laws granting special franchises and privileges.í† *Charles River Bridge v. Warren Bridge*, 11 Pet. 420, 36 U.S. 420, 9 L.Ed. 773.

Considering the limitations placed by law upon the license, the special class of industry licensed and its deleterious effect, the fact that it is in contravention of the common law, the fact that it is a statute granting special privileges, we entertain no doubt but that the statute is one meriting strict construction against the licensee, and must therefore conclude from the application of the rule of strict construction, that the omission of the immunity clause in the statute of 1931, does not in legal effect grant the right to maintain an action for winnings at a duly licensed game. There is no such clear and unquestionable implication from legislative acts.íIn *Ex parte Pierotti*, 43 Nev. 243, 184 P. 209, 211, Mr. Justice Sanders speaking in opposition to judicial construction to nullify the obvious meaning of a statute said: It is not the province of courts to confound by construction what the legislature has made clearí

Finally does the fact that the state now accepts two per cent of the gross income from duly licensed games, confer the right upon the licensee of such games to maintain an action for his winnings at such games?

It has been urged that such license fee in which the state has this direct interest, confers such right by operation of law. Under the statutes of 1869 and 1879 the state and county both had a financial interest in the proceeds of the license. Under the presnt law the state receives far more money, of that there can be no doubt, but the financial interest of the state and county has been present under all of the gambling statutes. It might be said that under the earlier laws the interest of the state was in licensing and nothing more, and that the state was not concerned with

the success of the licensed games. In a restricted and limited sense that is true, and yet on the other hand an unsuccessful game could not or would not under the earlier statutes, continue from quarter to quarter to be licensed. It is therefore true that under all license laws the state has been financially interested in the success of the games, machines or devices so licensed. The distinction between application of the old laws and the present law is therefore a distinction of quantity and not quality. We must therefore conclude that the enactment of the laws of 1945, p. 492, and of 1947, p. 734, by which a license fee of one (1%) per cent and later two (2%) per cent of gross income, was and is charged, does not alter the conclusions formerly reached.

We have carefully studied the other points raised herein by appellant but are convinced that the intent of the legislature is clear, and do not deem other points of contention of sufficient force to merit extended treatment in this rather long opinion.

In view of the conclusions reached it is not necessary for the court to pass upon other contentions raised by respondent, including that contention that the statutes could not have the effect contended for by appellant by reason of the necessity of a properly inclusive title.

Counsel for both sides are to be highly complimented for their tireless search and excellent briefs.

For the reasons heretofore given it is ordered that the judgment of the District Court be, and the same is hereby affirmed, with costs.

In 1983, the Nevada Legislature enacted NRS 463.361, which prohibited the enforcement of gaming debts absent evidence of a credit instrument.⁴ Generally, credit instruments in gaming transactions are evidenced by markers or checks, which are specifically enforceable under Nevada law.⁵

Markers

Markers are the primary vehicle of gaming credit extended to players. A marker is essentially a counter check. They have the same effect and function as a personal check and they are generally exchanged for casino credit or chips.

⁴ Nev. Rev. Stat. §463.361

⁵ Nev. Rev. Stat. §463.368 (2) and §205.130

Markers generally contain the following provisions at a minimum:

1. An authorization for the payee to fill in missing items such as amounts, the payee name, the dates, and banking information
2. A waiver of any right to stop payment
3. An acknowledgement that the debt was incurred in Nevada
4. A choice of law and venue provision providing for the exclusive use of Nevada law and courts to enforce the obligation
5. An agreement for the payer to pay for all collection costs

In rare circumstances, a casino may use a promissory note instead of a check as the vehicle for the extension of credit. Promissory notes are generally more substantial contracts than most checks or markers. Promissory notes are generally used for patrons from foreign jurisdictions where they are more likely to be enforceable than markers and checks.

Interstate Enforcement

As stated earlier, the Statute of Anne is the basis for many state statutes and common law opinions that prohibit the enforcement of gambling debts. Consequently, court opinions vary from state to state and even within a particular state as to whether gaming debts are enforceable. Therefore, a key to determining the enforceability of gaming debts is determining the choice of law and venue for enforcement of the debt.

In many states, enforcement of gambling debts has been deemed to be contrary to the public policy of the state. As illustrated by the court opinion below, courts in some venues may even assert such a public policy defense when the debtor has not:

United States District Court,
E.D. Virginia,
Richmond Division.

RESORTS INTERNATIONAL HOTEL, INC.

v.

Joseph J. AGRESTA.
Civ. A. No. 83-0215-R.
Aug. 5, 1983.

New Jersey gambling casino sued Virginia resident to recover on note given for gambling losses. Casino moved to enter default. The District Court, Warriner, J., held that although indebtedness may have been enforceable in New Jersey, enforcement would violate express public policy and positive law of Virginia.

Complaint dismissed.

OPINION AND ORDER

WARRINER, District Judge.

Plaintiff's amended complaint, filed 30 June 1983, alleges that during May and June, 1982, defendant came to plaintiff's place of business in Atlantic City, New Jersey, and engaged in and lost a substantial sum of money in games of chance. To pay the loss defendant drew a series of three drafts payable to plaintiff on the account of one Edward Hamway in a Philadelphia, Pennsylvania, bank. The drafts were dishonored by the bank and returned to the plaintiff. Defendant thereupon executed a note in payment of the loss providing that defendant would pay plaintiff the principal sum of \$10,000 together with eight percent (8%) interest. The note authorized defendant's attorney-in-fact, Benjamin B. Wooldridge, to confess judgment against defendant in the amount of \$10,000 (face value of the note), plus interest, costs, and collection charges. Plaintiffs allege that the note plus interest and collection charges is now due and owing from defendant to plaintiff. Plaintiff claims that demand has been made upon defendant to honor the obligation under the note, but that defendant has failed and refused to pay plaintiff the sum due. Plaintiff has moved the Court to enter default under Rule 55(a), Fed.R.Civ.P., against defendant for failure to plead or otherwise defend against the complaint. For the reasons set forth herein the action will be dismissed.

Plaintiff, Resorts International Hotel, Inc., is a New Jersey corporation with its principal place of business in the State of New Jersey. Plaintiff does not transact business in the Commonwealth of Virginia and has no principal place of business here. Defendant is a citizen of the Commonwealth. As the amount of the controversy exceeds \$10,000, and the parties are diverse, jurisdiction is proper. The Court looks to the substantive law of the Commonwealth of Virginia for the basis of its decision.

The general rule is that contracts and liabilities recognized as valid by the laws of the State or the country where made or established may be enforced in the courts of another State or country where the action is brought unless such contract or liability is contrary to morals, public policy, or the positive law of the latter. *Parker v. Moore*, 115 F. 799 (4th Cir.1902). In New Jersey, gambling has been legalized and a contract such as that in the present case would presumably be enforceable in its courts. Thus under ordinary principles of law the debt would be enforceable in the courts of the Commonwealth. The fact that the debt is, in fact, a gambling debt removes it from the ordinary and requires the Court to determine whether it is collectible in this Court. **The question is whether enforcing the debt would be contrary to the morals, public policy, or the positive law of Virginia.**

In Virginia any person who illegally gambles is guilty of a Class 3 misdemeanor. Va.Code § 18.2-326 (1982). Persons who operate an illegal gambling enterprise are guilty of a Class 6 felony. Va.Code § 18.2-328 (1982). Possession of a gambling device constitutes a Class 1 misdemeanor. Va.Code § 18.2-331 (1982). The public policy of the Commonwealth expressed through statutory provisions has been since 1740 that all promises, agreements, mortgages, and securities, and the like, where the consideration was based on wagers are void. *See Commonwealth v. Shelton*, 49 Va. (8 Gratt.) 592 (1851). The applicable Virginia statute, Va.Code § 11-14 (1982) provides that:

All wagers, conveyances, assurances, and all contracts and securities whereof the whole or any part of the consideration be money or other valuable thing, won, laid, or bet, at any game, horse race, sport or pastime, and all such contracts to repay any money knowingly lent at the time and place of such game, race, sport, or pastime, to any person for the purpose of so gaming, betting, or wagering, or to repay any money so lent to any person who shall, at such time and place, so pay, bet, or wager, shall be utterly void.

Id.

The Supreme Court of Virginia has recently interpreted Va.Code § 11-14 (1982). In *Kennedy v. Annandale Boys Club, Inc.*, 221 Va. 504, 272 S.E.2d 38 (1980), plaintiff sought to recover a judgment against defendant Boys Club for \$6,000. She alleged that she won the money in a bingo game conducted in Virginia at defendant club. The Supreme Court affirmed the lower court in sustaining defendant's demurrer to plaintiff's motion for judgment. The Court found that the contract was not merely voidable but utterly void, and therefore, unenforceable. The Court reasoned that

even though the General Assembly had removed the “taint of illegality” from the operation of bingo games in the Commonwealth, it had not repealed or amended Va.Code § 11-14 (1982).

The Virginia Supreme Court held that the plain and unambiguous language of the statute should be construed strictly. The language makes plain that the General Assembly has not made the State court system available to unpaid gambling winners. There can be no claim made on any contract founded upon gaming. The Virginia Court concluded that the General Assembly's failure to amend Va.Code § 11-14 (1982) could not be inadvertent in light of the change in law to allow bingo in the Commonwealth. The Court also found that the legislature's refusal to permit enforcement in its courts of a gambling contract presented no constitutional question, State or federal. Id. 272 S.E.2d at 40.

In light of the General Assembly's express and unmistakable policy and the Virginia Supreme Court's interpretation thereof in a case much more persuasive than this one, there can be no other conclusion than that the enforcement of such a contract would be against the express public policy and positive law of the Commonwealth.

This Court is mindful of a recent opinion by another judge of this Court directly on point holding to the contrary. I am not aware of the authorities cited in that case and none are specified in the bench opinion. But the controlling law in this diversity case is that of Virginia, under the principles above mentioned, and I am not persuaded that I can ignore the plain language of Virginia's statute and the equally plain language of its Supreme Court.

Accordingly, this Court cannot, despite defendant's failure to plead or otherwise defend this case, contravene the positive law of the Commonwealth of Virginia in a diversity case and enforce a contract that offends two centuries of State policy. *See Gulf Collateral, Inc. v. Morgan*, 415 F.Supp. 319 (S.D.Ga.1976).

Accordingly, for the above reasons, the amended complaint shall be DISMISSED.

And it is so ORDERED.⁶

⁶ *Resorts Inter. Hotel, Inc. v. Agresta*, 569 F. Supp 24 (E.D. VA 1983). *See also Carnival Leisure Ind., LTD. V. Aubin*, 53 F.3d 716 (5th Cir 1995). *Where a court held that a gambling debt was unenforceable against Texas public policy, an action for fraud against the player in incurring the debt cannot be sustained.*

Even in Nevada, which has a strong gaming industry, gaming contracts and debts were not enforceable until the mid 1980s. This is illustrated in one of the most cited Nevada gaming law court opinions below:

LAS VEGAS HACIENDA, Inc., A Nevada Corporation, Appellant,

v.

GEORGE GIBSON, Respondent.

No. 4319

February 3, 1961 359 P.2d 85

Appeal from the Eighth Judicial District Court, Clark County; A. S. Henderson, Judge.

Action by golfer against corporate owner of golf course to recover \$5,000 offered by owner for shooting hole in one. From judgment of the lower court in favor of golfer, defendant appealed. The Supreme Court, McNamee, J., held that offer by owner to pay \$5,000 to any person who, having paid 50 cents for the opportunity of attempting to do so, shot a hole in one on course, when accepted by golfer, was a valid contract enforceable at law and not a gambling contract.

Affirmed.

(Petition for rehearing denied March 2, 1961.)

Calvin C. Magleby, of Las Vegas, for Appellant.

C. Norman Cornwall, of Las Vegas, for Respondent.

OPINION

By the Court, McNamee, J.:

Respondent commenced this action in the lower court to recover the sum of \$5,000 based on the following transaction.

Appellant made a public offer to pay \$5,000 to any person who, having paid 50 cents for the opportunity of attempting to do so, shot a hole in one on its golf course. There were certain specified conditions in connection with said offer.

The lower court found from the evidence that the respondent complied with said conditions, that he shot a hole in one, and that appellant refused to abide by its offer. It further determined that this transaction was a valid contract enforceable at law and not a gambling contract. Judgment was entered in favor of respondent in the sum of \$5,000 plus interest and costs. Appeal is from said judgment.

On this appeal we are not concerned with any factual matters, the lower court properly having resolved such matters in favor of respondent.

Appellant specified the following two errors:

1. The court below erred in not holding that the alleged contract on which the action is based was a wagering contract and therefore unenforceable.
2. The court below erred in finding that the shooting of a “hole in one” is a feat of skill and not a feat of chance.

Although gambling, duly licensed, is a lawful enterprise in Nevada (Nevada Tax Commission v. Hicks, 73 Nev. 115, 310 P.2d 852), an action will not lie for the collection of money won in gambling. Weisbrod v. Fremont Hotel, 74 Nev. 227, 326 P.2d 1104. It is therefore necessary to determine whether the transaction between appellant and respondent in this case constituted a gaming contract.

It is generally held, in the absence of a prohibitory statute, that the offer of a prize to a contestant therefor who performs a specified act is not invalid as being a gambling transaction. Porter v. Day, 71 Wis. 296, 37 N.W. 259. The offer by one party of specified compensation for the performance of a certain act as a proposition to all persons who may accept and comply with its conditions constitutes a promise by the offeror. The performance of that act is the consideration for such promise. The result is an enforceable contract. Robertson v. United States, 343 U.S. 711, 72 S.Ct. 994, 96 L.Ed. 1237. There is no statute in Nevada prohibiting such offers.

A prize or premium differs from a wager in that in the former, the person offering the same has no chance of gaining back the thing offered, but, if he abides by his offer, he must lose; whereas in the latter, each party interested therein has a chance of gain and takes a risk of loss. Toomey v. Penwell, 76 Mont. 166, 245 P. 943; Pompano Horse Club v. State, 93 Fla. 415, 111 So. 801, 52 A.L.R.51.

Ballentine's Law Dictionary, 2d Ed., p. 1002, defines premium as “a reward or recompense for some act done. It is known who is to give before the event. It is not a bet or wager, for in a wager, it is not known who is to give until after the event.”

Misner v. Knapp, 13 Ore. 135, 9 P. 65, 66, was an action to recover the sum of \$250 offered by defendants to the owner of a horse that should trot a mile in the best time, less than two minutes and twenty-five seconds at City View Park, it being alleged therein that plaintiff complied with the terms and conditions specified. The

contention of defendants that the purse offered was a bet or wager and that no action would lie to enforce the payment thereof was held to be without merit, the court saying:

“Now, according to the definition of ‘wager,’ there must be two or more contracting parties, having mutual rights in respect to the money or other thing wagered, or, as sometimes said, ‘staked,’ and each of the parties necessarily risks something, and has a chance to make something upon the happening or not happening of an uncertain event. But a purse or prize offered by a party, and to be awarded to the successful competitor in a contest in which such party does not engage, nor has any chance of gaining, but only, perhaps, of losing, is without the element of a chance of gain or a risk of loss which characterizes the wager agreement. The distinction has been stated thus:

“In a wager or a bet, there must be two parties, and it is known, before the chance or uncertain event upon which it is laid or accomplished, who are the parties who must either lose or win. In a premium or reward there is but one party until the act or thing or purpose for which it is offered has been accomplished. A premium is a reward or recompense for some act done; a wager is a stake upon an uncertain event. In a premium it is known who is to give before the event; in a wager it is not known until after the event. The two need not be confounded.’ *Alvord v. Smith*, 63 Ind. 58.”

The fact that each contestant is required to pay an entrance fee where the entrance fee does not specifically make up the purse or premium contested for does not convert the contest into a wager. *Toomey v. Penwell*, supra.

Inasmuch as the contesting for a prize offered by another, which the one offering must lose in the event of compliance with the terms and conditions of his offer is not gambling, it was not error to hold that the said contract was valid and enforceable.

Whereas we have concluded that the contract does not involve a gaming transaction, consideration of appellant's second assignment of error, that the lower court erred in finding that the shooting of a “hole in one” was a feat of skill, becomes unnecessary. We do wish to state, however, that the record contains sufficient evidence to sustain the court's finding in this regard. Appellant insists, however, that the testimony of one Capps, a golf professional, precludes such a finding. He testified that luck is a factor in all holes in one where skill is not always a factor. He further testified that “a skilled player will get it (the ball) in the area where luck will take over more often than an unskilled player.”

The test of the character of a game is not whether it contains an element of chance or an element of skill, but which is the dominating element. *People ex rel. Ellison v. Lavin*, 179 N.Y. 164, 71 N.E. 753, 66 L.R.A. 601. It was within the province of the trial court to determine this question. *Brown v. Board of Police Commissioners*, 58 Cal.App.2d 473, 136 P.2d 617.

Affirmed.

Badt, C. J., and Pike, J., concur.

In the 1983 legislative session, Nevada changed its statutes to permit recovery of gambling debts. The statute is as follows:

NRS 463.368 Credit instruments: Validity; enforcement; redemption; penalties; regulations.

1. A credit instrument accepted on or after June 1, 1983, and the debt that the credit instrument represents are valid and may be enforced by legal process.
2. A licensee or a person acting on behalf of a licensee may accept an incomplete credit instrument which:
 - (a) Is signed by a patron; and
 - (b) States the amount of the debt in figures, and may complete the instrument as is necessary for the instrument to be presented for payment.
3. A licensee or person acting on behalf of a licensee:
 - (a) May accept a credit instrument that is payable to an affiliated company or may complete a credit instrument in the name of an affiliated company as payee if the credit instrument otherwise complies with this subsection and the records of the affiliated company pertaining to the credit instrument are made available to agents of the Board upon request.
 - (b) May accept a credit instrument either before, at the time or after the patron incurs the debt. The credit instrument and the debt that the credit instrument represents are enforceable without regard to whether the credit instrument was accepted before, at the time or after the debt is incurred.
4. This section does not prohibit the establishment of an account by a deposit of cash, recognized traveler's check, or any other instrument which is equivalent to cash.
5. If a credit instrument is lost or destroyed, the debt represented by the credit instrument may be enforced if the licensee or person if acting on behalf of the licensee can prove the existence of the credit instrument.
6. A patron's claim of having a mental or behavioral disorder involving gambling:

(a) Is not a defense in any action by a licensee or a person acting on behalf of a licensee to enforce a credit instrument or the debt that the credit instrument represents.

(b) Is not a valid counterclaim to such an action.

7. Any person who violates the provisions of this section is subject only to the penalties provided in NRS 463.310 to 463.318, inclusive. The failure of a person to comply with the provisions of this section or the regulations of the Commission does not invalidate a credit instrument or affect the ability to enforce the credit instrument or the debt that the credit instrument represents.

8. The Commission may adopt regulations prescribing the conditions under which a credit instrument may be redeemed or presented to a bank or credit union for collection or payment.

(Added to NRS by 1983, 828; A 1985, 798; 1989, 400; 1991, 817; 1995, 1499; 1999, 1500)

NRS 205.130 Issuance of check or draft without sufficient money or credit: Penalties.

1. Except as otherwise provided in this subsection and subsections 2 and 3, a person who willfully, with an intent to defraud, draws or passes a check or draft to obtain:

(a) Money;

(b) Delivery of other valuable property;

(c) Services;

(d) The use of property; or

(e) Credit extended by any licensed gaming establishment, drawn upon any real or fictitious person, bank, firm, partnership, corporation or depository, when the person has insufficient money, property or credit with the drawee of the instrument to pay it in full upon its presentation, is guilty of a misdemeanor. If that instrument, or a series of instruments passed in the State during a period of 90 days, is in the amount of \$250 or more, the person is guilty of a category D felony and shall be punished as provided in NRS 193.130. In addition to any other penalty, the court shall order the person to pay restitution.

2. A person who was previously convicted three times of a misdemeanor under the provisions of this section, or of an offense of a similar nature, in this State or any other state, or in a federal jurisdiction, who violates this section is guilty of a category D felony and shall be punished as provided in NRS 193.130. In addition to any other penalty, the court shall order the person to pay restitution.

3. A person who willfully issues any check or draft for the payment of wages in excess of \$250, when the person knows he has insufficient money or credit with the drawee of the instrument to pay the instrument in full upon presentation is guilty of a gross misdemeanor.

4. For the purposes of this section, “credit” means an arrangement or understanding with a person, firm, corporation, bank or depository for the payment of a check or other instrument.

In some states there are statutory prohibitions on the enforcement of gambling debts as the following Wisconsin statute illustrates:

895.055 Gaming contracts void. (1) All promises, agreements, notes, bills, bonds, or other contracts, mortgages, conveyances or other securities, where the whole or any part of the consideration of the promise, agreement, note, bill, bond, mortgage, conveyance or other security shall be for money or other valuable thing whatsoever won or lost, laid or staked, or betted at or upon any game of any kind or under any name whatsoever, or by any means, or upon any race, fight, sport or pastime, or any wager, or for the repayment of money or other thing of value, lent or advanced at the time and for the purpose, of any game, play, bet or wager, or of being laid, staked, betted or wagered thereon shall be void.

(2) This section does not apply to contracts of insurance made in good faith for the security or indemnity of the party insured.

(3) This section does not apply to any promise, agreement, note, bill, bond, mortgage, conveyance or other security that is permitted under chs. 562 to 569 or under state or federal laws relating to the conduct of gaming on Indian lands.

895.056 Recovery of money wagered. (1) In this section:

(a) “Property” means any money, property or thing in action.

(b) “Wagerer” means any person who, by playing at any game or by betting or wagering on any game, election, horse or other race, ball playing, cock fighting, fight, sport or pastime or on the issue or event thereof, or on any future contingent or unknown occurrence or result in respect to anything whatever, shall have put up, staked or deposited any property with any stakeholder or 3rd person, or shall have lost and delivered any property to any winner thereof.

(2) (a) A wagerer may, within 3 months after putting up, staking or depositing property with a stakeholder or 3rd person, sue for and recover the property from the stakeholder or 3rd person whether the property has been lost or won or whether it has been delivered over by the stakeholder or 3rd person to the winner.

(b) A wagerer may, within 6 months after any delivery by the wagerer or the stakeholder of the property put up, staked or deposited, sue for

and recover the property from the winner thereof if the property has been delivered over to the winner.

(3) If the wagerer does not sue for and recover the property, which was put up, staked or deposited, within the time specified under sub. (1), any other person may, in the person's behalf and the person's name, sue for and recover the property for the use and benefit of the wagerer's family or heirs, in case of the wagerer's death. The suit may be brought against and property recovered from any of the following:

(a) The stakeholder or a 3rd person if the property is still held by the stakeholder or 3rd person, within 6 months after the putting up, staking or depositing of the property.

(b) The winner of the property, within one year from the delivery of the property to the winner.

(4) This section does not apply to any property that is permitted to be played, bet or wagered under chs. 562 to 569 or under state or federal laws relating to the conduct of gaming on Indian lands.

This statute was analyzed in the following court opinion:

496 N.W.2d 671

173 Wis.2d 503

STATE of Wisconsin, Plaintiff-Appellant,

v.

Robert Michael GONNELLY, Defendant-Respondent.

No. 92-1232-CR.

Court of Appeals of Wisconsin.

Submitted on Briefs Oct. 14, 1992.

Opinion Released Dec. 30, 1992.

Opinion Filed Dec. 30, 1992.

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[173 Wis.2d 505] On behalf of the plaintiff-appellant, the cause was submitted on the brief of James E. Doyle, Atty. Gen. and Alan R. Kesner, Asst. Atty. Gen.

On behalf of the defendant-respondent, the cause was submitted on the brief of Dennis M. Cook of Cook & Franke, S.C. of Milwaukee.

Before NETTESHEIM, P.J., and ANDERSON and SNYDER, JJ.

SNYDER, Judge.

The state appeals from an order dismissing the criminal complaint and

information against [173 Wis.2d 506] Robert Michael Gonnely. The complaint and information had charged Gonnely with three felony counts of issuing a worthless check, contrary to sec. 943.24, Stats. Gonnely cashed the checks at Geneva Lakes Kennel Club (GLKC) for the purpose of gambling. The issues on appeal are whether the checks are "gaming contracts" under sec. 895.055, Stats., and, if so, whether sec. 895.055, which voids gaming contracts, prohibits their enforcement despite sec. 943.24, the worthless check statute. We conclude that the checks are gaming contracts and that sec. 895.055 prohibits their enforcement. We affirm the trial court.

Between November 9 and 21, 1990, Gonnely cashed three checks at GLKC worth a total of \$23,700. The checks were returned nonsufficient funds (NSF). Gonnely moved to dismiss the complaint on the grounds that the checks were gaming contracts void under sec. 895.055, Stats. For purposes of the motion, the parties stipulated that Gonnely cashed the checks to obtain money to bet on the dog races at GLKC and, in fact, bet the money he received on the dog races. They also stipulated that GLKC cashed Gonnelys checks to provide him with money to bet on the dog races at GLKC and knew that Gonnely was going to bet the money on the dog races at GLKC. The trial court granted the motion, concluding that the checks were void under sec. 895.055. The state appeals.

The state argues that because the checks here are not gaming contracts in the first instance, they are not void under sec. 895.055, Stats. It also argues that, regardless of whether or not the checks are gaming contracts, Gonnely is liable for them under sec. 943.24, Stats. Accordingly, we must first interpret the statutes, and then apply the undisputed facts to that interpretation. [173 Wis.2d 507] Both tasks present a question of law. *Zimmerman v. DHSS*, 169 Wis.2d 498, 504, 485 N.W.2d 290, 292 (Ct.App.1992).

We begin with the gaming contract statute. Section 895.055, Stats., provides:

Gaming contracts void. All promises, agreements, notes, bills, bonds, or other contracts, mortgages, conveyances or other securities, where the whole or any part of the consideration of such promise, agreement, note, bill, bond, mortgage, conveyance or other security shall be for money or other valuable thing whatsoever won or lost, laid or staked, or betted at or upon any game of any kind or under any name whatsoever, or by any means, or upon any race, fight, sport or pastime, or any wager, or for the repayment of money or other thing of value, lent or advanced at the time and for the purpose, of any game,

play, bet or wager, or of being laid, staked, betted or wagered thereon shall be absolutely void; provided, however, that contracts of insurance made in good faith for the security or indemnity of the party insured

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shall be lawful and valid. [Emphasis added.]

The state asserts that the checks are not gaming contracts, and that a gaming contract arose only later when Gonnely actually placed a bet. It contends that although both parties may have contemplated that Gonnely would use the proceeds for gambling purposes, that was simply their understanding, not a requirement. Nothing written on the checks indicates that they were cashed only upon the condition that the money received in exchange would be used to place bets.

The state also points out that the checks necessarily could not have contained any other promise or obligation such as one to use the proceeds to gamble at the track. In support, it looks to ch. 403, Stats., which provides[173 Wis.2d 508] that a check is a negotiable instrument and a negotiable instrument must contain an unconditional promise or order to pay a sum certain in money and no other promise or obligation. Section 403.104(1)(b) and (2)(b), Stats.

These arguments fail. Taking the states ch. 403, Stats., argument first, we reject it because it presumes that the check is not void in the first instance. As will be explained later in the opinion, there is a difference between "worthless" and "void" checks. Chapter 403 may apply to "worthless" checks but it does not apply to "void" ones.

We also reject the states argument that the checks had to contain, as consideration, some condition that the money be used to gamble. Section 895.055, Stats., requires no such written condition. Rather, it requires only that "the whole or any part of the consideration" be for "money ... won or lost, laid or staked, or betted at or upon ... any race ... for the repayment of money," such as the races at GLKC. Id. The parties established this by stipulation. 1

[173 Wis.2d 509] Finally, we reject the states argument that the checks are not themselves gaming contracts. The Minnesota Court of Appeals recently had occasion to address a similar question to that posed here. *State v. Stevens*, 459 N.W.2d 513 (Minn.Ct.App.1990). Like Wisconsin, Minnesota endorses certain forms of gambling yet also has a statute voiding gaming contracts. See Minn.Stat. sec. 541.21 (Supp.1989). In *Stevens*, the defendant wrote checks to purchase \$465 worth of legal "pull-tabs." When the checks were returned NSF, the state charged him with theft by check. The trial court granted the defendants motion to dismiss. The court of appeals affirmed, concluding that the gaming contract statute applied to *Stevens* checks. Id. at 514-15.

The state's attempt to distinguish Stevens from the case here is to no avail. It notes that in Stevens the checks were exchanged directly for the pull-tabs; here, Gonnely exchanged the checks for cash and then placed wagers. The state argues that if instead of gambling with the cash received from the checks Gonnely had taken it and spent it elsewhere, GLKC would have had no recourse against him.

The trial court found Stevens persuasive and so do we. We agree with Gonnely that the distinction the state draws is insignificant. Permitting the placing of wagers by check would be inefficient and time-

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consuming. On-track betting is not conducive to such a set-up. By contrast, purchasing pull-tabs by check does not pose [173 Wis.2d 510] such time and administrative obstacles. Moreover, the parties' stipulation satisfies us that both GLKC and Gonnely contemplated that the money would be used for gambling and that, in fact, it was.

The state contends, however, that even if the checks are gaming contracts, they still are enforceable under the worthless check statute. Section 943.24(2), Stats., provides:

Whoever issues any single check ... for the payment of \$500 or more or whoever within a 15-day period issues more than one check ... amounting in the aggregate to \$500 or more which, at the time of issuance, the person intends shall not be paid is guilty of a Class E felony.

The state argues that whether or not a check is void as a gaming contract under sec. 895.055, Stats., should be immaterial to a criminal prosecution under sec. 943.24(2) as long as the necessary elements are established. Those elements are that (1) the defendant issued a check (2) for the payment of \$500 or more (3) intending, at the time of issuance, that the check not be paid.

An enticing argument, it nonetheless fails because the necessary elements cannot be established here. Section 943.24, Stats., addresses "worthless" checks. Gonnely's checks are void under sec. 895.055, Stats., not worthless under sec. 943.24(2). "Void" means "[n]ull; ineffectual; nugatory; having no legal force or binding effect.... An instrument or transaction which is wholly ineffective, inoperative, and incapable of ratification and which thus has no force or effect so that nothing can cure it." BLACKS LAW DICTIONARY 1573 (6th ed. 1990). "Worthless," when used in the context of a worthless [173 Wis.2d 511] check, means a check "drawn on a bank account which is no longer open or on an account with funds insufficient to cover the check." *Id.* at 1607. Consequently, the sec. 943.24(2) elements cannot be established because a check, even if worthless, still is a legal instrument invoking legal obligations. See sec. 403.104, Stats. A void check, by contrast, is of no legal consequence.

The state also complains that the case was dismissed on an improper ground.

The trial court stated in its decision that GLKC "should have known the checks were void and thus could not have been defrauded when it cashed the checks and gave defendant money with which to gamble." The state argues that fraud is not an element of sec. 943.24(2), Stats. We agree with that reading of the statute, but disagree with the state that the lack of fraud "is the basis upon which the case was dismissed." That was but one comment in a two-page decision. Moreover, we read the courts statement as a comment on the checks voidness as gaming contracts, not on their worthlessness because of their ultimate NSF status.

The state then argues that to afford GLKC no redress would be unfair because GLKC cannot be held to have known that under sec. 895.055, Stats., checks would be considered unenforceable gaming contracts. This argument likewise fails. Section 895.055 has been on the books in some form since 1858 and was modified to its present form in 1878. In 1965, and again in later years, the state constitution was amended to permit certain forms of gambling. See WIS. CONST. art. IV, § 24. Those amendments are reflected in the statutes. See ch. 562, Stats. ("Regulation of Racing and On-Track Pari-Mutuel Wagering"); ch. 563, Stats. ("Bingo and Raffle Control"); and ch. 565, Stats. ("Lottery").

[173 Wis.2d 512] Undaunted, the state argues that by legalizing various gambling activities, Wisconsin has impliedly repealed its long-held legislative ban on the collection of certain gambling debts such as those incurred in pari-mutuel wagering. The state concedes that the implied repeal of statutes is disfavored. *Pattermann v. City of Whitewater*, 32 Wis.2d 350, 356, 145 N.W.2d 705, 708 (1966). Indeed, a strong public policy exists which favors the continuing validity of a statute except where the legislature has acted explicitly to repeal it. *State v. Christensen*, 110 Wis.2d 538,

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546, 329 N.W.2d 382, 385-86 (1983). The rule against implied repeal especially applies where the earlier statute is of long standing and has been stringently followed, unless it is so manifestly inconsistent and repugnant to the later statute that the two cannot reasonably stand together. *Pattermann*, 32 Wis.2d at 356-57, 145 N.W.2d at 708. The earlier statute also may be set aside where the legislative intent to repeal by implication clearly appears. *Id.* at 356, 145 N.W.2d at 708.

Whenever we engage in statutory interpretation, we may look to extrinsic sources if the legislative intent is unclear from the face of the statute. See *Zimmerman*, 169 Wis.2d at 504-05, 485 N.W.2d at 292. Whether the intent is clear is a question of law which we review de novo. See *id.* at 505, 485 N.W.2d at 292. It is not clear from the face of sec. 895.055, Stats., whether the legislature intended that it not apply to legalized gambling. Accordingly, we may look to other sources.

The statutes history reveals that the legislature considered addressing this problem and rejected that avenue. A proposed amendment to sec. 895.055, Stats.,

would have added this sentence: "This section does not [173 Wis.2d 513] apply to wagers permitted under ch. 562." Sec. 25, Assembly Sub. Amdt. 1, 1987 S.B. 444. Chapter 562, Stats., permits, among other things, pari-mutuel wagering at dog tracks. The proposed amendment did not pass. That it was considered and rejected deflates the states argument of implied repeal. It is not for this court to do what the legislature has chosen not to do.

Furthermore, sec. 895.055, Stats., and the statutes permitting certain forms of gambling are not necessarily inconsistent with and repugnant to each other. A Connecticut court addressed this question in a case where the defendant had purchased with a check \$15,000 worth of gambling chips and then stopped payment on the check. *King Intl. Corp. v. Voloshin*, 33 Conn.Supp. 166, 366 A.2d 1172, 1173 (1976). The casino owner sought to recover the \$15,000. Like Wisconsin, Connecticut has both an old statute prohibiting the collection of gambling debts and the more recent legalization of some gambling. We find persuasive the Connecticut courts reasoning. The court stated:

The prohibition of gambling on credit has been a part of anti-gambling statutes in this state for about two hundred years.... It is not incongruous for a legislature to sanction certain forms of gambling and still to refuse the collection of gambling debts. The policy of protection against financial ruin that underlies § 52-553 [Connecticut analog to sec. 895.055, Stats.] and the public policy prohibiting the extending of betting credit are valid state concerns....

It is the conclusion of this court that the legalization of gambling in a limited and regulated manner, while constituting a change to some degree in this states ancient and deep-rooted public policy prohibiting gambling, has had no effect on the long-established[173 Wis.2d 514] policy of this state condemning gambling on credit and prohibiting the enforcement of any claimed obligation relating thereto.

Id. 366 A.2d at 1174-75.

Finally, the state argues that not to hold Gonnely responsible will result in his unjust enrichment. In support, the state cites *Lemon v. Grosskopf*, 22 Wis. 427 [*447] (1868), where the plaintiff was involved in an illegal gambling contract yet was allowed to maintain an action for recovery. The reason the court so ruled, however, was that the person against whom the court said the action could be brought was a third party to the transaction whose actions were not a part of the illegal gambling activity. *Id.* at 432-33 [*453] *Lemon* thus does not apply here because GLKC clearly was a party to the transaction.

We make no comment as to whether the result dictated here is a desirable one. Our 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.

Order affirmed.

1 Another court decided the matter similarly, even absent a stipulation. In Connecticut National Bank v. Kommit, 31 Mass.App.Ct. 348, 577 N.E.2d 639 (1991), the defendant, a Massachusetts resident, used his credit card to withdraw \$5500 from an automatic teller machine (ATM) located in the gambling area of an Atlantic City, New Jersey casino. The Connecticut bank which issued the card sued Kommit seeking payment of the money. Kommit argued that he borrowed the money for gambling purposes and that, given the location of the ATM, the bank should have known that the ATM was intended to advance funds for gambling. After determining that Connecticut law governed the action, the court stated that the debt would be void if the bank "knew or should have known that the money was borrowed for gambling." Id. 577 N.E.2d at 641. This is significant to the instant case because to determine the elements required to sustain a defense, the Kommit court looked to a Connecticut statute which is virtually identical to sec. 895.055, Stats. See Conn.Gen.Stat. Ann. sec. 52-553 (West 1992). The Wisconsin and Connecticut statutes differ in that Connecticut requires proof that money "knowingly" was lent for gambling. Wisconsin has no knowledge requirement. The difference is immaterial here, however, because the parties stipulated that GLKC had knowledge.

In contrast, even in states where enforcement of gambling debts may be against public policy, judgments from courts other states that enforce gambling debts are likely to be domesticated and enforceable as illustrated in the following opinions:

United States Court of Appeals,
Ninth Circuit.
HARRAH'S CLUB, a Nevada corporation, Plaintiff-Appellee,
v.
Toshi VAN BLITTER, Defendant-Appellant.
No. 88-15373.
Decided May 17, 1990.

Creditor who obtained judgment from federal court in Nevada on claim under credit instruments given by debtor for gambling debt registered judgment. Debtor filed motion for order barring enforcement of registered judgment. The United States District Court for the Eastern District of California, Lawrence K. Karlton, J., denied motion, and debtor appealed. The Court of Appeals, Choy, Circuit Judge, held that: (1) determination by Nevada federal court that credit instruments would not be enforceable in California did not preclude enforcement of Nevada judgment in California, and (2) debtor would be sanctioned for bringing frivolous appeal.

Affirmed.

CHOY, Circuit Judge:

Toshi Van Blitter appeals the district court's denial of her motion to bar enforcement in California of a money judgment entered against her by the United States District Court of Nevada. She contends that paragraph one of the Nevada district court's order bars enforcement in California of paragraph two of the same order. We affirm.

FACTS

This case arises from a gambling debt owed by appellant Van Blitter to appellee Harrah's club. Appellant Van Blitter executed credit instruments in the amount of \$265,000 in favor of Harrah's Club. When Harrah's presented these instruments to Van Blitter's bank, they were dishonored. In April, 1985 Van Blitter filed a declaratory relief action (the "California" action) in the United States District Court for the Eastern District of California against Harrah's Club seeking to have the credit instruments declared unenforceable. Shortly thereafter, Harrah's Club brought an action in Nevada (the "Nevada" action) seeking to collect on those same credit instruments. Van Blitter's California action was transferred to the District of Nevada and in March, 1986, the two actions were consolidated for trial. The two actions remained separate in identity despite their consolidation for purposes of trial.

In an order dated July 21, 1986 the Nevada District Court addressed the question of whether California or Nevada law applied to the respective actions. In its order, the court held that California law applied to Van Blitter's action for declaratory relief, and granted Van Blitter's motion for summary judgment in the California action to the effect that "Harrah's Club, a Nevada corporation, cannot enforce in the state of California the negotiable instruments which are the subject matter of this action." The court granted summary judgment in the California action based on the fact that gambling debts are not enforceable under California law.

As to Harrah's Nevada action, however, the court concluded in the same order that Nevada law applied. In Nevada, unlike California, obligations based on gambling debts are enforceable. The court made clear in its order that the result in the California action would have no bearing on the result in the Nevada action, stating "The application of California law to Van Blitter's claim for declaratory relief will not impact Harrah's action brought in this forum."

In October, 1986 Harrah's filed a motion for summary judgment in the Nevada action. On January 2, 1987, the court denied Harrah's motion as premature, stating that whether Van Blitter could establish any viable defenses remained an open question requiring further development of the evidence. In its order denying summary judgment, the court reiterated that the ruling in the California action,

based on California law, would have no bearing on Harrah's Nevada action to collect on the instruments. In its January 2 order, the court stated:

On July 21, 1986, the court issued an order granting Van Blitter's motion for summary judgment in favor of plaintiff on her first cause of action for declaratory relief, "with the force and effect that Harrah's club, a Nevada corporation, cannot enforce in the state of California the negotiable instruments which are the subject matter of (Harrah's) action." ***That ruling does not address the enforceability in California of a Nevada judgment on the instruments or on the obligation they represent under principles of full faith and credit*** (emphasis added).

In February, 1988, the court granted summary judgment to Harrah's in the Nevada action to collect on the credit instruments. On April 22, 1988, a final order of judgment, the meaning of which is at issue on this appeal, was entered in the consolidated cases. It provides, in pertinent part:

(1) Toshi Van Blitter is given and granted judgment against Harrah's club, 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* (emphasis in original).

(2) Harrah's Club, a corporation, is given and granted judgment against Toshi Van Blitter 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 ...

In June, 1988, Harrah's Club registered paragraph two of this order in the United States District Court for the Eastern District of California pursuant to 28 U.S.C. § 1963.FN1 Van Blitter then filed a motion for order barring enforcement of the registered judgment. Van Blitter apparently argued that the two judgments were contradictory, and that the District Court for the Eastern District of California should refuse to enforce the money judgment entered in Harrah's favor in the Nevada action.

FN1. 28 U.S.C. § 1963 provides: "A judgment in an action for the recovery of money or property now or hereafter entered in any district court which has become final by appeal or expiration of time for appeal may be registered in any other district by filing therein a certified copy of such judgment. A judgment so registered shall have the same effect as a judgment of the district where registered and may be enforced in like manner."

The court below rejected Van Blitter's argument and denied her motion to bar enforcement of the judgment. The court explained that the judgment in the California action for declaratory relief simply meant that Harrah's Club could not

maintain an original action to enforce the debt in California. However, that judgment had no bearing on the enforceability in California, pursuant to 28 U.S.C. § 1963, of the Nevada judgment in favor of Harrah's. Van Blitter appeals the district court's denial of her motion to bar enforcement.

ANALYSIS

Van Blitter argues that paragraph one of the April 22 order operates to bar enforcement in California of paragraph two of the same order. She contends that the statement in paragraph one that “the negotiable instruments ... are not enforceable in the state of California ” means that Harrah's cannot enforce its Nevada judgment against Van Blitter in the state of California. This argument is wholly without merit.

Van Blitter asks this court to interpret the April order in direct contradiction to the expressed intent of the court issuing the order and in a manner which would violate the principle of full faith and credit. The meaning of paragraph one of the April order is clear: that the credit instruments could not be sued upon in an action brought directly in the state of California, since it is against the public policy of that state to enforce credit instruments based on an underlying gambling debt. However, as the district court expressly stated in its January 2 order, any claim of violation of California public policy had no bearing on Harrah's action filed in the state of Nevada to enforce the credit instruments, nor on the enforceability in California of a Nevada judgment on the credit instruments.

Not only does Van Blitter's interpretation of the judgment contradict the expressed intent of the court, but it also contravenes the longstanding principle of full faith and credit. It has long been established that a final judgment rendered under the laws of one state must be enforced by a sister state under the Full Faith and Credit Clause,^{FN2} even though the underlying action may be against the public policy of the state in which enforcement is sought. *Fauntleroy v. Lum*, 210 U.S. 230, 28 S.Ct. 641, 52 L.Ed. 1039 (1908); *Morris v. Jones*, 329 U.S. 545, 67 S.Ct. 451, 91 L.Ed. 488 (1947); *Harrah v. Craig*, 113 Cal.App.2d 67, 247 P.2d 855 (1952) (upholding enforcement of Nevada judgment in California, despite the fact that its underlying basis was a gambling debt which violated California public policy). Although the Full Faith and Credit Clause does not apply to successive actions in federal courts, *Baldwin v. Iowa State Traveling Men's Association*, 283 U.S. 522, 51 S.Ct. 517, 75 L.Ed. 1244 (1931), the underlying principle of that clause does apply through the doctrine of *res judicata*. *Id.* at 524, 51 S.Ct. at 517; *Americana Fabrics, Inc. v. L. & L. Textiles, Inc.*, 754 F.2d 1524, 1529 (9th Cir.1985); *Degnan*, “Federalized *Res Judicata*,” 85 *Yale L.J.* 741, 756 (1976).

FN2. Article 4, § 1 of the Constitution provides that “Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State.”

SANCTIONS

This court has discretion to award double costs and attorney's fees as a penalty for bringing a frivolous appeal. Fed.R.App.P. 38. A frivolous appeal is defined as one in which the result is obvious, or where the appellants' claims are utterly meritless. Int. Un. of Bricklayers etc. v. Martin Jaska, Inc., 752 F.2d 1401, 1406 (9th Cir.1985).

The appellant's claim in this case is utterly meritless. The district court made clear that the judgment in Van Blitter's declaratory relief action had no bearing on the enforceability in California of a Nevada judgment on the credit instruments. Indeed, the court's order of January 2, 1987 expressly states that its order in the declaratory relief action "does not address the enforceability in California of a Nevada judgment on the instruments or on the obligation they represent, under principles of full faith and credit."

The result of this appeal is and has been obvious, and the argument raised by Van Blitter is wholly meritless. Appellee is entitled to reasonable attorney's fees and double costs on this appeal.

AFFIRMED.

298 N.W.2d 236

99 Wis.2d 16

CONQUISTADOR HOTEL CORPORATION, Plaintiff-Respondent,

v.

Phil FORTINO, Defendant-Appellant.

No. 79-1989.

Court of Appeals of Wisconsin.

Submitted on Briefs Aug. 20, 1980.

Opinion Released Sept. 23, 1980.

Opinion Filed Sept. 23, 1980.

[99 Wis.2d 17] Robert C. Kunda, Brookfield, on brief, for defendant-appellant.

Burke & Schoetz, Milwaukee, on brief and Willard G. Neary, Milwaukee, of counsel, for plaintiff-respondent.

Before DECKER, C. J., MOSER, P. J., and CANNON, J.

DECKER, Chief Judge.

This case raises the question of whether the state of Wisconsin should accord full faith and credit to a foreign judgment rendered in a commonwealth of the United States enforcing a gambling debt. The trial court ordered that the plaintiff be allowed to enforce the judgment in the Milwaukee County Circuit Court, and we affirm.

Defendant spent three or four days at the Conquistador Hotel in Puerto Rico, and gambled at the hotel using the "marker system." He wrote a personal check to

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cover the markers, but stopped payment on the check after he returned home.

Plaintiff commenced an action against defendant on February 20, 1976, in the District Court of Puerto Rico, San Juan Section, for collection of the gambling debt. Plaintiff was served by mail pursuant to Rule 4.7 of the Puerto Rico Rules of Civil Procedure. A return receipt was signed on behalf of defendant on March 8, 1976. Defendant never responded to the summons, and on May 24, 1976, after a hearing in open court, a default judgment was rendered against defendant by the Puerto Rican court. For purposes of this appeal, defendant correctly assumes that the gambling debt is valid and enforceable in Puerto Rico. See *Intercontinental Hotels Corp. v. Golden*, 15 N.Y.2d 9, 13, 203 N.E.2d 210, 212, 254 N.Y.S.2d 527, 529 (N.Y.1964) (citing *United Hotels [99 Wis.2d 18] v. Willig*, 89 P.R.R. 185 (1963)); P.R.Laws Ann. tit. 15, § 71; P.R.Laws Ann. tit. 31, § 4774.

On August 8, 1979, the judgment of the Puerto Rican court was filed and entered pursuant to sec. 806.24, 2 [99 Wis.2d 19] Stats., in the Milwaukee County Circuit Court. After oral argument and the filing of affidavits and a brief, enforcement of the judgment in the Milwaukee court was ordered by the trial court on November 27, 1979.

U.S.Const., art. IV, sec. 1 states: "Full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state. And the
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Congress may by general laws prescribe the manner in which such acts, records and proceedings shall be proved, and the effect thereof."

Our supreme court has stated:

The purpose of the full-faith-and-credit clause is "to establish throughout the federal system the salutary principle of the common law that a litigation once pursued to judgment shall be as conclusive of the rights of the parties in every other court as in

that in which the judgment was rendered, so that a cause of action merged in a judgment in one state is likewise merged in every other." *Anderson v. Anderson*, 36 Wis.2d 455, 463, 153 N.W.2d 627, 631 (1967) (quoting *Magnolia Petroleum Co. v. Hunt*, 320 U.S. 430, 439, 64 S.Ct. 208, 213, 88 L.Ed. 149 (1943)).

Numerous other courts have held that:

Judgments of the courts of the territories and dependencies of the United States, when properly authenticated, [99 Wis.2d 20] stand on the same footing as those of the courts of a state; are conclusive, and equally entitled to full faith and credit in all courts within the United States whether state or federal. See *Greenhouse v. Hargrave*, Okl., 509 P.2d 1360, 1362 (1973) and cases cited therein.

Similarly, 28 U.S.C. § 1738 provides in part:

The records and judicial proceedings of any court of any such State, Territory, or Possession, or copies thereof, shall be proved or admitted in other courts within the United States and its Territories and Possessions by the attestation of the clerk and seal of the court annexed, if a seal exists, together with a certificate of a judge of the court that the said attestation is in proper form. 3

Such Acts, records, and judicial proceedings, or copies thereof, so authenticated, shall have the same full faith and credit in every court within the United States and its Territories and Possessions as they have by law or usage in the courts of such State, Territory, or Possession from which they are taken. (Emphasis added.)

We hold that judgments of the courts of the territories and possessions of the United States are as equally entitled to full faith and credit in the courts of Wisconsin as are judgments of foreign states.

Defendant argues that any foreign judgment enforcing gambling debts is not entitled to full faith and credit in Wisconsin courts because of Wisconsin's strong public policy against the enforcement of gambling debts in Wisconsin courts, and cites *Bartlett v. Collins*, 109 Wis. 477, 85 N.W. 703 (1901) and sec. 895.055, Stats. Because the debt underlying the foreign judgment in this case could not be enforced in an original action in the courts of this state, defendant reasons that Wisconsin courts should not be used to enforce a judgment based on the debt.

[99 Wis.2d 21] The question here is one of federal constitutional law, and we adopt § 117 of the Restatement (Second) of Conflict of Laws (1971), as applicable to foreign judgments of states or territories and possessions of the United States: § 117. Original Claim Contrary to Public Policy of State Where Enforcement of Judgment is Sought

A valid judgment rendered in one State of the United States will be recognized and enforced in a sister state even though the strong public policy of the latter State would have precluded recovery in its courts on the original claim.

Comment b. of this section illustrates the general rule:

b. Situation in the United States. As between states of the United States, the rule

of this Section is one of constitutional law. Provided that the judgment is valid, full faith and credit requires that it be recognized and enforced in a sister State even though the original claim is contrary to the strong public policy of the sister State. *Fauntleroy v. Lum*, 210 U.S. 230, 28 S.Ct. 641, 52 L.Ed. 1039 (1908).

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Assuming without deciding that the original claim underlying this case is contrary to the strong public policy of Wisconsin, the judgment of the District Court of Puerto Rico must be accorded full faith and credit in the Milwaukee County Circuit Court.

Order affirmed.

1 Appellant's challenge to personal jurisdiction before the District Court of Puerto Rico, addressed for the first time in his reply brief, is clearly without merit.

2 Sec. 806.24, Stats., the Uniform Enforcement of Foreign Judgments Act, provides:

(1) Definition. In this section "foreign judgment" means any judgment, decree or order of a court of the United States or any other court which is entitled to full faith and credit in this state.

(2) Filing and Status of Foreign Judgments. A copy of any foreign judgment authenticated in accordance with the act of congress or the statutes of this state may be filed in the office of the clerk of circuit court of any county of this state. The clerk shall treat any foreign judgment in the same manner as a judgment of the circuit court of this state. A judgment so filed has the same effect and is subject to the same procedures, defenses, and proceedings for reopening, vacating or staying as a judgment of a circuit court of this state and may be enforced or satisfied in like manner.

(3) Notice of Filing. (a) At the time of the filing of the foreign judgment, the judgment creditor or lawyer shall make and file with the clerk of court an affidavit setting forth the name and last known post-office address of the judgment debtor and the judgment creditor.

(b) Promptly upon the filing of the foreign judgment and affidavit, the clerk shall mail notice of the filing of the foreign judgment to the judgment debtor at the address given and shall make a note of the mailing in the docket. The notice shall include the name and post-office address of the judgment creditor and the judgment creditor's lawyer, if any, in this state. In addition, the judgment creditor may mail a notice of the filing of the judgment to the judgment debtor and may file proof of mailing with the clerk. Lack of mailing notice of filing by the clerk shall not affect the enforcement proceedings if proof of mailing by the

judgment creditor has been filed.

(c) No execution or other process for enforcement of a foreign judgment filed hereunder shall issue until 15 days after the date the judgment is filed.

(4) Stay. (a) If the judgment debtor shows the court that an appeal from the foreign judgment is pending or will be taken, or that a stay of execution has been granted, the court shall stay enforcement of the foreign judgment until the appeal is concluded, the time for appeal expires, or the stay of execution expires or is vacated, upon proof that the judgment debtor has furnished the security for the satisfaction of the judgment required by the state in which it was rendered.

(b) If the judgment debtor shows the court any ground upon which enforcement of a judgment of any court of this state would be stayed, the court shall stay enforcement of the foreign judgment for an appropriate period, upon requiring the same security for satisfaction of the judgment which is required in this state.

(5) Optional Procedure. The right of a judgment creditor to bring an action to enforce the judgment instead of proceeding under this section remains unimpaired.

(6) Uniformity of Interpretation. This section shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

(7) Short Title. This act may be cited as the "Uniform Enforcement of Foreign Judgments Act."

3 Sec. 806.24(2), Stats., authorizes local filing of a foreign judgment "authenticated in accordance with ... the statutes of this state" or "the act of congress." See note 2, supra.

As the previous court opinions illustrate, form and venue selection are essential elements in enforcing the collection of casino credit. At a minimum, casino credit authorization documents should have interpretative law and venue selection clauses that use a jurisdiction favorable to the casino. However, the general rule in most states regarding choice of law and venue is that the contractual provision will

be honored unless it is contrary to public policy. Therefore, even if a casino has choice of law and venue provisions in a credit agreement, check or promissory note, there is always a risk that a court in a different jurisdiction could refuse to enforce the clause for reasons of public policy.