



Indian Gaming

- Different Eras
 - Constitution and The Indian Intercourse Act.
 - Indian Nations recognized as nations and negotiation with Indian Nations is reserved for the Federal Government
 - Discovery Doctrine – Johnson v. McIntosh
 - Indians Occupy but don't own land
 - Treaty and Wars Era
 - Wars
 - Compelled migration and concentration


Indian Gaming


- Different Eras
 - General Allotment
 - Extinguishing tribal recognition
 - Allotment of land to individuals
 - Surplus after allotment sold by the Federal Government
 - Reorganization Era
 - Tribes and tribal governments recognized by the Federal Government
 - End of erosion of Indian Lands
 - Restoration of Indian governance over Indian lands

Indian Gaming

- Different Eras
 - PL280
 - Provided certain states with the right to enforce criminal law on Indian Land
 - Did not allow states to regulate or tax activities on Indian land
 - Assimilation
 - Encouraged movement from Indian Lands to economic centers
 - Self Determination (with substantial federal assistance)
 - Self Determination (with little federal assistance)

Indian Gaming

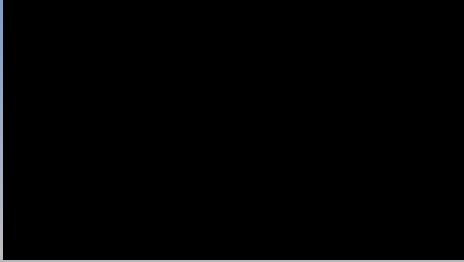
- Context 



Indian Gaming

- Pre IGRA Court Opinions
 - Seminole v. Butterworth
 - Bingo laws that permit certain forms and conduct of bingo are primarily civil and regulatory rather than criminal despite criminal penalties
 - Tribes can permit and regulate just as the state in which tribal land is located within can permit and regulate.

Pre-IGRA Case Law



- <https://youtu.be/8QDxPf2s5qg?si=1TNNMDle2D534aF->

Pre-IGRA Case Law

- Cabazon Band of Mission Indians v. California
 - 480 U.S. 202 (1987)
- Basic Facts

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- Cabazon Band of Mission Indians v. California
 - 480 U.S. 202 (1987)
- Basic Facts
 - Cabazon Band offers bingo and card rooms
 - The games are open to the public, and are played predominantly by non-Indians coming onto the reservations.
 - The State of California seeks to apply a state statute that prohibits operating bingo games unless they are operated by a recognized charity.
 - Riverside County also sought to apply an ordinance regulating bingo and another ordinance prohibiting card games.

Pre-IGRA Case Law

- Cabazon Band of Mission Indians v. California
 - 480 U.S. 202 (1987)
- Basic Facts
 - The Tribes sued the county in Federal District Court, seeking a declaratory judgment that the county had no authority to apply its ordinances inside the reservations and an injunction against their enforcement. The State intervened, the facts were stipulated, and the District Court granted the Tribes' motion for summary judgment, holding that neither the State nor the county had any authority to enforce its gambling laws within the reservations.

Pre-IGRA Case Law

- Cabazon Band of Mission Indians v. California
 - 480 U.S. 202 (1987)
- Issues
 - This case also involves a state burden on tribal Indians in the context of their dealings with non-Indians, since the question is whether the State may prevent the Tribes from making available high stakes bingo games to non-Indians coming from outside the reservations. Decision in this case turns on whether state authority is preempted by the operation of federal law; and "[s]tate jurisdiction is preempted . . . if it interferes or is incompatible with federal and tribal interests reflected in federal law, unless the state interests at stake are sufficient to justify the assertion of state authority.

Pre-IGRA Case Law

• Cabazon Band of Mission Indians v. California

- 480 U.S. 202 (1987)

• Issues

- California does not prohibit all forms of gambling. California itself operates a state lottery, and daily encourages its citizens to participate in this state-run gambling. California also permits parimutuel horse-race betting. Although certain enumerated gambling games are prohibited under Cal.Penal Code Ann. § 330 (West Supp.1987), games not enumerated, including the card games played in the Cabazon card club, are permissible. The Tribes assert that more than 400 card rooms similar to the Cabazon card club flourish in California, and the State does not dispute this fact.

Pre-IGRA Case Law

• Cabazon Band of Mission Indians v. California

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• Issues

- The sole interest asserted by the State to justify the imposition of its bingo laws on the Tribes is in preventing the infiltration of the tribal games by organized crime. To the extent that the State seeks to prevent any and all bingo games from being played on tribal lands while permitting regulated, off-reservation games, this asserted interest is irrelevant, and the state and county laws are preempted...

Pre-IGRA Case Law

• Cabazon Band of Mission Indians v. California

- 480 U.S. 202 (1987)

• Issues

- We conclude that the State's interest in preventing the infiltration of the tribal bingo enterprises by organized crime does not justify state regulation of the tribal bingo enterprises in light of the compelling federal and tribal interests supporting them. State regulation would impermissibly infringe on tribal government, and this conclusion applies equally to the county's attempted regulation of the Cabazon card club. We therefore affirm the judgment of the Court of Appeals and remand the case for further proceedings consistent with this opinion.

Pre-IGRA Case Law

- Cabazon Band of Mission Indians v. California
 - 480 U.S. 202 (1987)
- A landmark holding by the United States Supreme Court on tribal sovereignty
- The Court held that, provided the state permits some form of gaming, the state of California could not prohibit gaming on tribal lands
- It affirmed the authority of the tribal government to establish gaming operations on tribal lands

Pre-IGRA Environment – 1987-1988

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|--|--|---|
| <ul style="list-style-type: none"> • Tribes • Supreme Court confirms tribal right to regulate gaming just as states can. <ul style="list-style-type: none"> • Interpreted to be full rights to regulate even if the state chooses not to permit gambling • Major investments in bingo halls and card-rooms • Revenue needed to fund government | <ul style="list-style-type: none"> • States • Only NV and NJ permit and regulate casino gaming • Interpreted Cabazon to limit tribes to regulating what states were regulating • Never envisioned charitable bingo laws or state lotteries were would allow tribal casinos • Concern that poorly funded tribes had no ability or resources to keep out organized crime. | <ul style="list-style-type: none"> • Others • Religious groups • Anti-gambling groups • NV and NJ regulated casino industry • State lottery industry • Gaming device manufacturers • Problem gambling advocates • ... |
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Pre-IGRA Environment – 1987-1988

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WHAT TO THEY WANT?

Pre-IGRA Environment – 1987-1988

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WHAT TO THEY WANT? (Maximum)

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WHAT TO THEY WANT? (Minimum-what can they live with?)

Indian Gaming Regulatory Act of 1988 ("IGRA")

- In response to Cabazon, Congress passed IGRA to provide a statutory basis to regulate Indian Gaming
- IGRA Overview
- Established a Federal regulatory body and regime
- Defined three classes of gaming
- Defined the State's role

Classes of Gaming

- IGRA defines three classes of gaming
- Class I
 - Traditional Indian gaming and social gaming
- Class II
 - Bingo
 - Card games permitted under state law
 - Expressly does not include banked card cards and slot machines
- Class III
 - All forms of gaming that is not Class I or II

22

CLASS I Gaming

- The term “class I gaming” means social games solely for prizes of minimal value or traditional forms of Indian gaming engaged in by individuals as a part of, or in connection with, tribal ceremonies or celebrations.

23

Regulation of Class I Gaming

- Section 2710(a)(1) excludes Class I gaming from IGRA
- Class I gaming remains “within the exclusive jurisdiction of the Indian tribes” provided the gaming occurs on Indian lands

24

Regulation of Class II Gaming

- An Indian tribe may engage in Class II gaming provided
- The gaming is located on Indian lands within the tribe's jurisdiction
- The State permits gaming for any purpose
- The tribe's governing body has adopted an ordinance permitting Class II gaming

25

Class II Gaming

- (A) The term "class II gaming" means—
- (i) the game of chance commonly known as bingo (whether or not electronic, computer, or other technologic aids are used in connection therewith)—
- (I) which is played for prizes, including monetary prizes, with cards bearing numbers or other designations,
- (II) in which the holder of the card covers such numbers or designations when objects, similarly numbered or designated, are drawn or electronically determined, and
- (III) in which the game is won by the first person covering a previously designated arrangement of numbers or designations on such cards,
- including (if played in the same location) pull-tabs, lotto, punch boards, tip jars, instant bingo, and other games similar to bingo, and



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26

Class II Gaming

- (i) card games that—
- (I) are explicitly authorized by the laws of the State, or
- (II) are not explicitly prohibited by the laws of the State and are played at any location in the State, but only if such card games are played in conformity with those laws and regulations (if any) of the State regarding hours or periods of operation of such card games or limitations on wagers or pot sizes in such card games.
- (B) The term "class II gaming" does not include—
- (i) any banking card games, including baccarat, chemin de fer, or blackjack (21), or
- (ii) electronic or electromechanical facsimiles of any game of chance or slot machines of any kind.

27

Class II Gaming

- (C) Notwithstanding any other provision of this paragraph, the term "class II gaming" includes those card games played in the State of Michigan, the State of North Dakota, the State of South Dakota, or the State of Washington, that were actually operated in such State by an Indian tribe on or before May 1, 1988, but only to the extent of the nature and scope of the card games that were actually operated by an Indian tribe in such State on or before such date, as determined by the Chairman.
- (D) Notwithstanding any other provision of this paragraph, the term "class II gaming" includes, during the 1-year period beginning on October 17, 1988, any gaming described in subparagraph (B)(ii) that was legally operated on Indian lands on or before May 1, 1988, if the Indian tribe having jurisdiction over the lands on which such gaming was operated requests the State, by no later than the date that is 30 days after October 17, 1988, to negotiate a Tribal-State compact under section 2710 (d)(3) of this title.
- (E) Notwithstanding any other provision of this paragraph, the term "class II gaming" includes, during the 1-year period beginning on December 17, 1991, any gaming described in subparagraph (B)(ii) that was legally operated on Indian lands in the State of Wisconsin on or before May 1, 1988, if the Indian tribe having jurisdiction over the lands on which such gaming was operated requested the State, by no later than November 16, 1988, to negotiate a Tribal-State compact under section 2710 (d)(1) of this title.

28

Regulation of Class II Gaming

- The tribe's ordinance must provide that
 - Tribe has total control and interest over the gaming operation
 - Existing third party operations 'grandfathered' in
- Net revenues only used for
 - Tribal government operations or programs
 - General welfare of tribe and its members
 - Economic development
 - Donate to charitable organizations
 - Fund local government agencies

29

Regulation of Class II Gaming

- The tribe's ordinance must provide
 - Annual external audits provided to the NIGC
 - Contracts >\$25,000 relating to gaming subject to such independent audits
 - Facilities constructed and maintained to protect environment and public health
 - System for background checks, licensing of managers, standards for licensing and notification to the NIGC

30

Regulation of Class II Gaming

- Oversight of Gaming Licenses
- NIGC may consult with law enforcement regarding the issuance of gaming licenses
- NIGC can object within 30 days to the issuance of a license
- If the NIGC receives reliable information that a person does not meet the standards established, the tribe shall suspend such license and, after notice and hearing, may revoke the license

31

Class III Gaming

- The term "class III gaming" means all forms of gaming that are not class I gaming or class II gaming.

32

Regulation of Class III Gaming

- Class III gaming can only be conducted on Indian lands if
 - Authorized by ordinance or resolution
 - Adopted by the tribe's governing body
 - Approved by the NIGC Chairman
- Located in a state that permits gaming for any purpose
- Conduct gaming in accordance with the Tribal-State compact

33

Regulation of Class III Gaming

- Tribal ordinance or resolution
- Must detail the same elements as a Class II ordinance
- Approved by the NIGC Chairman unless
 - Chair determines that it was not properly adopted by the tribe's governing body
 - Governing body was "significantly and unduly influenced" by unsuitable people

34

Regulation of Class III Gaming

- State permits gaming in some form
 - One finding of IGRA states tribal gaming can occur "within a State which does not, as a matter of criminal law and public policy, prohibit gaming activity."
- How broad is gaming activity
- Cabazon: if the state permits some form of gaming (e.g., horse racing), the tribe can conduct full gaming.
- Lac Du Flambeau v. Wisconsin: Games consisting of the common elements of consideration, chance and prize are sufficient.

35
