

CONSIDERATION

- CAN YOU IDENTIFY THINGS THAT WOULD BE DEEMED CONSIDERATION IN A GAME OR CONTEST?

(hint, this is an opportunity to participate)

CONSIDERATION

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

CONSIDERATION - THEORIES

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

CONSIDERATION -

- Can you mitigate the consideration element?

CONSIDERATION

- In some states, an alternative free method of entry will eliminate the element of consideration for a gambling analysis.
 - The free method must have "Equal Dignity" with methods associated with a purchase

CONSIDERATION


- In some states, an alternative free method of entry will eliminate the element of consideration for a gambling analysis.
 - The free method must have "Equal Dignity" with methods associated with a purchase
 - Equal dignity" means that there is equality among entrants with regard to four aspects of the sweepstakes:
 - (i) method of entry,
 - (ii) opportunity to win,
 - (iii) claiming prizes, and
 - (iv) prizes awarded

SOCIAL GAMING & SWEEPSTAKES

- The Nevada Attorney general opined the following:
 - Free coins were representatives of value
 - Risking free for more free coins that could be converted to prizes creates a wager
 - Basing awards on something other than coins won or lost (such as time playing) would not be a wager
 - Awards including drawings were also deemed OK

13

SOCIAL GAMING & SWEEPSTAKES



THE PREMIUM REVOLUTION

14

SOCIAL GAMING & SWEEPSTAKES



zynga poker™
THE WORLD'S LARGEST POKER GAME

15

SOCIAL GAMING & SWEEPSTAKES

- Zynga Poker
 - Dominates the online poker market within a year of launch
 - Players are given free Zynga Bucks to play
 - If players run out, then they can purchase more Zynga Bucks to play or wait for a free minimum addition of Zynga Bucks to their account
 - Players can also win Zynga Bucks in play
 - No other prizes, no cash out

14

SOCIAL GAMING & SWEEPSTAKES

- Zynga Poker
 - Dominates the online poker market within a year of launch
 - Players are given free Zynga Bucks to play
 - If players run out, then they can purchase more Zynga Bucks to play or wait for a free minimum addition of Zynga Bucks to their account
 - Players can also win Zynga Bucks in play
 - No other prizes, no cash out
- ANY ISSUES?
- ANY DEFENSES?

17

SOCIAL GAMING & SWEEPSTAKES

- BIG FISH
 - Used the Zynga Model
 - Owned by Churchill Downs
 - Purchased by Aristocrat
 - Court in Washington deems it gaming :
 - RCW 9.46.0285
 - "Thing of value,"
 - "Thing of value," as used in this chapter, means any money or property, any token, object or article exchangeable for money or property, or any form of credit or promise, directly or indirectly, contemplating transfer of money or property or of any interest therein, or involving extension of a service, entertainment or a privilege of playing at a game or scheme without charge.

18

SOCIAL GAMING & SWEEPSTAKES

• Sites adjust for Washington and the Social Gaming Market Flourishes

Global social gaming market is estimated to be valued at US\$ 36.22 Bn in 2025 and is expected to reach US\$ 106.19 Bn by 2032, exhibiting a compound annual growth rate (CAGR) of 16.6% from 2025 to 2032.

SOCIAL GAMING & SWEEPSTAKES

The 2025 Q1 Walmart February - May Sweepstakes (the Sweepstakes) Official Rules

Who will you share a Coke with?

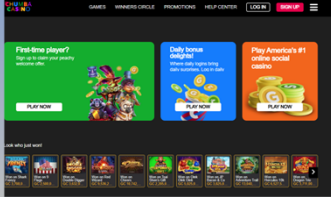
ENTER FOR A CHANCE TO WIN A DECADE OF OPENING DAY™ TICKETS*

SOCIAL GAMING & SWEEPSTAKES

• CONSIDERATION + CHANCE + PRIZE = SWEEPSTAKES

SOCIAL GAMING & SWEEPSTAKES

Dual Currency Model



22

SOCIAL GAMING & SWEEPSTAKES

Dual Currency Model

Social Casino Uses GOLD Coins for Play

- GOLD Coins are given at sign-up and through various promotions
- GOLD Coins can be purchased
- GOLD Coins can be won and lost in game play on traditional casino games
- GOLD Coins cannot be redeemed for Prizes



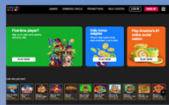
23

SOCIAL GAMING & SWEEPSTAKES

Dual Currency Model

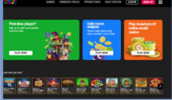
Social Casino Uses GOLD Coins for Play

- Sweeps Coins are used for sweepstakes drawings (via game play)
- Sweeps Coins are given away at signup
- Sweeps Coins are given away through promotions
- Sweeps Coins are given away at a 1:1 or better ratio when GOLD coins are purchased
- Sweeps Coins are won in drawings (via game play)
- Sweeps Coins can be redeemed after they have been played at least 3 times



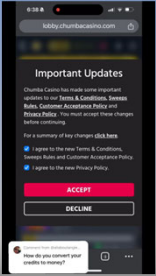

24

SOCIAL GAMING & SWEEPSTAKES

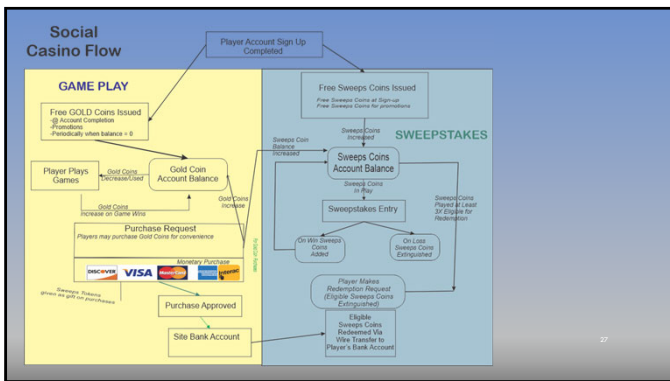



25

SOCIAL GAMING & SWEEPSTAKES

26



SOCIAL GAMING & SWEEPSTAKES

- Any Issues?

28

SOCIAL GAMING & SWEEPSTAKES

- Any Issues?

29

FANTASY SPORTS

- Hot Issue

30

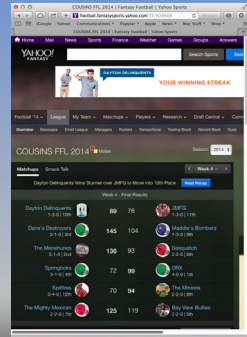
FANTASY SPORTS

- How it works....

31

FANTASY SPORTS

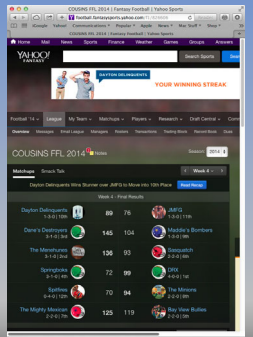
- Fantasy Sports
 - Fantasy sports are games where participants build a team of athletes from various leagues and other teams built by other participants based on the statistics generated by individual players or teams of a professional sport



32

FANTASY SPORTS

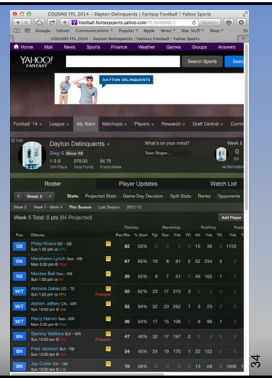
- Fantasy Sports
- Example:



33

FANTASY SPORTS

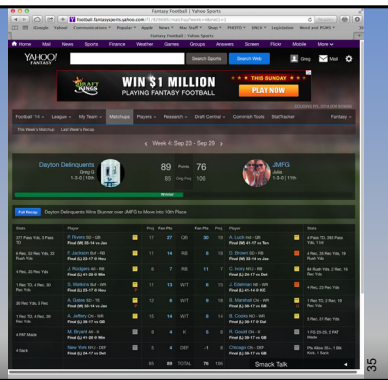
- Fantasy Sports
- Example:



34

FANTASY SPORTS

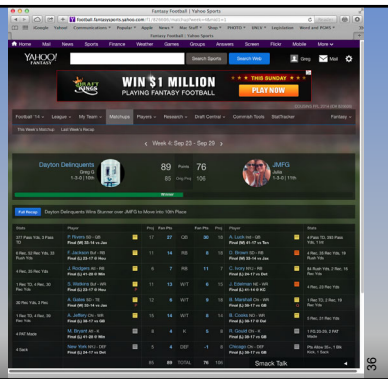
- Fantasy Sports
- Example:



35

FANTASY SPORTS

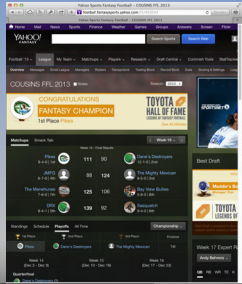
- Fantasy Sports
- Example:



36

FANTASY SPORTS

- Fantasy Sports
- Example:



37

FANTASY SPORTS

- Video That May explain it in a bit more interesting way:
- <https://youtu.be/4Pm2pkxbYYU>
- (link in the description below)

38

FANTASY SPORTS

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

39

FANTASY SPORTS

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

40

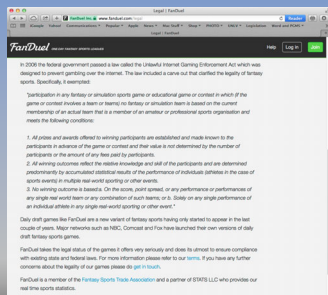
THE UNLAWFUL INTERNET GAMBLING ENFORCEMENT ACT

- What are the parameters for the fantasy sports exemption?
 - Bet or Wager (E) does not include...
 - (i) participation in any fantasy or simulation sports game or educational game or contest in which (if the game or contest involves a team or teams) no fantasy or simulation sports team is based on the current membership of an actual team that is a member of an amateur or professional sports organization (as those terms are defined in section 3701 of title 28) and that meets the following conditions:
 - (I) All prizes and awards offered to winning participants are established and made known to the participants in advance of the game or contest and their value is not determined by the number of participants or the amount of any fees paid by those participants.
 - (II) All winning outcomes reflect the relative knowledge and skill of the participants and are determined predominantly by accumulated statistical results of the performance of individuals (athletes in the case of sports events) in multiple real-world sporting or other events.
 - (ii) No winning outcome is based
 - (a) on the victory, participation, or any performance or performance of any single real-world team or any combination of such teams; or
 - (b) solely on any single performance of an individual athlete in any single real-world sporting or other event.

41

FANTASY SPORTS

- Fantasy Sports
 - UIGEA



42

UIGEA

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

43

DAILY FANTASY SPORTS

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

44

DAILY FANTASY SPORTS

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

45

FANTASY SPORTS

The screenshot shows the Fantasy Sports website interface. At the top, there's a navigation bar with 'FANTASY SPORTS' and a URL. Below that, there are several sections: 'Rapid Fire' featuring player matchups like Drew Brees vs Peyton Manning, DeMarco Murray vs Le'Veon Bell, LaSean McCoy vs Jamal Charles, Antonio Brown vs Julio Jones, and Jeremy Maclin vs A.J. Green. There are also sections for 'Must Roster' and 'Must Avoid' players. A sidebar on the right contains a 'For Sales Sports Book' advertisement for 'Football Game Scout' and 'NLS LAS VEGAS'. The bottom right corner of the page has the number '46'.

DAILY FANTASY SPORTS

The screenshot shows the Fantasy Sports website interface for a 'Weekly Fantasy Bet' on 11/18. The page title is 'Weekly Fantasy Bet - 11/18'. It features a table for 'Pick Your Lineup' with columns for 'Player', 'Position', 'Cost', 'Salary', and 'Status'. The table lists several players with their respective statistics and costs. The bottom right corner of the page has the number '47'.

DAILY FANTASY SPORTS

- In 2015, the DFS industry became a significant multi-billion dollar industry
- Advertising for DFS during sporting events in 2015 eclipsed advertising for beer during sporting events.
- However... With great publicity comes great interest, including interest from gaming regulatory authorities and law enforcement.

The bottom right corner of the page has the number '48'.

DAILY FANTASY SPORTS

- THE NEVADA OPINION

49

DAILY FANTASY SPORTS

- THE NEVADA OPINION
- Analyzes daily fantasy sports

50

PASPA

- Sec. 3702. Unlawful sports gambling
- It shall be unlawful for -
- (1) a governmental entity to sponsor, operate, advertise, promote, license, or authorize by law or compact, or
- (2) a person to sponsor, operate, advertise, or promote, pursuant to the law or compact of a governmental entity, a lottery, sweepstakes or **other betting, gambling, or wagering scheme based, directly or indirectly** (through the use of geographical references or otherwise), on one or more competitive games in which amateur or professional athletes participate, or are intended to participate, or on **one or more performances of such athletes in such games**.

51

PASPA



52

DAILY FANTASY SPORTS

- THE NEVADA OPINION
 - Is it sports wagering?

53

DAILY FANTASY SPORTS

- THE NEVADA OPINION
 - Is it skill gaming?

54

DAILY FANTASY SPORTS

- THE NEVADA OPINION
 - Is it a percentage game?

55

DAILY FANTASY SPORTS

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

56

DAILY FANTASY SPORTS

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

57

DAILY FANTASY SPORTS

THE NEVADA OPINION

- What is required to obtain a sports pool license?
 - NRS 463.160 Licenses required; unlawful to permit certain gaming activities to be conducted without license; exceptions; separate license required for each location where operation of race book or sports pool conducted.
 - 1. Except as otherwise provided in subsection 4 and NRS 463.172, it is unlawful for any person, either as owner, lessee or employee, whether for hire or not, either solely or in conjunction with others:
 - (a) To deal, operate, carry on, conduct, maintain or expose for play in the State of Nevada any gambling game, gaming device, inter-casino linked system, mobile gaming system, slot machine, race book or sports pool;
 - (b) To provide or maintain any information service;
 - (c) To operate a gaming salon;
 - (d) To receive, directly or indirectly, any compensation or reward or any percentage or share of the money or property played, for keeping, running or carrying on any gambling game, slot machine, gaming device, mobile gaming system, race book or sports pool;

DAILY FANTASY SPORTS

THE NEVADA OPINION

- What is required to obtain a sports pool license?

DAILY FANTASY SPORTS


Media Attention Follows

DAILY FANTASY SPORTS

- DFS attracted significant attention.
- Please watch the following videos, they are far more entertaining than this lecture:
 - Scott Van Pelt (ESPN) - <https://youtu.be/cEphiJlm-9k> (3 Min)
 - John Oliver - <https://youtu.be/Mq785nJ0FXQ> (20 min)
 - Daily Show - <https://youtu.be/QX6vey8b-lw> (4 min)

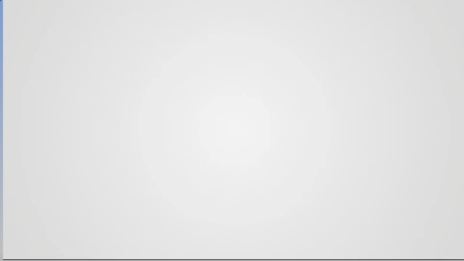
61

DAILY FANTASY SPORTS



62

DAILY FANTASY SPORTS



<https://youtu.be/Mq785nJ0FXQ>

63

FEDERAL WIRE ACT

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

64

FEDERAL WIRE ACT

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

65

DAILY FANTASY SPORTS

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

66

DAILY FANTASY SPORTS

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

67

NY FOLLOW UP

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

68

TEXAS OPINION

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

69

TEXAS OPINION

- Are DFS Games Skill Games?

70

TEXAS OPINION

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

71

TEXAS OPINION

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

72

TEXAS OPINION

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

73

TEXAS OPINION

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

74

TEXAS OPINION

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

75

TEXAS OPINION

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

76

FAN DUEL LETTER

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

77

FAN DUEL LETTER

- The Letter
 - No claim that DFS such wagering is legal
 - In connection with re-entering, however, FanDuel Group intends to adhere to stringent self-imposed restrictions. FanDuel Group will avoid any deceptive trade practices by:
 - 1) Refraining from any physical in-state direct marketing of FanDuel, and any intentional marketing directed to Texas residents that makes claims about the legality of paid contests in Texas; and
 - 2) Providing disclaimers in its Terms of Use and marketing materials that state: FanDuel makes no representation that participation in paid entry fantasy sports contests is lawful under Texas state law.
 - FanDuel Group further intends to refrain from seeking any widespread press or publicity concerning its Texas activities, other than on its own sites, apps, or social media feeds.¹

78

ILLINOIS STATUTES

- The first sentence of a statute is the operative part of the statute and is the part that is given effect by the courts.
- The second sentence of a statute is the explanatory part of the statute and is not given effect by the courts.
- The third sentence of a statute is the title of the statute and is not given effect by the courts.
- The fourth sentence of a statute is the section number and is not given effect by the courts.
- The fifth sentence of a statute is the section title and is not given effect by the courts.
- The sixth sentence of a statute is the section subtitle and is not given effect by the courts.
- The seventh sentence of a statute is the section description and is not given effect by the courts.
- The eighth sentence of a statute is the section definition and is not given effect by the courts.
- The ninth sentence of a statute is the section purpose and is not given effect by the courts.
- The tenth sentence of a statute is the section history and is not given effect by the courts.
- The eleventh sentence of a statute is the section amendments and is not given effect by the courts.
- The twelfth sentence of a statute is the section references and is not given effect by the courts.
- The thirteenth sentence of a statute is the section cross-references and is not given effect by the courts.
- The fourteenth sentence of a statute is the section notes and is not given effect by the courts.
- The fifteenth sentence of a statute is the section comments and is not given effect by the courts.
- The sixteenth sentence of a statute is the section analysis and is not given effect by the courts.
- The seventeenth sentence of a statute is the section criticism and is not given effect by the courts.
- The eighteenth sentence of a statute is the section praise and is not given effect by the courts.
- The nineteenth sentence of a statute is the section conclusion and is not given effect by the courts.
- The twentieth sentence of a statute is the section disclaimer and is not given effect by the courts.

ILLINOIS STATUTES

- The first sentence of a statute is the operative part of the statute and is the part that is given effect by the courts.
- The second sentence of a statute is the explanatory part of the statute and is not given effect by the courts.
- The third sentence of a statute is the title of the statute and is not given effect by the courts.
- The fourth sentence of a statute is the section number and is not given effect by the courts.
- The fifth sentence of a statute is the section title and is not given effect by the courts.
- The sixth sentence of a statute is the section subtitle and is not given effect by the courts.
- The seventh sentence of a statute is the section description and is not given effect by the courts.
- The eighth sentence of a statute is the section definition and is not given effect by the courts.
- The ninth sentence of a statute is the section purpose and is not given effect by the courts.
- The tenth sentence of a statute is the section history and is not given effect by the courts.
- The eleventh sentence of a statute is the section amendments and is not given effect by the courts.
- The twelfth sentence of a statute is the section references and is not given effect by the courts.
- The thirteenth sentence of a statute is the section cross-references and is not given effect by the courts.
- The fourteenth sentence of a statute is the section notes and is not given effect by the courts.
- The fifteenth sentence of a statute is the section comments and is not given effect by the courts.
- The sixteenth sentence of a statute is the section analysis and is not given effect by the courts.
- The seventeenth sentence of a statute is the section criticism and is not given effect by the courts.
- The eighteenth sentence of a statute is the section praise and is not given effect by the courts.
- The nineteenth sentence of a statute is the section conclusion and is not given effect by the courts.
- The twentieth sentence of a statute is the section disclaimer and is not given effect by the courts.

BECKER V. WU

- Facts...
-
-

BECKER V. WU

- Is either party in the business of betting or wagering?
-
-

BECKER V. WU

- Is either party maintaining or operating on online game?
-
-

BECKER V. WU

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

QUESTIONS/DISCUSSION

- Questions/Discussion

65
