


Breakout 3D

ALL IN: SWEEPSTAKES AND CONTESTS IN THE AGE OF UBIQUITOUS BETTING

Three white dice with black pips are scattered on a dark grey surface. One die is in the foreground, showing a 6, 2, and 3. Two other dice are behind it, one showing a 4 and a 5, and another showing a 1 and a 2.

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Overview of this Panel

**Lottery Basics
and
Developments**

**The Ubiquity
of Betting
and its
Impact on
Promotions**

**A Final Word
on Suski**

**Update on
Promotion
Advertising**

Lottery Basics



Horner v. U.S. (1893)

- Prize, Chance, Consideration

Ward v. Crow Vote LLC (9th Cir. May 17, 2024)

Ariz. Rev. Stat. Ann. § 13-3301(6)

“Gambling,” “gamble” or “wager” means an act of risking or giving something of value for the opportunity to obtain a benefit from a game or contest of chance or skill or a future contingent event but does not include bona fide business transactions that are valid under the law of contracts including contracts for the purchase or sale at a future date of securities or commodities, contracts of indemnity or guarantee, life, health or accident insurance and fantasy sports contests

AZ A.G. Opinion No. 198-002 (1998)

“[T]he satisfaction of getting the high score alone fails to meet the requirements of the second element [of requiring an opportunity to gain or benefit].”

AZ A.G. Opinion No. 191-024 (1991)

The purchase of a “dice roll” constituted “risking or giving something of value.”

The Chance-Skill Dichotomy



Some states to look at carefully when there is prize and consideration

Arizona

Arkansas

Indiana (particularly if the game involves cards or dice)

Iowa (particularly if the game involves cards or dice)

Louisiana

Maine (particularly if the game involves cards or dice)

Maryland

Montana

South Carolina

South Dakota

Tennessee

Consideration



Consideration



Consideration



Alvarez v. Musk – Michigan
McAfee v. Musk – Texas

Federal Law 52 U.S.C. § 10307(c)

“Whoever knowingly or willfully . . . pays or offers to pay . . . either for registration to vote or for voting shall be fined not more than \$10,000 or imprisoned not more than five years, or both. . . .”

Points with Value

***Colvin v. Roblox Corp.*,
2024 U.S. Dist.
LEXIS 54224
(N.D. Cal. Mar.
26, 2024)**

**The role of
UDAP
Statutes in
Enforcing
Gambling
Laws**

**Money in/Money
Out:**

**Virtual currency
that can be
transformed
into fiat
currency comes
with risks**

**Implications
for loyalty
points?**

**Differentiating
earned points
with a bona fide
purchase for
credit**

AMOE: Viewed through a Gambling Lens

Most states have construed their gambling statutes in a way so that “flexible participation,” – the ability for anyone to play for free, even if some or most people choose to play by making a purchase or paying other consideration – negates the consideration element in the lottery analysis.

It is for this reason that in many, many cases involving brands of myriad goods and services, a free AMOE solves the structural lottery question.

The AMOE is a construct that often (but not always) operates as a promotional exception in the U.S. to the general lottery laws of each state.

- **Occasional and tangential**
- **Equal dignity**
- **Available and communicated**

Making it Real: The Ubiquity of Gambling

Betting on Elections?

***Kalshiex LLC v. CFTC*, 2024 U.S. Dist. LEXIS 163925 (D.D.C. Sept. 12, 2024)**

Making it Real: The Ubiquity of Gambling

Key Takeaways

Many gambling statutes expressly carve out via statute or caselaw bona fide transactions involving securities, which by their nature involve contingencies with an opportunity for gain or loss.

Carve outs and exceptions abound.

Charitable raffles

Daily Fantasy

The *Kalshiex* case is first major case to discuss an administrative agency's approach to gaming and gambling after the U.S. Supreme Court's decision in *Loper Bright Enters. v. Raimondo*, 144 S. Ct. 2244 (2024).

Just because an activity is a lawful form of gambling, it does not mean that a promotion for that activity is lawful. Gambling principles still can apply.

Arbitration Delegation in the Promotional Context

***Coinbase, Inc. v. Suski*, 144 S. Ct. 1186, 218 L. Ed. 2d 615 (2024)**

The U.S. Supreme Court held that where there are two, separate contracts that conflict as to whether to arbitrate or go to court, a court (not an arbitrator) must decide which contract governs as to how to resolve the underlying dispute.

Key Takeaways

Arbitration clauses can be very helpful in mitigating the risk of a sweepstakes disaster.

Making sure an arbitration clause is effective in a set of Official Rules can require a sponsor to highlight the existence of the delegation clause up front, not somewhere deep in the bowels of the official rules.

Consider other terms applicable to entrant Some sponsors that may specify how disputes will be resolved.

The Practicalities of Promotions

Surgeon v. TKO Shelby, LLC, 385 N.C. 772, 898 S.E. 2d 732 (N.C. 2024)

Misrepresenting the nature of a scratch-off/instant-win “lottery” ticket

- Doing so can give rise to questions about “dark patterns,” which has been the subject of FTC litigation in recent years.
- Make sure the game functions the way you say it does.
- Always be careful not to declare someone a “winner” unless and until the person has been verified as such.

Conclusion



Questions?



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