

Chapter 1

INTRODUCTION

Please add the following to Note 1 at page 16:

See also David G. Schwartz, *Roll the Bones: The History of Gambling* (2006), reviewed in William Grimes, *I Got the Cricket Right Here: Gambling Past and Present*, N.Y. Times, Oct. 6, 2006, at B25.

Please add the following to Note 2 at page 16:

For a case that makes it clear just how important a knowledge of gaming terms can be, see *Johnson v. Bally's Atlantic City*, 2006 U.S. Dist. LEXIS 38636 (D.N.J. 2006) (word “monkey” yelled by blackjack players expressed hope for a card with a value equal to 10, and was not, as plaintiff claimed, a racial epithet).

Please add the following to Note 3 at page 16:

As of 2005, the Wong & Spector text cited in the note is in a fourth edition. For another such work, see Kevin Blackwood, *Casino Gambling for Dummies* (2006).

Please add the following to Note 4 at page 16:

For a further description of the current legal betting options that exist in the United States, see William A. Taggart & Jacqueline Wilks, *Gambling in the American States: “Finding Some Action” Has Never Been Easier*, 9 Gaming L. Rev. 3 (2005). See also *Gambling: Who Wins? Who Loses?* (Gerda Reith ed. 2003).

Following the enormous destruction wreaked by Hurricane Katrina in August 2005, New Orleans mayor Ray Nagin proposed creating a downtown casino district. See Adam Nossiter, *Mayor Bets Vegas-Style Casinos Could Help New Orleans Rebuild*, S. Fla. Sun-Sentinel, Oct. 8, 2005, at 14A. Two weeks later, however, he abandoned the idea after encountering stiff resistance from state officials, who were cool to the idea of expanding gambling. See *New Orleans Mayor Drops Proposal for Casino District*, S. Fla. Sun-Sentinel, Oct. 20, 2005, at 7A. See also Kathryn Hashimoto, *Report From New Orleans: The Impact of Hurricane Katrina on Casinos*, 10 Gaming L. Rev. 102 (2006).

Please add the following to Note 5 at page 16:

Pursuant to what has been dubbed the “Chuck E. Cheese Law,” Florida permits adult video arcades to offer games of skill but not games of chance. This has led to numerous actual and threatened prosecutions of arcade

operators on the ground their machines do not require enough skill. In August 2006, however, officials suffered a severe setback when a Fort Lauderdale jury acquitted Gale Fontaine, the president of the Florida Arcade Association, of running an illegal gambling parlor. *See* Jon Burstein, *Patrons Cheer Broward Jury's Decision That Game Room Operates Legally*, S. Fla. Sun-Sentinel, Aug. 15, 2006, at 1A. For a further look at so-called “prize gaming,” *see* Anthony N. Cabot & Louis V. Csoka, *The Games People Play: Is It Time for a New Approach to Prize Games?*, 4 Nev. L.J. 197 (2003–2004).

The recent boom in the popularity of poker, which has become a cable television darling and a staple of card rooms everywhere (and made a star out of Vanessa Rousso, a University of Miami law student nicknamed “Lady Maverick”), has raised anew the question of whether it is a game of chance or skill. For a canvassing of the arguments, *see* Anthony Cabot & Robert Hannum, *Poker: Public Policy, Law, Mathematics, and the Future of an American Tradition*, 22 T.M. Cooley L. Rev. 443 (2005).

Please add the following to Note 6 at page 17:

See also John Warren Kindt, “*The Insiders*” for *Gambling Lawsuits: Are the Games “Fair” and Will Gambling Facilities Be Easy Targets for Blueprints for RICO and Other Causes of Action?*, 55 Mercer L. Rev. 529 (2004) (a lengthy critique of legalized gaming by a well-known opponent).

For an interesting case reaffirming the rule that governments can regulate gaming as they see fit, *see* *Serpico v. Village of Elmwood Park*, 799 N.E.2d 961 (Ill. App. Ct. 2003) (ordinance that prohibited gambling machines commonly used in bars was rational means of controlling betting and therefore did not violate bar operator’s due process or First Amendment rights; fact that town had no plans to prosecute ownership of such machines by private citizens did not require ordinance to be struck down on basis of selective enforcement). *See also* *Holliday Amusement Company of Charleston, Inc. v. South Carolina*, 2006 U.S. Dist. LEXIS 30244 (D.S.C. 2006) (State of South Carolina owed nothing to owner of 500 recently-banned video game machines because decision to outlaw them did not constitute a taking); *Brizill v. District of Columbia Board of Elections and Ethics*, 911 A.2d 1212 (D.C. 2006) (federal law prohibited local ballot initiative on video lottery terminals); *Trainer v. State*, 930 So. 2d 373 (Miss. 2006) (criminal statute prohibiting illegal slot machines was not void for vagueness). *But see* *Galactic Ventures, LLC v. King County*, 2006 U.S. Dist. LEXIS 37307 (W.D. Wash. 2006) (county could be sued for interfering with plaintiff’s plan to acquire a former supermarket site and place a legal card room on it).

Although many legislators remain hostile to legalized gaming, studies indicate that the amount of revenue being collected by states from casinos, lotteries, and slot machines is rapidly approaching 10% in many jurisdictions. *See* Fox Butterfield, *As Gambling Grows, States Depend on Their Cut*, N.Y. Times, Mar. 31, 2005, at A1. *See also* *Lemons in a Row*, N.Y. Times,

July 13, 2004, at A18 (chastising governments for increasingly playing the role of “carnival barker, urging the poor to step right up and risk more.”). *But see* William N. Thompson & Christopher Stream, *Casino Taxation and Revenue Sharing: A Budget Game, or a Game for Economic Development?*, 22 T.M. Cooley L. Rev. 515 (2005) (arguing that states typically overestimate the budget contributions that can be made by gaming when authorizing new or expanded forms of wagering).

Please add the following to Note 7 at page 18:

For an article that claims likening gambling to other social ills (such as crack cocaine) is misguided and makes it impossible to rationally evaluate the pros and cons of legalized gaming, *see* Bennett Liebman, *Not All That It's Cracked Up to Be*, 9 Gaming L. Rev. 446 (2005). For the opposing viewpoint, *see* Bradley S. Fiorito, Comment, *Calling a Lemon a Lemon: Regulating Electronic Gambling Machines to Contain Pathological Gambling*, 100 Nw. U. L. Rev. 1325 (2006).

Please add the following to Note 8 at page 19:

See also Carolyn A. Viehe, *Accommodating Pathological Gambling Employees Under the ADA: All Bets Are Off*, 9 Gaming L. Rev. 232 (2005), and William K. Rashbaum, *Ex-Detective is Given 7-Year Prison Term*, N.Y. Times, Oct. 14, 2006, at B11 (describing the sentencing of former New York Police Department officer Thomas Rachko, who stole \$800,000 to support his gambling habit).

In July 2005, the Mayo Clinic reported that Mirapex, a drug used to treat Parkinson's disease, appears to cause some patients to suddenly become compulsive gamblers. While the authors did not call for a withdrawal of the drug, they did suggest that doctors carefully monitor their patients' betting behavior. *See Parkinson's Treatment and the Urge to Gamble*, N.Y. Times, July 12, 2005, at F7. In the meantime, lawsuits have been filed against Boehringer-Ingelheim Pharmaceuticals Inc., the drug's manufacturer, for failing to provide adequate warnings. *See, e.g., Rice v. Pfizer, Inc.*, 2006 WL 1932565 (N.D. Tex. 2006) (remanding case to state court), and *Sweet v. Pfizer*, 232 F.R.D. 360 (C.D. Cal. 2005) (denying request for class action certification). For a similar suit involving a different drug, *see Price v. Divita*, 2006 Tex. App. LEXIS 6929 (Tex. Ct. App. 2006) (disbarred lawyer sued his former psychiatrist for medical malpractice for prescribing and then failing to monitor his use of Adderall, an attention deficit disorder medication, which plaintiff claimed caused him to become a compulsive gambler). *See also* Eric Nagourney, *Gamblers Report More Health Problems*, N.Y. Times, Dec. 5, 2006, at D6 (describing a University of Connecticut study that found, based on interviews with 43,000 adults nationwide, that gamblers are more likely to suffer from heart and liver disease than non-gamblers).

To deal with the growing number of defendants charged with gambling-related crimes, some experts have called for the creation of specialized

gambling courts. The idea, pioneered by Judge Mark G. Farrell (who set up the first such court in Amherst, New York in 2001), looks to substitute treatment for punishment. *See further* Corey D. Hinshaw, *Taking a Gamble: Applying Therapeutic Jurisprudence to Compulsive Gambling and Establishing Gambling Treatment Courts*, 9 Gaming L. Rev. 333 (2005), and Ronald J. Rychlak & Corey D. Hinshaw, *From the Classroom to the Courtroom: Therapeutic Justice and the Gaming Industry's Impact on Law*, 74 Miss. L.J. 827 (2005).

Please add the following to Note 9 at page 20:

Compulsive gambling among youngsters, which is being fueled both by the country's current poker craze and the ubiquity of online gambling, has become a major concern. For a further discussion, *see, e.g.*, Jeffrey L. Derevensky et al., *Adolescent Problem Gambling: Legislative and Policy Decisions*, 8 Gaming L. Rev. 107 (2004); Jonathan Cheng, *Ante Up at Dear Old Princeton: Online Poker is a Campus Drawer*, N.Y. Times, Mar. 14, 2005, at A1; Marsha Irvine, *Some Fear Teens Are Playing Risky Game*, S. Fla. Sun-Sentinel, Nov. 29, 2004, at 3A; Mattathias Schwartz, *The Hold-Em Holdup*, N.Y. Times, June 11, 2006, § 6, at 52.

Please add the following to Note 10 at page 20:

For additional career advice, *see* Sean McGuinness, *They Call It Gaming . . . And You Can Bet It's Changed a Lot*, Bus. L. Today, July/Aug. 2006, at 34, and Lisa Stansky, *The Gaming Industry Creates Opportunities for Lawyers in Many Aspects of Practice*, Stud. Law., Apr. 2003, at 8. You also should be familiar with the International Masters of Gaming Law (www.gaminglawmasters.com), a by-invitation-only group of gaming attorneys that regularly holds conferences and symposia and publishes a quarterly magazine known as *The Casino Lawyer*.

Even if you are not planning to become a gaming lawyer, you may enjoy reading Steven Lubet, *Lawyers' Poker: 52 Lessons That Lawyers Can Learn From Card Players* (2006), reviewed in Robert L. Byman, *Playing One's Cards Right*, Nat'l L.J., Sept. 18, 2006, at 23.

Please add the following to Note 11 at page 20:

Gambling's influence on, and by, popular culture remains strong. In an attempt to cash in on Baby Boomer nostalgia, for example, many slot machines now have themes based on 1960s television shows, such as "I Dream of Jeannie" and "The Beverly Hillbillies." *See* Gary Rivlin, *I Dream of Royalties*, N.Y. Times, Sept. 28, 2003, § 3, at 1. *See also* *Hasbro, Inc. v. Mikohn Gaming Corp.*, 2006 U.S. Dist. LEXIS 52641 (D.R.I. 2006) (royalty dispute involving slot machines based on the board games "Battleship," "Clue," and "Yahtzee"). At the other end of the spectrum, in June 2006 *Maxim*, the British magazine aimed at young men, announced plans to build a casino hotel in Las Vegas that would take full advantage of its ribald image. *See* Lorne Manly, *A Lad Mag and a Brand in Las Vegas*, N.Y. Times,

June 5, 2006, at C1. However, when it came time for Nevada to participate in the United States Mint's Fifty State Quarters program in January 2006, its entry depicted a trio of wild mustangs, rather than playing cards, poker chips, or a slot machine, because federal officials had firmly rejected the use of all gambling icons. *See Gambling Images Barred From Quarter's Design*, S. Fla. Sun-Sentinel, Oct. 3, 2004, at 3A.

For its part, Hollywood continues to find fodder in gambling tales. Recent television series have included both dramas (e.g., CBS's *Dr. Vegas*, ESPN's *Tilt*, FX's *Lucky*, and NBC's *Las Vegas*) and reality shows (e.g., A & E's *Caesars 24/7*, Bravo's *Celebrity Poker Showdown*, Discovery's *American Casino*, ESPN's *The World Series of Poker*, Fox's *The Casino*, GSN's *Dream Derby* and *World Series of Blackjack*, and The Travel Channel's *World Poker Tour*), while recent movies have included *The Cooler* (2003) (starring Alec Baldwin and William H. Macy), *The Ladykillers* (2004) (Irma P. Hall and Tom Hanks), *Two for the Money* (2005) (Matthew McConaughey and Al Pacino), and *Casino Royale* (2006) (Daniel Craig and Eva Green). For proof that gaming shows are enormously popular, one need look no further than a case like *S.E.C. v. Chesnoff*, 2006 U.S. Dist. LEXIS 49090 (N.D. Tex. 2006) (defendant's announcement that he was putting together a \$700 million bid for WPT Enterprises, Inc., the producer of *World Poker Tour* and other television gaming fare, caused investors to go into overdrive). Hoping to cash in on the rising popularity of gambling, numerous mainstream companies, including Delta, Ford, Levi Strauss, and Pepsi, now often use betting storylines to promote their products. *See further* Stuart Elliott, *A Las Vegas Theme for Some Blue-Chip Names*, N.Y. Times, Nov. 4, 2003, at C4.

Please add the following to Problem 1 at page 22:

See also Marisa Campbell Atkinson, *How to Succeed in the Mississippi Gaming Industry . . . Sorry, But You Can't*, 7 Gaming L. Rev. 153 (2003), and I. Nelson Rose, *The Bizarre Law of Dealer Schools*, 7 Gaming L. Rev. 311 (2003).

Please add the following to Note 1 at page 40:

See also L. Nicholas Dean, *Losing in Louisiana: The Legal Problems of Gambling and Edwin Edwards*, 7 Gaming L. Rev. 57 (2003). After years of legal challenges, it appears that the end has finally come for Edwards and his son — in June 2006, the United States Supreme Court refused to hear their appeals. *See United States v. Edwards*, 442 F.3d 258 (5th Cir.), *cert. denied*, 126 S. Ct. 2948, *reh'g denied*, 127 S. Ct. 11 (2006).

Please add the following to Note 2 at page 41:

For additional cases involving lawyers who were disbarred for gambling-related misdeeds, *see, e.g., Coffman v. Kentucky Bar Association*, 183 S.W.3d 176 (Ky. 2006); *In re Brafford*, 625 S.E.2d 650 (S.C. 2006); *In re Christian*, 135 P.3d 1062 (Kan. 2006); *State ex rel. Counsel for Discipline of Nebraska*

Supreme Court v. Reilly, 712 N.W.2d 278 (Neb. 2006); *In re Reinstatement of Fraley*, 115 P.3d 842 (Okla. 2005); *In re Cleveland*, 884 So. 2d 1189 (La. 2004), *reinstatement granted by* 933 So. 2d 793 (La. 2006); *In re Bellicini*, 4 Cal. St. B. Ct. Rptr. 883 (2006).

Please add the following to Note 3 at page 41:

See also Martha D. Moore, *Don't Roll the Dice on Ethics*, 22 T.M. Cooley L. Rev. 605 (2005) (detailed description of how state ethics rules impact gaming lawyers).

Please add the following to Problem 2 at page 41:

See also Leigh Jones, *Indian Casino a Bad Bet for Dorsey & Whitney; Malpractice Action Could Cost the Firm Millions*, Nat'l L.J., Nov. 13, 2006, at 10.

Chapter 2

STATE-SPONSORED GAMING

Please add the following to the Overview at page 43:

Forty-two states and the District of Columbia currently have lotteries, and annual ticket sales have increased to \$53 billion. More tickets are sold each year in New York (\$6 billion) than anywhere else in the country (Massachusetts is a distant second at \$4.5 billion).

Please add the following to Note 1 at page 50:

While business promotion plans now generally are legal, it is still possible to run into trouble when operating them. *See, e.g., Kemp v. American Tel. & Tel. Co.*, 393 F.3d 1354 (11th Cir. 2004) (telephone company that provided “900” number and collected charges for call-in game based on the famous television program “Let’s Make a Deal” held to have assisted unauthorized gambling); *F.A.C.E. Trading, Inc. v. Todd*, 903 A.2d 348 (Md. 2006) (machine that dispensed retailer coupons with cash game prize on back was unauthorized slot machine); *Bullseye Distributing LLC v. State Gambling Commission*, 110 P.3d 1162 (Wash. Ct. App.), *review denied*, 126 P.3d 820 (Wash. 2005) (sports card vending machine that resembled slot machine and awarded credits that could be redeemed for cash or prizes was illegal); *Minnesota Souvenir Milkcaps, LLC v. State*, 687 N.W.2d 400 (Minn. Ct. App. 2004) (company’s “scratch-and-win” pogs promotion was a prohibited lottery because it did not meet the technical requirements of the state’s “in-package chance promotion” law).

Please add the following to Note 4 at page 52:

For a further discussion, *see* Brian Lester, *The Free Replay Feature in Pinball Machines: A Fresh Look at the Elements of Gambling and a Revised Method of Analysis*, 41 Brandeis L.J. 297 (2002). *See also* *McEntee v. Incredible Technologies, Inc.*, 2006 Mich. App. LEXIS 732 (Mich. Ct. App. 2006) (challenge to electronic golf machine that paid players for achieving a “hole-in-one”).

Please add the following to Note 5 at page 52:

Observers continue to debate whether the stock market is a form of gambling. *See, e.g.,* Christopher T. Pickens, Comment, *Of Bookies and Brokers: Are Sports Futures Gambling or Investing, and Does It Even Matter?*, 14 Geo. Mason L. Rev. 227 (2006). Whether or not it is, one can now put money into the “Vice Fund,” a mutual fund that invests in “sin” products, including alcohol, gambling, and tobacco company stocks. Since

its inception in 2002, the fund has outperformed the Standard & Poor's 500-stock index. *See* Joshua Brockman, *Drink, Smoke and Gamble, and This Fund Climbs*, N.Y. Times, July 9, 2006, § 3, at 6.

In 2003, the Pentagon proposed creating a futures market (dubbed the "Policy Analysis Market") in which players could place wagers on the occurrence or non-occurrence of assassinations, political coups, and terrorist attacks. The idea, whose goal was to give analysts help in predicting future world events, was terminated as a result of congressional protests. *See further* Tom Bowman, *New 'Market' Would Allow Betting on Terrorist Events*, S. Fla. Sun-Sentinel, July 29, 2003, at 3A, and Clyde Haberman, *Games of Chance for Wonks*, N.Y. Times, Aug. 1, 2003, at A20. *But see* Robert J. Rhee, *Terrorism Risk in a Post-9/11 Economy: The Convergence of Capital Markets, Insurance, and Government Action*, 37 Ariz. St. L.J. 435 (2005) (proposing and defending the use of "terrorism bonds," a variation on the Pentagon's idea).

Please add the following to Problem 3 at page 54:

See also American Treasures, Inc. v. State, 617 S.E.2d 346 (N.C. Ct. App. 2005).

Please add the following to Note 1 at page 72:

For a further look at the history of lotteries, *see* Anisha S. Dasgupta, *Public Finance and the Fortunes of the Early American Lottery*, 24 Quinnipiac L. Rev. 227 (2006).

Despite the enormous odds against hitting a lottery jackpot, a survey conducted in 2005 by the Opinion Research Corporation for the Consumer Federation of America and the Financial Planning Association found that 21% of Americans believe that winning the lottery is "the most practical strategy for accumulating several hundred thousand dollars" in net wealth. Among those earning less than \$25,000 a year, the figure was 38%. *See* Andrea Coombes, *Survey: 20 Percent in U.S. Say Lottery is the Path to Wealth*, S. Fla. Sun-Sentinel, Jan. 16, 2006, at 20 (Bus.).

Please add the following to Note 3 at page 73:

Although federal law prohibits the cross-border sale or purchase of lottery tickets, international lottery scams are on the upswing. Such schemes typically begin with a letter or e-mail advising the recipient that they have won a foreign lottery drawing and need only pay a small "processing fee" to cover the cost of the necessary currency exchange and customs paperwork. Of course, there is no prize and the processing fee, often hundreds or even thousands of dollars, is kept by the fraudsters. *See further* Robert K. Heady, *Lottery Scams Promise Big Cash*, S. Fla. Sun-Sentinel, July 19, 2004, at 19 (Bus.), as well as the web site of the Federal Trade Commission (www.ftc.gov).

Please add the following to Note 4 at page 74:

In November 2006, voters in Arizona were asked whether they wanted to give \$1 million at each election to one lucky voter, whose name would be selected at random. Based on past elections, the odds of winning were calculated to be 1-in-2 million, significantly better than the 1-in-146 million odds in the state's Powerball jackpot. *See* Randal C. Archibold, *Arizona Ballot Could Become Lottery Ticket*, N.Y. Times, July 17, 2006, at A1 (explaining that Mark Osterloh, who came up with the idea, hoped it would help spur voter turnout). Despite its lofty purpose, the measure failed 66%-34%. *See further Promise of Casting \$1 Million Vote Fails to Sway Arizona*, Charleston (W. Va.) Gazette & Daily Mail, Nov. 8, 2006, at 12A.

Please add the following to Note 6 at page 74:

For an interesting article that explores the continuing allure of illegal lotteries, *see* Michael Brick, *Dreams, Hunches and 600-to-1 Keep the Numbers Game Going*, N.Y. Times, Apr. 25, 2005, at A1 (explaining that despite the ready availability of legal lottery tickets, many New Yorkers prefer illegal lotteries because they offer better odds and the winnings are not taxed).

Please add the following to Note 7 at page 74:

Reports of people committing lottery-inspired crimes continue to fill the newspapers. In December 2003, for example, Elecia Battle filed a police report claiming she had lost the winning ticket, worth \$162 million, in Ohio's Mega Millions game. After the real winner came forward, Battle admitted her story was a hoax. As part of a plea arrangement, she was given 50 hours of community service, a \$1,000 fine, and ordered to pay nearly \$5,600 in restitution (most of which was due to police overtime). *See* Connie Mabin, *Woman Found Guilty in Mega Jackpot Claim*, Akron Beacon J., Apr. 7, 2004, at B4.

In October 2005, Christina Goodenow purchased a winning \$1 million Oregon Lottery "scratch-it" ticket. After she claimed the first installment of her prize, however, officials realized she had used a stolen credit card to buy the ticket and had her arrested. *See* Katy Muldoon, *Trouble Trails Winner of \$1 Million Prize*, Portland Oregonian, Oct. 29, 2005, at B3.

And in August 2006, Annie Donnelly pleaded guilty to stealing \$2.3 million from her employer so she could buy New York State lottery tickets. The thefts, which occurred over a period of 42 months, came to light when the company's checks began to bounce. At her peak, Donnelly was buying \$6,000 worth of tickets each day and was the single largest source of income for MK Cards and Gifts, the small shop where she routinely made her purchases. *See* Bruce Lambert & Valerie Cotsalas, *Bookkeeper Admits Embezzling \$2.3 Million for Lottery*, N.Y. Times, Aug. 24, 2006, at A25 (reporting that Donnelly faces a prison term of 4-to-12 years and is being forced to sell her home as part of a restitution order).

Please add the following to Note 8 at page 75:

In October 2005, President Bush nominated his White House counsel, Harriet Miers, to a seat on the United States Supreme Court, pointing to her years of service as the head of the Texas Lottery Commission as evidence of her integrity and competency. Critics, however, quickly revived a longstanding charge that she had played politics with the lottery. *See* Ralph Blumenthal, *Questions Linger on Role of Miers in a Contract to Run the Texas Lottery*, N.Y. Times, Oct. 7, 2005, at A14. The issue remained unresolved, however, as Miers, facing almost certain defeat in the Senate, soon asked to have her nomination withdrawn (the post eventually went to Judge Samuel A. Alito, Jr. of the Third Circuit).

In November 2006, Ohio State University beat the University of Michigan in a football game with national championship implications (at the time, the teams were ranked, respectively, #1 and #2). The final score was 42-39. Just minutes after the contest ended, the numbers 4-2-3-9 were drawn in the Ohio Lottery's Pick 4 game. *See Score Inspired Lottery Players*, N.Y. Times, Nov. 21, 2006, at C18.

Please add the following to Note 9 at page 75:

In July 2005, Reagan Greer, the executive director of the Texas Lottery Commission, resigned after acknowledging he had authorized advertisements for the June 8th Texas Lotto drawing that announced a payout of \$8 million, despite knowing that the game's ticket sales could not support a prize of more than \$6.5 million. *See Lottery's Top Boss Resigns After Misleading Ads*, S. Fla. Sun-Sentinel, July 10, 2005, at 3A.

Please add the following to Note 10 at page 76:

As the court in the *Ecumenical Ministries* case (page 60) explains, Oregon's voters did not want their approval of a state lottery to open the door to casinos. Accordingly, the Oregon State Lottery propounded a rule that any business selling lottery tickets had to derive the bulk of its income from non-lottery sales. A challenge to this requirement was turned aside in *Oregon Restaurant Services, Inc. v. Oregon State Lottery*, 112 P.3d 398 (Or. Ct. App.), *review denied*, 122 P.3d 64 (Or. 2005).

For a case raising the same issue, and coming out the same way, as the *Tichenor* case (page 68), *see State ex rel. Ohio Roundtable v. Taft*, 2003 Ohio App. LEXIS 3042 (Ct. App.), *appeal not allowed*, 798 N.E.2d 1093 (Ohio 2003).

In an attempt to attract more players, the Massachusetts State Lottery in 2005 proposed adding a new, animated game that would simulate a horse race. The idea immediately drew protests from the state's race tracks, which worried the game would prove too popular. *See Fox Butterfield, A Virtual Horse Race? Massachusetts Lottery's Plan for Game Angers Tracks*, N.Y. Times, Apr. 15, 2005, at A13. In contrast, in December 2003 the Florida Lottery decided not to start a game that would have given winners a chance

to ride on a Soyuz spacecraft after focus groups revealed that too few players were interested in such a prize. *See* Mike Schneider, *Florida Lottery Rejects Out-of-this-World Idea*, S. Fla. Sun-Sentinel, Dec. 13, 2003, at 5B.

Please add the following to Note 11 at page 76:

Since winning the \$314.9 million grand prize in the 2002 Christmas Day Multi-State Lottery, Andrew Whittaker has suffered a number of reversals:

- January 2003 – Arrested for DUI.
- August 2003 – Sport utility vehicle broken into and \$500,000 stolen.
- September 2003 – Jesse Tribble, a friend of Whittaker’s granddaughter Brandi, is found dead of a drug overdose in Whittaker’s house.
- January 2004 – SUV again broken into and \$100,000 stolen. Arrested for misdemeanor assault following a bar fight.
- December 2004 – Ordered to surrender driver’s license and enter into an alcohol rehabilitation program. Granddaughter Brandi goes missing and is later found dead of a drug overdose.

In addition to the foregoing, Whittaker has been sued by Caesar’s Atlantic City for bouncing \$1.5 million in checks and by a woman who claimed he groped her at a dog track. In an interview in December 2004, Whittaker’s wife Jewel exclaimed, “I wish all of this never would have happened. I wish I would have torn the ticket up.” *See \$315 Million Lottery Win is Regrettable, Wife Says*, S. Fla. Sun-Sentinel, Dec. 15, 2004, at 3A.

Please add the following to Note 12 at page 76:

See also *Trinkle v. California State Lottery*, 129 Cal. Rptr. 2d 904 (Ct. App. 2003) (vending machine that dispensed lottery tickets was not a prohibited slot machine under state law).

Please add the following to Note 1 at page 92:

For other cases in which players unsuccessfully sued lottery officials, *see* *Jacobs v. State Lottery Commission*, 801 N.E.2d 320 (Mass. App. Ct. 2004) (misprint in scratch-and-win lottery game did not give rise to any cause of action); *Tseffos v. State*, 2003 Wash. App. LEXIS 300 (Ct. App. 2003) (plaintiff who claimed he bought lottery ticket without being told that all of the top prizes already had been awarded failed to state a claim); *Palese v. Delaware State Lottery Office*, 2006 Del. Ch. LEXIS (Ct. Ch. 2006) (no pay out due to player who, having lost winning ticket in wash, submitted betting slip instead). *But see* *State ex rel. Barnett v. Missouri State Lottery Commission*, 196 S.W.3d 72 (Mo. Ct. App. 2006) (rule requiring players to redeem winning tickets within 180 days did not apply to plaintiff, who won prior to rule’s promulgation).

Of course, not all clerical goofs turn out badly for the player. In December 2005, Theresa Smith went to a Denver grocery store and asked for a Powerball ticket. Instead, the clerk printed out a Colorado Lotto ticket. Had

Smith gotten the right ticket, she would have lost. But by getting the wrong ticket, she ended up winning \$2.5 million. *See* George Merritt, *That's the Ticket: A \$2.5 Million Lottery Mistake*, S. Fla. Sun-Sentinel, Jan. 1, 2006, at 3A.

Please add the following to Note 2 at page 93:

For additional cases upholding lottery anti-assignment clauses, *see, e.g.*, *Cook v. Commissioner*, 349 F.3d 850 (5th Cir. 2003); *In re Fraden*, 317 B.R. 24 (Bankr. D. Mass. 2004); *In re Duboff*, 290 B.R. 652 (Bankr. C.D. Ill. 2003); *Commonwealth v. Settlement Funding, LLC*, 58 UCC Rep. Serv. 2d 470 (Va. Cir. Ct. 2005).

Please add the following to Note 2 at page 109:

In *Parker v. Parker*, 773 N.Y.S.2d 518 (Sup. Ct. 2003), a husband suing for divorce sought a share of his wife's winning lottery ticket, which was worth \$25 million. In denying his claim, the court wrote:

The law is well settled that a lottery prize won during a marriage is generally considered property acquired during the marriage subject to equitable distribution[.] The specific language of the parties' prenuptial "opting-out" agreement, which clearly defines marital assets as those held in joint name, renders the general rule inapplicable in this case. The lottery proceeds herein are not subject to equitable distribution unless the husband first successfully prosecutes his claim that he and the wife should be declared joint title owners of the lottery winnings.

Id. at 521. For a further look at the case, *see* Katie Foster, Comment, *Dividing Lottery Winnings During Dissolution of Marriage*, 18 J. Am. Acad. Matrim. Law. 535 (2003).

In August 2003, a group of hospital workers sued a couple over a New Jersey lottery ticket. According to the workers, the ticket had been purchased by one of their members, who, after realizing it was a winner, conspired with the couple to cut the rest of the group out of the prize. Concluding that the allegation lacked credibility, particularly in light of the fact that the supposed conspirators had not spoken in years, the court awarded the full prize to the couple. *See* Maria Newman, *Couple Win \$24.5 Million From Disputed Lottery Ticket*, N.Y. Times, Aug. 14, 2003, at A21.

Similarly, in December 2005 Jonathan De La Cruz sued seven co-workers in a California state court after they won a \$315 million multi-state lottery jackpot. According to De La Cruz, the group had been buying lottery tickets together for some time and had an oral agreement to pool their tickets, but on the day the winning ticket was purchased he had not been included. *See Lab Technician Files Suit to Get Part of Jackpot*, Deseret Morning News, Dec. 16, 2005, at A14.

Please add the following to Note 4 at page 109:

For a further look at Alabama's continuing struggle over whether to have a state lottery, see Joseph L. Lester, *Gaming Alabama: Futile Attempts to Put the Horse Back in the Barn*, 10 Gaming L. Rev. 458 (2006).

As reported in the casebook, Tennessee's 2002 lottery amendment was written in bare-bones fashion so as to avoid the squabbles that doomed Alabama's lottery. The gambit worked, as voters approved the proposal 58% to 42% and Tennessee lawmakers quickly passed the necessary implementing legislation. See further John P. Williams, *Examining the Lottery: How the New Tennessee Lottery Will Work, What Scholarships Will Be Available and What to Look for if Your Client is a Lottery Vendor or Retailer*, Tenn. B.J., Nov. 2003, at 19.

Please add the following to Note 5 at page 110:

See also Matthew S. Levine, Comment, *Lottery Winnings as Capital Gains*, 114 Yale L.J. 195 (2004), and Dan W. Holbrook, *So Your Client Just Won the Lottery* . . ., Tenn. B.J., Apr. 2004, at 32.

Yet another problem with winning the lottery is that it often brings unwanted police attention. In October 2004, for example, Lydia Moore won \$5 million while playing New York's "Livin' Large" instant scratch-off game. The resulting publicity helped Long Island detectives track Moore down, whom they had been looking for in connection with an earlier crime. See Corey Kilgannon, *Winner of a Lottery Jackpot is Accused in Check Fraud*, N.Y. Times, Nov. 7, 2004, § 1, at 50.

For an especially poignant example of how winning the lottery does not guarantee happiness, see James Dao, *Instant Millions Can't Halt Winners' Grim Slide*, N.Y. Times, Dec. 5, 2005, at A1 (describing how, despite winning a \$34 million lottery jackpot in 2000, Mark Metcalf and his wife Virginia, a formerly poverty-stricken couple, were unable to turn their lives around and died within just a few years, he in 2003 from alcohol abuse and she in 2005 from a drug overdose).

Chapter 3

CHARITABLE GAMING

Please add the following to Note 5 at page 122:

For an interesting article that describes the liability of condominiums, co-operatives, and homeowner associations for running or permitting friendly games, see Marc J. Randazza, *Condo Casino! Gambling Law and the Florida Community Association*, Fla. B.J., Oct. 2005, at 8.

Please add the following to the Note at page 128:

See also *Fraternal Order of Eagles Sheridan Aerie No. 186, Inc. v. State ex rel. Forwood*, 126 P.3d 847 (Wyo. 2006) (bingo exclusion in gambling statutes did not extend to electronic bingo), and Joseph L. Lester, *B-I-N-G-NO! The Legal Abuse of an Innocent Game*, 18 St. Thomas L. Rev. 21 (2005) (arguing that electronic bingo should not be deemed the equivalent of traditional bingo).

Please add the following to Note 1 at page 134:

See also *Sons and Daughters of Idaho, Inc. v. Idaho Lottery Commission*, 132 P.3d 416 (Idaho 2006) (upholding new rule requiring charities to use “bingo tracking paper”), and Kelly L. Frey & Carolyn W. Schott, *Sink or Swim: New Law Lets Charities Back in the Game, But Complex Rules May Put Fundraising Efforts Off Course*, Tenn. B.J., July 2004, at 14 (describing Tennessee’s tough new charity gaming rules, which are designed to prevent another “Operation Rocky Top,” a 1980s scandal that involved the illegal sale of bingo licenses and led to the imprisonment of House Majority Leader Tommy Burnette and the suicide of Secretary of State Gentry Crowell).

Although charities traditionally have relied on bingo, lately they have been turning to poker (particularly Texas Hold ‘em) due to the country’s current poker craze. This has alarmed many state regulators, some of whom have seen a doubling in the number of charitable gaming applications, and has led to a call for additional licensing restrictions. See further Tresa Baldas, *Lawyers Play Their Hand With ‘Poker Law’; Card Craze Sparks Move to Ease Laws*, Nat’l L.J., Jan. 2, 2006, at 1 (discussing prosecutions of charities for violating what many consider to be overly-rigid laws), and Jodi Rudoren, *Seeking New Sources of Money, Charities Get in on Poker Craze*, N.Y. Times, Feb. 6, 2006, at A1 (reporting that as a result of the boom, California now requires operators to turn over at least 90% of the proceeds to the sponsoring charity).

Please add the following to Note 3 at page 135:

For an interesting case denying a charitable gaming license to a fraternal organization because of its past convictions for illegal gambling, see *In re Franklin Lodge of Elks # 1280 BPOE*, 864 A.2d 325 (N.H. 2004).

In November 2006, the Shriners, a national fraternal organization, took over a clubhouse belonging to one of its Alabama chapters after discovering it had failed to turn over all of its bingo proceeds to the Shriners Hospitals for Children. See further Stephanie Strom, *Shriners Seize a Clubhouse in a Dispute Over \$119,000*, N.Y. Times, Nov. 7, 2006, at A14 (explaining that although the chapter was in compliance with local laws, which require charities to use 51% of their bingo proceeds for philanthropic purposes, the Shriners' by-laws set the rate at 100%).

Please add the following to Note 2 at page 144:

See also Steve S. Chang, *The Vital Role of Patent Law in the Gaming Industry*, 10 Gaming L. Rev. 8 (2006), and Robert B. Morrill & Brian Ogonowsky, *Gambling on Patents*, 7 Gaming L. Rev. 411 (2003).

Please add the following to the Note at page 151:

See also *Loyal Order of Moose v. State Tax Commissioner*, 632 S.E.2d 59 (W. Va. 2006) (fraternal organization could use a portion of its charitable raffle proceeds to pay reasonable operating expenses).

Chapter 4

PARI-MUTUEL GAMING

Please add the following to Note 1 at page 166:

See also Richard Eng, *Betting on Horse Racing for Dummies* (2005); Joan S. Howland, *Let's Not "Spit the Bit" in Defense of "The Law of the Horse": The Historical and Legal Development of American Thoroughbred Racing*, 14 Marq. Sports L. Rev. 473 (2004); Bill Finley, *The Case Against Braulio Baeza*, N.Y. Times, Sept. 13, 2006, at C19 (describing an unfolding scandal involving the misreporting of jockey weights).

Please add the following to Note 2 at page 167:

See also "Prof. Jones," *Winner's Guide to Greyhound Racing* (3d ed. 2003).

Please add the following to Note 3 at page 167:

See also Roger I. Abrams, *Keep Your Eye on the Pelota: Sports Arbitration at the Jai-Alai Fronton*, 16 Marq. Sports L. Rev. 1 (2005).

Since 2003, only Florida has had operating jai-alai frontons. See Geoffrey Gray, *A Sport Fighting for Survival*, N.Y. Times, June 12, 2004, at D4. In November 2004, voters in Florida amended the state constitution to permit slot machines in jai-alai frontons in Miami and Fort Lauderdale if approved in subsequent local referenda, a step Fort Lauderdale took in March 2005. As a result, the Dania jai-alai fronton instantly became a very lucrative property, and in May 2006 the Boyd Gaming Corporation announced it had reached a deal to buy the \$11 million facility for \$152.5 million. See Tom Stieghorst, *Vegas Comes to Dania Jai-Alai; New Rules Allowing Slots is Strong Lure for Buyer*, S. Fla. Sun-Sentinel, June 1, 2006, at 1A. Even with this development, however, few observers believe that jai-alai has a long-term future in Florida. See further Dave Joseph, *Players Hope Sale Will Salvage Sport*, S. Fla. Sun-Sentinel, June 1, 2006, at 5C.

Please add the following to Note 1 at page 198:

For a further look at the many hurdles that must be overcome to start a race track, see *Bedford Downs Management Corp. v. State Harness Racing Commission*, 901 A.2d 1063 (Pa. Cmwlth. Ct. 2006).

Please add the following to Note 2 at page 198:

In 2002, Hialeah's racing license was revoked after it failed to hold any races. See Robert Andrew Powell, *Hialeah Sits Dormant, But Owner Fights for Racing to Return*, N.Y. Times, June 27, 2005, at D9. In 2004, the track sought to get back its license by claiming economic hardship, but an

appellate court rejected the argument. See *Hialeah Racing Association, LLC v. Department of Business and Professional Regulation, Div. of Pari-Mutuel Wagering*, 907 So. 2d 1235 (Fla. Dist. Ct. App. 2005).

Please add the following to Note 4 at page 199:

For an interesting case concerning race track card rooms, see *Hartman-Tyner, Inc. v. Div. of Pari-Mutuel Wagering, Dept. of Business and Professional Regulation*, 923 So. 2d 559 (Fla. Dist. Ct. App. 2006) (agency acted without sufficient justification in promulgating emergency rule preventing tracks from hosting “no-limit” poker tournaments).

The drive to place slot machines at race tracks (thereby creating what now are frequently referred to as “racinos”), in the hope that doing so will prop up the pari-mutuel industry, continues to gain momentum. See generally Bill Finley, *Ailing Racetracks Hope Slots Will be the Cure*, N.Y. Times, Jan. 28, 2004, at C16, and Michelle York, *Betting on Harness Racing, But Counting on the Slots*, N.Y. Times, June 18, 2006, § 1, at 23. In Florida, for example, the citizen initiative that was struck from the 2002 ballot made it on to the 2004 ballot and subsequently passed, although it is currently being challenged in court on the ground that its proponents failed to collect a sufficient number of valid signatures. See further *Advisory Opinion to the Attorney General re: Authorizes Miami-Dade and Broward County Voters to Approve Slot Machines in Parimutuel Facilities*, 880 So. 2d 522 (Fla. 2004); *Floridians Against Expanded Gambling v. Floridians for a Level Playing Field*, 2006 Fla. App. LEXIS 20034 (Dist. Ct. App. 2006) (en banc); Alan B. Koslow & David S. Romanik, *Gaming at Florida Pari-Mutuels: Racinos Are a Sure Bet for the Sunshine State*, 10 Gaming L. Rev. 107 (2006). Likewise, in Pennsylvania the legislature approved 61,000 new slot machines in a bid to help the local racing industry. See *Pennsylvanians Against Gambling Expansion Fund, Inc. v. Commonwealth*, 877 A.2d 383 (Pa. 2005), and Sean D. Hamill, *Pennsylvania Awards 5 Slot-Machine Licenses*, N.Y. Times, Dec. 21, 2006, at A19. Few people, however, believe that the pari-mutuel industry will be saved by slot machines. See further Mike Vogel, *House Odds*, Fla. Trend, May 2006, at 86, and Jamie Malernee, *Track Bets on Slots*, S. Fla. Sun-Sentinel, Sept. 16, 2006, at 1A.

In the meantime, the United States Supreme Court has held that states can tax racino slots at rates different from those imposed on other machines. In *Fitzgerald v. Racing Association of Central Iowa*, 539 U.S. 103 (2003), Justice Breyer found (contrary to the conclusion of the state supreme court) that Iowa’s decision to tax race track slots at 36%, but riverboat slots at 20%, did not violate equal protection because:

Once one realizes that not every provision in a law must share a single objective, one has no difficulty finding the necessary rational support for the 20 percent/36 percent differential here at issue. That difference, harmful to the racetracks, is helpful to the riverboats, which, as respondents concede, were also facing financial peril. These two characterizations are but opposite sides of the

same coin. Each reflects a rational way for a legislator to view the matter. And aside from simply aiding the financial position of the riverboats, the legislators may have wanted to encourage the economic development of river communities or to promote riverboat history, say, by providing incentives for riverboats to remain in the State, rather than relocate to other States. Alternatively, they may have wanted to protect the reliance interests of riverboat operators, whose adjusted slot machine revenue had previously been taxed at the 20 percent rate. All these objectives are rational ones, which lower riverboat tax rates could further and which suffice to uphold the different tax rates.

Id. at 109. On remand, however, the Iowa Supreme Court again struck down the tax, this time on state constitutional grounds. *See Racing Association of Central Iowa v. Fitzgerald*, 675 N.W.2d 1 (Iowa), *cert. denied*, 541 U.S. 1086 (2004). For a criticism of its decision to do so, *see* Hillary Schlueter, Note, *The Return of Lochnerizing: The Iowa Supreme Court's Invalidation of Gambling Taxes*, 9 J. Gender Race & Just. 713 (2006).

Please add the following to Note 4 at page 207:

Pari-mutuel workers also can get into trouble for expressing their opinions. In March 2005, for example, D.G. Van Clief, the Commissioner of the National Thoroughbred Racing Association, apologized for remarks made by trainer Jeff Mullins. During an interview published in the *Los Angeles Times*, Mullins said, “If you bet on horses, I would call you an idiot. I don’t bet; there’s a reason why they call it gambling.” In an attempt to diffuse the resulting controversy, Van Clief called Mullins’s comments “inexcusable” and insisted, “As an industry, we do not overlook and we won’t forget our No. 1 asset, which is our customer.” *See Are Bettors ‘Idiots’? Van Clief Rips Mullins*, S. Fla. Sun-Sentinel, Mar. 10, 2005, at 2C. *See also Perez v. Hoblock*, 368 F.3d 166 (2d Cir. 2004) (upholding \$3,000 fine assessed against horse owner for intemperate remarks made during stewards’ meeting).

Although race officials have broad powers to ensure fair contests, *see, e.g., Burneson v. Ohio State Racing Commission*, 2004 Ohio App. LEXIS 2952 (Ct. App. 2004) (warrantless search of trainer’s duffle bag for illegal substances upheld), and *Bocachica v. Pennsylvania State Horse Racing Commission*, 843 A.2d 450 (Pa. Cmwlth. Ct. 2004) (jockey did not have to be given a *Miranda* warning before being questioned about his alleged use of a battery to shock his horse), their authority is not limitless. In *Collins v. Ohio State Racing Commission*, 2003 Ohio App. LEXIS 5762 (Ct. App. 2003), for example, a jockey’s suspension for failing to use her utmost efforts to win was reversed because it was based on an incomplete record. Likewise, in *Hughes v. Kentucky Horse Racing Authority*, 179 S.W.3d 865 (Ky. Ct. App. 2004), a case arising from the firing of a racing inspector, it was determined that the racing commission was not exempt from the requirements of the state’s civil service system. As such, the termination was deemed excessive and downgraded to

a 30-day suspension without pay. *See also Lee v. Walters*, 161 Fed. Appx. 656 (9th Cir. 2005) (racing officials were right to exclude track owners who had mishandled funds but went too far when they seized their tangible personal property), and *Rainey v. Washington State Horse Racing Commission*, 2006 Wash. App. LEXIS 1668 (Ct. App. 2006) (stewards who sued after being fired failed to prove that they had been retaliated against for criticizing how commission was doing its job).

Please add the following to Note 5 at page 207:

As the note explains, in October 2002 Chris Harn, a senior software engineer at Autotote, and two of his former college fraternity brothers came very close to walking away with \$3.1 million after they managed to alter several Breeders' Cup Pick-Six tickets. Their subsequent arrests and confessions (for which they received sentences ranging from 12 to 37 months) led the racing industry to adopt increased security measures, although the totalisator system, relying as it does on human beings, remains vulnerable. *See further Mac Engel, Pick Six Scam*, Fort Worth Star Telegram, Oct. 27, 2004, at D14.

Please add the following to Note 2 at page 225:

See also Autotote Enterprises, Inc. v. State, Div. of Special Revenue, 898 A.2d 141 (Conn. 2006) (moratorium on expansion of off-track betting did not apply to plaintiff's plan to begin airing horse racing on cable television with ads telling viewers how they could bet on the contests they were watching).

Please add the following to Note 3 at page 225:

See also Raceway Park, Inc. v. Ohio, 356 F.3d 677 (6th Cir. 2004) (where state changed its rules to permit simulcasting on days when no live races were offered, it was not required to follow its previous method of dividing income), and *Northfield Park Associates v. Ohio State Racing Commission*, 2006 Ohio App. LEXIS 3398 (Ct. App. 2006) (authority's decision to permit simulcasting at thoroughbred track did not violate rights of nearby standardbred track).

Please add the following to Note 6 at page 235:

See also Holton v. Indiana Horse Racing Commission, 398 F.3d 928 (7th Cir. 2005) (owner was not entitled to administrative review of stewards' decision to drop his horse from second to third for improper racing, even though this resulted in a purse reduction of \$6,250).

Please add the following to Note 7 at page 235:

See also Indianapolis Downs, LLC v. Indiana Horse Racing Commission, 827 N.E.2d 162 (Ind. Ct. App. 2005) (discussing state's breed development program, which is supported, in part, by an admission tax on the state's riverboat operators).

Please add the following to the Note at page 242:

See also *Birzer v. Jockey's Guild, Inc.*, 444 F. Supp. 2d 1005 (C.D. Cal. 2006) (suit against jockey's guild for failing to purchase supplemental on-track injury insurance).

Please add the following to Note 1 at page 251:

For a further description of the heavy burden imposed on trainers when a horse tests positive for an illegal substance, see *Hudson v. Texas Racing Commission*, 455 F.3d 597 (5th Cir. 2006), and *Lieberman v. Delaware Harness Racing Commission*, 2004 Del. Super. LEXIS 146 (Super. Ct. 2004).

Please add the following to Note 2 at page 251:

See also *VanHorn v. Oelschlager*, 457 F.3d 844 (8th Cir. 2006) (upholding banning of veterinarians who, in violation of racing commission's rules, had administered Clonidine, a blood pressure medication, to horses on race day).

Please add the following to Note 3 at page 251:

See further *Fattorusso v. Urbanowicz*, 744 N.Y.S.2d 658 (Sup. Ct. 2004) (describing the notorious use of such mixtures, which are known as "milk shakes," in order to improve racing performance by reducing lactic acid buildup).

Please add the following to Note 5 at page 251:

See also Alison G. Jones, Comment, *Australia's Damaging International Trade Practice: The Case Against Cruelty to Greyhounds*, 14 Pac. Rim L. & Pol'y J. 677 (2005).

Chapter 5

SPORTS GAMING

Please add the following to Note 1 at page 278:

In 2005, Dmitri Dostoyevsky, the great-grandson of Fyodor Dostoyevsky, the acclaimed Russian writer who also was a notorious gambler, filed a lawsuit in Moscow against a government-affiliated sports lottery because each ticket bore his grandfather's picture and biography. The game's organizers defended their use of Dostoyevsky to promote the game by saying it allowed players "to familiarize themselves with . . . their great fellow countryman[.]" Sophia Kishkovsky, *Can They Make Book on Dostoyevsky?*, N.Y. Times, Mar. 4, 2005, at B4.

Please add the following to Note 2 at page 278:

For an article that argues that New Jersey should try again to legalize sports books, see Michael Levinson, *A Sure Bet: Why New Jersey Would Benefit from Legalized Sports Wagering*, 13 Sports Law. J. 143 (2006).

Please add the following to Note 3 at page 278:

See also Ronald J. Rychlak, *A Bad Bet: Federal Criminalization of Nevada's Collegiate Sports Books*, 4 Nev. L.J. 320 (2003–2004).

Please add the following to Note 5 at page 279:

Although fantasy sports leagues—now a \$1.5 billion industry with more than 15 million players—can constitute gambling, in October 2006 Congress exempted them in certain circumstances. See I. Nelson Rose, *The Unlawful Internet Gambling Enforcement Act of 2006*, 10 Gaming L. Rev. 537, 538 (2006) ("Fantasy leagues are legal, but subject to detailed restrictions. . . . There is no limit on the cost of entering, but prizes must be announced in advance and not based on the fees paid by participants. Statistics must be derived from more than one play, more than one player, and more than one real-world event."). The new law would seem to imperil the federal lawsuit brought in June 2006 by Charles Humphrey Jr., who claims that media giants such as CBS, ESPN, and *The Sporting News* are "getting away with illegal gambling by hosting pay-to-play fantasy leagues, complete with big cash prizes and wide-screen TVs." See Tresa Baldas, *Are Fantasy Sports Real-Life Gambling?*, Nat'l L.J., Aug. 14, 2006, at 4.

Please add the following to Note 6 at page 279:

See also Michael P. Fecteau, *All for Integrity or All for Naught: The Battle Over State-Sponsored Sports Betting*, 7 Gaming L. Rev. 43 (2003), and Ola

O. Olatawura, *Why There May Not Be an Extraterritorial Sport Right to Online Gambling*, 27 Loy. L.A. Int'l & Comp. L. Rev. 371 (2005).

Please add the following to Note 1 at page 296:

See also *United States v. DeMichael*, 461 F.3d 414 (3d Cir. 2006) (fine imposed for violating § 1955 abated due to death of defendant but conviction allowed to stand); *United States v. Offner*, 88 Fed. Appx. 438 (2d Cir. 2004) (concluding that § 1955 is broad enough to reach offshore betting operations); *United States v. Merlino*, 349 F.3d 144 (3d Cir. 2003), *cert. denied*, 541 U.S. 965 (2004) (chilling description of how the Mafia forced a bookmaker to become its partner).

For an interesting article discussing the legal status of “pick services,” which help sports bettors decide which games to bet on (and therefore are a step removed from bookies), see Josh Traxler, *Sports Betting with Bookies on Picks Provided by Persons/Operations Who Charge a Fee and/or a Percentage of the Amount of Winnings*, 8 Gaming L. Rev. 371 (2004).

Please add the following to Note 2 at page 296:

See also *Uresti v. State*, 98 S.W.3d 321 (Tex. Ct. App. 2003) (upholding search warrant that provided detailed information regarding the defendant’s bookmaking operation).

Please add the following to Note 3 at page 296:

See also Wayne H. Clark, *Who’s In? The Bona Fide Future of Office Pools*, 8 Gaming L. Rev. 202 (2004) (a comprehensive look at the legality of office pools under PAPSA).

Please add the following to Note 2 at page 317:

In January 2004, Pete Rose finally abandoned 14 years of denials and revealed in a new book (*My Prison Without Bars*) that he had bet on baseball. See Jack Curry, *Rose, In New Book, Admits Betting on His Team*, N.Y. Times, Jan. 6, 2004, at A1. Although Rose had hoped that the admission would pave his way to Cooperstown, to date Commissioner Bud Selig has not revoked Rose’s lifetime ban. See further Paul Weiler, *Renovating Our Recreational Crimes*, 40 New Eng. L. Rev. 809 (2006) (arguing that given his admission, Rose now should be declared eligible for election to the Hall of Fame).

Please add the following to Note 3 at page 318:

Claims that athletes are consorting with gamblers and that games are fixed continue to roil professional sports. In February 2006, for example, former player and current assistant Phoenix Coyotes coach Rick Tocchet was accused of financing a multimillion-dollar sports gambling ring; within days, the scandal had engulfed hockey legend Wayne Gretzky and his starlet wife Janet Jones, although the couple were never formally charged. See Richard Lezin Jones, *N.H.L. Assistant is Cited as Head of a Betting*

Ring, N.Y. Times, Feb. 8, 2006, at A1. In May 2006, golfer John Daly released a new autobiography (*My Life In and Out of the Rough*) in which he estimated losing \$50-\$60 million as a result of his gambling habit. See *Book Delves Into Daly's Gambling*, S. Fla. Sun-Sentinel, May 2, 2006, at 2C. In June 2006, FIFA took the extraordinary step of sequestering the referees working the World Cup due to earlier betting scandals involving soccer officials in Brazil, Germany, and Italy. See Jere Longman, *Betting Scandals Have the World Cup on Guard*, N.Y. Times, June 8, 2006, at A1. In August 2006, New York Mets catcher Paul Lo Duca, in the middle of a nasty and very public divorce, was accused of being a regular on internet betting sites. According to some published reports, when Lo Duca failed to pay his losses, bookmakers contacted the Florida Marlins (at the time Lo Duca's employer) to put pressure on him. While Lo Duca admitted betting on horse races and having an on-line gambling account, he denied the more lurid charges. See Ben Shpigel, *As Gambling Stories Swirl, Mets Support Lo Duca*, N.Y. Times, Aug. 12, 2006, at B13. And in December 2006, Israel's professional soccer league was thrown into turmoil after it was revealed that three players from Hapoel Be'er Sheva had been offered bribes to throw a game against Hapoel Ra'anana to influence the country's \$9 million sports lottery. See *Israeli Game Canceled After Players Bribed*, S. Fla. Sun-Sentinel, Dec. 18, 2006, at 2D.

Please add the following to Note 4 at page 318:

In May 2006, a University of Pennsylvania economist published a paper that, based on a review of the betting line and actual outcome of nearly every game played during the past 16 years, concluded cheating in college basketball remains as much of a problem now as when Henry Hill was fixing games. See Justin Wolfers, *Point Shaving: Corruption in NCAA Basketball*, 96 Am. Econ. Rev. 279 (2006). For a further discussion of Wolfers's research, see David Leonhardt, *Sad Suspicions About Scores in Basketball*, N.Y. Times, Mar. 8, 2006, at C1 (noting that in a recent poll, 1.5% of college basketball players claimed to have had at least one teammate who had taken a bribe).

Please add the following to Note 5 at page 318:

The connection between legalized gambling and sports continues to grow. See further Stephen A. Berkovits, *Gambling on Las Vegas: Bringing Professional Sports to Sin City*, 9 Gaming L. Rev. 220 (2005); Stephen M. McKelvey, *U.S. Professional Sport Organizations Policies Shift to Embrace Legalized Gambling Entities: A Roll of the Dice?*, 14 J. Legal Aspects Sport 23 (2004); Murray Chass, *Baseball and Casinos Don't Mix, or Do They?*, N.Y. Times, Dec. 19, 2006, at C18. In January 2003, for example, the negotiations to place a WNBA team at the Mohegan casino were successfully concluded, resulting in the Orlando Miracle becoming the Connecticut Sun. A short time later, the NHL's Pittsburgh Penguins began backing the Isle of Capri's bid for a local casino license because the company promised to

build a \$290 million stadium for the team if its effort was successful. Although nothing came of the plan (due to the license being awarded to a different bidder), it may signal a new direction in future arena financing. *See further* Steve Gorten, *March of Penguins May Leave Pittsburgh in Cold*, S. Fla. Sun-Sentinel, Dec. 24, 2006, at 9C. *See also* Michael Mayo, *Would Stadium Built on Slots Money Be a Home Run or Wild Pitch?*, S. Fla. Sun-Sentinel, Oct. 8, 2006, at 1B (supporting a plan to use casino revenues to build a new home for the Florida Marlins). And in January 2005, the Massachusetts State Lottery agreed to sponsor a statewide tour of the Boston Red Sox's 2004 World Series trophy and later unveiled a new scratch-off game that prominently uses the team's logo. *See further* Sasha Talcott, *State to Roll Out Sox Scratch Tickets*, B. Globe, Mar. 28, 2006, at E1 (explaining that similar game tie-ins are being planned by many other teams).

Please add the following to Note 6 at page 319:

See also John Grady & Annie Clement, *Gambling and Collegiate Sport*, 15 J. Legal Aspects Sport 95 (2005).

Please add the following to Problem 22 at page 319:

See also Kyle D. Craddock, *The Cardstock Chase, Trading Cards: A Legal Lottery?*, 8 Gaming L. Rev. 310 (2004).

Chapter 6

CASINO GAMING

Please add the following to Note 1 at page 332:

See also *In re Advisory Opinion to the House of Representatives (Casino II)*, 885 A.2d 698 (R.I. 2005) (concluding that the state constitution prohibited the government from allowing private operators to make any decisions regarding casino functions, including what games to offer and whether and on what terms credit could be extended to patrons).

The extent to which casinos are subject to government regulation was made dramatically clear in July 2006, when all 12 of Atlantic City’s casinos were forced to shut down during a state budget impasse that happened to coincide with the busy July 4th holiday weekend. With New Jersey facing a \$4.5 billion budget gap and officials unable to agree on a funding plan, the state had no choice but to idle its 100,000 workers, including its 109 casino inspectors (in an attempt to stay open, the casinos asked the New Jersey Supreme Court to declare the inspectors “essential employees” but the effort failed). See David W. Chen, *Casinos Closed by Budget Fight in New Jersey*, N.Y. Times, July 6, 2006, at A1. Following six days of tense negotiations, during which the casinos lost nearly \$100 million in revenue (and the state forfeited nearly \$8 million in taxes), a compromise centering on an increase in the state’s sales tax finally was hammered out. See Richard G. Jones, *New Jersey Shutdown Ends, and Casinos May Open Tonight*, N.Y. Times, July 7, 2006, at A17.

Please add the following to Note 2 at page 332:

For a highly-entertaining biography of Oscar Goodman, Frank Rosenthal’s colorful attorney who later shed his mob image to become the mayor of Las Vegas, see John L. Smith, *Of Rats and Men: Oscar Goodman’s Life from Mob Mouthpiece to Mayor of Las Vegas* (2003). See also *Wright v. City of Las Vegas*, 2006 U.S. Dist. LEXIS 62015 (D. Nev. 2006) (claiming that Goodman served as the stakeholder in a \$500,000 game of Texas Hold ‘em played among criminals, refused to pay the winners, and then intimidated the plaintiff into abandoning his plan to write a book about the incident).

Please add the following to Note 6 at page 333:

For a further look at the licensing of casino employees, see, e.g., *Vuong v. Trump Taj Mahal Associates*, 2006 WL 2001294 (N.J. Super. Ct. App. Div. 2006) (plaintiff’s “casino key employee” license revoked for mishandling a high roller’s account); *Teague v. Missouri Gaming Commission*, 127 S.W.3d 679 (Mo. Ct. App. 2003) (burden of proof when seeking a license is on the applicant and is a heavy one); Timothy Binetti, *State Regulation of Casino*

Entertainment, 7 Gaming L. Rev. 51 (2003) (comparing the licensing regimes applicable to different types of casino workers).

Please add the following to Note 7 at page 333:

See further *Papas v. Michigan Gaming Control Board*, 669 N.W.2d 326 (Mich. Ct. App. 2003), *appeal denied*, 683 N.W.2d 145 (Mich. 2004) (vendors who provided restaurant and hotel services to casino patrons were subject to regulation).

Please add the following to Note 10 at page 334:

See also *Double Eagle Hotel & Casino v. NLRB*, 414 F.3d 1249 (10th Cir. 2005), *cert. denied*, 126 S. Ct. 1331 (2006) (government could require casino patron tips to be divided equally between slot technicians and security guards, even though the number of guards far exceeded the number of technicians); Kurt Eggert, *Truth in Gaming: Toward Consumer Protection in the Gambling Industry*, 63 Md. L. Rev. 217 (2004) (arguing that casinos should have to disclose more information to the public about their odds and payouts); John K. Maloney, *Global Gaming Compliance*, 8 Gaming L. Rev. 119 (2004); Christopher Wansley, *The Revolving Door Between the Casino Industry and Its Regulating Agencies*, 7 Gaming L. Rev. 215 (2003); Gregg W. Zive, *The House Doesn't Always Win*, 8 Gaming L. Rev. 278 (2004) (discussing the unique issues that arise when a casino goes bankrupt); Melissa Fallon, Note, *Antitrust Implications of Casino Mergers: The Gamble of Defining a Relevant Market*, 57 Hastings L.J. 235 (2005); Laura Mansnerus, *As Atlantic City Considers Smoking Ban, Its Casinos Fear Losses*, N.Y. Times, Nov. 29, 2006, at C17 (reporting on the on-going efforts of Atlantic City's casinos to avoid a government-imposed ban on indoor smoking for fear that it will cut into their revenues).

Please add the following to Note 2 at page 344:

See also Fredric E. Gushin & William R. Kisby, *The Compliance Department—Key to Protecting Gaming Companies Domestically and Internationally*, 7 Gaming L. Rev. 149 (2003).

As the *Adamar* case at page 337 explains, regulators are loathe to permit any gaming-related activity to take place off the casino floor. Yet manufacturers now are developing hand-held devices that would allow patrons to keep playing even when they are nowhere near the casino. See Marc Weingarten, *In Las Vegas, the Wagering is Going Mobile*, N.Y. Times, May 3, 2006, at 4 (reporting that Nevada is leaning towards a requirement that such devices have biometric scanners to make sure that only authorized adults can use them).

Please add the following to Note 4 at page 345:

See further Edward Magaw, *Suspicious Activity Reporting and Casinos: The Life and Death of Nevada's Regulation of Casino Suspicious Activity Reporting*, 7 Gaming L. Rev. 427 (2003), and I. Nelson Rose, *Casinos Stuck Under New Anti-Terrorism Law*, 8 Gaming L. Rev. 1 (2004).

Please add the following to Note 5 at page 355:

For a particularly interesting case involving a player who successfully sued a casino for failing to take appropriate action when he suffered a heart attack, *see Duk v. MGM Grand Hotel, Inc.*, 320 F.3d 1052 (9th Cir. 2003). *See also Lassoff v. State of New Jersey*, 414 F. Supp. 2d 483 (D.N.J. 2006) (patron permitted to sue casino's security staff after it intervened in fight between him and another player), and *Ratcliff v. Rainbow Casino-Vicksburg Partnership*, 914 So. 2d 762 (Miss. Ct. App. 2005) (casino patron, who was injured when she fell off her chair, failed to prove that it was either dangerous or defective).

Please add the following to Note 6 at page 355:

For additional player dispute cases, *see, e.g., Semaan v. IGT*, 126 Fed. Appx. 794 (9th Cir. 2005); *Miller v. Sodak Gaming, Inc.*, 93 Fed. Appx. 847 (6th Cir. 2004); *Kelly v. International Games Technology*, 874 So. 2d 977 (Miss. 2004); *Griggs v. Harrah's Casino*, 929 So. 2d 204 (La. Ct. App.), *writ denied*, 929 So. 2d 1288 (La. 2006). *See also* Mireya Navarro, *After the Winning Hand*, N.Y. Times, Sept. 10, 2006, § 9, at 1 (reporting on the injunction obtained by Crispin Leyser to prevent the Rio casino from paying Jamie Gold, the winner of the 2006 World Series of Poker, the tournament's \$12 million prize; according to Leyser, Gold had promised him half of whatever he won as repayment for a business deal).

Please add the following to Note 1 at page 372:

See also Samuel D. Zurier, *Will a Rhode Island Common Law Court Enforce a Gambling Contract? How Much Do You Want to Bet?*, 55 R.I. B.J. 21 (Sept./Oct. 2006).

Please add the following to Note 4 at page 373:

See further Steven M. Davis, *Florida's Gambling Debt Collection Process: Play There, Collect Here*, 8 Gaming L. Rev. 35 (2004). *See also In re Titan Cruise Lines*, 353 B.R. 919 (M.D. Fla. 2006) (foreign-flagged cruise ship that advanced monies to gambler while in international waters could not enforce resulting debt in Florida because of state's strong public policy against gambling).

Please add the following to Note 5 at page 373:

See also In re Miller, 292 B.R. 409 (9th Cir. BAP 2003), *later proceedings at* 310 B.R. 185 (Bankr. C.D. Cal. 2004) (even though debtor lived in California, Nevada law applied in determining whether gambling debts were enforceable); *Schrenger v. Caesars Indiana*, 825 N.E.2d 879 (Ind. Ct. App.), *transfer denied*, 841 N.E.2d 178 (Ind. 2005) (while state law prohibited collection of gambling debts, casino could sue patron who bounced checks under state's "extension of credit" law); Richard I. Aaron, *Collection of Gambling Debts and the Bankruptcy Reform Act of 2005*, 9 Gaming L.

Rev. 299 (2005); Darren A. Prum, *Enforcement of Gaming Debt*, 7 Gaming L. Rev. 17 (2003).

Please add the following to Note 2 at page 384:

See further Anthony Cabot & Robert Hannum, *Advantage Play and Commercial Casinos*, 74 Miss. L.J. 681 (2005).

Please add the following to Note 3 at page 384:

For two more cases in which patrons claimed that the entire casino was cheating, see *Poulos v. Caesars World Inc.*, 379 F.3d 654 (9th Cir. 2004) (denying class certification), and *Fuller v. Harrah's Entertainment, Inc.*, 2004 U.S. Dist. LEXIS 22097 (E.D. La. 2004) (rejecting charge that house consistently underpaid its poker winners).

Please add the following to Note 4 at page 384:

For a further look at cheating in casinos, see, e.g., Tim Julian, *Exclusions and Countermeasures: Do Card Counters Have a Right to Play?*, 9 Gaming L. Rev. 165 (2005), and Alan W. Zajic, *Managing Liability in Gaming Operations: Surveillance*, 8 Gaming L. Rev. 260 (2004). See also Ben Mezrich, *Bringing Down the House: The Inside Story of Six M.I.T. Students Who Took Vegas for Millions* (2002) (a highly readable account of the career of card counter Semyon Dukach).

In August 2001, Estella Romanski spotted a five cent token in a slot machine tray that had been left behind by another patron. When she picked it up, security officers of the MotorCity Casino in Detroit surrounded her, accused her of cheating, and escorted her out of the building with a warning not to come back. Feeling that she had been mistreated, she sued for defamation, deprivation of her civil rights, false imprisonment, and intentional infliction of emotional distress. After the casino's motion for summary judgment was denied, see *Romanski v. Detroit Entertainment, L.L.C.*, 265 F. Supp. 2d 835 (E.D. Mich. 2003), a jury awarded her \$875,000 in punitive damages. See Leonard Post, *Here's a Nickel's Worth of Advice: Forget the Nickel*, Nat'l L.J., July 28, 2003, at 4. On appeal, however, the Sixth Circuit ordered this amount reduced to \$600,000. See *Romanski v. Detroit Entertainment, L.L.C.*, 428 F.3d 629 (6th Cir. 2005), *cert. denied*, 127 S. Ct. 209 (2006).

In *United States v. Liang*, 362 F.3d 1200 (9th Cir. 2004), the Ninth Circuit rejected an attempt to increase a card cheater's sentence because of his physical abilities. The district court had found that due to his extraordinary eyesight, the defendant was especially able to cheat at games like baccarat and therefore imposed extra punishment. In reversing this upward departure from the sentencing guidelines, the Ninth Circuit held that "intrinsic physical attributes" do not constitute "special skills." See further Jahna Berry, *Card Cheating Not Special Skill*, Nat'l L.J., Apr. 5, 2004, at 6.

Please add the following to Note 1 at page 393:

See also *Annitto v. Trump Marina Hotel Casino*, 2005 WL 4344137 (N.J. Super. Ct. App Div. 2006) (player who alleged casino took advantage of him by plying him with free drinks failed to state a valid claim).

In *Merrill v. Trump Indiana, Inc.*, 320 F.3d 729 (7th Cir. 2003), the Seventh Circuit, citing *Hakimoglu*, held that casinos have no duty to keep out players who have asked to be banned in an attempt to control their compulsive gambling. For a further discussion of so-called “self-exclusion contracts,” see *Stulajter v. Harrah’s Indiana Corp.*, 808 N.E.2d 746 (Ind. Ct. App. 2004) (casino’s failure to keep patron out after he placed himself on voluntary exclusion list did not give rise to private cause of action); Carol O’Hare, *Self-Exclusion—Concept vs. Reality*, 8 Gaming L. Rev. 189 (2004); Andy Rhea, *Voluntary Self Exclusion Lists: How They Work and Potential Problems*, 9 Gaming L. Rev. 462 (2005); Dee McAree, *Addicted Gamblers File Long-Shot Actions*, Nat’l L.J., Mar. 8, 2004, at 4.

Please add the following to Note 2 at page 394:

Yet another way that some casinos try to entice male patrons is by requiring their female bartenders and waitresses to be thin, and suspending or firing those who gain too much weight. See Iver Peterson, *Casino With Weight Policy Finds Boon in Controversy*, N.Y. Times, Mar. 14, 2005, at A20 (describing the weight policy of the Borgata casino in Atlantic City and questions surrounding its legality). In the meantime, the Ninth Circuit has ruled that a casino is within its rights when it fires a female bartender for failing to wear makeup. See *Jespersen v. Harrah’s Operating Co.*, 444 F.3d 1104 (9th Cir. 2006) (en banc). See further Patrick H. Hicks et al., *Reasonable Dress and Grooming Requirements Survive Court Scrutiny*, 10 Gaming L. Rev. 342 (2006); Gregory J. Kramer & Edwin A. Keller Jr., *Give Me \$5 Chips, a Jack and Coke—Hold the Cleavage: A Look at Employee Appearance Issues in the Gaming Industry*, 7 Gaming L. Rev. 335 (2003); E. Frederick Preis Jr. et al., *Employment in Gaming: Recent Discrimination Issues*, 8 Gaming L. Rev. 89 (2004).

Please add the following to Note 3 at page 394:

See also *Busch v. Commissioner of Revenue*, 713 N.W.2d 337 (Minn. 2006) (professional slots player permitted to deduct her losses, to the extent of her winnings, on her state tax return), and Charles W. Blau & Jason B. Coutant, *Federal Tax Treatment of Gains and Losses From Gambling Transactions*, 7 Gaming L. Rev. 319 (2003).

Please add the following to Note 4 at page 394:

See also Leslie Davis, *My Gambling Made Me Do It: Compulsive Gambling as a Criminal Excuse*, 9 Gaming L. Rev. 239 (2005); Gilbert Geis, *Pathological Gambling and Insanity, Diminished Capacity, Dischargeability, and Downward Sentencing Departures*, 8 Gaming L. Rev. 347 (2004);

Robin Samson, *Compulsive Gambling as a Criminal Excuse Under the Federal Sentencing Guidelines § 5K2.13*, 8 Gaming L. Rev. 361 (2004).

In September 2005, former Kansas City Municipal Court judge Deborah Neal was sentenced to 28 months in jail. During her eight years on the bench, Neal received \$36,000 in loans from at least 17 attorneys to fund her gambling habit. In return, she gave them preferential treatment. *See Ex-Judge Gets 28 Months for Soliciting Loans*, S. Fla. Sun-Sentinel, Oct. 1, 2005, at 3A. *See also In re Neal*, 461 F.3d 1048 (8th Cir. 2006) (newspaper entitled to obtain and publish names of those who made loans).

Please add the following to Note 5 at page 394:

See also Arnie Wexler & Sheila Wexler, *The Compulsive Gambler Working in the Gaming Industry*, 8 Gaming L. Rev. 103 (2004), and Jamie Mal-erne, *Odds Stacked Against Gamblers Seeking Help*, S. Fla. Sun-Sentinel, Aug. 27, 2006, at 1A (reporting on the criticism that local officials have taken for earmarking \$1 million-a-year for gambling addiction prevention, but nothing for treatment, after voters in 2005 authorized slot machines in Fort Lauderdale-area pari-mutuel facilities. According to the officials, they decided not to fund assistance programs because they doubted their efficacy.).

In May 2003, William J. Bennett, the former Secretary of Education and National Drug Czar, as well as the author of *Book of Virtues*, admitted he had bet heavily at various casinos during the previous 10 years (although he insisted he had “come out pretty close to even,” estimates put his losses at \$8 million). Because of his strong opposition to alcohol, drugs, and sex (particularly gay sex), the media immediately branded him a hypocrite. Bennett defended himself by saying: “I’ve gambled all my life and it’s never been a moral issue with me. I liked church bingo when I was growing up. . . . I adhere to the law. I don’t play the ‘milk money.’ I don’t put my family at risk.” When the firestorm would not die down, however, Bennett promised to stop gambling. *See further* Bill Haltom, *Let He Who Is Without Sin Play Video Poker . . . While the Rest of Us Hire Bob Bennett*, Tenn. B.J., July 2003, at 39. What do you think of the distinction Bennett draws between gambling and other “vices” and his rationalization of his betting losses?

Chapter 7

SHIPBOARD GAMING

Please add the following to Note 2 at page 415:

When Mississippi authorized casinos in 1990, it required them to be built on water, both to recapture the spirit of the 19th century riverboats and as a way of limiting their impact on surrounding communities. After Hurricane Katrina struck in August 2005, however, the legislature changed the law to permit land-based casinos. *See Mississippi Governor Signs Bill to Rebuild Gulf Casinos on Land*, N.Y. Times, Oct. 18, 2005, at A18. *See also* Haley Necaïse Broom, *Contributions of the Gaming Industry in Mississippi and Present Risks That the Industry Faces: A Proposal for Mississippi Casinos to be Moved onto Land*, 9 Gaming L. Rev. 153 (2005), and Matt Dowd, *Suitable Casino Sites in Mississippi: What Are They? Why? What About the Future?*, 9 Gaming L. Rev. 325 (2005) (two eerily prescient articles that appeared just before Katrina struck). This has set off a spectacular building boom that is expected to increase the size of the state's casino industry by as much as one-third. *See* Gary Rivlin, *Bright Spot on Gulf as Casinos Rush to Rebuild*, N.Y. Times, Dec. 14, 2005, at A1. For further discussions, *see, e.g., Resorting to Casinos: The Mississippi Gambling Industry* (Denise von Herrmann ed. 2006), and I. Nelson Rose, *When Social Engineering is a Disaster*, 10 Gaming L. Rev. 1 (2006).

Please add the following to Note 3 at page 415:

Although the Johnson Act permits states to opt out of its provisions and thereby make "cruises to nowhere" illegal, the statute does not permit counties or cities to exercise such power. *See Palmetto Princess, LLC v. Georgetown County*, 631 S.E.2d 68 (S.C. 2006), and *Palmetto Princess, LLC v. Town of Edisto Beach*, 631 S.E.2d 76 (S.C. 2006).

Please add the following to Note 5 at page 418:

In *Dream Boat, Inc. v. Department of Revenue*, 921 So. 2d 1 (Fla. Dist. Ct. App. 2003), a different appellate panel rejected the reasoning of *New Sea Escape Cruises* and ruled that the state could tax "cruises to nowhere." To resolve the resulting conflict, the Florida Supreme Court stepped in and held that because such ships spend some of their time in state waters and some of their time in international waters, they can be taxed but only on a pro rata basis. *See Florida Department of Revenue v. New Sea Escape Cruises, Ltd.*, 894 So. 2d 954 (Fla. 2005).

Please add the following to Note 6 at page 418:

For a further discussion, *see* I. Nelson Rose, *Casinos on Cruise Ships, Why Not on Airplanes?*, 10 Gaming L. Rev. 519 (2006).

Please add the following to Note 1 at page 448:

For a further look at the issues raised in *Horak*, see Robert M. Jarvis, *Casino Boats and Dram Shop Act Liability*, 10 Gaming L. Rev. 247 (2006).

As the *Soloman* case cited in the note explains, an admiralty claim generally requires a vessel and navigable waters. In *Stewart v. Dutra Construction Co.*, 540 U.S. 1177 (2004), a non-gaming case, the Supreme Court liberalized the vessel status test, but this decision has not had any impact on riverboat casino claims. See, e.g., *Tagliere v. Harrah's Illinois Corp.*, 445 F.3d 1012 (7th Cir. 2006); *Board of Commissioners of Orleans Levee District v. M/V Belle of Orleans*, 439 F. Supp. 2d 1178 (S.D. Ala. 2006); *Earls v. Belterra Resort, Indiana, LLC*, 439 F. Supp. 2d 884 (S.D. Ind. 2006); *Booten v. Argosy Gaming Co.*, 848 N.E.2d 141 (Ill. App. Ct. 2006).

Please add the following to Note 2 at page 448:

For other failed gaming ship ventures that led to litigation, see, e.g., *In re Camelot Casino Cruises, Inc.*, 330 B.R. 263 (Bankr. M.D. Fla. 2005), and *Endacott v. International Hospitality, Inc.*, 910 So. 2d 915 (Fla. Dist. Ct. App. 2005).

Please add the following to Note 3 at page 449:

The killing of SunCruz Casinos founder Gus Boulis appears to have been solved. In September 2005, three Mafia members—Anthony “Little Tony” Ferrari, James “Pudgy” Fiorillo, and Anthony “Big Tony” Moscatiello—were arrested and charged with murdering Boulis as part of a plan to begin extorting money from the company. See Robert Nolin et al., *Three Arrested in Gangland-Style Slaying*, S. Fla. Sun-Sentinel, Sept. 28, 2005, at 1A. A short time later, Adam Kidan admitted that he and Jack Abramoff, a Washington, D.C. lobbyist with close ties to the Republican Party, had sought to buy SunCruz from Boulis through the use of fraudulent paperwork that made it appear they had sufficient capital to complete the deal. In March 2006, the pair were sentenced to nearly six years in prison and ordered to pay \$21.7 million in restitution. See Philip Shenon, *Lobbyist in Congress Furor is Sentenced in Florida Case*, N.Y. Times, Mar. 30, 2006, at A17. For a further look at Boulis’s murder, see Trevor Aaronson, *The Bad Bet*, Broward Palm Beach New Times, Nov. 10-16, 2005, at 19. In the meantime, SunCruz was brought out of bankruptcy in February 2004 by a group of investors that included one of Boulis’s nephews. See Tom Stieghorst, *\$36M SunCruz Deal Ok'd*, S. Fla. Sun-Sentinel, Feb. 21, 2004, at 9B. See also *In re SunCruz Casinos LLC*, 342 B.R. 370 (Bankr. S.D. Fla. 2006) (post-purchase proceedings), and Tom Stieghorst, *SunCruz Floats an Idea to Expand*, S. Fla. Sun-Sentinel, Dec. 1, 2006, at 1D (reporting on the company’s efforts to return to fiscal health).

Please add the following to Note 4 at page 449:

See also *Gaffney v. Riverboat Services of Indiana, Inc.*, 451 F.3d 424 (7th Cir. 2006), *petition for cert. filed* 75 U.S.L.W. 3122 (Sept. 14, 2006) (No.

06-389) (riverboat casino's employees were covered by federal maritime whistle blower's protection act); *Tate v. Showboat Marina Casino Partnership*, 431 F.3d 580 (7th Cir. 2005) (crew members of gambling boat were seamen); *Boston Pilots v. Motor Vessel Midnight Gambler*, 357 F.3d 129 (1st Cir. 2004) (rule requiring vessels to use harbor pilots upon entering or leaving port applied to "cruises to nowhere" operator); John Givens, *The Jones Act*, 9 Gaming L. Rev. 453 (2005); Brian D. Wallace et al., *Riverboat Casinos and Admiralty and Maritime Law: Place Your Bets!*, 28 Tul. Mar. L.J. 315 (2004); Courtney P. Cochran, *Gambling on Seaman Status: The Plight of Riverboat Casino Employees in Light of Amended State Gaming Statutes*, 29 Tul. Mar. L.J. 139 (2004).

Please add the following to Note 1 at page 465:

See also Sun Cruz Casinos, L.L.C. v. City of Hollywood, 844 So. 2d 681 (Fla. Dist. Ct. App. 2003) (siting dispute involving a "cruise to nowhere" operator).

Chapter 8

INDIAN GAMING

Please add the following to Note 2 at page 493:

See further *Wyandotte Nation v. Sebelius*, 443 F.3d 1247 (10th Cir. 2006) (state could not enforce its gaming laws until underlying dispute, involving federal government and whether Indian casino was on tribal or non-tribal land, was resolved). See also *Inyo County, California v. Paiute-Shoshone Indians of the Bishop Community of the Bishop Colony*, 538 U.S. 701 (2003) (tribe could not sue under 42 U.S.C. § 1983 when its casino employment records were seized as part of county's investigation into welfare fraud because statute only vindicates individual rights).

Please add the following to Note 3 at page 493:

Despite the legal uncertainties surrounding IGRA, Indian gaming is thriving. As of 2005, 228 tribes were operating 405 casinos in 30 states, supporting 539,000 jobs, paying \$19.4 billion in wages, and generating \$19 billion in revenues, making them roughly two-thirds the size of commercial casinos. See Fox Butterfield, *Indian Casino Revenues Grow to Sizeable Segment of Industry*, N.Y. Times, June 16, 2005, at A18. See also Cezar M. Froelich et al., *Investing in Tribal Gaming*, 9 Gaming L. Rev. 19 (2005).

Meanwhile, in Florida, the issues that led to the *Seminole* case (page 484) have heated up again due to the fact that in November 2004 voters amended the state constitution to permit Class III slot machines in two counties (subject to local referenda). Many believe that this development requires the state to now enter into a compact with the Seminoles, but after holding preliminary talks with the tribe, Governor Jeb Bush decided not to conclude an agreement. See Linda Kleindienst & John Holland, *Bush Ends Talks With Seminoles on Gaming*, S. Fla. Sun-Sentinel, Apr. 8, 2006, at 1B. Whether the federal government can approve Class III gaming over a state's opposition remains an open question. See further *Texas v. United States*, 362 F. Supp. 2d 765 (W.D. Tex. 2004) (suggesting that the answer is "yes"). Most observers, however, believe that Florida's new governor (Charlie Crist, who takes office in January 2007) will conclude a compact with the Seminoles, thereby avoiding a showdown with the federal government. See further Michael Mayo, *Crist Must Play Tribal Gambling Card Better Than Bush*, S. Fla. Sun-Sentinel, Nov. 26, 2006, at 1B.

Even without Class III gaming, Florida's Indian casinos are turning handsome profits. In fact, they are so large that Donald Trump, who had a chance to partner with the Seminoles in the 1990s but passed on the advice of his aide Richard Fields, is now suing The Cordish Company,

claiming that it conspired with Fields to cut him out of what became the Seminole Hard Rock casinos in Fort Lauderdale and Tampa. Ironically, the Seminoles, who reap \$500 million a year from the facilities, also are suing Cordish, arguing that its development deal (which is scheduled to pay it a total of \$2.2 billion over 10 years) is too rich. *See further* John Holland, *Tribe Amends Lawsuit, Says Deal's Illegal*, S. Fla. Sun-Sentinel, Aug. 16, 2006, at 1B.

Please add the following to Note 5 at page 494:

Although the Golden Hill Tribe still has not won federal recognition, in January 2004 another Connecticut tribe did, much to the consternation of local residents, who worry about being overrun by gambling venues. *See* Stacey Stowe, *U.S. Recognizes Tribe in Connecticut, Raising Prospect of a 3rd Casino*, N.Y. Times, Jan. 30, 2004, at A17. For a useful look at how tribes gain federal recognition, *see* Iver Peterson, *Would-Be Tribes Entice Investors*, N.Y. Times, Mar. 29, 2004, at A1 (noting that since 1978, when the Bureau of Indian Affairs was given the authority to recognize tribes, it has granted such status to only 15 of the hundreds of groups that have applied). *See also* Alexa Koenig & Jonathan Stein, *Lost in the Shuffle: State-Recognized Tribes and the Tribal Gaming Industry*, 40 U.S.F. L. Rev. 327 (2006) (arguing that tribes that lack federal recognition should still be deemed to having gaming rights under state law).

Please add the following to Note 1 at page 505:

Having been rebuffed by the courts, the National Indian Gaming Commission has changed its stance and now considers almost every type of video gaming device to be an electronic aid permitted under Class II. Although the United States Supreme Court has twice had the opportunity to resolve the question, it has declined to get involved. *See Ashcroft v. Seneca-Cayuga Tribe of Oklahoma*, 540 U.S. 1218 (2004) (refusing to hear an appeal from 327 F.3d 1019 (10th Cir. 2003)), and *United States v. Santee Sioux Tribe of Nebraska*, 540 U.S. 1229 (2004) (refusing to hear an appeal from 324 F.3d 607 (8th Cir. 2003)). As a result, the United States Department of Justice currently is attempting to have the Johnson Act amended to outlaw all electronic play on Indian land that is conducted without a compact. *See further* Heidi McNeil Staudenmaier, *Proposed NIGC Class II Game Classification Standards: End of Class Gaming Debate . . . or Just Further Fuel for Fire?*, 10 Gaming L. Rev. 527 (2006).

For an interesting case discussing the powers of the National Indian Gaming Commission, *see Colorado River Indian Tribes v. National Indian Gaming Commission*, 466 F.3d 134 (D.C. Cir. 2006) (concluding that despite its broad powers over Class II gaming, IGRA gives the NIGC no power to even minimally regulate Class III gaming).

Please add the following to Problem 34 at page 505:

See also *Lac Vieux Desert Band of Lake Superior Chippewa Indians of Michigan v. Ashcroft*, 360 F. Supp. 2d 64 (D.D.C. 2004).

Please add the following to Note 1 at page 532:

As explained in the casebook, Proposition 1A has led to numerous compacts between California and its tribes, although not without a few bumps along the way. *See, e.g., Artichoke Joe's California Grand Casino v. Norton*, 353 F.3d 712 (9th Cir. 2003), *cert. denied*, 543 U.S. 815 (2004) (fact that only Indians could run casinos did not violate due process or equal protection rights of non-Indians), and *In re Indian Gaming Related Cases*, 331 F.3d 1094 (9th Cir. 2003), *cert. denied*, 540 U.S. 1179 (2004) (California's refusal to sign compacts unless they include revenue sharing provisions, under which tribes with casinos help those without casinos, does not violate IGRA).

In October 2003, Gray Davis was recalled from office in a special election that ended up placing actor Arnold Schwarzenegger in the governor's mansion. Faced with a ballooning budget deficit, Schwarzenegger quickly engineered new compacts with California's Indian tribes under which they agreed to give more money to the state in exchange for the right to significantly expand their gaming operations. *See* John M. Broder, *Deal Is Near on Casinos in California*, N.Y. Times, June 17, 2004, at A19. *See also* Steve Andrew Light et al., *Spreading the Wealth: Indian Gaming and Revenue-Sharing Agreements*, 80 N.D. L. Rev. 657 (2004), and Alan Meister, *Tribal-State Gaming Compacts and Revenue Sharing: A California Case Study*, 7 Gaming L. Rev. 347 (2003). However, in August 2006 a further expansion bid by Schwarzenegger was rejected by the state legislature. *See* Randal C. Archibold, *Governor's Push to Expand Indian Casinos Fails in California*, N.Y. Times, Sept. 2, 2006, at A8.

Please add the following to Note 3 at page 533:

For a further look at how compacts are negotiated, *see* Matthew L.M. Fletcher, *The Comparative Rights of Indispensable Sovereigns*, 40 Gonz. L. Rev. 1 (2004-2005). *See also* *Northern Arapaho Tribe v. Wyoming*, 389 F.3d 1308 (10th Cir. 2004), *order granting en banc reconsideration vacated*, 429 F.3d 934 (10th Cir. 2005) (having authorized other forms of gaming, state was required to negotiate with Indian tribes), and *Dalton v. Pataki*, 835 N.E.2d 1180 (N.Y.), *cert. denied*, 126 S. Ct. 739 (2005) (same). *See also* Bennett Liebman, *New York's Expanded Gambling Statute Survives Judicial Scrutiny: A Closer Look at Dalton v. Pataki*, 9 Gaming L. Rev. 579 (2005).

In July 2006, the Alabama-Coushatta Tribe of Texas filed a federal lawsuit against Washington, D.C. super-lobbyist Jack Abramoff and Georgia lieutenant governor candidate Ralph Reed, accusing them of having orchestrated a religious-centered campaign that caused the Texas legislature to vote against Indian gaming. According to the complaint, the defendants were working for another tribe that did not want its neighboring casino in Louisiana to face competition. The suit also claims that the defendants tried to pit tribes against one another with the goal of having the losers hire them to represent their interests. *See* Rick Lyman, *Abramoff*

and 4 Others Sued by Tribe Over Casino Closing, N.Y. Times, July 13, 2006, at A16. See also Steven Andrew Light & Kathryn R. L. Rand, *The “Tribal Loophole”: Federal Campaign Finance Law and Tribal Political Participation After Jack Abramoff*, 10 Gaming L. Rev. 230 (2006).

Please add the following to Note 1 at page 540:

For a further look at the *Pataki* case, see Iver Peterson, *1993 Deal for Indian Casino is Called a Model to Avoid*, N.Y. Times, July 30, 2003, at A16 (reporting that the surrounding town of Verona has decided to give up the fight and reluctantly accept the casino).

Please add the following to Note 2 at page 540:

See also *Dewberry v. Kulongoski*, 406 F. Supp. 2d 1136 (D. Or. 2005) (governor had the authority to negotiate a compact, notwithstanding the fact that the state constitution prohibited casinos), and *Dairyland Greyhound Park, Inc. v. Doyle*, 719 N.W.2d 408 (Wis. 2006) (compact agreed to by governor, which expanded scope of permissible tribal gaming, was valid).

Please add the following to Note 1 at page 548:

For a case reaching the same conclusion as *Siletz* (page 541), see *Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin v. United States*, 367 F.3d 650 (7th Cir. 2004), *cert. denied*, 543 U.S. 1051 (2005).

Please add the following to Note 2 at page 548:

For a look at the efforts some tribes are making to obtain geographically-advantageous parcels for future casino projects, see, e.g., Fox Butterfield, *Indians’ Wish List: Big-City Sites for Casinos*, N.Y. Times, Apr. 8, 2005, at A1 (describing how the Arapaho and Cheyenne tribes, which live in Oklahoma, have offered to pay Colorado \$1 billion and forego ancestral claims to nearly half the state in return for the right to build a casino near Denver).

For further discussions of where tribal casinos can be placed, see, e.g., Carter W. Hick, *The Indian Gaming Regulatory Act: Why Tribes Can Build Casinos Off the Reservation*, 10 Gaming L. Rev. 110 (2006); I. Nelson Rose, *The Threat of Reservation Shopping*, 9 Gaming L. Rev. 567 (2005); Heidi McNeil Staudenmaier & Anne Bishop, *Reservation Shopping 101*, 9 Gaming L. Rev. 439 (2005); Alan E. Brown, Note, *Ace in the Hole: Land’s Key Role in Indian Gaming*, 39 Suffolk U. L. Rev. 159 (2005). See also *TOMAC, Taxpayers of Michigan Against Casinos v. Norton*, 433 F.3d 852 (D.C. Cir. 2006); *South Dakota v. United States Department of the Interior*, 423 F.3d 790 (8th Cir. 2005), *cert. denied*, 127 S. Ct. 67 (2006); *Wyandotte Nation v. National Indian Gaming Commission*, 437 F. Supp. 2d 1193 (D. Kan. 2006).

Please add the following to Note 3 at page 561:

For a further discussion, see, e.g., *Allen v. Gold Country Casino*, 464 F.3d 1044 (9th Cir. 2006) (fired casino employee could not sue tribe for retaliation); *Hartman v. Kickapoo Tribe Gaming Commission*, 319 F.3d 1230 (10th Cir. 2003) (Eleventh Amendment barred claims of card dealer whose tribal gaming license was suspended); *Burdett v. Harrah's Kansas Casino Corp.*, 260 F. Supp. 2d 1109 (D. Kan. 2003) (tribe could not be sued for alleged violations of federal debt collecting and racketeering statutes); *Candido v. Viejas Group of Capitan Grande Band of Mission Indians*, 2004 Cal. App. Unpub. LEXIS 6582 (Ct. App. 2004) (dismissing patron's suit for intentional infliction of emotional distress arising from being called a cheater by casino personnel); Heidi McNeil Staudenmaier, *Tribal Sovereign Immunity: Will These Rights Survive Judicial Review?*, 7 Gaming L. Rev. 245 (2003).

In *Seminole Tribe of Florida v. McCor*, 903 So. 2d 353 (Fla. Dist. Ct. App. 2005), an Indian casino patron who sued after she fell off a chair had her case dismissed on sovereignty grounds. In his concurring opinion, Chief Judge Altenbernd made clear his frustration with the tribe:

The Seminole Tribe has every right to raise the defense of sovereign immunity concerning the claim of a person who is injured while visiting a traditional reservation to observe and learn about the culture of native Americans. In this case, however, the Seminole Tribe has created a large tourist attraction along Interstate 4 known as the Seminole "Hard Rock" Casino. It is adjacent to the State Fairgrounds and advertises itself as a hotel and casino on Orient Road in Tampa, Florida. But this casino is not legally in Florida.

The average tourist has no idea that her Florida constitutional rights to access to the courts and to trial by jury do not apply to any claims that may arise while she visits the hotel and casino. The Tribe itself does not post warnings that its tourist attraction is exempt from these basic Florida constitutional protections. In this case, the Seminole Tribe and, indirectly its commercial insurance company, are raising the jurisdictional bar to prevent judicial resolution of a relatively minor and defensible personal injury claim. However, they could raise the same bar for a serious wrongful death action.

Although the insurance policy is not in our record, many general liability policies issued to governmental bodies contain an agreement that the insurance company will not itself rely upon the government's sovereign immunity, but these clauses do not prevent the governmental entity from raising its sovereign immunity. The rule of law requires this court to reach this outcome, but hopefully the Seminole Tribe of Florida will eventually conclude that this litigation tactic is not the best policy to promote a profitable business.

Id. at 360–61.

So far, Chief Judge Altenbernd’s words appear to have fallen on deaf ears. In August 2006, Freddy Howard, an out-of-work actor, won \$260,000 in a “Swipe and Win” contest held at the Seminole Hard Rock Casino in Fort Lauderdale. Several hours after being paraded around the casino, presented with an oversized cardboard check, and signing a winner’s release form, however, he was told the machine had made a mistake. Feeling he had been cheated, Howard went to the press and hired a lawyer, while the public castigated the tribe and threatened a boycott. *See further* Michael Mayo, *The Score at the Hard Rock: Casino \$260,000, Gambler 0*, S. Fla. Sun-Sentinel, Sept. 10, 2006 at 1B. After weeks of constant criticism, the tribe finally gave in. *See further* John Holland, *Casino Relents, Pays Off on Jackpot*, S. Fla. Sun-Sentinel, Sept. 20, 2006, at 1A.

Chapter 9

INTERNET GAMING

Please add the following to Note 3 at page 584:

As explained in the casebook, in 2002 Nevada passed the country's first state internet gaming statute. In response, the United States Department of Justice sent a letter objecting to it on federal grounds. *See* Antonia Z. Cowan, *The Global Gambling Village: Interstate and Transnational Gambling*, 7 Gaming L. Rev. 251 (2003) (reproducing the letter in Appendix B). Unwilling to carry on the fight, Nevada declined to issue the regulations needed to implement the statute. For a further look at the role of the states when it comes to internet gaming, *see, e.g.*, Martin D. Owens Jr., *If You Can't Beat 'Em, Will They Let You Join? What American States Can Offer to Attract Internet Gambling Operators*, 10 Gaming L. Rev. 26 (2006), and Linda J. Shorey et al., *Do State Bans on Internet Gambling Violate the Dormant Commerce Clause?*, 10 Gaming L. Rev. 240 (2006).

Please add the following to Note 4 at page 584:

For a further look at the *Cohen* case, *see* David B. McGinty, *The Near-Regulation of Online Sports Wagering by United States v. Cohen*, 7 Gaming L. Rev. 205 (2003).

Following its successful prosecution of *Cohen*, the federal government continued its campaign against internet betting. In April 2004, for example, Google and Yahoo! announced they would stop running ads for internet casinos after being threatened with federal prosecution. *See* Matt Richtel, *Web Engines Plan to End Online Ads for Gambling*, N.Y. Times, Apr. 5, 2004, at C1. In May 2004, the government seized \$3.2 million being held by the Discovery channel as payment for ads it had agreed to run for ParadisePoker.com, a Costa Rican internet casino. *See* Matt Richtel, *U.S. Steps Up Push Against Online Casinos by Seizing Cash*, N.Y. Times, May 31, 2004, at C1. And in January 2006, *The Sporting News* agreed to pay a \$7.2 million fine for publishing and broadcasting ads for overseas on-line casinos. *See* Matt Richtel, *Sporting News Settles Gambling Accusations*, N.Y. Times, Jan. 21, 2006, at B4. *See generally* Ronald J. Mann & Seth R. Belzley, *The Promise of Internet Intermediary Liability*, 47 Wm. & Mary L. Rev. 239 (2005); Megan E. Frese, Note, *Rolling the Dice: Are Online Gambling Advertisers "Aiding and Abetting" Criminal Activity or Exercising First Amendment-Protected Commercial Speech?*, 15 Fordham Intell. Prop. Media & Ent. L.J. 547 (2005); Anne Lindner, Comment, *First Amendment as Last Resort: The Internet Gambling Industry's Bid to Advertise in the United States*, 50 St. Louis U. L.J. 1289 (2006).

The government really came down on the industry, however, in July 2006, when it arrested David Carruthers, the chief executive officer of a British outfit called BetOnSports PLC, while he was changing flights in Dallas. Simultaneously, it unsealed a 22-count indictment in St. Louis against the publicly-traded company, accusing it of running an illegal gambling operation and seeking \$4.5 billion in penalties. See Matt Richtel, *An Arrest in Internet Gambling*, N.Y. Times, July 18, 2006, at C1. Although BetOnSports denied any wrongdoing, the firm quickly fired Carruthers, closed its operations in Antigua and Costa Rica, and announced it was shifting its focus from the United States (which had accounted for 80% of its business) to Asia. See Matt Richtel, *BetOnSports, After Indictment, Folds Its Hand and Decides to Move to Asia*, N.Y. Times, Aug. 11, 2006, at C3. In September 2006, New York State officials joined the crackdown by arresting Peter Dicks, the chief executive of Sportingbet, a BetOnSports competitor, when he arrived at Kennedy International Airport from London. See Matt Richtel & Thomas Crampton, *Arrest of Second Major Online Gambling Figure is a First for State Officials*, N.Y. Times, Sept. 8, 2006, at C3. Looking for an out, in November 2006 BetOnSports accepted a permanent injunction against its activities. See *United States v. BetOnSports PLC*, 2006 WL 3257797 (E.D. Mo. 2006).

Just days before Carruthers's arrest, the United States House of Representatives, by a vote of 317-to-93, passed a tough bill outlawing not only internet betting on sports but also such activities as online poker. See Kate Phillips, *House Decisively Approves a Crackdown on Gambling*, N.Y. Times, July 12, 2006, at A16. Although the bill was expected to die in the Senate, at the eleventh hour, just as Congress was getting ready to adjourn for the mid-term elections, it was tacked on as Title VIII to the Security and Accountability for Every (SAFE) Port Act of 2006 and rammed through by the leadership without any discussion. Officially known as the "Unlawful Internet Gambling Enforcement Act of 2006," the bill was signed into law by President Bush in October 2006 and appears at 31 U.S.C. §§ 5301 & 5361–5367.

The UIGEA, which seeks to wipe out internet gaming by prohibiting banks and other financial institutions from transferring money to gambling web sites, has been widely criticized on both philosophical and practical grounds. See, e.g., I. Nelson Rose, *The Unlawful Internet Gambling Enforcement Act of 2006 Analyzed*, 10 Gaming L. Rev. 537 (2006) (vague and confusing); George F. Will, *Prohibition II: Good Grief*, Newsweek, Oct. 23, 2006, at 78 (unenforceable); Charles Murray, *The G.O.P.'s Bad Bet*, N.Y. Times, Oct. 19, 2006, at A29 (makes criminals out of honest citizens). As a result, the future of the UIGEA is uncertain. But see Liz Benston, *Online Gambling a Hot Potato: Congress is Likely to Shy Away From the Issue for Some Time*, Las Vegas Sun, Nov. 19, 2006, at A3 (predicting that despite the law's flaws, it will be a decade or more before Congress returns to the subject due to its complexity and the lack of industry or public agreement as to what should be done). In the immediate aftermath of passage, the internet gambling industry was sent reeling. See further Neil Craven,

Online Gaming Firms Sell U.S. Units for \$1, S. Fla. Sun-Sentinel, Oct. 14, 2006, at 3D, and Eric Pfanner, *Online-Gambling Shares Plunge on Passage of U.S. Crackdown Law*, N.Y. Times, Oct. 3, 2006, at C3. Whether this will continue to be the case remains to be seen, and already some observers are predicting the UIGEA will have no permanent effects. See, e.g., Joseph M. Kelly et al., *U.S. Department of Justice Travel Alert: U.S. Enforcement Efforts Likely to Curtail Business Travel Rather Than Online Gambling*, 10 Gaming L. Rev. 532 (2006), and Catherine Holahan, *Online Gambling Goes Underground*, Bus. Wk. Online, Oct. 19, 2006, available at www.businessweek.com.

Please add the following to Note 6 at page 585:

In the absence of an international treaty regulating internet gambling, it has been suggested that gambling sites be given their own top level domain name (such as .bet) so that regulation can be achieved through commercial means. See further Peter J. Scoolidge, *Gambling Blindfolded: The Case for a Regulated Domain for Gambling Web Sites*, 10 Gaming L. Rev. 252 (2006). What do you think of this idea?

Meanwhile, the government of Antigua and Barbuda (“Antigua”), a former British colony in the Caribbean that has become a favored headquarters of internet gambling operators, has sought to take matters into its own hands. In March 2003, it asked for consultations at the World Trade Organization after claiming that the United States’s attempted suppression of web gaming violated international trade rules. Although a hearing panel in March 2004 ruled in Antigua’s favor, see Matt Richtel, *Trade Group Says U.S. Ban on Net Gambling Violates Global Law*, N.Y. Times, Mar. 26, 2004, at C5, in April 2005 an appellate panel found that with certain minor exceptions relating to horse racing, the United States was in compliance with the organization’s rules. See Fox Butterfield, *U.S. Limits on Internet Gambling Are Backed*, N.Y. Times, Apr. 8, 2005, at C14. In July 2006, however, Antigua renewed its complaint. See *W.T.O. Panel Will Investigate U.S. Limits on Online Gambling*, N.Y. Times, July 20, 2006, at C7. The WTO opinions, all bearing the caption “Measures Affecting the Cross-Border Supply of Gambling and Betting Services,” are available online at docsonline.wto.org. For further commentary, see, e.g., Federico Ortino, *Treaty Interpretation and the WTO Appellate Body Report in US-Gambling: A Critique*, 9 J. Int’l Econ. L. 117 (2006); I. Nelson Rose, *U.S. Ignores Deadline in WTO Fight with Antigua*, 10 Gaming L. Rev. 225 (2006); Jeremy C. Marwell, Note, *Trade and Morality: The WTO Public Morals Exception After Gambling*, 81 N.Y.U. L. Rev. 802 (2006).

Please add the following to Note 7 at page 585:

See also I. Nelson Rose & Martin D. Owens, *Internet Gaming Law* (2005); David G. Schwartz, *Cutting the Wire: Gaming Prohibition and the Internet* (2005); John M. Norwood, *Gambling in the Twenty-first Century: Judicial Resolution of Current Issues*, 74 Miss. L.J. 779 (2005); William Berling,

Bookies in Exile, N.Y. Times, Aug. 17, 2003, § 6, at 34 (describing the ups-and-down of being an internet gambling operator).

Please add the following to Problem 39 at page 586:

The cited case has been reversed. See 433 F.3d 1199 (9th Cir.), *cert. denied*, 126 S. Ct. 2332 (2006).

Please add the following to the principal case that begins at page 590:

The district court's holding in *International Bancorp* was subsequently affirmed on other grounds. See 329 F.3d 359 (4th Cir. 2003), *cert. denied*, 540 U.S. 1106 (2004).

Please add the following to Note 1 at page 602:

In *Home Gambling Network, Inc. v. Betinternet.com, PLC*, 2006 U.S. Dist. LEXIS 44205 (D. Nev. 2006), the plaintiff claimed that the defendant had infringed his method patent for internet betting and claimed that jurisdiction existed in Nevada because he had been able to access the defendant's web site from his home in Henderson. The court rejected this contention, finding that Betinternet.net maintained only a passive presence in the state. However, in *Uebler v. Boss Media AB*, 432 F. Supp. 2d 301 (S.D.N.Y. 2006), a claim of personal jurisdiction over a Swedish internet gambling company that failed to pay the plaintiff nearly \$1 million in winnings was upheld because of the substantial local contacts of its subsidiary.

Please add the following to Note 4 at page 603:

For a further discussion, see I. Nelson Rose, *Why Visa is Dropping Online Gambling*, 7 Gaming L. Rev. 243 (2003).