

GAMING LAW IN LEGAL EDUCATION:

GAMING LAW'S UNEXPLORED OPPORTUNITIES IN AMERICA'S LAW SCHOOLS

By Charles C. Rainey

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INTRODUCTION:

Despite more than thirty years of rapid growth in the gaming industry,¹ only a handful of law schools have built programs that train lawyers for this expanding field of law² and fewer still have constructed coursework that fully takes advantage of its unique learning opportunities. At the time of this writing, only 23 law schools are offering classes in gaming law with any regularity.³ Of those schools, only 12 had offered a class in the subject prior to 2004.⁴ Moreover, most of the schools that do offer gaming law classes, so narrowly focus their curriculum that they sometimes ignore the diversity of legal scholarship that the subject has to offer. This dearth of gaming law education is a rare opportunity for certain law schools and professors—an opportunity that, if seized upon, could enhance the caliber of a school's curriculum and better prepare students for the challenges of legal practice.

This paper attempts to juxtapose the benefits of a gaming law curriculum with the legal academy's reluctance to teach the subject, emphasizing that this disconnect between legal education and the growing importance of gaming has created a curricular vacuum that certain law schools can and should fill. In Section I, I seek to demonstrate the value of gaming law as a field of legal study, highlighting not only the extraordinary growth in the gaming industry, but also the theoretical and pedagogical benefits the subject holds as an academic discipline. Then,

¹ See e.g., UNLV Center for Gaming Research, "UNLV On-Line Gaming Statistics," available at <http://www.unlv.edu/centers/gaming/abstract/stats.html> (last visited May 15, 2007); See also, American Gaming Association, "Gaming Revenue: 10 Year Trends," available at http://www.americangaming.org/Industry/factsheets/statistics_detail.cfv?id=8 (last visited May 15, 2007).

² See Robert M. Jarvis, *A Survey of Law School Gaming Courses*, Gaming L. Rev. (forthcoming 2007) (although there is no official database of gaming law courses, this article compiles the most comprehensive list of past and present gaming law courses; I was able to independently verify the existence of the courses listed in the article through a combination of internet research and phone calls to the various universities. Moreover, after conducting an exhaustive search of the last year's curriculum at every ABA accredited law school, I was unable to find any courses other than those listed in Mr. Jarvis' article).

³ *Id.* at Appendix.

⁴ *Id.*

in Section II, I provide a brief overview of the currently available coursework in the subject, illustrating how the academic community has been relatively slow to adopt "gaming law" as a field of study. Pairing these two sections, one sees an immediate opportunity for new advancements in legal education. The law school community's general reluctance to adopt gaming law curriculum has created a void that certain law schools should fill.

However, before proceeding, I must clarify certain terminology used in this paper. The term "gaming law" has a somewhat fluid definition in our current lexicon. As I use the term here, I am principally focused on traditional casino-style gaming, as offered in Las Vegas resorts, on Caribbean cruise ships, and on certain Native-American reservations. However, the term also encompasses racetracks, card houses, lotteries, bingo parlors, sports books, and a wide assortment of other wagering activities. "Gaming" is essentially any act of wagering⁵ money for chance. Correspondingly, "gaming law" is any regulation of such wagering activities.⁶ The term, as used throughout this paper, includes the more expansive definition of gaming even though I often draw examples from the casino industry. Secondly, my discussion of legal education is principally focused on the curriculum of juris doctorate programs in the United States. Although I may make mention of courses offered in other disciplines or degree programs, my analysis is principally focused on the benefits that the study of gaming law can offer juris doctoral candidates. I believe that gaming law, as a course of study, holds enormous

⁵ THE OXFORD ENGLISH DICTIONARY (2nd Ed. 1989) (defines "gaming" as "The action or habit of playing at games of chance for stakes;" cites the earliest recorded use of the word from a statement found in the Bury Wills (Camden) dated 1501 "Suche mony as I haue wanne or loste in gamyng")

⁶ This terminology will likely become problematic in the near future with the growth of traditional "gaming" and computer "gaming" as two distinct legal disciplines. The term "gaming" has lately taken on new meaning as it has been used by enthusiasts and scholars of the expanding on-line world of Internet communities like "Second Life" and "Warcraft." See e.g.,

John N. Drobak, *Computer Simulation and Gaming: An Interdisciplinary Survey with a View Toward Legal Applications*, 24 Stan. L. Rev. 712 (1971-1972). (this article was the earliest usage I found of the term "gaming" as referring to computer gaming and, more specifically, computer simulations).

potential for both practical and theoretical legal education, making it a unique opportunity for certain law schools to enhance their curriculum and provide students with a more comprehensive educational experience.

PART I: MAKING A CASE FOR GAMING LAW

The American Gaming Association (AGA) estimates that in 2006 the gaming industry in the United States generated revenues of more than \$85 billion.⁷ In that same year, commercial casinos in the U.S. directly employed more than 366,000 people, generating approximately \$13.6 billion in tips and wages.⁸ Meanwhile, roughly 56.2 million people made a collective 371 million trips to American casinos.⁹ All but two states, Hawaii and Utah, have legalized some form of gaming, while commercial casinos now operate in twelve states.¹⁰ Undoubtedly, the gaming industry has evolved into a powerful economic force, holding enormous influence over the nation's economy, social mores, and laws.

At the same time, the gaming industry has become increasingly complex, endeavoring into ever more complicated business transactions and falling subject to an expanding web of statutes, regulations, and case law. Today, the successful operation of a Gaming enterprise requires millions of dollars in investment capital and the mastery of numerous regulatory hurdles. Similarly, with the increased sophistication of gaming companies, gaming regulators must craft and enforce progressively more sophisticated regulations, working to ensure that the profit-driven goals of gaming enterprises do not overtake the public interest. This escalating relationship between the gaming industry and gaming regulation has caused the field of gaming law to broaden. At an ever-expanding rate, the topic of gaming is invading issues of commercial

⁷ American Gaming Association, "Gaming Revenue: Current Year Data," available at http://www.americangaming.org/Industry/factsheets/statistics_detailcfv?id=7 (last visited on May 15, 2007).

⁸ American Gaming Association, "Casino Employment," available at http://www.americangaming.org/Industry/factsheets/general_info_detailcfv?id=28 (last visited on May 15, 2007).

⁹ American Gaming Association, 2007 STATE OF THE STATES, P. 7 (2007).

¹⁰ American Gaming Association, "States with Gambling," available at http://www.americangaming.org/Industry/factsheets/general_info_detail.cf?id=15 (last visited on May 15, 2007).

law,¹¹ constitutional law,¹² political and social theory,¹³ international trade,¹⁴ environmental law,¹⁵ public health,¹⁶ alternative dispute resolution¹⁷ and a plethora of other legal disciplines.

The exponential growth of gaming in our society, coupled with the inter-disciplinary nature of the subject, renders it a valuable addition to the law school canon. As law schools continue to struggle with the dilemma of practical versus theoretical modes of instruction, the subject of gaming law offers a surprising balance, not only dealing with scholarly notions of public policy and governmental theory, but also offering concrete examples of how a wide body

¹¹ See e.g., Shannon L. Bybee, Jr., *The Gaming Industry: Current Legal, Regulatory, and Social Issues: Corporate Responsibility in the Gaming Industry*, SE81 ALI-ABA 117 (2000); see also, Melissa Fallon, *Antitrust Implications of Casino Mergers: The Gamble of Defining a Relevant Market*, 57 Hastings L.J. 267 (2005-2006); Christine Hurt, *Regulating Public Morals and Private Markets: Online Securities Trading, Internet Gambling, and the Speculation Paradox*, 86 B.U.L. Rev. 371 (2006).

¹² See e.g., Lawrence G. Walters, *Will the Commerce Clause Save OnLine Gambling?*, International Masters of Gaming (2005), available at <http://www.gaminglawmasters.com/articles/> (last visited on May 15, 2007); see also, Anne Lindner, *First Amendment as Last Resort: The Internet Gambling Industry's Bid to Advertise in the United States*, 50 St. Louis U. L.J. 1329 (2005-2006); Colleen F. Walsh, *Constitutional Law - Sovereign Immunity - Congress's Article I Powers May Not Abrogate State Sovereign Immunity Granted by the Eleventh Amendment and Ex Parte Young Is Inapplicable to Suits Brought under the Indian Gaming Regulatory Act*, 27 Seton Hall L. Rev. 806 (1996-1997).

¹³ See e.g., Patrick Lenta, *Just Gaming - The Case for Postmodernism in South African Legal Theory*, 17 S. Afr. J. on Hum. Rts. 173 (2001); Eric Henderson, *Ancestry and Casino Dollars in the Formation of Tribal Identity*, 4 Race & Ethnic Anc. L.J. 7 (1998); Bruce J. Winick, *Harnessing the Power of the Bet: Wagering with the Government as a Mechanism for Social and Individual Change*, 45 U. Miami L. Rev. 737 (1990-1991).

¹⁴ See e.g., Kelly Ann Tran, *The WTO Appellate Body Gambles on the Future of the GATS: Analyzing the Internet Gambling Dispute Between Antigua and the United States Before the World Trade Organization*, 6 Appalachian J. L. 165 (2006); Albena P. Petrova, *WTO Internet Gambling Dispute as a Case of First Impression: How to Interpret Exceptions Under GAT's Article XIV(a) How to Set the Trend for Implementation and Compliance in WTO Cases Involving "Public Morals" and "Public Order" Concerns?*, 6 Rich. J. Global L. & Bus. 45 (2006); Jeremy C. Marwell, *Trade and Morality: The WTO Public Morals Exception after Gambling*, 81 N.Y.U. L. Rev. 802 (2006).

¹⁵ See e.g., Jeffrey P Reynolds and Daniel L. Singletary, *Environmental Concerns and the Impact of Wetlands Regulations on Mississippi's Gaming Industry*, 64 Miss. L.J. 517 (1994-1995); see also Michael P. O'Connell, *Environmental Issues Associated with Indian Gaming*, 872 PLI/Corp 27 (1994).

¹⁶ See e.g., Darren Gowen, *Pathological Gambling: An Obscurity in Community Corrections*, 60 Fed. Probation 3 (1996); Shannon L. Bybee, Jr., *The Gaming Industry: Current Legal, Regulatory, and Social Issues: Problem Gambling*, SC91 ALI-ABA 453 (1998); William Leary, *The Hidden Illness of the 1990s*, 47 RI Bar Jnl. 19 (1999).

¹⁷ See e.g., Matthew Potter, *Is Alternative Dispute Resolution a Possibility in the Riverboat Gambling Quagmire - Akin v. Missouri Gaming Commission*, 1998 J. Disp. Resol. 193 (1998); J. Steven Jarreau, *Department: Recent Developments: ADR to Trusts: ADR to Trusts: International Law: WTO and Cross-Border Gambling Services*, 52 LA Bar Jnl. 389 (2005).

of law applies to complex factual situations. Gaming law is perfectly suited for law school study; and students should have the opportunity to learn this unique and expansive field of law.

A. An Industry that Knows No Bounds

The extraordinary growth in the gaming industry over the last thirty years indicates a need for corresponding growth in gaming law education. U.S. Consumer spending in commercial casinos has more than doubled over the last ten years.¹⁸ Meanwhile, the growth of gaming internationally has surpassed all expectations, as Macau (the newly minted "Las Vegas of Asia"¹⁹) enjoyed record gaming revenues in 2006 of nearly \$7 billion.²⁰ The industry shows little sign of slowing down and continues to diversify its interests throughout the nation and throughout the world. With this rapid expansion of the industry, gaming issues are becoming more prevalent in legal practice. As such, law schools should prepare students for the complex challenges that gaming-related issues present.

Critics of legal education often accuse law schools of focusing too intently on theoretical paradigms and ignoring the real-life situations that lawyers encounter.²¹ Some commentators have even suggested that the legal academy is ensconced in a crisis of identity, torn between theory and practice.²² In his often cited 1993 article, *The Growing Disjunction Between Legal Education and the Legal Profession*, Federal Circuit Court Judge Harry T. Edwards argued that many schools, "especially the so-called 'elite' ones—have abandoned their proper place, by

¹⁸ American Gaming Association, STATE OF THE STATES, p. 7 (2006).

¹⁹ See, "Turning Macau into the Las Vegas of Asia," Jun 14 Asia Pulse News (2005).

²⁰ German Press Agency, "Gaming Revenue in Macau outstrips Las Vegas strip at 7 US Billion," Jan 24 THE RAW STORY (2007), available at http://rawstory.com/news/2006/Gambling_revenue_in_Macau_outstrips_01242007.html (last visited May 15, 2007).

²¹ See Harry T. Edwards, *The Growing Disjunction Between Legal Education and the Legal Profession*, 91 Mich. L. Rev. 34 (1992) (cites a decline in practical legal scholarship, which fails to provide students with the needed doctrinal education and skills for the workplace).

²² Stephen M. Feldman, *The Transformation of an Academic Discipline: Law Professors in the Past and Future (or Toy Story Too)*, 54 J. Legal Educ. 471 (2004).

emphasizing abstract theory at the expense of practical scholarship and pedagogy."²³ Meanwhile, many professors continue to push their scholarship farther from the practicalities of the legal profession and delve deeper into sociological and philosophical theory, with particular attention on interdisciplinary analysis.²⁴

However, gaming law offers an easy middle ground between these two competing visions of legal education. The interdisciplinarity of gaming law provides ample intellectual fodder, particularly with regard to its social and political implications, while its rapid and undeniable growth illustrates its practical applications to the legal profession. Increasingly, attorneys will face issues involving the gaming industry, its regulations, and its socioeconomic effects on society.²⁵ The gaming industry already represents a sizeable segment of the American economy and continues to grow. Moreover, its highly regulated character causes the subject to sprawl out into other areas of legal practice.

Today, examples of the gaming industry and the cumbersome regulations that come with it are readily available throughout the country. At present, 37 States allow some form of slot machine gaming.²⁶ Meanwhile, 11 states now allow racetrack casinos, with Pennsylvania and Florida just opening their first "racinos" in 2006.²⁷ As of this writing, Indian casinos are

²³ Edwards, *supra* note 21, at 34.

²⁴ See e.g., Steve Fuller, PHILOSOPHY RHETORIC, AND THE END OF KNOWLEDGE, (1993); See also Stanley Fish, *Dennis Martinez and the Uses of Legal Theory*, 96 Yale L.J. 1773 (1987); , THE POSTMODERN TURN

²⁵ Although there has been great debate over whether gaming holds a positive or negative impact on society, I am not entering that debate in this paper. For further information on this issue, please see John Warren Kindt, *The Negative Impacts of Legalized Gambling on Businesses*, 4 U. Miami Bus. L.J. 93 (1994); see also William N. Thompson and Christopher Stream, *Casino Taxation and Revenue Sharing: A Budget Game, or a Game for Economic Development*, 22 T. M. Cooley L. Rev. 523 (2005).

²⁶ American Gaming Association, "States with Gaming," available at http://www.americangaming.org/Industry/factsheets/general_info_detail.cfv?id=15 (last visited May 15, 2007)

²⁷ *Id.*

operating in 28 different states, and pari-mutual wagering is permitted in 43 states.²⁸ Although the U.S. Congress recently passed legislation banning Internet gambling,²⁹ legislative action is already in place to repeal the law,³⁰ which some analysts estimate would furnish the industry an additional \$5.9 billion in annual revenue.³¹

With this ongoing growth, the practice of gaming law is more pervasive than ever before, rendering it a topic prone to academic scrutiny. This is not to say that law schools should be training students en masse for the sole practice of gaming law. In fact, even with the rampant growth of the industry, few attorneys devote their practice entirely to gaming. Even in Nevada, where the gaming industry is most ubiquitous, you can probably "count all of the big gaming attorneys on your fingers and your toes."³² Instead, I am suggesting that the expansion of the industry has brought its issues to bear on the legal community as a whole. As gaming enterprises grow, they consume more legal services, presenting attorneys with a wider array of complex legal issues—all of which are subject to an intricate web of gaming regulation. Accordingly, law schools—particularly those where the gaming industry is most pronounced—owe a duty to inform their students of the many distinct characteristics of gaming regulation.

For example, if a probate attorney is charged with representing the estate of a recently deceased Nevada gaming licensee, the law requires that she inform the gaming commission of the licensee's passing within 30 days of the person's death.³³ Moreover, no profits from any of

²⁸ *Id.*

²⁹ The Unlawful Internet Gaming Enforcement Act, 31 U.S.C. §§ 5361-5367 (2007).

³⁰ On April 26, 2007, U.S. Representative Barney Frank, chairman of the House Financial Services Committee, filed a bill that would essentially repeal the Unlawful Internet Gaming Enforcement Act, and legalize Internet gambling in the United States; *see* Internet Gambling and Enforcement Act of 2007, H.R. 2046, 110th Congress (2007).

³¹ Laura Goldman, *Online Gambling Supporters Bet They Can Get Ban Repealed*, McClatchy Newspapers, May 9, 2007.

³² Interview with Bill Curran, Partner, Ballard Spahr Andrews & Ingersoll, LLP (April 2007).

³³ NV Reg. 9.020.

the licensee's gaming interests can pass to her heirs until such heirs have received licensure from the Gaming Commission.³⁴ This serves as an example of how the conduct and practices of a non-gaming attorney may be subject to gaming laws. Moreover, if that attorney fails to acknowledge those laws and merely carries out her practice as she normally would, she may be subject to sanctions or disciplinary action. What's more, an attorney that ignores such laws and regulations has failed to properly serve her client's interests.

Similarly, if a gaming licensee enters into bankruptcy and her gaming interests fall into receivership, her attorney is obligated to inform the Commission, in writing, of the bankruptcy proceedings.³⁵ Moreover, no trustee, receiver or assignee can operate the gaming enterprise for the benefit of the licensee's creditors without the prior authorization of the Nevada Gaming Commission.³⁶ If a bankruptcy attorney, unfamiliar with gaming's regulatory structure, failed to notify the Commission of the bankruptcy and then allowed an unlicensed receiver to operate the casino enterprise, that attorney would face possible sanction or other disciplinary action.³⁷

For litigators, gaming law can present a host of other problems. For instance, during discovery, an attorney may seek out information from the Gaming Control Board, issuing a subpoena duces tecum to Gaming Control investigators or Board members for certain licensing records. However, the Gaming Control Board maintains strict confidentiality of the information gathered during the licensing process.³⁸ Without a court order or the express permission of the licensee, the Gaming Control Board will routinely reject all such requests.³⁹ Although the

³⁴ *Id.*

³⁵ NV Reg. 9.030.

³⁶ *Id.*; See also, A.J. Hicks, *Common Mistakes Lawyers Make in Gaming Matters*, 3-FEB Nev. Law. 14 (1995).

³⁷ NV Reg. 7.140.

³⁸ N.R.S. 463.120(4)(e).

³⁹ N.R.S. 463.341; See also, A. Scott Bodeau, *Common Law Practice Pitfalls: A Gaming Law Primer for Non-Gaming Attorneys*, 7-MAR Nev. Law. 16 (1999).

rejection of such a request may not jeopardize the attorney's case, it will certainly provide a source of mild embarrassment, while the attorney receives a lesson in the law from an employee of the Gaming Control Board.

As illustrated by these brief examples, gaming law extends into other legal practices and carries significant implications for non-gaming attorneys. These intrusions into everyday legal practice will undoubtedly grow more apparent as the industry continues its trend of growth and expansion. As such, law schools should provide students with at least a rudimentary understanding of gaming law and its impacts on the legal profession.

B. A Diverse Legal Discipline

Gaming Law sits at a unique interdisciplinary crossroad, situated at the intersection of state, federal, and international law—at the intersection of administration, legislation, and adjudication—at the intersection of private industry, public policy, and government affairs. Governed by an intricate web of statutes, regulations, and case law, gaming is arguably the most heavily regulated industry in the world.⁴⁰ What's more, the operation of gaming enterprises requires a wide array of legal services, from contract negotiation to securitization. The field embodies principles of federalism, constitutionalism, government policy, business transactions, corporate governance, corporate finance, and a host of other inter-related issues. Consequently, gaming law provides unique educational benefits, providing law students with a contextual setting to apply a wide body of legal doctrine. For this reason, it holds enormous potential as a means of enhancing students' conceptual understanding of the law.

As noted by Professors David Binder and Paul Bergman:

⁴⁰ See, American Gaming Association, "Is the Casino Industry Controlled by Mobsters and Organized Crime?" available at http://www.americangaming.org/industry/faq_detail.cfv?id=64 (last visited May 15, 2007).

Conceptual understanding occurs when students are aware of general principles underlying different skills or practices. Research into learning suggests that for transfer to occur, knowledge of a large set of disconnected facts is not sufficient. Rather organizing information into a conceptual framework allows for greater 'transfer;' that is, it allows the students to apply what was learned in new situations.' [...] Conceptual frameworks tend to produce 'meta-cognition,' meaning that students become aware of their learning strategies and thus can continue to learn from their professional experiences.⁴¹"

Gaming law provides a forum for conceptual understanding, as students must integrate a myriad of legal concepts and doctrines to tackle the many complex issues facing the gaming industry. Law students can carry the core concepts learned in other legal subjects into the field of gaming law and, by applying those concepts in a more integrative setting, gain a more contextual understanding of how the law relates to business, government, society, and individuals. In the end, this synergistic application of the law, should improve students' ability to recall key legal concepts and comprehend how these concepts function in everyday legal practice.

Gaming law deals with issues of public policy,⁴² commercial transactions,⁴³ criminal law,⁴⁴ intellectual property,⁴⁵ international law,⁴⁶ administrative law,⁴⁷ Indian law,⁴⁸ employment

⁴¹ David A. Binder and Paul Bergman, *Taking Lawyer Skills Training Seriously*, 10 *Clinical L. Rev.* 191, 199 (2003); *See also*, Ruth Clark & Merlin C. Wittrock, *Psychological Principles of Training*, PSYCHOLOGICAL PRINCIPLES OF TRAINING AND TRAINING at 77 (Sigmund Tobias & J.D. Fletcher eds., 2000)

⁴² *See*, Joseph Kelly, *Caught in the Intersection between Public Policy and Practicality: A Survey of the Legal Treatment of Gambling-Related Obligations in the United States*, 5 *Chap. L. Rev.* 87 (2002).

⁴³ *See*, Theresa A. Gabaldon, *John Law, with a Tulip, in the South Seas: Gambling and the Regulation of Euphoric Market Transactions*, 26 *J. Corp. L.* 225 (2000-2001).

⁴⁴ *See*, Justin W. Starr, *Diminished Capacity Departures for Compulsive Gambling: Punishing the Pathological or Pardoning the Common Criminal*, 2003 *BYU L. Rev.* 385 (2003).

law,⁴⁹ real estate,⁵⁰ taxation,⁵¹ torts,⁵² and several other subjects. On issues of public policy, gaming law intersects with questions of economic development,⁵³ public health,⁵⁴ politics,⁵⁵ and government process.⁵⁶ On issues of commercial law, gaming practice deals with bankruptcy,⁵⁷ corporate structure,⁵⁸ contracts,⁵⁹ and commercial finance.⁶⁰ Meanwhile, the industry raises constitutional questions, such as: whether the Indian Gaming Regulatory Act (IGRA) fits within

⁴⁵ See, Steve S. Chang, *The Vital Role of Patent Law in the Gaming Industry*, 10 Gaming L. Rev. 8 (2006).

⁴⁶ See, Claudia K. Cormier, and Robert D. Faiss, *The International Effect of the Nevada Gaming Control Act*, 16 Sw. U. L. Rev. 437 (1986).

⁴⁷ See, R. Benjamin Cohen, *The New Jersey Casino Control Act: Creation of a Regulatory System*, 6 Seton Hall Legis. J. 1 (1982-1983).

⁴⁸ See, Naomi Mezey, *Distribution of Wealth, Sovereignty, and Culture through Indian Gaming*, 48 Stan. L. Rev. 711 (1995-1996).

⁴⁹ See, David B. Cruz, *Symposium: Pursuing Equal Justice in the West: Making Up Women: Casinos, Cosmetics, and Title VII*, 5 Nev. L.J. 240 (2004).

⁵⁰ See, Frank Aiello, *Gambling with Condemnation: An Examination of Detroit's Use Eminent Domain for Riverfront Casinos*, 46 Wayne L. Rev. 1639 (2000).

⁵¹ See, Douglas E. Kulper, *Taxpayer Rolls the Dice and the IRS Craps out: Forgiveness of Gambling Debts is Not Income in Zarin v. Commissioner*, 1991 Utah L. Rev. 617 (1991).

⁵² See John Zachary Blanchard, Jr. *Departments: Recent Developments: Administrative To Proof. Liability: Insurance, Tort, Workers' Compensation and Admiralty Law: Jones Act: Applicability To Casiono Riverboats*, 52 LA Bar Jnl. 140 (2004).

⁵³ See, Audie Blevins and Katherine Jensen, *Gambling: Socioeconomic Impacts and Public Policy: Gambling as a Community Development Quick Fix*, 556 Annals 109 (1998).

⁵⁴ See, Cheralynn M. Gregoire, *Offenses Against Public Health and Morals: Prohibit as Gambling Devices Certain Video Poker Games and Devices; Provide that Certificates or Evidence of Winning Other Games and Devices Must be Redeemable on Premises where Such Game or Device is Located; Define Crimes and Penalties; Provide Examples of Bona Fide Coin Operated Amusement Machines*, 19 Ga. St. U.L. Rev. 105 (2002).

⁵⁵ See, R. Randall Bridwell, and Frank L. Quinn, *From Mad Joy to Misfortune: The Merger of Law and Politics in the World of Gambling*, 72 Miss. L.J. 565 (2002-2003).

⁵⁶ See, Christian C. Bedortha, *House Always Wins: A Look at the Federal Government's Role in Indian Gaming & the Long Search for Autonomy*, 6 Scholar 267 (2003-2004).

⁵⁷ See, Gerald M. Gordon, Rudy J. Cerone and Scott Fleming, *Bankruptcy Trends in the Gaming Field*, 10 J. Bankr. L. & Prac. 293 (2004).

⁵⁸ See, Richard Gruner, *Banished from the Boardwalk: Control of Corporate Casino Operators through Executive Disqualification*, 16 Rutgers L.J. 759 (1984-1985).

⁵⁹ See, Kevin K. Washburn, *The Mechanics of Indian Gaming Management Contract Approval*, 8 Gaming L. Rev. 333 (2004).

⁶⁰ See, Thomas Lee Hazen, *Disparate Regulatory Schemes for Parallel Activities: Securities Regulation, Derivatives Regulation, Gambling, and Insurance*, 24 Ann. Rev. Banking & Fin. L. 375 (2005).

the framework of the eleventh amendment;⁶¹ whether state restrictions on casino advertising violate the first amendment;⁶² and whether gambling laws violate the Federal Commerce Clause.⁶³ At the same time, gaming regulators must police any criminal violations of the gaming regulatory structure, including gambling cheats, organized crime,⁶⁴ and money laundering.⁶⁵

Admittedly, all industries deal with a multitude of legal issues in their day-to-day operations. I could randomly select any trade or business and upon a close analysis of its structure and operations likely find a variety of legal concerns. Accordingly, some may argue that the gaming industry is no different than, say, the coffee industry or the automobile industry. Safely managing the operations of each of these industries requires a firm understanding of the legal framework in which they operate.

Nevertheless, the highly regulated environment in which gaming enterprises conduct business adds a new dimension of complexity to its legal analysis. Every aspect of a gaming operation is subject to municipal, state, and federal regulation. Moreover, the scope and substance of such regulations can differ dramatically from one jurisdiction to the next. Meanwhile, the "vice" of gaming is ensconced in a host of public policy concerns, requiring significant analysis and consideration from the public sector. Consequently, a competent gaming attorney must have a broad understanding of municipal, state, and federal law, as well as a keen sense of public policy. As noted at the 2006 Winter Conference of the International Masters of

⁶¹ See, Joseph J. Weissman, *Upping the Ante: Allowing Indian Tribes to Sue States in Federal Court under the Indian Gaming Regulatory Act*, 62 Geo. Wash. L. Rev. 123 (1993-1994).

⁶² See, Dana M. Shelton, *Greater New Orleans Broadcasting Association v. United States: The Fifth Circuit Upholds the Federal Ban on Casino Gambling Advertising against a First Amendment Challenge*, 70 Tul. L. Rev. 1725 (1996).

⁶³ See, Jeremy Robert Kriegel, *Place Your Bets on the Constitutionality of Riverboat Gambling Acts: Do They Violate the Commerce Clause*, 47 Wash. U. J. Urb. & Contemp. L. 123 (1995).

⁶⁴ See, Thomas R. O'Brien Mary Jo Flaherty, *Regulation of the Atlantic City Casino Industry and Attempts to Control Its Infiltration by Organized Crime*, 16 Rutgers L.J. 721 (1984-1985).

⁶⁵ See, Charles W. Blau, *Gaming Enforcement II Money Laundering and Currency Violations in Gaming Enforcement*, N98GENB ABA-LGLED B-37 (1998).

Gaming: "Formerly casino executives and legal professionals had little formal education in gaming regulatory and security issues. Today, a higher education is essential."⁶⁶

Although the limitations of a paper such as this prevent me from detailing each and every aspect of gaming law and how it interacts with other legal disciplines, I feel it necessary to offer a few brief examples.

In late 2003, the Hard Rock Hotel and Casino launched a somewhat racy marketing campaign, in which it made veiled references to adultery, drug abuse, and cheating at cards. The campaign, which included a radio spot and two billboard advertisements, sparked some concern amongst members of the community and the state's Gaming Control Board (GCB). On January 22, 2004, the GCB issued a complaint against the Hard Rock Hotel,⁶⁷ charging it with three counts of violating Nevada Regulation 5.011.4, which allows for disciplinary action against any gaming licensee that fails "to conduct advertising [...] in accordance with decency, dignity, good taste, honesty and inoffensive is false or materially misleading."⁶⁸ The complaint also accused the casino company of failing to abide by a 2002 settlement with the GCB, under which Hard Rock was required to submit any advertisements containing "questionable elements" to its compliance committee for review.⁶⁹

This incident illustrates how, within the gaming industry, a very simple set of facts can let loose a torrent of legal issues. First and foremost, the Constitutionality of Regulation 5.011.4 is highly suspect: the regulation may be void for vagueness, or it may violate the First Amendment. Second, the Board has an enormous evidentiary hurdle: how does it prove that (1) the advertisements contained "questionable elements," and (2) that the Hard Rock compliance

⁶⁶ International Masters of Gaming, "Winter Conference – Schedule of Events," available at <http://www.gaminglawmasters.com/neworleans/sessions.htm> (last visited May 15, 2007).

⁶⁷ See Jeff Simpson, Racy Hard Rock ads raise complaint, *Las Vegas Review Journal*, 1D, Jan 23, 2004.

⁶⁸ NV Reg. 5.011.4.

⁶⁹ See Simpson, *supra* note 67.

committee never "reviewed" the advertisements. Also, if the compliance committee did actually review and approve the advertisements, does that nullify the complaint, or does the Board still have a disciplinary cause of action? What's more, this situation raises a variety of policy concerns: should the Gaming Control Board act as the arbiter of morality and good taste? If so, does the Board jeopardize the state's tax base by injecting morality into the sin city image that has spurred so much of Southern Nevada's economic development? From a practical perspective, how should the Hard Rock Casino proceed? Should it fight the Board on grounds of free speech, or should it work toward a discreet private settlement? If it settles the matter and admits that it acted wrongly, does the Hard Rock risk further disciplinary action from the County?⁷⁰ Furthermore, these issues all circulate within the framework of the state's administrative process and the possibility of judicial review.

Similarly, transactional events within the gaming industry can spark a variety of legal issues that touch upon state, federal, and even international law. For instance, over the last decade, the casino industry has undergone a number of mega mergers, each more remarkable than the last. In 2000, MGM Grand and Mirage Resorts completed a \$6.4 billion dollar merger, making it the largest casino merger of its time. However, five years later, just as MGM/Mirage was completing another merger with Mandalay Resorts, Harrah's Entertainment merged with Caesars Entertainment to create the largest casino operator in the world, with over 40 casinos, 4 million square feet of casino space, and nearly 100,000 employees. In late 2006, the private equity firms Apollo Management and Texas Pacific Group made unsolicited bids to purchase the Harrah's behemoth for \$15 billion.

⁷⁰ See Clark County Code § 8.04.270 (using language similar to NV Reg. 5.011.4, empowers the "board" to take similar disciplinary action against licensees).

This spate of mergers and acquisitions raises a number of issues at the state, federal, and international level, all of which ultimately relate back to the unique legal considerations of gaming law. First of all, any proposed merger is typically subject to the review of the Gaming Control Boards within each jurisdiction that the company operates. For instance, under Nevada law, the Nevada Gaming Control Board (GCB) must approve the merger transaction pursuant to Nevada Regulation 16.200. Although the GCB may simply agree with the findings of the FTC and approve a merger or acquisition, it retains the right to impose its own, more stringent standards. In fact, under Nevada Regulation 5.011.8, the GCB can level sanctions against a gaming licensee that it believes has violated federal antitrust laws; the regulation provides that the GCB can make that determination at its "sound discretion," without any action from the FTC or any other federal entity. Meanwhile, at the federal level, a series of cases, statutes, and regulations provide somewhat contradictory guidelines on how to define the market of a casino operator and how to determine whether a merger is in violation of federal antitrust law.⁷¹

However, the recent entrance of private equity firms raises even more puzzling questions. As of this writing, none of Nevada's statutes or regulations make any mention of private equity firms, nor do they provide specific guidance as to how the states Gaming Commission should treat these entities. In a 2006 interview with then Gaming Control Board member Bobby Siller, I asked for his opinion on the private equity bid to take over Harrah's. Mr. Siller responded with some trepidation, indicating that he believed the GCB and the Gaming Commission would ultimately approve these purchases, but that he was still somewhat reluctant to offer his full endorsement of the private equity buyout.⁷² He emphasized that a key consideration in the state's licensing process is determining whether the applicant will be a good corporate citizen. He

⁷¹ See Melissa Fallon, *Antitrust Implications of Casino Mergers: The Gamble of Defining a Relevant Market*, 57 *Hastings L.J.* 235 (2005).

⁷² Interview with Bobby Siller, Member, Nevada Gaming Control Board (October 2006).

pointed out that private equity firms had yet to show themselves fully capable of playing that role. Inversely, when I posed the same question to Gary Jacobs, the general counsel of MGM/Mirage, he indicated a greater willingness to embrace private equity investment. Mr. Jacobs stressed that private equity was merely another form of investment capital and to refuse its entry into the market would potentially hold back development.⁷³

As evidenced by the above examples, a comprehensive study of gaming law offers a broad perspective on statutes, regulations, case law, and the public policy considerations that shape these legal frameworks. Because of the dynamic character of the gaming industry and the heavy regulation that it faces, the study of gaming law is a valuable source of legal scholarship, underscoring several core legal concepts while also providing vivid illustrations of how the law may be applied to various unique situations.

C. The Volume and Depth of Gaming-Related Legal Scholarship

As further evidence of gaming law's interdisciplinarity, law professors and students are increasingly turning to the subject in scholarly writing. As part of my research for this paper, I conducted a broad survey of gaming law scholarship, attempting to find every article ever written on the subject. Although I attempted to cast a rather wide net in my research, I am sure that many articles on the subject failed to make it into my final list. Nevertheless, my research shows that, over the last three decades, the volume of gaming law scholarship has increased significantly. Meanwhile, and I think more notable, gaming law scholarship has expanded into a far more diverse set of subject areas.

⁷³ Interview with Gary Jacobs, Vice President and General Counsel of MGM/Mirage (November 2006).

1. Methodology

I examined seven different law journal and law review databases: Hein Online, Lexis Nexis, Westlaw, Wilson Web, Wilson Retro, Oxford Journals, and the Social Science Research Network. Within each database, I searched for articles with titles that included any of the following words: "gaming," "gambling," "bet," "betting," "wager," "wagering," or "casino." Admittedly, this search likely ignored several articles that discuss gaming issues but do not explicitly reference those issues in the title. Nevertheless, I chose to narrow my search by these criteria, in hopes of limiting the results to only those articles that are expressly focused on gaming-related issues.

The initial search of these databases rendered 3434 results.⁷⁴ I then merged those results into a single document and, examining each title individually, removed any duplicate titles. Then, I examined the document a second time, removing any articles that were clearly off-topic (i.e. Liza M. Ray, *The Vertical Settlement Industry: Betting on People's Lives is Certainly no "Exacta,"* 17 J. Contemp. Health L. & Pol'y 321 (2000)). Then, I examined the document a third time, removing any citations to documents that did not include actual commentary, such as reprinted court opinions or brief news blurbs (i.e. *News in Brief from the Gaming World*, 11 Gaming L. Rev. ??? (2006)).

Finally, I organized the citations by date, author, publication, and subject, attached hereto as appendices 1, 2, 3, and 4.

⁷⁴ The results broke down as follows: 637 from Hein Online; 729 from Westlaw, 430 from Lexis Nexis, 587 from Wilson Web; 750 from Wilson Web Retro; 166 from Oxford Journals; 135 from Social Science Research Network.

2. Findings⁷⁵

Gaming law has served as a subject of legal study for more than two centuries. In 1807, John Disney, an English barrister, wrote the first article on the subject, entitled *The Laws of Gaming, Wagers, Horse Racing, and Gaming Houses*.⁷⁶ The subject first donned the covers of law school journals in 1904, when the Yale Law Journal published the article *Gambling and Cognate Vices* by John R. Dis Poses.⁷⁷ Since then, the topic has regularly appeared in law journals and law reviews. The topic saw increased attention in the earlier eighties, with the legalization of gambling in New Jersey⁷⁸ and again in the early nineties with the passage of the Indian Gaming Regulatory Act.⁷⁹ The following graph should provide some indication of how the quantity of scholarship has grown over the last century.

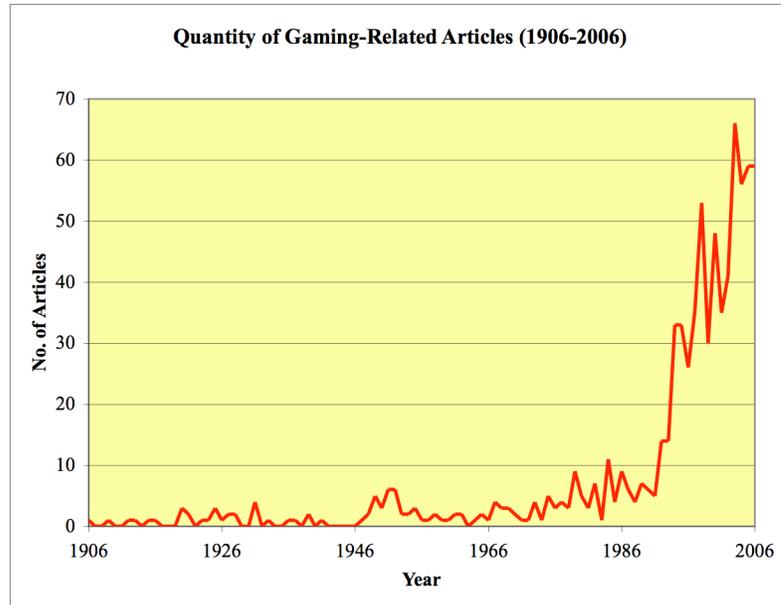
⁷⁵ For a complete list of the law review and journal articles, please refer to Appendices 1, 2, and 3.

⁷⁶ John Disney, *The Laws of Gaming, Wagers, Horse Racing, and Gaming Houses*, 3 Law J. 293 (1807).

⁷⁷ John R. DosPassos, *Gambling and Cognate Vices*, 14 Yale Law Journal 9 (1904-1905).

⁷⁸ See e.g., William T. O'Donnell, *A Chief Executive's Views on the Necessity for Comprehensive State Control and Regulation in the United States Gaming Industry*, 12 Conn. L. Rev. 727 (1979-1980); I. Nelson Rose, *The Legalization and Control of Casino Gambling*, 8 Fordham Urb. L.J. 245 (1979-1980); Kathryn Keneally, *State Regulation of Casino Gambling: Constitutional Limitations and Federal Labor Law Preemption*, 49 Fordham L. Rev. 1038 (1980-1981); Alvin J. Hicks, *No Longer the Only Game in Town: A Comparison of the Nevada and New Jersey Regulatory Systems of Gaming Control*, 12 Sw. U. L. Rev. 583 (1980-1981).

⁷⁹ Thomas L. Wilson, *Indian Gaming and Economic Development on the Reservation*, 68 Mich. B.J. 380 (1989); Nancy McKay, *Meaning of Good Faith in the Indian Gaming Regulatory Act*, 27 Gonz. L. Rev. 471 (1991-1992); T. Barton French Jr., *Indian Gaming Regulatory Act and the Eleventh Amendment: States Assert Sovereign Immunity Defense to Slow the Growth of Indian Gaming*, 71 Wash. U. L. Q. 735 (1993).



In total, I found 836 articles, written by approximately 724 authors. Of the 198 ABA accredited law schools, 145 have published articles on the subject of gaming law. Moreover, these articles, although centered on the subject of gaming, cut across a broad swath of legal topics.⁸⁰

Although the increased quantity and diversity of scholarship in this subject may be attributable to any number of factors, I believe the fact that it exists reflects the need for more focus on the subject in the classroom.

⁸⁰ See, App. 4 (the nine categories and 40 sub-categories that I identified here, span all of the subject areas demarcated in Harvard's 2007-2008 course catalog except: legal history, family law, and gender studies); compare with Harvard Law School, 2007-2008 COURSE CATALOG, available at <http://www.law.harvard.edu/academics/courses/2007-08/> (last visited May 15, 2007).

Part II: THE CURRENT FIELD OF GAMING LAW CURRICULUM

Although several schools have recently adopted gaming law curriculum, as a whole, the law school community has somewhat ignored the subject. At the time of this writing, only thirty-one law schools have ever offered a course in gaming law. Of those schools that offered such classes, only twenty-three are offering courses with any regularity.⁸¹ Of those schools still offering courses, only twelve of them had offered a class in the subject prior to 2004.⁸² Although the existing courses appear to offer a balanced approach to the subject, they represent only a handful of schools.⁸³ The scarcity of gaming law courses is especially evident when: (1) contrasted with the current prevalence of the gaming industry, particularly in jurisdictions where law school are located; and (2) compared to other electives widely offered in America's law schools.

As of this writing, seventy-four law schools are located in states where commercial casinos or racetrack casinos operate.⁸⁴ That accounts for more than one third of all ABA accredited law schools. Yet, out of those seventy-four schools, only thirteen have ever offered a course in gaming law.⁸⁵ Moreover, three of those thirteen schools only offer classes on Indian gaming; this, despite the fact that their states contain relatively large commercial gaming operations.⁸⁶

⁸¹ *Id* at Appendix.

⁸² *Id.*

⁸³ For a complete overview of the courses currently offered, see Appendices 5 and 6; *also see*

⁸⁴ For a complete list of schools located in states where commercial casinos and racetrack casinos operate, see Appendix 7.

⁸⁵ *Id.*

⁸⁶ The University of New Mexico offers a course solely on Indian Gaming. However, New Mexico legalized racetrack casinos ten years ago; last year, New Mexico's "racinos" generated \$238 million in revenue. Similarly, the only gaming courses at the University of Tulsa and the University of South Dakota focus solely on Indian Gaming. Yet, Oklahoma and South Dakota "racinos" respectively generated \$73 million and \$89 million in revenue last year.

For instance, in Indiana, commercial casinos and racetrack casinos grossed nearly \$2.6 billion dollars in 2006.⁸⁷ However, not one of the state's law schools offers a course in gaming law. To offer some perspective, nationwide movie box office receipts for that same year totaled less than \$10 billion. That is to say, in Indiana, a state whose population equals less than 2% of the entire United States, the total spending on gambling equaled more than 25% of the entire nation's entire box office receipts. Nevertheless, none of the state's law schools offer a course on gaming law. They do, however, offer courses on entertainment law. This, despite the fact that no major film, music or television companies operate out of Indiana.

Likewise, in Missouri, gaming revenues topped \$1.6 billion in 2006. However, not one school within the state offers a course in gaming law. Also, in Delaware, where racetrack casinos grossed \$651 million dollars in 2006, the state's only law school does not offer a course in gaming law. In Rhode Island, Racetrack Casinos gross \$406 million dollars; yet again, the state's only law school does not offer a course in gaming law.

Moreover, the statistics cited above do not include Indian gaming; if we include Indian gaming in the calculation, another 18 states and at least 55 law schools enter the fray. Meanwhile, only 13 of those law schools offer any courses on gaming law. In total, including commercial casinos, racetrack casinos, and Indian gaming, 37 states are home to gaming operations. Those same state also contain roughly 129 law schools, only 27 of which have ever offered a course in gaming law and only 16 of which have offered such a course within the last year.

Ironically, the University of Utah, which is located in one of only two states that completely ban all forms of gaming, offers a yearly course on the subject, taught by the Chief Executive Officer of the Northwestern Band of the Shoshone Indian Tribe.

⁸⁷ American Gaming Association, 2007 STATE OF THE STATES (2007).

As I noted in the previous section, the gaming industry is not starved for talented attorneys. Law schools need not train students en masse to become "gaming lawyers." The field of gaming law remains a relatively narrow one, composed of only a handful of highly skilled legal professionals. I am merely suggesting that the expansion of the industry has brought gaming issues to bear on other practices of law and that the subject is especially useful as a vehicle for legal education. Admittedly, the specialized practice of gaming remains relatively small.

However, even a basic search on the Martindale Hubble (MH) Attorney listings reveals that gaming law is more widely practiced than many of the subjects commonly offered as law school electives. For instance, Animal Law is offered at 72 law schools throughout the country;⁸⁸ but a search for the term "animal" within the practice description of attorneys on the MH listings reveals on 574 attorneys nationwide.⁸⁹ Meanwhile, more than two thousand listings on the MH Directory indicate that they work in gaming-related practice areas.⁹⁰

Similarly, the overwhelming majority of law schools throughout the United States offer coursework in Federal Indian Law, even though only a handful of attorneys work in that field. A search on the MH Directory for the terms "Native American" or "Indian" only yielded 2011 results, eleven fewer results than the terms "gaming" or "gambling." Also, virtually every school in the country teaches public international law, yet only 107 listings on MH showed attorneys specifically identified as working in that field.

⁸⁸ See, National Association for Biomedical Research, Animal Law Section, "Animal Law Courses/Seminars" available at <http://www.nabr.org/AnimalLaw/LawSchools/AnimalLawCourses.htm> (last visited May 15, 2007).

⁸⁹ Note that a search on the Martindale Hubble Database often yields duplicate results. If the search yielded 574 results, it is likely that upon a closer examination at least 200 of those results are duplicates.

⁹⁰ A search on the Martindale Hubble Attorney Listings for the terms "gaming," "gambling," or "casino" listed in the "Practice" section unearthed 202 results.

Even though more attorneys identify themselves as working in gaming-related practices than identify themselves as working in animal law, Indian law, or even public international law, law schools continue to favor these subjects over gaming. Simply stated, the number of gaming law courses offered by American law schools does not reflect the prevalence of the Gaming industry in the United States.

CONCLUSION

Admittedly, the decision to adopt a new curriculum is nuanced and complicated by the political pressures of university administration. If I were able to survey every single law school dean, asking each why they do or do not have a course in gaming law, I'm certain that the answers would differ from school to school. Moreover, I'm certain that some responses would be candid while others would be tactfully moderated. In the end, I have no way of knowing precisely why so few law schools have decided to offer study in gaming law. Consequently, any theories that I may have as to why schools have avoided gaming law are somewhat assumptive and speculative.

Nevertheless, based upon my observations and analysis, I suspect that some of the reasons for schools' reluctance to adopt gaming law curriculum include (1) a moral resistance to the inherent "evils" of gambling; (2) the tendency to favor public interest scholarship over business-related scholarship; and (3) a focus on federal rather than state law. Each of these issues could be debated at length in independent articles.

Even if you are of the opinion that gaming is an industry that must be curtailed and contained, its study is essential to such a mission. Recognizing the serious harms that gambling can cause in a community, any government that legalizes gaming enterprises must adopt a well-reasoned regulatory system that can mitigate, or even eliminate, such harm. The adoption of such regulation involves complex policy considerations that require in depth study and analysis. These issues elicit evocative legal arguments that demand scholarly attention and deserve discussion in the classroom.

Gaming law, as a course of study, holds significant potential for both practical and theoretical legal education, making it a unique opportunity for law schools to enhance the caliber of their curriculum and better prepare students for the challenges of legal practice