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Gambling and the Law®: What Is Poker?

Should the prohibitions on internet gambling have a carve-out for online poker?

The question is much more complicated than it seems. If the argument is that poker is not gambling but rather a contest of skill, should the exemption be limited to poker tournaments? What is “online” – what about people playing against each others at terminals in a club, or linked clubs? Which laws are getting changed, federal or state? And who is doing the changing, legislature, courts or regulators?

Let’s start with what should be the easiest question: “What is poker?”

I have been asked that question twice while on the witness stand and under oath. Fortunately, in both cases I was prepared.

The first came in the 1980s when California card clubs were trying to expand beyond 5-card high, 5-card low and panguini, the only games they were spreading at the time. Even Texas hold ‘em was thought to be illegal. The problem was a statute from 1885 which outlawed “stud-horse poker.”

The Attorney General and local law enforcement thought this outlawed any poker game where a card was dealt face up. They also thought that all forms of poker were illegal except for draw.

So, the now defunct Huntington Park Club invented a game to test the law: “7-card down.” Here are the rules: players are dealt two cards face down, there is a round of betting; then each remaining player receives three cards face down and there’s another round of betting; then the fourth and then the fifth cards are dealt face down with betting rounds. The best five card hand wins.

It was purposely designed to look like hold ‘em, but clearly to be something else.

The L.A. County Counsel tried to shut it down, claiming it violated the prohibition on stud-horse poker.

I testified about the years of research I had conducted trying to find out what the

stud-horse poker was that was outlawed in 1885. The best I can tell from court cases, 123 year-old newspapers and interviews with an old-timer in Arkansas, which had a case within living memory, stud-horse poker was either a house banked game, 5-card stud, or code for “Let’s cheat the newcomer.” Whatever it was, it was played with players getting at least one card face up.

The judge interrupted my testimony as an expert witness to ask his own question: “What is poker?” My answer was that players got equal number of cards, there was a ranking of hands based on how rare the hand was, but players could win with lower ranked hands if they made a bet that was not called.

He then asked, “What is stud poker?” The County’s expert testified that multiple betting rounds distinguished stud from draw. I said there are additional forms of poker, including straight poker, the original game, where all the cards are face down but without a draw, and community card games like spit in the ocean and hold ‘em.

I said that stud poker means at least one of the players’ own cards is face up, so that the strength of their hands is shown to all.

Journalists speak of a “stud horse headline.” These are the ones in gigantic, bold print, like “**WAR.**”

My theory is that we know a real live “stud-horse” is a stud horse because he is (don’t blush) obviously male.

Later, the Legislature removed stud-horse poker from the list of prohibited games, leaving us with the simple question of what is poker? No problem there, right?

More next column.

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