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Gambling and the Law®: Another “What Is Poker” Case

Last column I started the discussion of whether the prohibitions on internet gambling should apply to online poker by asking the fundamental question: “What is poker?”

Twenty years ago I actually had to answer that question under oath in the “7-card down” case I described in my last column. The fight was about what games were prohibited by an 1885 statute that outlawed “stud-horse poker.”

But in my next case, the definition of poker was the central issue in the case.

It was ten years later, April 1997, and Florida had recently legalized poker to be played commercially at the state’s parimutuel outlets. Unfortunately, the proponents were willing to make a compromise to get cardrooms authorized that almost proved fatal: They agreed that the stakes would be the same low stakes permitted for home social games.

Everyone called them “penney-ante.” but in a way they were worse. At least with antes of a penney many players play seriously, to avoid the embarrassment of having to buy in again. In internet Texas hold’em games where chips are entirely free, many players go all in on the first two cards. But go to a micro-stakes table where players are betting 2 cents - 4 cents or 5 cents - 10 cents, and you see most player wait until they have somewhat decent cards.

What Florida did was put a \$10 limit on how much any player could win in a single game. This meant at a card club table with eight players, each player simply bet \$1.25 before the deal and then the winner got the \$10 pot. There could be no betting after the first round. And the house charged a seat rental fee.

The clubs tried desperately to figure out a way around the restriction. The St. Petersburg Kennel Club requested the Florida Department of Business and Professional Regulation to permit it to spread Big Poker 21, Florida 21 and Sure-2-Win. These games are obviously not the games you think of when you think of poker. In fact, you could say they are not poker according to Hoyle.

In fact, it was the fact that the games had few of the elements of poker games found in Hoyle, specifically HOYLE'S MODERN ENCYCLOPEDIA OF CARD GAMES by Walter B. Gibson, 1974, 1st edition, that they were not considered poker. The regulator had adopted that book as a guideline in evaluating whether a game would be approved to be played in the new card rooms.

Edmund Hoyle would probably have approved. Although he died 200 years earlier and never saw a poker hand, since the game had not yet been invented, he did believe in categorizing games according to their rules. And these games did not look much like poker.

I was called to testify that they did not have the basic elements of poker. In particular, there was no way a player could bluff.

But before I started testifying, the games first had to be described to the administrative judge hearing the case. Big Poker 21, for example requires players to make their bets before they see their cards. They then are dealt two cards. All face cards have the same value, they are worth ten points. Aces are one or eleven. If a player gets 21 on his first two cards, he automatically wins. Otherwise he can keep drawing cards until he decides to stand, with the player getting closer to 21 being the winner.

Before I could be asked a single question, the judge said, "That's not poker, that's blackjack."

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