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## DEMYSTIFYING POKER

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Poker may not be the next big thing, but it remains the current big thing, and despite the growth of interest in other games, such as backgammon and mah-jong, they were the next big things, Poker remains at the top of the popularity charts. That is where it is likely to remain for some time to come, as the explosion in the popularity of Poker shows no sign of abating, and is still spreading around the world.

All the more surprising therefore that there remains a deal of confusion about the legal status for Poker, both online and terrestrially.

In the US, arguments rage as to whether Poker is a game of chance — and therefore constitutes gaming — or whether it is game of skill, in which case it does not. Many States rely upon case law to determine that question, but unfortunately in some of them the point has not been tested in the courts.

In the UK, the televising of Poker tournaments, and the existence for two years of a Poker venue, the Gunshot Club, led to confusion about the legal status of Poker, and the circumstances in which it can legally be played.

Although the law on the point is complex, it is time that some of the myths surrounding the legal status of Poker were dispelled, even at the risk of depriving my firm of a considerable amount of work!

Everything flows from the way in which Poker is treated under the law. In the UK, games of chance played for winnings or money's worth constitute gaming under Section 52(1) of the Gaming Act 1968. Games of chance include games of chance and skill combined, whether or not the element of chance can be eliminated by superlative skill. In effect, this means that any games involving either cards or dice will be treated under the law as games of chance. The regime of the legislation, both the 1968 Act and under the new Gambling Act 2005, makes all gaming illegal unless either it takes place on premises licensed for gaming, or falls within one of the limited exceptions, such as playing games of chance at home, or in certain other places falling within the phrase domestic occasion! i.e. privately.

On this basis broadcasters have been able to televise Poker competitions from their studios which are private premises, to which the public do not have access, and which are not licensed for the sale of alcohol. Because their income is derived from subscriptions and advertising on their channels, they are not concerned about the inability to make any charge from the players in fees or rake. There are provisions which enable Poker to be played on certain club premises, but the gaming cannot be the main inducement to visit the premises, and the very low level of charges which can be made render this an impractical way of operating Poker or even occasional Poker tournaments, commercially.

It must be remembered that the whole purpose of gaming legislation, both in the 1960s and now, is to bring all commercial gaming within the ambit of the regulatory system. It is therefore not surprising that the only practical way of offering gaming on a commercial basis is to obtain a gaming licence. The same is true whether or not the licence is for the operation of casino gaming, or card room gaming, including

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Poker. This means that a licence can presently only be applied for in one of the allocated permitted areas for gaming under the present legislation. Under the new legislation, which will come into force next year, the number of new licences will be restricted to 17 for at least for the first three years, and those will all be allocated for casino gaming.

The upshot is that anyone wishing to operate a commercial Poker or other card club in the UK in the next few years would be well advised to apply now, as the deadline for seeking Gambling Commission consent to a licence application must be made by the end of April. At least one such application is anticipated in London, but for the moment, perhaps surprisingly, the only gaming licence for a dedicated card room gaming club in the UK is in Margate.

So what of the Gunshot Club? Given that it does not fall within the limited exceptions allowed for in the legislation, does not have a gaming licence and it is not in any event within one of the existing permitted areas, it is now the subject of prosecution, and the case has been sent for trial, probably to be heard later this year. Now that the Gambling Commission has its own powers of enforcement, which the old regulator (the Gaming Board) did not, anyone seeking to take advantage of the Poker boom in the UK would be well advised to ensure that their operation falls within the law.

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