



Bahar Alaeddini solicitor, Harris Hagan

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The first question is whether edge-sorting, or any other technique designed to beat the house by circumventing game rules, is exploiting a loophole? Quite clearly, it is. As a result of his skilful edge-sorting, Ivey gained an advantage in the game that enabled him to establish whether the first card to be dealt was a 7, 8 or 9 and, as a result, the odds in Punto Banco changed and favoured him. The second question is whether such exploitation is cheating.

The Oxford English Dictionary defines cheating as dishonest behaviour to gain an advantage, such as by fraud or deception. There are varying legal definitions of cheating, including the common law definition used in civil law and the statutory definition in criminal law. But is dishonesty a prerequisite of cheating? As long ago as 1845, section 17 of the UK Gaming Act defined the criminal offence of cheating as “any fraud or unlawful device or ill practice”. International jurisdictions

have different definitions and most to our knowledge require proof of dishonesty, fraud or deceit, but not always.

Most relevantly to the Ivey case, section 42 of the UK Gambling Act 2005 provides that cheating may, in particular, consist of actual or attempted deception. It is therefore clear that deception, which is of course difficult to prove, is not necessarily an inherent element. The explanatory notes to the 2005 Act add that although cheating is not defined in the 2005 Act, it should be given its normal, everyday meaning, which takes us back to the OED definition.

Whilst some commentators believe that dishonesty is a necessary element of the act of cheating, Mr Justice Mitting, handing down his judgement in the Ivey case, was unconvinced that it was part of the civil concept of cheating. He instead decided that ill-practice also amounted to cheating. He used the example of looking at your opponent’s cards, which may or may not involve an element of dishonesty.

Further, he acknowledged that “there are difficulties with the current English statutory definition...[because] there is no attempt to define the overall concept of cheating as the explanatory notes make clear.”

The Ivey case was the first in an English court to consider the issue under the 2005 Act. Mitting noted in his judgement that there was no commonly accepted view amongst those who play Punto Banco about whether edge-sorting does or does not amount to cheating. However, he concluded that for the purposes of civil law, it did amount to cheating. Mitting stated that Ivey was not simply taking advantage of an error by the croupier. Ivey converted a game in which the likelihood of each side winning was equal, into a game in which his knowledge was greater than that of the croupier. Whilst Mitting was unwilling to determine the requirements of cheating under the 2005 Act, he did confirm that cheating could be based on ill-practice that did not include deception.