Op-Ed/Editorials – Poker Tournaments in Bars, Clubs, Online … Everywhere

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> "*Nothing succeeds like success.*"
> *— Alexandre Dumas*

The astounding success of poker on television and the Internet has created a poker phenomenon in the United States. And everyone wants a piece of the action.

Toys 'R' Us ran out of poker gift sets at Christmas, and so did Nordstrom. Run a search for "poker' at BarnesandNoble.com and you get 670 titles, including kits for home Texas Hold 'Em tournaments. Stores sell poker clocks, lamps and bed sheets. For $5, I bought a computer game of Dogs Playing Poker from Office Depot. (Incidentally, The Art of Gambling: Through the Ages by Arthur Flowers and Anthony Curtis asserts that those poker dogs are America's best known art – and I believe them. I've had 'A Bold Bluff' and the others as the background on my personal checks for years.)

The craze cuts across all lines. A couple of 12-year-old kids I know decided not to go trick-or-treating, because they had a big poker tournament set for Halloween. Leo Chu, owner of Hollywood Park casino, told me a little old lady came in and said she wanted "to learn how to play that game where you push all your chips into the middle of the table."

Even the states are getting into the act: The North Dakota House of Representatives voted to allow the state to license and tax online poker operators.

A bill in Connecticut would make poker legal in restaurants and bars. The Mohegans have said that if that happens the tribe will withhold the state's share of slot machine revenue.

After a bowling alley was raided in St. Cloud, Minnesota, the local State Senator introduced a bill to make it clear Hold 'Em tournaments are legal, if there's no prize money. The County Attorney did not file charges, deciding poker might not be illegal even under present law.

Poker got its biggest push through the new mass media: cable T.V. and the Internet. When the World Poker Tour introduced the sophisticated use of lipstick cameras to let home viewers see players' down cards, the show broke records at the Travel Channel.

It also spawned imitators. There are now at least seven TV shows and movies either on-air or being made.

As for the 'Net PartyPoker has 60,000 players online at any time. There are no accurate figures on the industry, but a conservative guess is that Internet poker sites will take in more than $1 Billion this year.

So, every day I get at least one inquiry about whether it is legal to operate poker games, perhaps as a membership club, or as a game of skill, or with the operator not making any money off the games, etc., etc.

I have seen literally a thousand variations. The proposed locales range from homes and clubs to bars. Lots of bars. It seems everyone with a liquor license wants to set up poker tables.The Internet is also a hot alternative. Some want to set up kiosks or computer terminals in bars, linked to online poker websites.

Everyone recognizes there are legal barriers. Entrepreneurs can be pretty inventive in trying to get around the law. How about turning a bar into a dues-paying private club run by a non-profit company incorporated in Uzbekistan and licensed by Rwanda, where players pay nothing to participate in poker tournaments, and the winners receive points redeemable only on the Internet for merchandise shipped by monks from Belize? If only it were that easy.

Enforcement actions are beginning against bar-owners and others who have set up poker tables. For example, the Louisiana Office of Alcohol and Tobacco Control is trying to close down the no-limit Texas Hold 'Em tournaments that have

become common in barrooms throughout the state. Whether it succeeds will depend upon subtle and complex questions of state law, such as, "Is a bar owner "profiting from gambling" if he takes no direct cut, but increases his business by having poker tournaments?"

It is usually, but not always, easy to know what is clearly permitted. Most casinos can spread poker under state law. California, the biggest poker jurisdiction, also has "local option," meaning clubs have to have licenses from their local cities or counties. Some states, like Florida, allow commercial poker but put severe limits on how much can be bet.

The law for licensed operators and tribes can be very complicated. For example, California has a statute that allows a club to rake the pot only three times. An operator who takes money out of the pot four times is committing a misdemeanor. And so, unknowingly, are all the players at that table.

Tribes in states with legal poker can operate their own games. But in a little-known twist in the federal Indian Gaming Regulatory Act, poker is one of the very few forms of gambling where the tribes must follow state law on stakes and hours of operation. So, any high-stakes poker game you see in a tribal casino in Florida is illegal. Florida tribes could run games with limits higher than state law, but only if they first have compacts with the state.

Operators in a few states have found obscure exemptions from the general prohibitions on operating poker games for profit. In Kentucky, it is apparently perfectly legal for a licensed charity to run poker games, as long as they are limited to six-hour stretches. In New Hampshire, entrepreneurs run up to ten poker tournaments a year for nonprofit organizations.

Many states have express exemptions for social games played in private homes. In California, there is no state prohibition on a home poker game, where no one can make any money other than what they win. Note, this still could violate a city or county ordinance, although you have a better chance of winning the World Series of Poker than of being arrested.

Poker could also be legal if it lacked one of the elements of gambling: prize, chance or consideration. Games where players pay, but can win nothing of value, are usually legal as amusement games. I believe it is possible to run poker tournaments as contests of skill. And operators are taking the "no purchase

necessary" approach and opening poker games which can cost nothing to enter.

The only way to be sure your plan for a poker tournament is legal is to have a lawyer apply your state’s laws to your idea. It is very difficult, but not impossible, to operate poker games that won’t get you thrown in jail. But the next problem is figuring out how to be both legal and still make money.

What do you think? Comments can be addressed to Prof. Nelson Rose.

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