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## GAMBLING AND THE LAW®: Sweden Gets It Mostly Right

The Supreme Court of Sweden has ruled that poker is either a game of skill or a game of luck, depending upon the rules.

At first, this sounds almost like a joke. But, in fact, the Court got it almost completely correct.

The poker game under consideration was Texas Hold ‘Em. Certainly, experienced players know this is a game of skill.

But courts have been reluctant to rule that any poker game is more skill than chance. Maybe it’s because they fear such a ruling will open the door to widespread cardrooms. Maybe they harbor deep anti-gambling feelings. Or, maybe, they are simply ignorant.

There is some evidence that some judges who have been asked to rule on poker don’t understand how the game is actually played. Either that or they are intellectually dishonest. How else can you explain statements in judge’s opinions like, “an amateur could beat a professional by getting dealt a Royal Flush”?

This might be true, if poker were a game similar to a single roll of dice. In the real world, I don’t believe there has ever been a poker game in which players, who had never played with each other before, sat down to a game where there would be one, and only one, hand dealt.

I have given a formal Legal Opinion that if courts and prosecutors were honest in evaluating poker under the existing legal tests, they would declare it a game of skill. Particularly if it were run as a tournament.

I have also advised operators and their lawyers that the only test cases they should

take to court are those where a tournament was involved. Chance drops out with more repetitions. And the “anti’s” can’t argue that poker is a game that depends on a single hand.

The Swedish Supreme Court has agreed with me.

The main case revolved around a Texas Hold ‘Em tournament. Because it was open to the public, the defendants were charged under Sweden’s anti-lottery laws. But the Supreme Court ruled them not guilty, because poker, when played as a tournament, was predominantly skill and not gambling.

The defendants were convicted of the lesser crime of illegal gambling for running cash, sit-and-go, side games.

The Court noted that tournaments are often played over a period of days. The cash games, however, allowed players to join, and leave, at any time. This, the Court ruled, meant that it would be proper to consider individual hands when determining whether the game was more skill or luck.

Not entirely true, of course. Even in sit-and-go games, nobody ever sits for a single hand and then goes.

But it is nice to have a Supreme Court say, in effect, “You should listen to Professor Rose when he tells you how to bring your test cases.”

Opponents are already attacking the decision, claiming that Sweden’s lottery laws would cover a game even if it is predominantly skill. That is going to be a hard argument to make, since the Court dismissed the lottery charges.

But every golden lining has a cloud.

The Scandinavian countries have great social services, and high taxes. So far, gambling winnings from within the European Union are not taxed.

However, Sweden taxes “professional income” at rates as high as 50%.

So, the operators may go free. But Swedish poker tournament winners may be forced to give up half their winnings in personal income tax – a very tough rake to overcome!

END

© 2012, I. Nelson Rose. Prof. Rose is recognized as one of the world's leading experts on gambling law, and is a consultant and expert witness for governments, industry and players. His latest books, *INTERNET GAMING LAW* (1st and 2nd editions), *BLACKJACK AND THE LAW* and *GAMING LAW: CASES AND MATERIALS*, are available through his website, [www.GAMBLINGANDTHELAW.com](http://www.GAMBLINGANDTHELAW.com).