

Gambling and the Law[®]: Culture Clash



I. Nelson
Rose*

It is not easy to do business in Asia. Or in the U.S. This is especially true of heavily regulated businesses, like legal gaming. And the problems are compounded when an individual raised and doing business in one culture wants to expand into a foreign market.

Sometimes, the barriers are structural. How, for example, do you prove your financial purity to a Nevada regulator when you operate in a country in Asia where you cannot easily get access to your own bank records? Investigators from American state regulatory agencies are often surprised to find that their status of being police agents means little when trying to get confidential information from the police in Tokyo, let alone in Beijing. Imagine the problem for a regulator from, say, Pennsylvania, who did not technically have police agency power.

At other times, misunderstandings come from cultural differences. In the U.S., casino operators and suppliers often have to supply fingerprints to state gaming regulators. But in most of the rest of the world being fingerprinted is often seen as a sign that the person must be guilty of a crime.

How do you even get the official fingerprints to send to an American state regulator when your local police tell you that they only fingerprint individuals who have been arrested?

And the world has just gotten a lot more complicated.

Imagine how difficult it was for the U.S. company, Las Vegas Sands ("LVS"), to get the rights to open casinos in Macau. How, exactly, do you do that?

Richard Suen, a Hong Kong businessman, claimed he had connections and had a deal to introduce LVS to the proper Chinese officials. He claimed he was never paid and filed suit. Trial was held in a Nevada court in 2008. He won a verdict of \$43.8 million. Two years later, the Nevada Supreme Court reversed, ruling the trial judge should have let the jury decide the question of whether Suen had an oral contract to get \$5 million and 2 percent of the casino's gaming revenue.

Don't ever believe that old adage that an oral contract isn't worth the paper it's written on. In May, 2013, a second jury awarded again ruled in Suen's favor, this time awarding him \$70 million. Adding in interest, growing the total by \$8,400 a day, by the time this case hit the Nevada Supreme Court a second time, Suen was due to receive \$115 million. Suen has won most of these legal battles, without much more real evidence than people testifying what they said more than a decade earlier.

For that amount of money, Adelson had LVS hire the best, Harvard Law Professor Alan Dershowitz, to handle the appeal. Great lawyers are worth whatever you have to pay. In July of this year, the Nevada Supreme Court reversed



the second Suen victory and sent it back for retrial, at least as to damages.

It is often difficult for foreigners to understand the American legal system. Few countries, even in the English-speaking world, require the lawyers representing the parties to do so much, be zealous advocates only for their clients, while court and other governments officials do so little, especially when it comes to ascertaining the facts. And the American system takes so long. Suen's suit is now more than 12 years old, and it has just been kicked back to the trial court.

Today, it is not just American gaming companies trying to open successful land-based casinos around the globe. Genting has expanded from its Highlands hotel-casino in Malaysia to the integrated resort in Singapore, a racino in New York City and a billion-dollar casino complex in Las Vegas. Casinos Austria probably operates more casinos in more different countries and on ships, than any other operator.

Every new business, whether created by changes in technology or the law, starts with many small entrepreneurs competing against each other. Within a few years – it used to be decades – most of the small operators have gone out of business, often by mergers. Consolidation continues until there are only a handful of companies running the vast majority of the industry.

So, the hundreds of small automobile manufacturers that existed in the U.S. in the early 1900s became only three. There are now very few makers of computers or cell phones. And five companies control more than 80 percent of the legal gaming on the Las Vegas Strip.

The same sort of consolidation is occurring in online gaming. And internet operators are looking at buying or merging with land-based operators, and vice versa.

Sometimes the consolidations are pushed by the way laws are made and written. The well-established and politically powerful casino operators in Atlantic City made sure that the only companies that could get internet gaming licenses were,

well, themselves. A large online poker operator, PokerStars, wanted in. So it tried to buy the brick and mortar Atlantic Club, formerly known as the Atlantic City Hilton Casino. It was turned down by the regulators, because it has accepted real-money players from the U.S.

Then Pokerstars was bought by the Canadian gaming company, Amaya. Amaya was smart enough to hire one of the top former New Jersey casino regulators, Tom Auriemma, to advise the company on how to get into that state's new internet casino market. Auriemma knew that the only way to get a gaming license is to make sure there are no bad apples. So he cleaned house, eliminating executives who had been involved with PokerStars' online poker in the 1990s and early 2000s. And New Jersey found Amaya was suitable to do business with Atlantic City casinos.

It's not just landbased casinos wanting to go online and vice versa. Caesars Entertainment paid more than \$60 million dollars in 2011 to buy Playtika, founded by a couple of Israelis for about \$2 million. Playtika lost money all nine months it existed, before being acquired. But it also had developed some of the most popular social casino games on social networks. Caesars built Playtika up. Five years later, Caesars sold Playtika for \$4.4 billion.

Language is obviously the first barrier to overcome. The problem is particularly acute for legal gambling. Throughout the world, gambling is restricted by law. Which means that legal gaming is a creation of local law. And local laws between countries differ a lot more than the difference between states.

Utah and Nevada share a border but are seen, correctly, as having completely different public policies toward gambling. As different as they may be, any student of American law can fairly quickly determine what the laws are in the two states. A good lawyer can even give a legal opinion on whether whatever restrictions on, say, advertising of casinos exist in the two states are valid or violate a higher law, like the United States Constitution.



But Utah and Nevada are part of the same legal system, with the same history and culture. And the same words. For while doctors have medicine and scalpels, lawyers only have words.

When Portugal gave Macau back to China in 1999, it insisted that the laws of the S.A.R. continue to be in both Chinese and Portuguese for the next 50 years. Since no two languages are exactly the same, this creates the possibility of conflicts and confusion. The casinos in Puerto Rico at least know that the Spanish version of a local law controls if there is a conflict with the English version. Of course, it does not help that many of the operators in Macau today cannot read either Chinese or Portuguese.

Even if the Americans and Australians running Macanese casinos were fluent in one or both of the official languages, they wouldn't necessarily appreciate the different legal cultures.

For example, Macau does not issue casino licenses. Operators get concessions. These derive from Portuguese law. American law is based on English common law.

And the legal cultures of the People's Republic of China and the U.S. or Australia could not be more different. For example, a few years ago the Macau Chief Executive unilaterally announced a moratorium on new casino construction. In the U.S., the lawsuits would have been flying. But in China... well that is just the way things are done.

Cultural differences arise at all levels of the law. In China, gifts are a basic part of the social fabric and family ties are strong. Even something as standard as giving a gift (in Asia) might be a federal felony under U.S. laws.

And NOT giving a gift can get you in trouble. The American casino operators in Macau were criticized by local Chinese for not giving money immediately to help after a major earthquake on the Mainland. No one cared that Americans and American companies can get into real legal trouble if a gift falls under the technical definition of "bribe."

If gift-giving is an important part of Chinese culture, so is the family. So, how should an American gaming regulator react to a Chinese father giving his daughter \$80 million to buy a share of a casino?

New Jersey regulators said no one gives a gift like that without strings attached. Since they didn't like the father, Stanley Ho, they found his daughter Pansy unsuitable to be partners with MGM in Macau. Nevada regulators had

the same information, but decided that they would let MGM stay in business with Pansy, unless and until they saw some undue influence by Stanley.

We now have about every cross-over possible: Western companies in Asia, and Asian companies in the West; European internet operators going into American land-based gaming, and vice versa; and a complete merger of social and real money gaming. Individuals who are used to one world are often surprised at what they find in the other, both institutionally and culturally.

There is one culture that is unlike all the others: The American regulatory system over casinos. Operators from other parts of the gaming industry are often shocked at the intrusiveness of state government background checks, and the control of every part of these privately owned businesses by federal, state and local officials.

Nevada created its regulatory system in the 1950s, for very good reasons. The Kefauver hearings, the first televised Congressional investigations, linked Las Vegas casinos with the Mob. State officials feared the federal government might take over control of casinos, or even close them all down.

There may no longer be secret Mafia owners, but the culture of complete control was adopted by every other American state. Casinos in Atlantic City were not even allowed to have different colored felts on their tables.

If America wants to remain the leader in legal gaming, we have to remember that in culture clashes, there are no winners. Given a choice between Atlantic City and Macau, MGM chose China. It has taken the company years to get back in.

© Copyright 2016, I. Nelson Rose, Encino, California. All rights reserved worldwide. Gambling and the Law® is a registered trademark of Professor I. Nelson Rose, www.GamblingAndTheLaw.com.

***About the author**

© 2016, 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, Gaming Law: Cases and Materials and Gaming Law in a Nutshell are available through his website, www.GamblingAndTheLaw.com.

