

## ▶ GAMBLING AND THE LAW®



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# Is proxy play legal?

In a Very Important Person suite in a casino in Macau, a scene similar to the following is probably taking place at this very moment. The game, of course, is Baccarat.

**J**unket operator into a telephone headset: "O.K. How much do you want me to bet on this hand?"  
High roller, from somewhere on the Chinese Mainland: "\$100,000."  
Junket operator: "O.K. I've bet \$100,000 Hong Kong dollars for you on Player."  
Junket operator: "You got a six of diamonds and the two of clubs."  
Junket operator: "The dealer got the three of diamonds and the six of hearts."  
Junket operator: "Sorry, you lost. How much do you want to bet on the next hand?"  
This is called proxy play or telebetting, and it is very big money.<sup>1</sup> Is it also legal?

Proxy play was little known outside of VIP rooms until a person close to a junket operator commented at the Global Gaming Expo Asia in May 2014 that 10 percent of Macau's VIP revenue came from proxy play. This amounts to at least US\$3 billion a year. To generate that much revenue players, who are almost always not physically present in Macau, let alone in the VIP room, are betting tens of billions of dollars by phone.<sup>2</sup>

Players are not allowed to have cameras or video recorders in Macau's casinos. So proxies have to talk into their cell phones, with the video off.

Since other players would be annoyed at this constant chatter, proxies arrange to have their own, private table. Junket operators, in fact anyone, can get their own table in a VIP room. All you have to do is put up a minimum of HK\$3 million (US\$385,000) for the gambling session.

There are obviously two practical problems: How can the gamblers make sure the cards are dealt as his proxy said they were; and, how does the casino and junket operator collect if the gambler loses?

The first issue depends upon trust. Some Macau VIP rooms have printers and faxes, but that does not really work as a substitute for a live, streaming video. There is some security in knowing that the proxy is saying what the cards are out loud, in a licensed casino and within the hearing of the dealer. Of course, this assumes the junket operator is actually in a casino and actually playing Baccarat.

Proxy play has caught on in the Philippines because video cameras are not always forbidden, so there is online streaming of the actual games. Proxy players often have a television on behind them, set to a channel like CNN, so the remote bettors can see the cards being dealt in real time. There is probably no more chance of a dealer and proxy colluding to cheat the remote gambler than there would be of a dealer cheating a live and present player. The video gambler also eliminates the possibility of the casino being nothing more than a TV set.<sup>3</sup>

The second issue is actually quite common in China. Of the

28 million visitors to Macau each year, more than half come from the Mainland.<sup>4</sup> The People's Republic of China has put severe restrictions on the exportation of cash from the Mainland, even to Macau and Hong Kong, which are legally part of the PRC. It is against the law for anyone from the Mainland to take out more than 20,000 yuan renminbi, or about US\$3,200, in cash. That's less than \$25,000 in Hong Kong dollars; a typical bet in the VIP rooms in Macau casinos. Mainland players who visit Macau in person do have to contrive ways to get actual cash to the casinos. Due to the PRC's restrictions, when players and junket operators want to get cash out of the Mainland they have to resort to smuggling;<sup>5</sup> taking expensive jewelry for sale; pretending to buy jewelry from a store in Macau;<sup>6</sup> going to stores in Zhuhai and other border cities to arrange, for a fee, for an agent in Hong Kong or Macau to meet the Mainland visitor with any amount of cash the visitor wants.

But junket operators involved in proxy play do not need to transfer cash. Although "junket operator" is the generally accepted term used in the Western English language press, the title is misleading. They are actually called "VIP gaming promoters", because all such operators, whether involved in proxy play or not, do far more than simply arrange for players to make bets in Macau's licensed casinos. They lend the players the money to make those wagers.

Gambling debts are not legally enforceable on the Mainland. So how does any junket operator collect, if he cannot go to court? The overwhelming majority of players pay up, often by negotiating a settlement for less than the total owed. But organized crime syndicates, known as triads, appear to sometimes become involved, when Mainland residents do not, or cannot, pay off their gambling debts.

In a 2008 study by Macao Polytechnic of 99 high rolling Mainlanders who made the Chinese newspapers for excessive gambling, seven died "extra-judicially," meaning they committed suicide or were murdered.<sup>7</sup>

The major problem proxy play creates for licensed casinos in Macau is not whether triads are involved with collecting gambling debts. Casino operators can say, quite truthfully, that they do not know what junket operators are doing in specific cases of casino related debt collection.

The same cannot be said about proxy play. Here, the casino sets up the private table for the proxy, allows the proxy to talk on a phone and describe every card dealt, and does anything else the junket operator wants, within the rules, to facilitate the gambling.

4 [http://www.dsec.gov.mo/getAttachment/eb632e59-4789-4abc-a0ee-83ae35810568/E\\_MV\\_FR\\_2013\\_M05.aspx](http://www.dsec.gov.mo/getAttachment/eb632e59-4789-4abc-a0ee-83ae35810568/E_MV_FR_2013_M05.aspx).

5 Of the 28 million visitors who entered Macau in 2013, there were only 141 seizures of cash at the PRC border. Macau case tops cash seizures, *Asia Gaming Brief*, <http://www.asiagamingbrief.com/intelligence/latest-headlines/623-macau-case-tops-cash-seizures.html> (July 19, 2013).

6 Some of the jewelry stores are actually located on the floors of Macau's casinos; they don't sell jewelry but rather cash. <http://graphics.thomson-reuters.com/14/03/CHINA-UNIONPAY.pdf>.

7 Another 15 were sentenced to death, usually for embezzlement. Zhonglu Zeng and David Forrest, "High Rollers from Mainland China: A Profile Based on 99 Cases," <http://digitalscholarship.unlv.edu/grj/vol13/iss1/3/>.

1 AGBrief 23 May 2014.

2 Muhammad Cohen, "Macau Casinos Allow High Rollers To Bet By Phone, With Plenty Of Hang-Ups," *Forbes* (July 24, 2014), <http://www.forbes.com/sites/muhammadcohen/2014/07/27/macau-casinos-allow-high-rollers-to-bet-by-phone-with-plenty-of-hang-ups/>.

3 High rollers can be fooled by phony casinos: Katie Barlowe, "VIP Room Hoax Henchmen Sentenced in Macau," April 12, 2013, <http://www.casino.org/news/fake-vip-room-hoax-henchmen-sentenced-in-macau>.

### Is proxy play legal?

Casinos first have to be in compliance with local statutes and regulations. Macau's basic law creating the framework for casino gambling does have language designed to prohibit true interactive gaming. No one thought of proxy play at the time, so the only activity expressly banned is "entering in and participating in a game using a telecommunications device."<sup>8</sup>

Companies that hold licenses from other jurisdictions have to be concerned with those laws and regulations as well. Las Vegas Sands, Wynn and MGM are all licensed by the state of Nevada, and often by other states and nations.

At least two of the American casino companies operating in Macau have decided to not allow proxy play. Las Vegas Sands had allowed phone-bets to its VIP rooms, but changed its mind last year. In October 2014 LVS that it would no longer accept proxy play. The reason given? ". . . it's a continuation of Las Vegas Sands and Sands China expanding their leadership role on compliance-related matters in general." It is unclear exactly which rule or regulation Sands thought made proxy betting problematic. There is some indication it may have been the Macau law prohibiting electronic devices. In fact, the law is written so broadly, covering any instruments that can record images, it would apply to almost all cell phones.

Even if proxy play does not violate any Macanese law, what about the laws of Mainland China, or wherever the real bettor was located when he made the wagers?

### Why would anyone make proxy bets?

Proxy play apparently developed in 2003 to allow Chinese VIPs to bet in Macau during the Severe Acute Respiratory Syndrome (SARS) epidemic, without having to expose themselves to the dangers of traveling. In November 2002 through July 2003 the outbreak of SARS, a fatal disease, in China created almost a panic atmosphere throughout southeast Asia. Telegaming appears to have been a temporary measure. There is no evidence it was meant to be a permanent and significant part of casinos' VIP room gambling.

Telephone betting is discreet. The PRC puts severe restrictions on government officials and others from even traveling to Macau. Individuals who obtained their fortunes illegally would not want to be seen taking frequent trips to Macau casinos.

Even if the remote bettors are not violating any special laws, they are undoubtedly violating Chinese general laws. The PRC has strict prohibitions on gambling and promoting.<sup>9</sup>

There are no statistics, of course, on who the players are. Junket operators target not only Mainland gamblers, but also VIPs in Hong Kong, Thailand and Taiwan. So to know for sure whether the bettors – and for that matter the casinos – are violating the law of those jurisdictions it would be necessary to research these foreign laws.

And that is why it is not usually a crime in America to violate the laws of a foreign jurisdiction. It may even be unconstitutional, because people, including corporations, have to be warned in advance that doing a certain act is a crime.<sup>10</sup>

Even if all local laws and the applicable gaming laws allow an activity, American companies have to comply with the growing number of federal restrictions on U.S. businesses' activities around the world, but is there actually a law in place that would make proxy play illegal?

American law, with very few exceptions, requires that there be an act of a legislature before an activity may be declared a crime. Legislatures may pass on some of their power to make crimes to administrative agencies, but the ultimate power resides with the lawmakers.

There does not appear to be any statute making proxy play a federal crime. Few laws, federal or state, apply outside their borders. Fewer still expressly say that violating a foreign government's laws is a crime in the

<sup>8</sup> Law 16/2001.

<sup>9</sup> Article 303 of the Criminal Law of the People's Republic of China.

<sup>10</sup> Paul Larken, "The Injustice of Imposing Domestic Criminal Liability for a Violation of Foreign Law," <http://www.heritage.org/research/reports/2013/06/the-injustice-of-imposing-domestic-criminal-liability-for-a-violation-of-foreign-law>.

U.S..<sup>11</sup> The most feared is the Foreign Corrupt Practices Act<sup>12</sup>, which would not apply.

Under American law, there are basically only three ways for a person, including corporations, to be criminally liable for actions taken by another person. The rarest are the few statutes expressly statute making everyone in a criminal enterprise liable. The most important of these is the Illegal Gambling Business Act, which makes it a federal crime for five or more individuals to violate state anti-gambling laws under some circumstances.<sup>13</sup> Does Macau have a similar theory of criminal liability? For that matter, does Hong Kong, Thailand, Taiwan or Mainland China? If it is a crime for the remote gambler to make the bet, say, from the Mainland, would Chinese law also make the proxy, and the casino, guilty as well, of making a bet under this theory of complicity liability?

The real danger for casinos comes from state gaming statutes and regulations. Gaming agencies have broad power to punish licensees for actions that will bring disrepute upon the industry. Some go further. Nevada's statute expressly provides:

A licensee shall not, in a foreign gaming operation, knowingly:

1. Violate a foreign, federal, tribal, state, county, city or township law, regulation, ordinance or rule, or any equivalent thereof, concerning the conduct of gaming;
2. Fail to conduct the operation in accordance with the standards of honesty and integrity required for gaming in this state;
3. Engage in an activity or enter into an association that is unsuitable for a licensee because it:

- (a) Poses an unreasonable threat to the control of gaming in this state;
- (b) Reflects or tends to reflect discredit or disrepute upon this state or gaming in this state; or
- (c) Is contrary to the public policy of this state concerning gaming...<sup>14</sup>

It is difficult to see how a Nevada-licensed casino could unknowingly allow a person on the Chinese Mainland, who is not allowed to gamble, to place a bet through a proxy. The casino cannot use the excuse that it did not know -- because it did not want to ask -- where the real bettor was located. In criminal law, we call that "wilful blindness," which is the same as knowing.<sup>15</sup>

Even without such a law, casino regulators should not allow proxy betting without supporting laws. A decision to allow remote wagering should be made by the legislature. Most won't even approve Internet gambling, where there is a perfect computer record of all transactions. Rules should first be put in place by regulators, in consultations with casinos and proxies, to ensure honesty and less the risks of disputes. Without statutes and regulations, proxy wagering looks like old-fashioned, illegal phone betting.

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<sup>11</sup> The Lacey Act, for example, expressly outlaws the importation of fish, wildlife and plants in violation of a foreign nation's laws.

<sup>12</sup> 15 U.S.C. § 78dd-1, et seq. The FCPA requires U.S. companies to follow its rules for transparency in accounting. But it also makes it a crime for Americans and U.S. corporations to make a payment to a foreign official for the purpose of influencing the official's government action.

<sup>13</sup> 18 U.S.C. § 1955.

<sup>14</sup> Nev. Rev. Stat. § 463.720.

<sup>15</sup> *Global Tech Appliances v. SEB*, 131 S. Ct. 2060, 179 L. Ed. 2d 1167 (2011).