
The tip pooling in the United States of America and in the United Kingdom: brief overview

by Hugo Luz dos Santos



Introduction

In the United Kingdom and in the United States, the social practice commonly known as “tipping” is a method of showing appreciation to those in a particular to those in a particular line of service. As such, many industries allow employees to collect tips for services rendered on top of their regular salary or hourly pay. The employees claim these *tips* as *income*, and the tips often make up a substantial part of their total income. Waiters, stylists, and valets are tipped on a regular basis. Casino table dealers are no different. When hired, they expect that tips, often referred as “tokens” will supplement the hourly pay they receive. In fact, in Las Vegas, table game dealers at high-end casinos can make tens of thousands of dollars in tips each year, making it a substantial part of their earnings and a major factor in deciding which casino to work for. Per Nevada Revised Statute (“NRS”) § 608.160, it is illegal for employers to “take” tips from employees. A controversial new tip-sharing, or tip-pooling, policy at Wynn Las Vegas has attracted much attention, and much debate, to tipping policies and the legal system’s role in enforcing them. Because of the large amounts of money and the controversy surrounding tipping in the casinos, the gaming industry should set regulations to govern tip-pooling, particularly between table dealers and other positions that might be introduced into tip-pools. Consequently, as argued by academics, not having these regulations in place could create bad policy by opening up the gaming industry to possible bribery and favoritism amongst

casino employees, as well as allowing the possibility of illegitimate and illegal “takings” from casino employees by their employers, which is banned under NRS¹.

In regards of tipping casino employees in Great Britain, UK Gambling Commission has issued the Licence Condition 10.1.1, which states that “Licensees must only permit tipping of staff holding personal licences where a tronc system is operated; that is to say, where all tips are pooled and distributed amongst the employees concerned. A separate tronc may be operated for each of a number of categories of licensed staff”.

In order to disentangle the aforesaid “legal knots”, this article will argue that tip-pooling should be legally qualified as a *trust*.

Moreover, this article will shed light about the duty of loyalty that enshrines the legal status of the trustees, namely the casinos.

Background- What is Tip-Pooling?

Tipping at table games is a form of art, and tipping can make the gambler’s experience more or less favorable depending on their knowledge of the practice. Tipping the valets and the housekeeping staff is a fairly standard practice, but is important to understand how tipping at table games works in order to understand what a tip-pool is and why it’s done in most casinos. Players tip dealers at

¹ In this sense, KANDIS McCLURE, “Tip-Pooling at Nevada Casinos – The case at the Wynn and why the Nevada State Gaming Control Board and Gaming Commission should set strict regulations on tip-pooling to protect the rights of dealers, casinos, and the repupation of the Nevada Gaming Industry”, in: UNLV Gaming Law Journal, Volume 5, Spring, (2014), pp-81-82, whose research we have followed very closely in this paragraph.

table games, and sometimes the other casino floor staff, for one reason – to receive better treatment while gambling. In most casinos, tips given to dealers are *pooled* in the interest of fairness and integrity. To make sure that no customer is given an advantage, or even perceived by other patrons of the casino as having an advantage, the tips are pooled so that all dealers take home equal shares and there is no perception of bias favoring any one player over another. Tip-pooling occurs when employees who are regularly tipped put all the tips received within a certain time frame together to be divided up evenly by the employer. This compilation of tips, or tip-pool, must then be distributed by the employer according to the mutually agreed upon terms of the *pooling arrangement*².

Overall, tip-pooling is a legal practice deeply enshrined in the United States of America and even in Europe.

Discussion - Tip-pooling should be legally qualified as a trust³

In our view tip-pooling should be legally qualified as a trust. But why?

As outlined above, the employees rely heavily on the employers to divide the money collected in the tip-pooling between all those employers entitled according to their respective shares.

Hence, in order to reflect the trust given by the employees, the employers ought to be considered as holding the tips in trust.

Traditionally, the trust has an internal tripartite structure: 1) settlor, 2) trustee; 3) beneficiaries. In general terms the settlor (gamblers) is the original owner of the

right of ownership of the goods (tips) to constitute in trust; the trustees (casinos), are the present depositary of the constituted goods in trust (the money in the tip-pooling); and the casino table dealers are the last beneficiaries of the goods and of the rights that are associated to it.

For that reason, the trustees are legally prohibited from taking any benefits from the position (of mere depositary), unless duly authorized.

Thus, the trustees should maintain the goods (tips) in trust – that obligation is actually a manifestation of the duty of loyalty, that is deeply ingrained in the legal status of the trustee⁴.

The no profit rule, which is a fundamental aspect of the English law of trusts, forbids any sort of conflict between the interests of the beneficiary and the interests of the trustee.

Furthermore, the no profit rule prevents those trustees from getting profits or income through the fiduciary position that they occupy, unless provided for in pooling arrangement or duly authorized by the beneficiaries⁵.

Conclusion

Tip-pooling is now so ingrained in the culture of United States and in the gaming industry as a whole that it will not cease to be a part of service industries anytime in the foreseeable future⁶.

For this very reason, the specific regulation of the tip-pooling in the United States poses a considerable challenge to the casino industry as a whole.

For the sake of the integrity of the gaming industry as a whole, such a challenge should be embraced.

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2 In this sense, KEVIN BLACKWOOD, *Casino Gambling for Dummies*, 76, (2006), pp. 76-78, whose research we have followed very closely in this paragraph; apud, KANDIS McCLURE, “Tip-Pooling at Nevada Casinos”, id., pp.81-82.

3 For reference, we will closely follow what we have written in, HUGO LUZ DOS SANTOS, “Tip-Pooling in the Casinos of the Special Administrative Region of Macau (Show me the Money)?”, in: *Gaming Law Review and Economics (GLRE)*, being published.

4 For that reason the jurisprudence of English courts emphasized “the “no conflict rule” and “no profit rule” to which fiduciaries such as directors are subject”; *O Donnel v Shanahan* (2008) EWHC 1973 (Ch), (RIMER LJ) (37).

5 The principle no conflict rule, in opposition to no profit rule, is today set out into Companies Act 2006 (CA 2006), in the section 175 (1) which reads: “A director of a company must avoid a situation in which he has, or can have, a direct or indirect interest that conflicts, or possibly may conflict, with the interests of the company”; about the Companies Act 2006 and the fiduciary duties of the directors of the companies, in the English doctrine, ANDREW KEAY, *Directors’ Duties*, Jordans, Bristol, (2009), pp. 264-278.

6 KANDIS McCLURE, “Tip-Pooling at Nevada Casinos”, id., p. 98.