

ONLINE GAMING

The State of Play in Singapore

This article will examine the legality of online gambling in Singapore, whether operated out of or merely conducted within Singapore. It will include comparative analyses where relevant. The four principal statutes in Singapore that govern gaming are the Common Gaming Houses Act (Cap 49, 1985 Rev Ed) (“CGHA”), the Betting Act (Cap 21, 1985 Rev Ed), the Private Lotteries Act (Cap 250, 1985 Rev Ed) and the Betting and Sweepstakes Duties Act (Cap 22, 1999 Rev Ed). This article will focus on the CGHA and the Betting Act as they are the two most relevant pieces of legislation to online gambling. Each of these statutes deal with a different aspect of gambling and a particular gambling activity may fall under more than one statute. The various forms of gambling and gaming will be expounded and the statutes will be applied to each type of gambling, together with an analysis of the equivalent online gambling activity. It will be apparent from the arguments presented below that perhaps the CGHA and the Betting Act can be meaningfully combined for the sake of brevity and clarity.

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I. Introduction

1 This article will examine the legality of online gambling in Singapore, whether operated out of or merely conducted within Singapore. It will include comparative analyses where relevant. The four principal statutes in Singapore that govern gaming are the Common

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Gaming Houses Act¹ (“CGHA”), the Betting Act,² the Private Lotteries Act³ and the Betting and Sweepstakes Duties Act.⁴ This article will focus on the CGHA and the Betting Act as they are the two most relevant pieces of legislation to online gambling. Each of these statutes deal with a different aspect of gambling and a particular gambling activity may fall under more than one statute. The various forms of gambling and gaming will be expounded and the statutes will be applied to each type of gambling, together with an analysis of the equivalent online gambling activity. It will be apparent from the arguments presented below that perhaps the CGHA and the Betting Act can be meaningfully combined for the sake of brevity and clarity.

2 The term “gaming” refers to a wide range of activities. Section 2 of the CGHA⁵ defines “gaming” with its grammatical variations and cognate expressions as “the playing of any game of chance or of mixed chance and skill for money or money’s worth”. The focus is thus on what is a game of chance or of mixed chance and skill. Traditionally, games of chance or of mixed chance and skill have referred to lotteries, wagers and casino-style games such as roulette. Many jurisdictions have laws that ban or regulate some or all of these activities in their traditional form in the physical world context. Each of these traditional games of chance or of mixed chance and skill will be discussed in the following sections to ascertain if each falls within the definition of “gaming” and hence within the statutes in Singapore. It will be argued that the laws in Singapore currently do cover various types of online gambling although it does so in a haphazard and incongruent way. The legal landscape would be much clearer if the Betting Act⁶ and the CGHA are combined and streamlined.

II. Lotteries

3 The CGHA⁷ in s 2 defines “lottery” to include “any game, method, device, scheme or competition whereby money or money’s worth is distributed or allotted in any manner depending upon or to be determined by chance or lot, whether the same is held, drawn, exercised or managed within or without Singapore”. The emphasis here again is on a game of chance or mixed chance for money or money’s worth.

1 Cap 49, 1985 Rev Ed.

2 Cap 21, 1985 Rev Ed.

3 Cap 250, 1985 Rev Ed.

4 Cap 22, 1999 Rev Ed.

5 Common Gaming Houses Act (Cap 49, 1985 Rev Ed).

6 Cap 21, 1985 Rev Ed.

7 Common Gaming Houses Act (Cap 49, 1985 Rev Ed).

A. *Traditional lotteries*

4 Lotteries usually involve money being given up in exchange for an opportunity to win a prize through typically the method of being drawn by chance; *ie*, it is akin to drawing lots for a prize. The prize can be a monetary amount or anything else such as a car or house. The most common types of lotteries are those operated by governments where one buys a ticket at a set price such as in the Singapore Sweep.⁸ Each ticket is numbered and if the number of the ticket is drawn, a prize is awarded. These are popular partly due to their simplicity. Moreover, government-run lotteries in particular attract customer trust in operations since the governmental backing signals an honest, reliable operation.⁹

5 A popular type of these lotteries is charity lotteries. In Australia, one of the oldest charity lotteries is the BoysTown lotteries, the proceeds of which goes towards BoysTown's services which provide care and support for disadvantaged young Australians and their families. BoysTown runs 15 lotteries each year – ten House Lotteries and five Prestige Car Lotteries with the prizes being luxury homes and luxury cars respectively; which although are not money, they are certainly money's worth. Each ticket costs \$15 and there are generally only three winners in each draw.¹⁰ BoysTown lotteries are trusted as they have been in operation since 1961.¹¹ Charity raffles are required to be operated pursuant to rules laid down by governmental authorities.

6 Playing most forms of lottery would come within the definition of gaming under the CGHA¹² even though the prize may be cars and homes and not monetary because s 2 of the CGHA includes "for money's worth" in the definition. And all lottery winners are determined through chance and the tickets are drawn by chance. Hence, there is no question that traditional lotteries come within the purview of the CGHA.

B. *Selecting numbers*

7 Selecting numbers is also a form of lottery. It typically involves players choosing, say, six numbers out of 45, and if all the selected

8 See <http://www.singaporepools.com.sg/en/lottery/bigswEEP_results.html> (accessed 3 January 2011).

9 In some countries however, governments do not actually operate their own lotteries but grant licences to private operators, and allow the use of the Government's name and endorsement. In many jurisdictions, such as Europe, Australia, and the US, the authorities exercise continued oversight and supervision of the operators.

10 See <<http://www.boystown.com.au/lot/about-us.html>> (accessed 3 January 2011).

11 See <<http://www.boystown.com.au/lot/history.html>> (accessed 3 January 2011).

12 Common Gaming Houses Act (Cap 49, 1985 Rev Ed).

numbers are drawn, the player wins first prize. In some countries such as Australia, the drawings are televised to bolster confidence in the integrity of the operation. To win a lesser prize, some lesser number of the drawn numbers must be chosen.¹³ As the winning numbers are achieved through the process of a draw, it is again a game of chance.

8 The 4D game in Singapore is a combination of the traditional lottery and selecting numbers style of play. Players choose the four-digit number they desire and if the number is drawn, they win a prize. Again there is no skill involved as it is pure chance. Hence, games involving selecting numbers come within the purview of the CGHA.¹⁴

C. *Scratchers*

9 Newer forms of lotteries that have come onto the market in recent years are the scratchers. These are played by players scratching off a latex covering to reveal whether the player has won. Typically, they uncover hidden symbols and if there are three of the same kind of symbols revealed, then the player has won a prize.¹⁵ They are similar in play style to the older forms of paper instant tickets such as the pull-tab and the punchboard. Pull-tabs are still used in bingo operations in some countries, and the concept is similar to scratchers, in that players pull off a piece of paper rather than scratch off the latex covering. These would be games of chance as it is already determined when the tickets are printed whether or not a particular ticket is a winning ticket. Hence, scratchers also come within the purview of the CGHA.¹⁶

D. *Slot machines*

10 Slot machines can in some ways be considered a variant of lotteries, scratchers, pull-tabs, and punchboards. When a player buys a scratcher, it consists of data stored on the piece of paper albeit hidden by latex. Similarly, when a player puts a coin or credit into a slot machine, data is already stored in the onboard computer of the slot machine. And when one “spins” the slot machine to get the result, the process is the same as scratching off the latex. The major difference between the slot machine and the other forms of lotteries is that the odds on the slot machines take more effort to control and supervise because of the sheer number of machines to check and the ease in which the odds can be changed with just a small change in one line of the programming code.

13 See <http://www.singaporepools.com.sg/en/howtoplay/howtoplay_toto_overview.html> (accessed 22 January 2011).

14 Common Gaming Houses Act (Cap 49, 1985 Rev Ed).

15 See <http://www.singaporepools.com.sg/en/lottery/scratchit_faststart.html> (accessed 22 January 2011).

16 Common Gaming Houses Act (Cap 49, 1985 Rev Ed).

It is for this reason that many would not consider them as lotteries and would class them as casino-style games which will be considered below. But they are nevertheless games of chance for money which would be covered by the CGHA.¹⁷

E. Legal position of online sale of lotteries – Comparative perspective

11 In many jurisdictions, lotteries are often made expressly legal by statutes and regulations although the usual prohibitions on minors purchasing lotteries apply. For example, in the US, 42¹⁸ of the 50 states and the District of Columbia allow lotteries.¹⁹ In some states, archaic laws make it a crime to possess an out-of-state lottery ticket although these laws are rarely enforced.²⁰ Some countries and states like New York have laws that declare cross-border lotteries illegal. So when an out-of-state internet lottery operator accepts lottery purchases from customers from a state with prohibitions against selling lottery tickets, it would likely be violating the local law.²¹

12 In some jurisdictions, regulations specifically allow off-line lottery tickets to be sold online such as the BoysTown lotteries in Australia,²² while in other jurisdictions such as California, charities are expressly prohibited from selling raffle tickets online.

13 Some online lottery operations specifically limit their sales to local residents whereas others deliberately cast the net wide. For example, the Lottery of Finland, Veikkaus Oy,²³ attempts to restrict its players to locals by requiring players to have a Finnish bank account and the website is entirely in Finnish with the exception of one page²⁴ entitled “Finnish lottery for Finns” which merely explains the background and rationale for the gambling setup in Finland.

17 Common Gaming Houses Act (Cap 49, 1985 Rev Ed).

18 See generally Yee Fen Lim, “Internet Gambling – the US Perspective” (1998) 1(8) Internet Law Bulletin 114.

19 Arizona, California, Colorado, Connecticut, Delaware, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nebraska, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Vermont, Virginia, Washington, West Virginia, Wisconsin, District of Columbia, Virgin Islands, Commonwealth of the Northern Mariana Islands and Puerto Rico.

20 See, eg, RI Gen Laws §11-19-4 (2003); NJ Stat Ann §2C:37-6 (2003).

21 Yee Fen Lim, “Internet Gambling – the US Perspective” (1998) 1(8) Internet Law Bulletin 114.

22 See <<https://online.boystown.com.au/lot/buyTickets.php>> (accessed 22 January 2011).

23 See <<http://www.veikkaus.fi>> (accessed 3 January 2011).

24 See <<https://www.veikkaus.fi/fi/yritysTietoa/english>> (accessed 22 January 2011).

14 At the other end of the spectrum, the website <<http://www.interlotto.com/>> allows players to play the major official national and state lotteries from around the world. A player can choose from the Australian Lotto, to the USA Powerball, to Japan's Jumbo Draw. There are disclaimers scattered throughout the website so that for example, on the webpage for the Euro Millions,²⁵ it states that it is "Not Available to Residents of The Netherlands, Pakistan & The Philippines" and that "Offers Void where Prohibited by Law".

15 Most online operators, however, just offer online the same lotteries they offer off-line with some operators aggressively advertising and selling tickets on the Internet to players from all around the world.²⁶ One of the earliest state run lotteries to have an online presence is the UK national lottery which has been online since 2003.²⁷ In Canada, British Columbia and the four Atlantic provinces have had their lottery operations online since 2006.²⁸

16 In the US, some state lotteries, such as Indiana's state lottery, began their internet operations with "second chance" drawings which used the Internet to give losing tickets another opportunity to win a prize. Players with tickets that did not win a prize could enter their ticket numbers on the Internet for second chance drawings.

17 Some of the US states and territories that allow lotteries now also offer subscription purchase programs where players can use the Internet to enable account betting on their lotteries using their credit cards. So, for example, New Hampshire²⁹ and New York³⁰ offer subscriptions to their respective state lotteries via the Internet.

18 In China, in late April 2009, VODone Limited became the first authorised service providers of a mobile lottery betting service for mobile end users in China (data-enabled mobile phones and handheld computers such as Palm Pilots).³¹ Authorised by Heilongjiang Welfare Lottery Center, to play, users need to register, log in and download the lottery software from the website <cai.vodone.com>, then they can place their bets. The system uses a special process of bundling the mobile number and identity card number as the certification

25 See <<https://www.internet-secure.net/il-eu/euromillions.html>> (accessed 3 January 2011).

26 See <<http://www.pluslotto.com/>> (accessed 3 January 2011).

27 See <<http://www.national-lottery.co.uk>> (accessed 3 January 2011).

28 See <<http://www.alc.ca/>> (accessed 11 August 2010) and <<http://www.bcl.com>> (accessed 3 January 2011).

29 See <<http://www.nhlottery.org/subscription>> (accessed 3 January 2011).

30 See <<https://www.mynylottery.org/portal/home.do>> (accessed 22 January 2011).

31 See <http://www.acnewswire.com/article.asp?art_id=1398&lang=EN> (accessed 3 January 2011).

information of user registration.³² Winnings of less than RMB10,000 can be collected through players' virtual accounts whereas higher winnings need to be collected at the Welfare Lottery Center.

19 In Singapore, the legal landscape is less chaotic. The assisting of the carrying on of public lotteries whether online or not is prohibited by s 5³³ of the CGHA but there is a provision for exemption by the Minister under s 24(1). The Singapore Totalisator Board is a body so exempted and it runs lotteries such as the popular 4D and Toto through its subsidiary Singapore Pools. Section 24(2) specifies that it is lawful for any person to participate in any public lottery or gaming exempted under s 24(1). The CGHA has no specific provisions restricting the online sale of lotteries once an exemption has been given under s 24(1), so presumably, it would be open for lotteries such as 4D to be sold online. However, currently, Singapore Pools does not sell lotteries online although the purchase of lottery tickets is permitted through the phone via PoolzConnect.³⁴ The Government has in the past taken the position that all online gambling would be illegal³⁵ but this does not appear to be supported by the statute.

20 With respect to the position of consumers who buy lotteries online, this will be discussed at paras 31–46 of this article.

32 See <http://www.acnnewswire.com/article.asp?art_id=1398&lang=EN> (accessed 3 January 2011).

33 Common Gaming Houses Act (Cap 49, 1985 Rev Ed) s 5:

Assisting in carrying on a public lottery, etc.

5. Any person who —

- (a) assists in the carrying on of a public lottery;
- (b) receives, directly or indirectly, any money or money's worth for or in respect of any chance in any event or contingency connected with a public lottery or sells or offers for sale or gives or delivers or collects any lottery ticket;
- (c) draws, throws, declares or exhibits, expressly or otherwise, the winner or winning number, ticket, lot, figure, design, symbol or other result of any public lottery; or
- (d) writes, prints or publishes or causes to be written, printed or published any lottery ticket or list of prizes or any announcement of the result of a public lottery or any announcement or riddle relating to a public lottery,

shall be guilty of an offence and shall be liable on conviction to a fine of not less than \$20,000 and not more than \$200,000 and shall also be punished with imprisonment for a term not exceeding 5 years.

34 See <http://www.singaporepools.com.sg/en/poolzconnect/poolzconnect_abt.html> (accessed 3 January 2011).

35 See, eg, "Internet betting on S-league games illegal" *The Straits Times* (31 May 2004).

III. Wagers

21 The Betting Act³⁶ refers to the word “wager” in numerous sections but it is not defined. For example, in s 2 “common betting-house” means

- (a) any place kept or used for betting or wagering on any event or contingency of or relating to any horse-race or other sporting event to which the public or any class of the public has or may have access;
- (b) any place kept or used for habitual betting or wagering on any such event or contingency as aforesaid, whether the public has, or may have, access thereto or not; and ...

22 Further, s 5 of the Betting Act³⁷ provides that any person who bets or wagers in a common betting-house or who for the purpose of betting or wagering loiters in any place to which the public may have access shall be guilty of an offence.

23 The definition of “wager” is something, usually a sum of money, that is risked on an uncertain event.³⁸ Although this definition is broad enough to encompass lotteries, the reference to an uncertain event is more specific, so it becomes more focused than guessing six numbers out of 45 numbers such as in Singapore’s Toto. So, in this sense, wager has come to mean the likes of betting on a particular racehorse or greyhound winning a particular race. Betting on horse races is one of the oldest forms of *pari-mutuel* betting and in a sense it is a game of mixed chance and skill. It may require some skills as the player may need to study the previous performances of all the horses but there is also a strong chance element as the player has to make an educated guess as to which horse is likely to win under the circumstances which may include taking into account the length of the race, the altitude of the racecourse, the temperature and humidity of the air and so on.

A. Horse racing and dog racing

24 With the advent of radio and television which can transmit live information to remote sites, it has been possible for bettors not at the racetrack to bet on horse races. Most horse races have a merged *pari-mutuel* pool, with all bets treated as if they were actually placed at a single location. Around the world, off-site betting on races began first by using the phone and then by using the Internet.

36 Cap 21, 1985 Rev Ed.

37 Cap 21, 1985 Rev Ed.

38 *Merriam-Webster Dictionary* <<http://www.merriam-webster.com/dictionary/wager>> (accessed 3 January 2011).

25 In the US, the situation is somewhat complicated by federal law. The Interstate Wire Act³⁹ specifically forbids taking bets by interstate telecommunication facilities, which would include the Internet.⁴⁰ There is an exception if it is legal to take the bet both at the place the bet originates and at the place it is taken.⁴¹ In 2000, the Interstate Horseracing Act⁴² was amended to expressly allow wagers to be received from out of state through electronic media which would include the Internet. It should be noted, however, that the Interstate Horseracing Act only allows remote wagers on horse races but some operators have illegally extended the Internet wagering to dog wagers (greyhound racing).

26 Outside the US, many countries' state-authorised horse and dog racing operators allow residents of other countries to wager on horse and dog races. For example, Australia⁴³ and New Zealand also have *pari-mutuel* systems and online wagering sites open to all, although the New Zealand site seems to prohibit US residents from setting up an account.⁴⁴ Even for those countries where horse betting is not *pari-mutuel*, such as the Caribbean, the UK, and European countries, the websites take bets from anywhere in the world. Canada has gone so far as expressly allowing licensed betting on races in other countries.⁴⁵

B. Betting on sports

27 Sports wagering is an activity that has raised more controversy than wagering on horses and greyhounds, not least because of the possibility and occurrences of professional sportspersons "fixing" the result by deliberately throwing away matches. This is one of the major reasons why, in the US, there is a prohibition on sports wagering,⁴⁶ although because of the wording of the provisions, some sports wagers are allowed in some states.⁴⁷ If all sportspersons give their best and behave ethically in every match, then betting on sports, like betting on horses, is also a game of mixed chance and skill. The categorisation becomes problematic if sportspersons cheat by throwing away matches as then, arguably, there is no element of chance involved.

39 18 USC §1084.

40 Yee Fen Lim, "Internet Gambling – the US Perspective" (1998) 1(8) Internet Law Bulletin 114.

41 See further Yee Fen Lim, "Internet Gambling – the US Perspective" (1998) 1(8) Internet Law Bulletin 114 at 116.

42 15 USC §3001.

43 See <<http://www.tab.com.au/>> (accessed 3 January 2011).

44 See <<http://www.tab.co.nz/>> (accessed 22 January 2011).

45 Criminal Code (RSC, 1985, c C-46) (Canada) Pt VII, §204(1).

46 Amateur Sports Protection Act 28 USC §§3701–3704 (2008).

47 Yee Fen Lim, "Internet Gambling – the US Perspective" (1998) 1(8) Internet Law Bulletin 114.

28 In many countries such as Australia, betting on sports such as football and motor racing is permitted both off-line and online.⁴⁸

C. *Securities, futures and proposition betting*

29 In essence, trading on stock and commodities markets is very similar to gambling. One never knows if the market will move up or down and it can, in some ways, be akin to playing in a game of mixed chance and skill. But many legislatures around the world have moved to expressly exempt such activities from the reach of gambling laws so playing on the stock market would not fall under the realm of a game of chance or mixed chance and skill.

30 One step away from commodities markets are predictions markets that allow players to place bets on their predictions. These would straddle the fine line between gambling regulation and securities regulation. One of the biggest predictive markets online is intrade.com, based in Ireland, where one's imagination is the limit of what can be wagered on. For example, at the time of writing, the prediction that the California marijuana legalisation initiative will be passed in the November 2010 ballot is trading at around \$5.28. Arguably, this is a game of chance as well as skill as no one would really know if the legalisation initiative will be passed in the November 2010 ballot but yet some element of skill may be required to assess the likelihood and to, for example, determine the accuracy of straw polls already taken. The tone of the site indicates that it regards itself as trading in securities (contracts) and not involved in gambling but the website is blocked by all large American credit cards indicating that it is likely to be a game of mixed chance and skill which is generally prohibited in the US.

D. *Singapore*

31 In Singapore, the most relevant legislation for wagers on horse races and sports is the Betting Act⁴⁹ which makes it an offence to be involved in certain ways with a common betting-house or betting information centre, or to publish information relating to any horse race or sporting event for the purpose of illegal betting. It further seeks to curb betting in public places and bookmaking as well as prohibit betting or wagering on any event or contingency relating to any horse race or other sporting event.

48 See, eg, <<http://www.tab.com.au/Sports/Default.aspx?State=2>> (accessed 3 January 2011).

49 Cap 21, 1985 Rev Ed.

32 Section 3 of the Betting Act⁵⁰ sets out offences applicable to both common betting-houses and betting information centres. They are fairly broad and stipulate, for example, liability for owners or occupiers who keep or use a place as a common betting-house or betting information centre. The offences set out in s 3 are very similar to s 4 of the CGHA⁵¹ except that the Betting Act refers to common betting-houses and betting information centres whereas the CGHA refers to common gaming houses. Both pieces of legislation also criminalise patrons of such places or activities.⁵² Like the CGHA, the Betting Act also allows for exemptions, and the Singapore Totalisator Board, through its ownership of Singapore Pools and Singapore Turf Club, in effect is placed in the position of operating both sports betting and horse racing in Singapore respectively.

33 As discussed above, horse racing and sports betting can also come within the CGHA⁵³ as they can be considered games of mixed chance and skill. Thus the Betting Act⁵⁴ and the CGHA cover similar prohibitions, and for simplicity and clarity, it would make sense for the Betting Act to be subsumed into the CGHA, especially since many prohibitions in both pieces of legislation are similar.

(1) *Betting Act – “Place”*

34 In terms of wagering on horses and sports on the Internet, a closer examination of the wording of the legislation is required. Although the terms “common betting-house” and “betting information centre” are given very broad meanings under s 2 of the Betting Act,⁵⁵ both definitions definitively use the word “place”. For example, betting information centre “*means* any place kept or used for ...”⁵⁶ [emphasis added]. The definition is exhaustive and it refers to a “place”. The word “place” is defined in both the Betting Act and the CGHA⁵⁷ as:

‘place’ means any house, office, room or building and any place or spot, whether open or enclosed, and includes a ship, boat or other vessel, whether afloat or not, and any vehicle;

35 This strongly suggests that the Betting Act⁵⁸ refers only to the physical realm and not the virtual realm if a literal interpretation is

50 Cap 21, 1985 Rev Ed.

51 Common Gaming Houses Act (Cap 49, 1985 Rev Ed).

52 Betting Act (Cap 21, 1985 Rev Ed) s 5 and Common Gaming Houses Act (Cap 49, 1985 Rev Ed) s 7.

53 Common Gaming Houses Act (Cap 49, 1985 Rev Ed).

54 Cap 21, 1985 Rev Ed.

55 Cap 21, 1985 Rev Ed.

56 Betting Act (Cap 21, 1985 Rev Ed) s 2.

57 Common Gaming Houses Act (Cap 49, 1985 Rev Ed).

58 Cap 21, 1985 Rev Ed.

adopted. However, it must be noted that both pieces of legislation were first enacted in the 1960s and back then, it was not within the contemplation of the Legislature that any such thing as the virtual realm would come into being. As such, it can be argued that currently, there is no prohibition under the Betting Act for online horse and sports betting.

36 However, another possible interpretation of “place” needs to be considered. The definition of a betting information centre under s 2 of the Betting Act⁵⁹ is a place kept or used for receiving or transmitting information relating to any sporting event for the purpose of betting or wagering. This can be interpreted to mean any physical place such as an internet café that is used for receiving or transmitting, through the computers, information relating to any sporting event for the purpose of betting or wagering. Consequently, the owner or occupier of the internet café could be guilty of an offence under s 3.

37 Similarly, a common betting-house is defined to include, *inter alia*, a place that is kept or used for habitual betting on sports events, or, a place where the public has access and it is used, even just once,⁶⁰ for sports wagering. Hence, an internet café where the public has access can be argued to be a common betting-house when just one sports wager is placed. Not only would the offences in s 3 of the Betting Act discussed above (owner, occupier, manager, *etc*, of the internet café) apply, but in addition, s 5 lists the offences applicable to users who patronise a common betting-house. Section 5(1) provides that any person who bets or wagers in a common betting-house shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding six months or to both. Thus the customer of the internet café who places a wager would be guilty of an offence under s 5. Herein lies the anomaly. A person who places a bet on a sports event while sitting in an internet café would be liable under s 5 but a person who does the same act in the home would not be caught by s 5, unless the home is used for habitual betting on sports events.

38 The analysis does not, however, end here, as already mentioned above, horse and sports wagering can be regarded as games of mixed chance and skill for money and, as such, it would also fall under the CGHA.⁶¹

59 Cap 21, 1985 Rev Ed.

60 Betting Act (Cap 21, 1985 Rev Ed) s 2(2).

61 Common Gaming Houses Act (Cap 49, 1985 Rev Ed).

(2) *CGHA*

39 When horse and sports wagering is considered under the CGHA,⁶² s 4(1)(e) relevantly provides:

4. —(1) Any person who —

...

(e) conducts in or through any newspaper or any other periodical publication, or in connection with any trade or business or the sale of any article to the public —

(i) any competition in which prizes are offered for forecasts of the results either of a future event or of a past event the result of which is not yet ascertained or not yet generally known; or

(ii) any other competition success in which does not depend to a substantial degree upon the exercise of skill,

shall be guilty of an offence and shall be liable on conviction to a fine of not less than \$5,000 and not more than \$50,000 and shall also be punished with imprisonment for a term not exceeding 3 years.

40 Section 4(1)(e)(i)⁶³ would easily capture those who conduct horse and sports wagering online as it would clearly be a competition for the forecasts of the results of a past or future event the result of which is not yet ascertained. In addition, the operator would ostensibly be involved in a trade or business. However, as s 4(1)(e) only covers those activities which have some sort of public or commercial element, a competition conducted online but within a family setting that is not connected with any trade or business would not be caught by the subsection. Hence, generally speaking, businesses that conduct horse and sports wagering online would be liable under s 4(1)(e) of the CGHA.

41 A consumer who places sports wagers online would most probably be caught by s 7 of the CGHA⁶⁴ which provides

7. Any person who games in a common gaming house shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding 6 months or to both.

62 Common Gaming Houses Act (Cap 49, 1985 Rev Ed).

63 Common Gaming Houses Act (Cap 49, 1985 Rev Ed).

64 Common Gaming Houses Act (Cap 49, 1985 Rev Ed).

42 The CGHA⁶⁵ defines a “common gaming house” in s 2 as

‘common gaming house’ includes any place kept or used for gaming to which the public or any class of the public has or may have access, and any place kept for habitual gaming, whether the public or any class of the public has or may have access thereto or not, and any place kept or used for the purpose of a public lottery whether the public has access thereto or not;

43 Although this definition uses the term “place” in its definition which is defined in exactly the same “physical” way as “place” is defined in the Betting Act,⁶⁶ the definition of “common gaming house” uses the non-exhaustive word of “includes” in the definition which can take the term beyond the physical realm to the virtual realm. Hence, if an online establishment is used for sports wagering to which any class of the public has access or it is an online establishment that is used for habitual sports wagering, whether any class of the public may have access thereto, it then could be considered a virtual place and would fall within the definition of a common gaming house. Hence, under s 7 of the CGHA,⁶⁷ a consumer who places sports wagers with the online establishment would be guilty of an offence because he or she would be gaming in a common gaming house. It does not matter if the wager is placed whilst the player is sitting at home in private or sitting in a public park.

44 In a similar fashion, a consumer who buys an online lottery ticket would also commit an offence under s 7 of the CGHA⁶⁸ because the definition of common gaming house in s 2 does not preclude the virtual establishment and would include any online establishment that is “used for the purpose of a public lottery whether the public has access thereto or not”.

45 With regards to online predictions markets that allow players to place bets on their predictions, as these are clearly games of mixed chance and skill for money, the operators of these “competitions” would be caught under s 4(1)(e) of the CGHA⁶⁹ and any person in Singapore who patronises such websites would be caught under s 7 of the CGHA.

46 From the foregoing, it is evident there is considerable overlap in coverage between the two pieces of legislation and that it could be argued that the Betting Act⁷⁰ is in a large part redundant and can be subsumed into the CGHA.⁷¹

65 Common Gaming Houses Act (Cap 49, 1985 Rev Ed).

66 Cap 21, 1985 Rev Ed.

67 Common Gaming Houses Act (Cap 49, 1985 Rev Ed).

68 Common Gaming Houses Act (Cap 49, 1985 Rev Ed).

69 Common Gaming Houses Act (Cap 49, 1985 Rev Ed).

70 Cap 21, 1985 Rev Ed.

71 Common Gaming Houses Act (Cap 49, 1985 Rev Ed).

IV. Casino-style games

47 These are generally the games found in a brick and mortar casino such as blackjack, craps, roulette, slot machines and card games such as poker. In a brick and mortar casino, state authorities usually inspect the equipment to ensure there is no cheating. For example, the dice must have six different numbers on each of the faces and there must be no magnet or other device flipping the dice to any particular number and so on. For card games, each deck of cards must be unmarked and have all 52 cards with the requisite number of aces, kings and so on.

48 Essentially, in casino-style games, each player is playing against chance and probability so they are clearly games of chance or of mixed chance and skill for money's worth. The casino on the other hand makes its money by beating its customers at games of chance. In some "banked" games such as blackjack, the players compete against not only other players but also the gaming establishment, and as a result, players generally have a better probability of winning. In other games such as roulette, the casino has a natural built-in higher winning probability. In roulette, for example, the presence of the zero and often the double zero means that the supposed "even chance" of winning by placing a bet on an odd number or an even number is in reality less than an even chance because if the ball falls into the zero or double-zero slot in the wheel, the casino would collect on all bets placed in the "odd" and "even" categories, not to mention other categories such as "red", "black", "1st dozen" and "2nd dozen", "3rd dozen" or any of the columns.⁷²

49 Casino-style games can be contrasted with lotteries and *pari-mutuel* betting. In the latter, the operator acts as a disinterested stakeholder who takes a portion of the wagers and returns the remainder to the winners. With casino-style games, the casino is a player and is not a mere disinterested stakeholder.

50 The other notable feature of casino-style games compared with lotteries and *pari-mutuel* betting is the speed at which a player can lose money. For a game like roulette which takes less than one minute to complete, a player can place a bet of up to the maximum table limit which could be anywhere between \$10,000 to \$1m or even higher in a brick and mortar casino. It is not generally possible to lose that quickly with lotteries or horse and sports betting.

72 See, eg, <http://www.starcity.com.au/d/Resource_Library/PDFS/Gaming_pdfs/5L5752NYIKZ7DGJP6T75BYH1R8L/WX3H1CEXMF9I8AN.pdf/Roulette_WEB1.pdf> (accessed 3 January 2011).

51 Turning to the Internet, it should be obvious why there has been much concern over websites offering casino-style games. There are no checks to ensure the casino “equipment” is not rigged. When the digital roulette wheel is spun, there is no guarantee that the ball is not deliberately programmed to fall into a number where no players have placed bets. Where online casinos set no table limit or very high table limits, it also means the rate at which a player can lose money is potentially even faster.

52 Similarly, online slot machines suffer from the high possibility of cheating by the operator. The online reels of an online slot machine can be programmed in such a way as to not give any returns ever. In countries where physical slot machines are allowed, the governments usually stipulate the minimum payout *per* number of spins to ensure players have a chance of winning something. Random checks are also often carried out by government inspectors to ensure the slot machines are not tampered with by the operators.

53 The three other major concerns with casino-style games are the possibility for money laundering, the unscrupulous operators who lure underage gamblers, and those operators who have a disregard for promoting responsible gambling, all of which are very difficult to police online. Any legalisation of this type of online gambling would certainly increase the availability and accessibility of gambling to the ordinary person while at the same time could well undermine the anti-gambling policies of other jurisdictions especially if no technical geolocation techniques are employed.

54 In Singapore, under the CGHA,⁷³ it would appear that online casino-style establishments can be regarded as common gaming houses as the definition does not require any physical place as long as the establishment is used for the playing of any game of chance or of mixed chance and skill for money or money’s worth to which any class of the public may have access. The games offered on casino-style websites are all games of mixed chance and skill for money, if not games of pure chance, and most are certainly available to any class of the public and this was confirmed in the recent decision of *PP v Peh Chye Heng*.⁷⁴ In *PP v Peh Chye Heng*, the defendant was charged under s 4(1)(a) of the CGHA⁷⁵ for running an internet café which provided online casino gaming services to customers. In coming to its decision, the court said:⁷⁶

73 Common Gaming Houses Act (Cap 49, 1985 Rev Ed).

74 [2009] SGDC 100.

75 Common Gaming Houses Act (Cap 49, 1985 Rev Ed).

76 [2009] SGDC 100 at [21].

The online casino games were games of chance which did not require skill. The internet café was open to public and anyone could access to bet on online casino games via the computers.

55 It should be noted that in *PP v Peh Chye Heng*,⁷⁷ the defendant was running the internet café, a physical place, and thus he was charged under s 4(1)(a) of the CGHA.⁷⁸ The argument being made here is that the website *itself* would also be regarded as a common gaming house, and hence, operators of such casino-style websites would be caught under s 4(1)(e) of the CGHA. Further, any person in Singapore who patronises such websites would be caught under s 7 of the CGHA.

V. Games of skill

56 Games of skill are not gambling. The most obvious examples are games of chess and checkers. If they are played for money or some other award, they would be contests or competitions or tournaments. In the US, much controversy has raged over the years at the federal and state level in the Judiciary and Legislatures over whether certain activities are predominantly games of skill or games of chance. It is clear today in the US that chess, checkers and pinball machines are games of skill but pinball machines that awarded prizes were banned for a period of time.⁷⁹ The element of chance plays little or no part in determining the outcome in these games.

VI. Gaming in public – CGHA

57 Section 8 of the CGHA⁸⁰ contains a special provision for gaming in public. The relevant subsections are s 8(2), (4) and (7):

8. ...

(2) Any person gaming in any public place shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding 6 months or to both; and all instruments or appliances for gaming seized under this section may be declared by the court before which the conviction is had to be forfeited to the Government and shall be dealt with accordingly.

...

(4) Any person who instigates, promotes or intentionally facilitates the commission of an offence punishable under subsection (2) shall be guilty of an offence and shall be liable on conviction to a fine of not

77 [2009] SGDC 100.

78 Common Gaming Houses Act (Cap 49, 1985 Rev Ed).

79 See, eg, *US v Two Coin-Operated Pinball Machines* 241 F Supp 57 (DC Ky 1965).

80 Common Gaming Houses Act (Cap 49, 1985 Rev Ed).

less than \$20,000 and not more than \$200,000 and shall also be punished with imprisonment for a term not exceeding 5 years.

...

(7) Where it is shown that any person has been found to be playing any game of chance or any mixed game of chance and skill in a public place, it shall be presumed until the contrary is proved that the person was gaming in that public place.

58 Section 8(2) of the CGHA⁸¹ makes it an offence for any person to be gaming in a physical public place. As it has already been shown above, the purchase of online lottery tickets, the online wagering on sports, and the bets on online casinos would all be considered gaming under the CGHA, hence, if any of these activities are conducted in a physical public place such as a park or a cafe, then the player would also commit an offence under s 8(2). The presumption contained in sub-s (7) seems to reinforce sub-s (2) but does not appear to add anything extra. Under s 8(4), the website provider of the game the person is playing in the public place would be guilty of an offence as the website provider would be clearly facilitating the commission of an offence punishable under sub-s (2).

59 It seems that the prohibition in s 8 of the CGHA⁸² takes the restrictions on online gaming to a higher level. Not only is it an offence to be involved in online gaming, there are additional offences attached when the gaming is done in public places. This resonates with the provisions of the Betting Act⁸³ already discussed where a person who wagers online on a sports event at home would not be caught by s 5 but a person who wagers online on a sports event while in a public place such as a park would be liable under s 5. In traditional forms of physical gambling, it is understandable for the extra sanctions to apply if the activity is undertaken in public. For online gambling, these reasons are not as compelling.

VII. Conclusion

60 With the advent of the Internet, there has been a tendency for the word “online” to be added in front of almost any word to refer to the networked or internet version of whatever it is that is the subject matter. So today we have online music, online videos, online news and so on. However, the usage of “online gaming” in many jurisdictions has been confined to referring to participation in virtual worlds such as “Second

81 Common Gaming Houses Act (Cap 49, 1985 Rev Ed).

82 Common Gaming Houses Act (Cap 49, 1985 Rev Ed).

83 Cap 21, 1985 Rev Ed.

Life” or playing in massively multiplayer online role-playing games⁸⁴ such as “War of Warcraft” and not to mean online gambling. When referring to gambling on the Internet, the norm has been to use the phrase “online gambling” so that online gambling is not a subset of online gaming.

61 The CGHA⁸⁵ in Singapore still uses the broadly defined word “gaming” and even though the legislation was enacted in the 1960s, it is broad enough to criminalise many aspects of online gambling, although in a somewhat convoluted manner. However, the Government may wish to consider updating the language of the legislation and combining it with the Betting Act⁸⁶ to make the law clearer. Indeed, the Court of Appeal in the recent case of *Poh Soon Kiat v Desert Palace Inc*⁸⁷ expressly stated that:⁸⁸

Controlled casino gambling may not be contrary to the legal policy of Singapore and also the public policy of this country (in so far as legal policy reflects public policy), but gambling in general, especially unregulated gambling at large and gambling on credit, is, in our view, contrary to Singapore’s public policy.

62 Since gambling in general is contrary to Singapore’s public policy, then the anti-gambling laws should be much more clearly expressed in the law books.

84 See further Hannah Yee Fen Lim, “Who Monitors the Monitor? Virtual World Governance and the Failure of Contract Law Remedies in Virtual Worlds” (2009) 11 *Vanderbilt Journal of Entertainment and Technology Law* 1053–1073.

85 Common Gaming Houses Act (Cap 49, 1985 Rev Ed).

86 Cap 21, 1985 Rev Ed.

87 [2010] 1 SLR 1129.

88 [2010] 1 SLR 1129 at [97].