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Quarterly

WINTER 2010

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WHEN TO HOLD 'EM, WHEN TO FOLD 'EM

Legal video gaming comes to Illinois – or maybe it doesn't

Video gaming is an electronic video game machine into which the player inserts cash and then plays a card game like poker or blackjack against the machine. Video gaming is a form of gambling and has always been strictly illegal in Illinois, outside of licensed riverboat casinos.

Last year, in an attempt to boost revenue for infrastructure repair, without angering the public by raising taxes, Illinois legalized video gaming, and then of course enacted a heavy tax on the proceeds. The new Video Gaming Act allows certain establishments to install and operate video gaming terminals that pay winners in credits that can be redeemed for cash.

However, the law allows counties and municipalities to override the state law and ban video gaming within their boundaries. But, if they do so, they will not share in any revenue generated by that activity. The challenge for units of local government is to determine if the revenue from video gaming outweighs concerns about permitting legalized gambling in their communities.

In each issue of the RSP Quarterly, we will be running a Chicago Lore quiz. The answers will appear later in the same issue. Here's our opening question:



The Question (answer on page 5)

Although radio and television call letters are technically arbitrary and not abbreviations for anything, in the 1950's what did these Chicago stations promote their call letters as standing for: **WLS, WGN** and **WTTW**?

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If the local government does not vote to ban video gambling, an establishment may install and maintain a video gaming terminal if (1) it has a valid liquor license, and (2) it is licensed as either:

- a retail establishment (such as a restaurant or bar);
- a fraternal establishment with a national fraternal organization charter (such as the Knights of Columbus);
- a veteran's establishment with a national veterans organization charter (such as the American Legion); or
- a truck stop, located on at least three acres of land with a convenience store and separate diesel islands for fueling commercial motor vehicles, and parking spaces for commercial motor vehicles.

Existing gambling facilities, such as inter-track wagering locations, river boats and horse racing facilities, are not permitted to have video gaming.

A video gaming establishment may not be located within 1,000 feet of a church or school and may not install more than five gaming terminals. As with any legal gambling, players must be 21 years or older.

Establishments, manufacturers of the terminals, distributors and a few others cut in on the deal have to pay an application fee of up to \$5,000 and an annual fee of up to \$10,000. Those fees are deposited into something called the Illinois State Gaming Fund. In a great legislative irony, 25% percent of that fund is to be used to treat compulsive gamblers. The remaining 75% is used for administration of the law. None of the application or annual fees are distributed to units of local government.

The big money for the State and the municipalities comes from tax revenue generated from the use of the terminals by gamblers. Each establishment will pay a 30% net terminal income tax. In addition, units of local government are allowed to enact ordinances that impose more fees on the gaming establishments within their borders.

If a municipality wants to stop video gaming within its corporate limits, it may pass an ordinance to that effect. Similarly, counties may pass an ordinance banning video gaming, but only within their unincorporated areas; i.e. outside of municipal boundaries. Video gaming can also be prohibited through a majority vote at an election. To get such a referendum on the ballot, a petition must be filed containing the signatures of at least 25% of the legal voters of that municipality or county. That requirement makes it unlikely that anti-gambling activists in a populous city like Chicago could ever generate enough signatures to get the question on the ballot.

Many municipalities and several counties have already enacted ordinances to ban video gaming, and others are expected to follow suit. In the Chicago area, more than 40 municipalities (not including Chicago) have enacted such a ban, as have the counties of Cook, Lake, DuPage, Kane and McHenry. Again, the county bans apply only to unincorporated parts of the county.

Illinois is depending on video gaming revenues to help fund infrastructure improvements throughout the State. However, with a growing number of units of government banning video gaming, it appears the State may be drawing to an inside straight.

✦ *Eric G. Patt*



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SWINE FLU: LAWYERS STICK THEIR NOSES INTO THE PROBLEM

Employers should be ready to deal with H1N1 flu virus (the "swine flu").

Sick leave policies should be reviewed to ensure that they encourage employees who have influenza-related symptoms to stay home so that they do not infect others. Likewise, employees who have ill family members may need to stay home to care for them, or may need to stay home to watch their children if schools or childcare facilities close. Sick leave policies should also reflect the employer's right to direct employees to remain at home or to seek medical attention.

An employer's telecommuting policy should provide great flexibility for employees to work remotely if a workplace swine flu outbreak occurs. Employers should also review their travel and event attendance policies to ensure they have the right to restrict travel and event attendance for the health and safety of their employees.

Given the potential serious threat of swine flu, employees experiencing flu-like symptoms should be told not to report for work. If an employer has a reasonable belief that an employee is a direct threat to the workplace, an employer may send an employee to a qualified

healthcare provider for examination. Employers may not, however, mandate that employees be immunized.

If an employee comes to work in contravention of an employer's directive not to do so, an employer might consider disciplining the employee. Conversely, under certain circumstances, an employee may have the right to refuse to perform a task or refuse to report to work if he reasonably believes the work would place him in imminent danger of death or serious injury. Whether swine flu would meet such a standard is not clear.

In some instances, swine flu may qualify as a serious health condition under the Federal Family and Medical Leave Act (FMLA), such that an employee may be entitled to personal medical leave or leave to care for a family member. Thus, if an employer mandates leave for employees who may have been exposed to swine flu or who are exhibiting flulike symptoms, employers may wish to conditionally designate such mandated time off as FMLA leave, pending further information from the employee or the employee's health care provider.

✦ *Andrés J. Gallegos*



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ESTATE PLANNING – A FAMILY AFFAIR

We have preached, urged and cajoled the advisability of everyone having a good estate plan. To some, that means having only a will, but the documents of choice should be both a conventional testamentary will and also a living trust.

A living trust is another name for a self-declaration of trust. This document keeps your estate private, allows you to pick a representative to administer your estate, and allows you to decide who receives the benefits of your estate and when. But, is that enough where the family is not the conventional mother and father who are married with two children? What about those with eclectic extended families: single relatives, relatives with domestic partners, and relatives whose private lives and histories we know little about?

When alleged actress and part-time playmate Anna Nicole Smith [real name: Vicky Lawrence Marshall] died a few years ago, she was unmarried, had an infant daughter out of wedlock as her only heir, and had no estate plan. By law, the infant inherited everything. The perception was that Anna Nicole's estate would be very substantial. Accordingly, whoever was established to be the father of the child would have indirect access to a large inheritance. Suddenly, the line of gentlemen claiming to be the biological father became lengthy. Their sole concern purportedly was their love for the child they sired.

Ultimately, DNA testing established the child's paternity and put an end to the fatherly speculation. That did not end the other problems that frequently arise when there is no estate plan.

A problem that did not arise in the Smith estate that can easily arise in other estates occurs when there is no estate plan and a long-lost adult child of the deceased surfaces to claim the estate. The Illinois Parentage Act specifies circumstances that would give rise to a presumption of paternity. A presumption, if established, can be rebutted, but only by clear and convincing evidence. The poor long-lost child may turn out to become the very rich long-lost child.

Seniors sometimes believe it is sufficient to verbally tell a younger family member how the assets should be distributed when they die. That seldom works. Absent a written estate plan, the wishes of a decedent expressed to family members are legally irrelevant. Instead, the state law of descent and distribution will prevail.

With an estate plan, an individual can decide to what extent he wants each of his children – including children born out of wedlock – to inherit. Similarly, an individual can decide to leave a bequest to someone he considers to be his child but who is not legally his child, such as a spouse's child by a former marriage who was never legally adopted.

It may be appropriate to suggest to members of one's extended family, especially those that do not have children or who fathered children out of wedlock, that they engage in thoughtful estate planning to avoid unintended results. Such individuals may have friends that they specifically want to inherit or heirs that they specifically want to disinherit.

After years of heartache, they may wish to leave nothing to a biological child with whom they have no meaningful relationship.

Adjudicating the issues of paternity can be time consuming and expensive. A properly drafted estate plan avoids the uncertainty of intended beneficiaries being disinherited and unwanted heirs inheriting.

Encouraging estate planning for extended family members, when tactfully done, can avoid undesirable results and anguish which may occur shortly after the decedent is laid to rest. The decedent may be lying peacefully, but the estate will be anything but peaceful.

✦ *Howard S. Golden*



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CAN YOU LOSE YOUR FIRST JOB FOR WORKING A SECOND?

Many full-time employees have recently taken to working a second or third job or freelancing on their own to make up for lost income on their first job. But while striving to increase one's take-home pay, can working one job pose the threat of termination from the other? It depends.

With most employees, the short answer is "yes." That's because most working Americans fall into the legal category of at-will employment: there is no employment contract and therefore the employer may terminate the employee for any reason or no reason at all, so long as the reason is not one that is prohibited by law (e.g., because of the employee's religion, gender, race, etc.). By the same token, an at-will employee is generally granted the same latitude to sever his or her relationship with the employer. So in the case of an at-will employee, the employer who believes – correctly or not – that another job interferes with an employee's performance may certainly terminate that employee.

Some at-will employers may not mind if their employees are working another job. However, this understanding certainly decreases if the other job hurts the employee's performance. That could include anything from a sleep-deprived employee to one who takes telephone calls for her freelance acting gig while punched in on her employer's clock. All employees owe their employer a legal duty of loyalty.

Employees seeking to compete or otherwise divert business opportunities away from their employer to their freelance gigs or to their second jobs will almost certainly find themselves looking for a "first" job, and perhaps defending a lawsuit.

Employees working under an employment agreement, i.e. those who are not at-will, fall under a different standard. The general rule there is that to terminate such an

employee, the employer must show that the employee violated some term of the employment contract. In some instances, a contract may explicitly prevent an employee from working for any other employer during their term of employment. In other cases the restriction may be more subtle. Some contracts require the employee to give his "best efforts" for the employer or to work for the "sole benefit" of the employer. Other contractual provisions might exclude work performed for another employer as a violation of a covenant not to compete or a covenant not to solicit customers or employees of the employer.

Some contracts are much more specific, containing a provision that the employee must not work for a competitor or must maintain employer confidentialities. If the two jobs compete in the same marketplace, the employer may take the position that the employee's second job will violate the contract.

Employees generally do not have an affirmative duty to inform their employer of their other sources of income. Nevertheless, it is prudent for the employee to know the restrictions an employer may have in place or what the employer might view as a conflict. For at-will employees, the company's employee handbook is a good first place to check before taking a second job that might end up costing you your first. Contract employees should know where these boundaries are by reading and understanding their own employment agreement.

As with many potential conflicts, full-disclosure is often a good policy. If there is no mention of the topic in the handbook or employment agreement, asking one's employer about the prospect of another job – and getting approval expressed in writing – certainly provides more security for the employee working that second job.

✦ *William A. Castle, Jr.*



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WHAT CAN YOU KEEP IF YOU FILE FOR BANKRUPTCY?

Most personal bankruptcy cases are filed under Chapter 7 of the U. S. Bankruptcy Code. This is known as a liquidation, and is geared toward individuals who want to make a fresh start by wiping out their debts. Unfortunately for the debtor – but fortunately for the creditors – all of the debtor’s non-exempt assets go into the bankruptcy estate along with his debts. The assets are then sold under court supervision and the proceeds are divided among the creditors.

Can a debtor who goes into bankruptcy keep any of his assets? Yes, but not a lot.

The Bankruptcy Code is a federal law, administered in the federal courts. Nevertheless, what assets a debtor in bankruptcy may keep (known as exemptions) is governed principally by state law. As a result, what is exempt and what is not exempt varies from state to state. Here is the Illinois list of bankruptcy exemptions:

Exemptions that are limited and have a dollar cap:

- *Homestead (equity in the debtor’s residence) - \$15,000 in value (double if married)*
- *Automobile - \$2,400 in value in one motor vehicle*
- *Tools of the trade - \$1,500 in value*
- *Wildcard (for any other personal property except wages) – \$4,000 in value*

Exemptions that are unlimited and have no dollar cap:

- *Health aids*
- *Insurance and disability benefits*
- *Un-matured life insurance*

- *Pensions, IRAs, ERISA qualified benefits, public employee retirement benefits*
- *Unemployment benefits*
- *Workers compensation payments*
- *Public aid benefits*
- *Social security benefits*
- *Veteran’s benefits*
- *Household items such as family pictures, school supplies, clothes, etc.*
- *Alimony and child support*
- *Money deposits in pre-paid tuition trust funds like Bright Start*

That’s it in full. It’s not much. Compare, for example, Illinois’ miserly \$15,000 homestead exemption to Florida’s unlimited homestead exemption.

The way around the \$15,000 Illinois limit for married couples is to own the home in tenancy by the entireties between husband and wife. There are some significant caveats to that however. The general rule is that one spouse’s debt cannot be collected from property owned in tenancy by the entities.

Therefore, to be exempt, the debt cannot be a joint debt of both the husband and wife; it must be a debt of one spouse only. And, both spouses must be alive. So, if the debt was incurred by both spouses or if one spouse passes away, the only exemption on the house is the \$15,000 exemption, even if owned in tenancy by the entities.

✦ *Nathaniel J. Pomrenze*



The Answer (to our quiz on page 1)

WLS: *World’s Largest Store* (back when Sears Roebuck & Company owned WLS and was the world’s largest retailer).

WGN: *World’s Greatest Newspaper* (which was how the Tribune, the owner of WGN, referred to itself).

WTTW: *Your Window To The World.*



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“The only function of economic forecasting is to make astrology look respectable.”

~ John Kenneth Galbraith

GREAT URBAN LEGENDS OF THE LAW

Fact or Fiction?

It's great to get a big income tax refund.

A: Fiction.

When you get an income tax refund, the government is not giving you anything. It is simply returning your own money that you overpaid the government during the previous year. To add to the insult, the government usually pays no interest on the withheld money it returns to individual taxpayers. In effect, you made the government an interest free loan for a year.

If, on the other hand, you withheld an insufficient amount to cover the tax due, you will have to pay interest to the government – and possibly penalties too. The government may not pay interest, but it sure does *charge* interest.

The ideal scenario for a taxpayer is that the amount withheld exactly equals the amount of the tax assessed. That means that the taxpayer does not owe anything for underwithholding and didn't make the government an interest free loan.

While hitting the number right on the button is difficult, coming close is easy if you plan carefully and make adjustments as necessary during the year. Yes, you can adjust the amount withheld, upward or downward, at any time. Just fill out a new W-4 and give it to your employer, or change the amount of your quarterly estimated payment.

RECENT ANNOUNCEMENTS

All the news you can use...

ACHIEVEMENTS OF NOTE

Larry Woodard is the proud father of a bouncing, bubbly, baby boy, Tyler Joseph, 5 pounds, 12 ounces.

Caroline Smith and **Kymn Harp** have become shareholders (partners) in the firm.

Dr. Michael Hriljac addressed the freshman class of medical students at the University of Illinois College of Medicine on medical malpractice.

Kymn Harp spoke on how lenders should deal with troubled condominium projects at the Illinois Institute of Continuing Legal Education seminar on condominiums in crisis. He also addressed the Chicago Bar Association's committee on commercial finance and transactions on loan workout strategies for distressed commercial real estate loans.

Tracy Stevenson, Richard Fimoff and **Richard Stavins** served as supreme court judges in the Appellate Lawyers Association's annual law school moot court competition

Tracy Stevenson published the article "Extra-contractual Remedies Against Insurers" in the Illinois Defense Counsel Quarterly.

Crystal Kontny is now listed in the *Heritage Registry of Who's Who*.

Andrew Lapin was elected an Illinois Super Lawyer by *Chicago* magazine and *Law & Politics* magazine, and was designated as an Illinois Leading Lawyer by the *Illinois Law Bulletin*.

Jeffrey Randall joined the board of directors of the Immokalee Foundation, a charity that supports vocational and academic education for economically depressed children of migrant farm workers in Florida.

NEW ATTORNEYS IN THE FIRM

We are pleased to welcome **Vincent Borst** and **Jennifer Tweeton** as two new attorneys with the firm. Vince is joining us as a shareholder (partner). He represents equipment lessors, banks and corporations in litigation and transactional matters. Jennifer is an associate. She represents commercial clients and insurance companies in litigation matters

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