



CONTRACTUAL RELATIONSHIP ARISING FROM GAMBLING AND BETTING
UNDER THE CIVIL AND COMERCIAL CODE AND THE
GAMBLING ACT OF B.E. 2478 (AD 1935)

BY

MR. PUVAPAT PURIPAKDEE

AN INDEPENDENT STUDY PAPER SUBMITTED IN
PARTIAL FULFILLMENT OF THE REQUIREMENTS
FOR THE DEGREE OF MASTER OF LAWS
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ABSTRACT

This independent study aims to study the problems of legal consequences of gambling contractual relationship, under Thai Civil and Commercial Code and the Gambling Act of B.E. 2478 (A.D. 1935) compared to English law, French law, Singapore law, and Swiss law. The study adopted qualitative research method through analysis of documents.

The study founded the gambling in Thailand is governed by the Civil and Commercial Code and the Gambling Act of B.E. 2478 (A.D. 1935). However, both of legal and illegal gambling cannot be enforced by courts as Section 853 of the Code prohibits the recovery of any money or valuable objects lost in a wager or their placement in the hands of anybody to abide by the outcome of the wager, so if a gambler refuses to pay the stakes after losing a bet, or if the bookmaker refuses to deliver the reward to the winning gambler, the gambler and the bookmaker have no legal right to recover their stakes or prizes. The study also indicated that the foreign law provides exceptional provisions to allow to enforce any gambling contractual relationship based on legal principle of good faith.

The study recommends Thailand's Legislative Organization to add a provision of safeguard lawful gamblers into the Gambling Act of B.E. 2478 (A.D. 1935), by writing the conditions of gambling contracts that can be enforced through judicial proceedings.

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Chapter 1

Introduction

1.1 General Background and Statement of the Problem

Gambling is the act of putting money ("the stakes") on an event with an unknown result in the hopes of winning something valuable. Gambling thus necessitates the presence of three elements: consideration (a stake), risk (a chance), and a prize. Gambling has been popular in Thailand since the Sukhothai periods. Thai local culture, such as Muay Thai, boat racing, bullfighting, and cockfighting, as well as foreign cultures, such as the lottery, which was introduced by Chinese immigration¹, horse racing, which started in Europe, and billiards, which originated in England². It is well known that gambling necessitates the presence of a stake or property, which is the amount of money or property risked on a gamble for the possibility of monetary benefit. When a gambler makes a bet, the gambler must pay the stake to the bookmakers; conversely, if the gambler wins the bet, the bookmakers must pay the prize; gambling therefore results in a mutual agreement between two gamblers or a gambler and a bookmaker.

In Thailand, gambling and betting are specific contracts under Civil and Commercial Code, Book III, Specific Contracts, Title XVIII: Gambling and Betting. The Code states about consequences of gambling contracts, as well as the exception of type of gambling in not subject to general provisions of gambling and betting. The provisions of gambling and betting in the Code were influenced by the French Civil Code, the German Civil Code, and the Obligation Code of Swiss, which the intent of law to not encourage people gamble because gambling is socially dangerous activity. It is necessary to legislate the law for control of civil consequences of gambling contracts. which later, the government promulgates the Gambling Act of B.E. 2478, the Act's objective is to specify the types of gambling that are legal in Thailand, as well as the requirements for seeking gambling permission and the penalties for illegal gambling but civil regulation remains unchanged.

¹ Archives, Krung Siam Lottery, <http://catholichaab.com/main/index.php/research-and-study/research-and-study/1181-2016-05-13-02-21-03>, (accessed February 10, 2021).

² Billiard sports association of Thailand, History of the Billiards Association of Thailand, http://www.thailandsnooker.org/bsat_history.php, (accessed February 10, 2021).

Although gambling creates a mutual agreement between the players, but according to Section 853 of the Civil and Commercial Code does not allow to create legal relationship between the parties. To apply Section 853, all gambling contracts, whether legal or illegal, create no obligation and hence cannot be enforced by a court. As a result, gambling contracts, can only be enforced between the parties not by court proceeding. Moreover, the section 853 prohibits the recovery of any money or valuable objects lost in a wager or their placement in the hands of anybody to abide by the outcome of the wager. Section 853 also covers legal gambling and betting. Based on Section 853 if a gambler refuses to pay the stakes after losing a bet, or if the bookmaker refuses to deliver the reward to the winning gambler, the gambler and the bookmaker have no legal right to recover their stakes or prizes. Moreover, in the situation of a gambling game winner engaged in cheating, fraud, foul play, or other impropriety in order to exploit the loser of the game, the loser has no right to present facts or make a case for the truth in court.

Notably, according to section 854, it prescribes exception of the types of gambling contracts that are permissible to be enforced by court are limited to only government lottery or a raffle that has been approved by the government. Gamblers who win a government lottery or a government-approved raffle can claim their prizes. In addition, any issue involving a government lottery, such as a gambler claiming ownership of a stolen lottery ticket³, can be settled through the justice process⁴. To put it in other words, a gambling contract related to a government lottery or a raffle that has been approved by the government can be enforced by a court. In contrast, other legal gambling, such as horse racing, Muay Thai, Boat racing, Bullfighting, and Cockfighting, which are permitted to be played and thus create a mutual agreement between the parties in Thailand by the Gambling Act B.E. 2478, are still not permitted to be settled, enforced, or recovered debts arising from such gambling contracts through the court system resulting in the Bookmaker or gambler in gambling is permitted by the Gambling Act B.E. 2478 (A.D. 1935) cannot claim their stake or prizes.

³ Thairath Online, 30 million lottery cases, <https://www.thairath.co.th/news/local/central/1583236>, (accessed February 10, 2021).

⁴ Daily news, Lottery cheat case, <https://www.dailynews.co.th/crime/705104>, (accessed February 10, 2021).

To recover the loss, the party of gambling contract may resort to aggressive self-help, resulting in a variety of issues such as informal debt problems, bodily injury, or death to a debtor as a result of an unlawful debt collector's acts, and so on. And when the government has a policy in place to build a casino or allow remote gambling in the future. The regulation of gambling contracts is an impediment to doing so because the legal system will be unable to settle any issues resulting from the operation of the casino or remote gambling enterprise. As a result, firms may fail or turn to illegitimate dispute settlement methods.

There are two main approaches to resolve problems of gambling contractual relationship: legislative approach and judicial approach. England enacted the Gambling Act 2005, Singapore added an exceptional provision, as Section 5, into the Civil Code reading all forms of gambling, and a gambling contract is treated as a regular contract that can be legally enforced, with the exception of gambling contracts that are subject to any rule of law prohibiting the enforcement of a contract on the grounds of unlawfulness Article 5 of Singapore's Civil Code governs all gambling contracts. The legislation expressly states that all gambling contracts are null and invalid, and that no action in court may be taken to collect a stake or valued item. Those provisions, however, do not apply to gambling conducted under the control or supervision of a permitted by another legislation operator or promoted by the operator of such a permitted by another legislation. As a result, any issue arising from legal gambling in both countries, such as gambling debt non-payment or gambling cheating, can be settled by legal action. Switzerland, any legal gambling contract is governed by Title XXI: Gambling and Betting of Obligation Code, which stipulates that no obligation in gambling contract but gambling in casinos gives rise to claims if it occurs in a casino that has been licensed by the competent authorities. The legislation also protects gamblers from cheating by enabling the loser of a gambling bet to reclaim his or her stake or property if the loser can prove that the winner cheated.

French courts use judicial approach through principles of good faith. In this regard, the courts accept contractual relationship in case gambling contracts, casinos, sports betting, and the lottery, are authorized by Government. Title XII of Aleatory Contracts, Chapter I of play and betting of the Napoleon Code govern legal gambling contracts. Moreover, despite the fact that the law states do not allow an action for debt

at play or for the payment of wager, the Highest Court of ordinary jurisdiction in France has defined an exception to this provision if a gambling contract arises from a gambling operator who is licensed by the law and ruled by the government. As a result of the administrative approval, a gambling obligation becomes a fully enforceable civil obligation. Furthermore, the judgment states no circumstance may the loser reclaim what he has willingly paid, unless there has been foul play, fraud, or cheating on the side of the winner and this provision protects the gambler from being cheated.

This study aims to analysis of efficiency of gambling contractual relationship under legislative and judicial approach based on legal comparison study to recommend the efficient approach to Thailand. The writer assumes that the problem of gambling contractual relationship brings about problem of legal enforcement in the current circumstance of country.

1.2 Objective of the Study

1.2.1 To study the historical background and general concept of gambling.

1.2.2 To study the law related to gambling in Thailand, England, Singapore, France, and Switzerland in relation to the enforcement of gambling debt.

1.2.3 To analyze the problem of gambling debt and the possibility of adopting the regulation of acceptance of gambling debt into Thai legislation.

1.2.4 To explore recommendations to Thailand Legislative Branch to revise the Gambling Act of B.E. 2478 (A.D.1935) to cope with gambling contractual relationship.

1.3 Hypothesis of the Study

As the Gambling Act of B.E. 2478 (A.D. 1935) legalized gambling; however, Sections 853 of the Civil and Commercial Code stipulates that gambling contracts are not binding, that no stakes or property may be reclaimed, and that the only exemption is a government lottery. The section causes the problems of debt recovery in legal gambling and reclaim of stakes in the situation of a gambling game winner committed an impropriety. To resolve the problem, Thailand should revise the Gambling Act B.E. 2478 by amending the Act to allow the loser has right to reclaim of stakes when winner

engaged in cheating, fraud, foul play, or other impropriety in order to exploit the loser of the game. In this regard, the Legislative Branch should add, exceptional provisions for contractual relationship in legal gambling, into the Gambling Act B.E. 2478 (A.D. 1935) to allow the courts to apply a principle of good faith to recovery the debts arising from gambling under the Act.

1.4 Research Methodology

This independent study adopted qualitative research methodology. The study focuses on analysis of documents through origin of civil regulation related to gambling and the theory of contract and compiling includes document research, academic writing, journal, legal textbook, provisions. The study aims to compare between legislative and judicial approach used by Thailand, England, Singapore, France, and Switzerland. The study aims to examine data collecting from documents, including books, textbooks, law books, research papers, academic and research articles.

1.5. Scope of the Study

The scope of this Independent Research study on gambling legislation focuses on revising title xviii: gambling and betting in the Civil and Commercial Code. Due to the succession in controlling gambling and appropriate modern gambling regulation, the information and document research is from theory of contract and The Gambling Act 2005, of England and Civil Code of France, Singapore, and Switzerland to be adopted as a role model for the additional regulation of gambling debt in Thailand.

1.6 Expectation of the Study

1.6.1 To understand of historical background as well as general concept of gambling in Thailand.

1.6.2 To understand of the law related to gambling in Thailand and foreign countries.

1.6.3 To get a result of analyze the problem of gambling debt and the acceptance of gambling debt in Thai legislation.

1.6.4 To obtain recommendations about amendment of the Gambling Act B.E. 2478 (A.D. 1935) to resolve problems of gambling contractual relationship appropriately.



Chapter 2

Historical Background and General Concept of Gambling

Chapter 2 aims to examine the definition, evolution, and classification of gambling laws in Thailand, as well as the roles of the state in controlling gambling. Furthermore, this chapter will provide a thorough understanding of the theories relating to gambling debt, namely autonomy of will, freedom of contract, good faith, and agreements that must be kept. The last part of this chapter offers a comprehensive insight into the concepts of gambling debt in the common law and the civil law systems, and the origin of the civil regulations of gambling in Thailand.

2.1 Definition, evolution, and progress of classification of gambling

2.1.1 The definition of gambling and betting

According to the Royal Institute Dictionary, the definition of gambling is “an activity of playing games of chance for money,” and the definition of betting is “an act of risking money on the result of an unknown event.”⁵

Mr. Rungroj Ruenroengwongse, the former Vice-President of the Supreme Court, said that “gambling is an agreement that results in the loss of money or property which the parties use the result of an uncertain future event to determine the result of winning or losing”.⁶

Mr. Chumpol Lohachala, the former Deputy Police Chief General, stated that “gambling is an act of participating in a game of chance using tactics and skill to win a stake, such a game can be lawful or unlawful.”⁷

⁵ Gambling, (2020), In the Royal Institute Dictionary, <https://dictionary.orst.go.th/>, (accessed February 15, 2021).

⁶ Rungroj Ruenroengwongse, “Gambling,” Journal of Chulalongkorn University Law 45 (February 1976): 75-78.

⁷ Chumpol Lohachala, “Descriptions of the gambling that take place in the court,” Journal of court of justice 4 (July 1974): 4-26.

Prof. Jeed Sethabutra, Ph.D. Professor of Law, stated that “gambling is a specific agreement that the parties have promised, and is binding to each other; one party will pay money or property to the other depending on the result of an event that the parties do not yet know. When the result is clear, the parties will make good on their promise by paying the wagered money or property. The party that pays the wagered money is referred to as the loser, while the other party that receives the money or property is referred to as the winner.”⁸

Assoc.Prof. Manoj Suthiwartnarueput, Professor of Law, stated that “Gambling has its particularities: The parties must be involved in the event they are gambling on. As for betting, the parties are not involved in the event.”⁹

In conclusion, the definition of gambling is an agreement between two or more parties to wager money or property on the outcome of an unknown future event in which the parties are involved in. For example, gambling is when two runners agree that whoever loses in a race will pay the winner 1,000 Baht. On the other hand, this is different from when the parties agree to wager the money on the outcome of another race competing by other athletes, in other words, a race they are not participating in. To clarify this point, the definition of betting is when two or more parties wager money or property on the outcome of an unknown future event in which the parties are not involved in.

However, in legal capacity, the law does not differentiate between gambling and betting. To put simply, by legal definition, gambling also covers betting.

The opinion of the Office of the Council of State described that “the main nature of gambling must be betting to win or lose benefits.”¹⁰

⁸ Jeed Sethabutra, Explanation of the Civil and Commercial Law on Deposit Store things in the warehouse, compromise, gambling, and betting, (Bangkok: Thammasat University Printing House., 1949), p. 171.

⁹ Manoch Suthiwartnarueput, Explanation of the Civil and Commercial Code on Borrowing, Depositing, Storage in Warehouses and Gambling and Betting, 3rd ed. (Bangkok: Ramkhamhaeng University Printing House., 1987), p. 221.

¹⁰ Office of the Council of State. “The Memorandum of the Office of the Council of State discusses the problem of gambling laws related to the use of telephones, the

Alternatively, another legal definition of gambling is “an agreement between two or more individuals to play collectively at a game of chance, the objective of the game is a stake or property, which become the property of the winner.” In this sense, lottery is considered a type of gambling.¹¹

In terms of law, the elements of gambling and betting include 1) Two or more individuals 2) An agreement to wager money or property, and 3) Using future events to determine who wins or loses.

2.1.2 The evolution of gambling regulations in Thailand

Civil law was first established in *Mangraisat* (The Law of Mangrai) during the Sukhothai and Ayutthaya periods (1249 -1767). The law, however, did not provide a rule for gambling debt, nor for loan debt, trade debt, and deposit debt, for the details of civil regulations during the periods were not as advanced as they are today.¹² It appears that the government only had a gambling tax policy, in essence, collecting taxes on gambling houses. Later, during the reign of Borommarachathirat V, King of Ayutthaya from 1733 to 1758, gambling became forbidden for state servants. If a public official was found violating the law, they were to be beaten 90 times and dismissed from their state position.¹³

During the Rattanakosin period (1782-present), the monarch Phraphutthayotfa Chulalok (King Rama I) continued to collect gambling taxes. In 1782, he issued a royal edict forbidding public servants from entering gambling establishments, and a new legislation was enacted to prohibit putting up wagers for cockfighting.¹⁴ The law enforced

1900 number system in the provision of sports predictions and answering questions to win prizes.” 28 May 2002.

¹¹ The Free Dictionary by farlex, *Gaming*, <https://legaldictionary.thefreedictionary.com/gambling>, (accessed February 15, 2021).

¹² Sumet Chanpradab, et al, *Thai Legal History and Major Legal System*, rev ed, (Bangkok: Ramkhamhaeng University Printing House., 1997), p. 32-33.

¹³ Prince Tisavarakumarn, the Prince Damrong Rajanubhab, “The Chronicle Meeting Part 17 is about the legend of quitting gambling and quitting the lottery,” 30 March 1960.

¹⁴ Prachum Kotmai Pracham sok, No 2 (1790), P.69-70.

during this period was the Law of Three Seals, which was adopted from the *Mangraisat*, and as a result, similarly in the Sukhothai period, regulations on gambling debt was still absent.

During his reign, King Chulalongkorn (King Rama V) issued a royal command to reduce the number of gambling establishments.¹⁵ Since Westerners living in Siam during the time were dissatisfied with the Law of Three Seals, King Rama V appointed a royal commission to reform the law, hence the creation of the Civil and Commercial Code. The Civil and Commercial Code took its roots from different sources, such as the French, English, Japanese, and German laws, in order to find the appropriate legal regulations for Siam.¹⁶

On January 1, 1925, during the reign of King Vajiravudh (King Rama VI), the Civil and Commercial Code Book I: General Provisions and Book II: Obligations were enforced. The content of Book II includes obligations, juristic acts, and contracts, and from then on, the concept of juristic acts has been the cornerstone of Thailand's Civil and Commercial Code. Later, on April 1, 1929, King Prajadhipok (King Rama VII) promulgated Book III: Specific Contracts to regulate and solve specific legal cases. Title XVIII: Gambling and Betting was first established in this section.¹⁷ This was the first time that civil regulations on gambling were incorporated in the Civil and Commercial Code, and they have remained in effect ever since. Later, the government passed the Gambling Act BE 2473 (1930), which went into effect on September 14, 1930, and for the first time, the country had provisions for legislation pertaining to crimes and criminal punishments for gambling.

In order to update the legislation and introduce new types of gambling, King Ananda Mahidol (King Rama VIII) issued a royal command to establish the Gambling Act BE 2478 (1935) and abolished the Gambling Act BE 2473 (1930). The law has been in

¹⁵ Royal command reduced the number of gambling houses, Siam government gazette, No 15, 19 February 1898.

¹⁶ Munin Pongsapan, The Civil Law Systems: From the Twelve Tables to the Thai Civil and Commercial Code, 2nd ed, (Bangkok: Thammasat university, 2019), p. 258.

¹⁷ Royal Decree enforcing the provisions of the Civil and Commercial Code, Book III, 1 January 1928.

existence since April 1, 1939, and it is still practiced even today. The government lottery is considered a type of gambling, however, it is not subject to the Gambling Act, since it is regulated by the Government Lottery Office Act BE 2517 (1974). Consequently, the government lottery is under more specific regulations than any other types of gambling.¹⁸

2.1.3 The classification of gambling

The types of gambling are determined by the methods in which they are classified by. There are types of gambling as defined by law, and then there are types of gambling as determined by who places the wagers, according to the Center for Gambling Studies. Gambling can also be classified as either chance-based or skill-based.

1. Classified by law

The Gambling Act BE 2478 (1935) and the Government Lottery Act BE 2503 (1960) divides gambling games into 4 categories.¹⁹

1) Casino games

Although casinos are deemed illegal in Thailand, a list of casino games is identified by law, specifically in List A which is annexed in the Gambling Act BE 2478 (1935). The list includes lottery A and B, *po-pan po-kam*, *tua*, *pad-kaao*, *jab yi ki*, domino, *biabok*, three-card monte, *mai-sam-an*, *chang-nga* or poker, *mai-dam mai-daeng*, *e-pong-krob*, *kam-tad mai-mun*, *hua-toh* or puzzle, games in which animal torture is practiced, pool, *tee-pee*, *yon-jim*, *si-ngao-lak*, *kluk-klik*, *nam-tao*, high-low, spin of coin, and *e-pong-sad*. When the government deems it acceptable to allow any types of the aforementioned games to be played at any specific location under certain conditions, license should be acquired and issued by a royal decree. The royal decree, then, permits gamblers to play exclusively at such government-approved places.

¹⁸ Nantawat boramanand, Laws relating to gambling in Thailand, Thai health Health Promotion Foundation (Bangkok: Chulalongkorn University, 2011), p. 20.

¹⁹ Sawang Mana, "Measures of Controlling Gamble," In Accordance with the Gamble Act (1935), (National Health Foundation): p.14-15, <http://www.thainhf.org/icgp/autopagev4/files/FLjfxTZWed122805.pdf>, (accessed June 19, 2021).

2) General gambling

The games shall be authorized for the direct or indirect advantage of the host only upon permission when deemed acceptable by the competent Minister or licensing officer. General gambling games are specified by law, specifically in List B annexed in the Gambling Act BE 2478 (1935). The list includes games in which animals are put to fight or to race, bull running, boxing and wrestling, boat racing and rowing, image guessing, quoit, tossing of coins or any object in any kind of container, fishing, drawing lots by any means, shooting, pitching at the face, *tao-kham-dan*, *mak-kaew*, *mak-hua-daeng*, bingo, lottery, raffle or any game of luck promising money, totalizator, sweepstake, bookmaking, sale of lottery, raffle or sweepstake tickets, mah-jong, domino, backgammon, billiard, and *khong-oy*.

3) Other gambling games that are not listed

This category includes gambling games other than those specified on List A and List B annexed in the Gambling Act.

4) Government lottery

The government lottery is a special legislation that is not included in the Gambling Act since it is administered by the Government Lottery Office (GLO) and has a different control structure and betting style than gambling under the Gambling Act.

2. Classified by betting with gambler or bookmaker²⁰

1) Gamblers betting against each other

This type of bet is a competition between two or more gamblers. The gamblers have an agreement to place wagers on the outcome of a future uncertain event. At the end of the event when the result is clear, one party will receive the money or property placed as wagers from the other party based on equal chance. An example of this type of gambling is poker.

2) Gambler betting against bookmaker

This type of bet is a competition between some players and a bookmaker. The bookmaker needs to have a sum of cash on hand in order to pay the players for their bet. In this kind of gambling, although there is a chance of the bookmaker

²⁰ Richard Eng, Betting Against Other Bettors, <https://www.dummies.com/sports/betting-against-other-bettors/>, (accessed February 20, 2021).

losing a big amount of money, the odds of the bookmaker winning are greater than the odds of the player winning. This is because the bookmaker always designs the game to provide a greater chance for themselves to win rather than for the players. Some examples of this type of gambling are casino games and government lottery.

3. Classified by chance-based and skill-based²¹

This classification of gambling can be divided into 2 categories of gambling games:

1) Chance-based

When a game is chance-based, the results of the event are random; the gambler has an equal chance of winning and losing, and has no control over the game. Some examples of such a type of gambling games are football betting, card games, and baccarat.

2) Skill-based

When a game is skill-based, the gambler wields power over the result of the game using their skill or ability. However, gamblers do not always win the game. Skill only increases the chance of winning, but it does not guarantee it. Some examples of this type of games are blackjack and poker.

2.1.4 The role of the state in controlling gambling

There are different gambling control measures depending on the types of gambling as defined by the Gambling Act BE 2478 (1935). The law determines how gambling is controlled and permitted for each type.

1. Casino games

According to Section 4, paragraph 1 of The Gambling Act BE 2478, it is unlawful to authorize the organization or participation in gambling games. Whoever

²¹ Better health, Gambling, <https://www.betterhealth.vic.gov.au/health/healthy-living/gambling>, (accessed February 20, 2021).

organizes a casino game shall be penalized,²² as shall the player or gambler who is hereby called a client.²³ However, when the government deems it suitable to allow any types of games at a specific location under certain conditions, a license shall be granted by a royal decree. The royal decree specifies that only government-permitted casinos established by the Minister of Finance may be allowed to operate. Currently, the Thai government has no policy for any gambling establishments such as casinos, which means that it is still illegal to play any types of casino games.

2. General gambling

According to Section 4, paragraphs 2 and 3 of the Gambling Act BE 2478, an organizer can request permission to play general gambling when the responsible minister or the licensing officer considers it appropriate. In such a case, they must acquire a permit where they meet all the requirements established by the regulations and policies of the Ministry of Interior. However, not all general gambling can be permitted since there are some gambling games that are dictated by the policy of the Ministry of Interior to not be allowed at all, such as billiards and poker. Some general gambling is allowed only at the Red Cross fairs, or at an annual event of a province, both of which must be held with an intention to raise money for the Red Cross, in other words, for charity purposes. Some examples of the general gambling allowed for the aforementioned events are quoits, bingo, and tossing of coins or any objects.²⁴ Other than the stated cases, unauthorized gambling shall be punished by a period of imprisonment to both the organizer and the player or gambler.²⁵

²² Whoever organizes a casino game shall be penalized by a term of imprisonment ranging from three months to three years, as well as a fine of 500 Baht to 5000 bahts.

²³ A player or gambler who is called a client shall be punished by a period of imprisonment of not more than three years or a fine of not more than 5,000 baht, or both

²⁴ Department Of Provincial Administration, Gambling license, https://www.dopa.go.th/public_service/service_guide306, (accessed February 20, 2021).

²⁵ The organizer and a player or gambler shall be punished by a period of imprisonment of not more than two years or a fine of not more than 2,000 baht.

3. Other gambling games

According to Section 4bis of the Gambling Act BE 2478, other types of gambling that are not specified by the Gambling Act cannot be requested for permission to play. This includes such gambling as football betting and basketball betting. Violation of the law shall result in punishment by period of imprisonment to both the organizer and the player or gambler.²⁶

4. Government lottery

The government lottery is administered by the Government Lottery Office, whose duty is to issue the government lottery tickets, manage the printing house which is responsible for printing the tickets, and take responsibility for any other acts beneficial to the operation of the Government Lottery Office. Government lottery is legal in Thailand and can be purchased anywhere. The state's role in regulating the lottery is to control the selling price, to prohibit sale to minors under the age of 18, and to prevent sale in educational facilities such as schools and colleges.

2.2 Theories of gambling contract

2.2.1 Definition of contract

According to the People's Law Dictionary, a contract is "an agreement with specific terms between two or more parties or entities in which there is a promise to do something in return for a valuable benefit known as consideration."²⁷

Professor Sak Sanongchart explained the term of "contract" as follows: "A contract is a juristic act occurring from declaring of intention between two or more persons. One party declares his intention by an offer and an acceptance of the terms of

²⁶ The organizer and player shall be punished by a period of imprisonment of not more than one year or a fine of not more than 1,000 baht.

²⁷ Gerald N Hill and Kathleen Thompson Hill, The People's Law Dictionary: Taking the Mystery Out of Legal Language, (New York: MJF Books., 2002), p. 111.

that offer by the other. When acceptance corresponds exactly with an offer, a contract occurs.”²⁸

The Thai law does not give any definitions for the term contract. However, in the first version of the Civil and Commercial Code, the one enforced before the current revised version, there appeared a definition of the word contract in Section 106: a contract is "a concurrence of wills between two or more persons to create, modify, assign or terminate obligations.”

2.2.2 The theory of autonomy of will

The term "*contractus*" was first generalized in the Roman private law system, and then later used globally in all legislations. At that time, there was a code of law called the Code of Justinian. The Justinian law distinguishes four different forms of real contracts depending on the cause of debt (*Obligatio*) as follows: debt caused by property, debt caused by oral speech, debt caused by writing, and debt caused by consent. To give a general idea of what these are, the debt incurred by property is such that of a loan contract or a deposit contract, while the debt incurred by oral communication is such that of a pledge. The debt incurred by writing is that caused by any written contract, and lastly, the debt incurred by consent is such that of a land lease agreement or an agent agreement. These were the only four forms of contracts in which the Justinian law considers valid. The Justinian law also solidified the idea of the binding nature of contracts which is only recognized once it is written in the law.²⁹

Later in the 18th century during the Middle Ages, legal philosophers came up with a new doctrine concerning contract, known as "the autonomy of will." The doctrine is a philosophical explanation regarding the obligation that is founded on a person's declaration of purpose. The 18th century legal philosophers desired for people to be free of social and legal limitations, that is, people are free to enter into any contracts. Furthermore, they thought that a person's right of making contract should be

²⁸ Sak Sanongchart, Commentary on the Civil and Commercial Code: Juristic Acts and Contracts, 2rd ed. (Bangkok: Nitibunkarn., 1981), p.306.

²⁹ Alan Watson, "The Evolution of Law: The Roman System of Contracts," Law and History Review 2 (January 1984): 1.

restricted solely by the parties' satisfaction, unless the contract is immoral or opposes the public order, in which case it is deemed appropriate for the state to limit that freedom. Such a doctrine would be the norm that fosters fairness in the public sector and has given rise to the theory of autonomy of will.³⁰

For a contract to be made, it needs a declaration of intention between the parties to create the obligation. In other words, the parties must share the same intentions. In this sense, the ability to negotiate and stipulate the terms and conditions of the contract is considered an important factor. According to law, everyone involved in the contract must be aware of their own advantages and disadvantages in the contracts they enter into. Bargaining power is the power to enter into a mutual stable contract without state intervention. Furthermore, freedom of intention is another important part of forming a contract. To clarify, this means that the parties are not forced into entering the contract, and that they must understand the contents of the contract to make one.³¹ By law, everyone is free to make decisions to create a contract's substance for the parties to enter into a binding agreement.

Legal philosophers think that the law alone may be inadequate and difficult to adapt to the needs of the people in today's society and culture. As a result of this notion, people should be allowed to think freely about defining and enforcing their own right in contracts. The doctrine of autonomy of will is more prevalent in the civil law system than in the common law system. This doctrine is known as "agreements must be kept (*pacta sunt servanda*)."³²

2.2.3 The theory of freedom of contract

The theory of freedom of contract is thought to have its origins in the Constitution of the United States of America. The US Constitution prescribes that everyone is free to engage in whatever business he or she so desires. The same notion

³⁰ Suthapdi Sattabut, Comparative Civil and Commercial Law Explanation, (Bangkok: Faculty of Law, Chulalongkorn University, 1979), p. 1.

³¹ Ibid., pp. 1.

³² Chaiyot Hemaratchata, Contract law/Chaiyot Hemaratchata, 2nd ed. (Bangkok: Chulalongkorn University Printing House., 1996), p. 81.

reappears in the Napoleonic law, also known as the French Civil Code. Although the French Civil Code does not define specifically the meaning of the term freedom of contract, the idea is present in Articles 6, 1131, and 1133,³³ which states that an agreement made under the authority of the law is considered an obligation to the person who entered into it.³⁴

By definitions, freedom of contract has two distinct meanings:³⁵

1. Freedom to enter into agreements: This is the freedom to create and enter into contracts (positive sense), and it comes hand in hand with the freedom to suspend the process of creating and entering into contracts (negative sense). This includes the suspension of the negotiation process and the withdrawal of the offer or the cancellation of the negotiation.

The offeree is free to refuse to enter into, or suspend the negotiations of, the contract they are offered, for it is clearly in their right to exercise their freedom. On the other hand, the offeror may not be at the same liberty to withdraw from their own offer, even if they no longer wish to enter into the contract, since this is against the law in some countries.³⁶

2. Freedom from interference: This is the freedom to not be interfered by the state when entering into a contract. The state has provided liberal freedom to its people, and therefore, after the contract is made, the state cannot interfere in the agreement between the parties.

³³ Art 6 Private agreements must not contravene the laws, which concern public order and good morals.

Art 1131 An obligation without a cause, or upon a false cause, or upon an unlawful cause, can have no effect.

Art 1133 The cause is unlawful when it is prohibited by the law, when it is contrary to good morals or to public order.

³⁴ Vicha Mahakhun, "Theory of law," *Journal of law* 1(3) (September 1974): 75.

³⁵ Nicholas S. Wilson, "Freedom of contract and Adhesion Contract," *International and comparative law quarterly*, (Cambridge: Cambridge University press, 1965): 174.

³⁶ Sanankorn Sotthibandhu, *Culpa in Contrahendo*, 3rd ed. (Bangkok: Winyuchon Publication House., 2001), p. 15-16.

The theory of freedom of contract is the fundamental of the contract law, which is recognized by many countries, especially those where the civil law system is applied. The basic understanding of the theory is that people of legal age and competence are by law entitled to exercise their freedom to make contracts. By the same token, a person is free to enter into any contracts independently and voluntarily as long as the contract is not against the principles of public order.

2.2.4 The theory of good faith

The theory of good faith, also known by its Latin name *bona fides*, means that all parties involved in a contract must act honestly. The term "good faith", according to the Black's Law Dictionary, can be divided in four parts as follows: (1) Purposeful honesty (2) Obligation integrity (3) Trade standards compliance and fair negotiations, and (4) No intent to deceive or gain an illegal advantage.³⁷

The principle of good faith was formulated by Ancient Roman philosophy, and later the German Civil Code accepted this theory in 1900. It is a general theory governing the enforcement of rights and the payment of civil debts in which the legal relationship between the parties must be trustworthy and honest. The theory of good faith is the foundation of many legal theories, such as the *venire contra factum proprium* or the epithet. The theory of good faith is divided into 2 cases:

General theory of good faith

In the Civil and Commercial Code of Thailand, the theory of good faith appears in Section 5, as follows: "Every person must, in the exercise of his rights and in the performance of his obligations, act in good faith." This section was influenced by the Swiss Civil Code and the German Civil Code.

This section serves as a general presumption that the parties involved in a contract will treat each other honestly, fairly, and in good faith so as to not jeopardize the other party's or parties' right to obtain the contract's benefits.

Specific theory of good faith

³⁷ Kittisak Prokati, Good Faith & Supervening Events in in the German, French, Anglo-American, and Thai legal systems, (Bangkok: Winyuchon Publication House., 2012), p.12.

In specific cases, a person will be protected by law if they act in good faith when he or she enters into a contract without knowing the defects in the contract or agreement that the other party or parties had made before with another party. To clarify this point, such a case may be common in property transfer cases. When the transferee accepts the asset transferred to them without realizing that it is a stolen asset or it is fraudulent, for example, if the transferee does so in good faith, the law will protect them by not returning the property. In contrast, if the transferor is aware of the defect, they will not be protected by the law.

The theory of good faith as prescribed in the German Civil Code and the French Civil Code coincides with the theory of good faith as prescribed in the Civil Law of Thailand.³⁸

2.2.5 The theory of agreements must be kept

The theory of agreements must be kept is also known by its Latin name *Pacta sunt servanda*. This theory finds its principle in morality and religions. More specifically, it appears in Islamic Law, in Chapter 5 of the Quran, the chapter on the subject of contracts, as follows: "ye who believe Fulfill (all) obligations." Similarly, it also appears in the Old Testament: "When a man makes a vow to the Lord or takes an oath to obligate himself by a pledge, he must not break his word but must do everything he said." Furthermore, it is also stated in the Roman law as *pacta sunt servanda ex fide bona* which means "Agreements must be followed in good faith."

During the 18th and 19th centuries, the theory of *Pacta sunt servanda* was recognized as a fundamental legal element of contracts. Although it was not specifically prescribed in law, it was regarded as a general theory applying to contracts and settlements. To clarify, when the parties enter into a contract, they must comply with the terms of the agreement they have formed, unless the law requires such contract terms to be void, such as when the contract is contrary to public morals, impossible, or prohibited by law. In cases where the law dictates contract terms to be void, the contracts formed by the parties will henceforth not be enforceable.

³⁸ Vorranaree Singto, Good Faith (Bangkok: Sukhothai Thammathirat Open University, 2018), p. 1-8. (Unpublished manuscript).

When the parties agree to enter into a contract with each other, the concept of *Pacta sunt servanda* applies. Legally binding contracts are agreements established by two or more parties that will bind them by law and are valid according to the federal and state contract laws. The parties will be bound by the obligation to comply with the contract. If obligation settlements are not performed in accordance with the specifications stated on the contract, the state will step in as the custodian of the law and society to enforce the contract's fulfillment through the court.³⁹

2.2.6 The relation between gambling and contracts

Gambling is intentional between the involved parties, for they share the same intention to bet or wager something while understanding the contents of the agreement as well as the obligations it has created. They operate on the basis of trust in the belief that the payment of stakes or property on the gambling agreement shall be met and treated with honesty from the other party. The parties believe that when the result of the predicted future event they bet on occurs, the other party will comply with the terms of the gambling agreement they have formed. Analyzed this way, therefore, gambling is considered a form of contract according to the contract theories aforementioned in this part.

It is crucial to remark, then, that in legal capacity, only legal gambling is considered contracts. On the other hand, illegal gambling is excluded from such a definition according to the theories of contract simply because the objective of this type of gambling is deemed illegal. In other words, it is prohibited by law, and as a result, it cannot be enforced by law.

2.3 The origin and concept of gambling obligations

2.3.1 The concept of gambling obligations in the common law system

The common law system is an unwritten collection of rules based on legal precedents that frequently governs court decisions. Apart from court judgments, the parliament can make any written legislations to regulate any subjects. Nations that use

³⁹ Supreme Court judgement of Thailand No 988/2533 (AD 1990), <https://deka.in.th/view-23243.html>, (accessed March 1, 2021).

the common law system, such as England, Wales, Scotland, Northern Ireland, and Singapore usually have specific written laws that govern gambling. However, the concepts of gambling contracts in countries using the common law system may not go in the same direction and depend on each individual country.

England, Wales, and Scotland: Gambling contract is enforceable with the condition that gambling must be legal, regardless of the form of gambling. This includes gambling in a casino, remote gambling, and sport betting according to the Gambling Act 2005. However, before September 2007, gambling contract had been unenforceable because Section 1 of the Gaming Act 1892 establishes that any commitment, explicit or implicit, to pay any person any sum of money under any gambling contract or agreement is invalid.⁴⁰

Northern Ireland: Although Northern Ireland is a part of the United Kingdom, it has its own set of gambling rules and regulations. As a result, the Gambling Act 2005 of the United Kingdom does not apply to gambling contracts in Northern Ireland. According to Article 170 of the Betting, Gaming, Lotteries, and Amusements (Northern Ireland) Order 1985, any gambling or wagering contract is null and invalid.

Singapore: Singapore is another country that regulates that any contracts or agreements involving gambling or wagering are null and void. The country, however, has issued an exception to this regulation, as follows: if gambling is permitted by applicable gambling laws such as the Common Gaming Houses Act, the Betting Act, and the Remote Gambling Act, then the gambling contracts incurred are enforceable.

Based on the three samples above, it is determined that the concept of gambling contracts in the common law system does not follow the same path and can be divided into three concepts: 1. Gambling contracts can be enforceable 2. Gambling contracts cannot be enforceable. 3. Gambling contracts cannot be enforceable but exceptions are possible in some cases.

⁴⁰ Cms-lawnow, Tamimi v Khodari: Pre-September 2007 Gambling Loans Potentially Unenforceable, https://www.cms-lawnow.com/ealerts/2009/12/tamimi-v-khodari-pre-september-2007-gambling-loans-potentially-unenforceable?cc_lang=fr, (accessed March 1, 2021).

2.3.2 The concept of gambling obligations in the civil law system

The principle of gambling contracts is determined by the written law of the civil law system. Examples of countries where the civil law system is in use are France, Germany, Portugal, Thailand, Japan, and Switzerland. In all of these countries, the principle of gambling contracts appears in the Civil Code, except in Switzerland, where it appears in the Code of Obligations, and in Japan, where the gambling contracts are not cited in any specific law. The concept of gambling contracts in each of these countries does not coincide.

France: There is a principle in the French Civil Code (*Code Napoléon*) that prohibits action for gambling debt or wager payment. That means gamblers are unable to recover anything that has been voluntarily paid. However, these provisions are not applicable when the legislation permits gambling, in other words, when authorized operators provide the game. As a result, an administrative authorization can convert a gambling obligation into a fully enforceable civil debt.⁴¹ It is still important to remark that such gambling contracts must not be related to loans or credit specifically granted for additional gambling activities. The purpose of this is to protect a gambler from additional financial harm.

Germany, Thailand, and Switzerland: The regulation of gambling contracts in German law, Thai law, and Swiss law share the same principle: gambling does not impose any obligations.⁴² What has been paid as a result of gambling cannot be refunded. However, there are exceptions in certain types of gambling, such as government lottery and government casinos, which can be enforceable in jurisdiction.

Based on the two samples, it can be concluded that gambling obligations in nations with the civil law system is not enforceable unless the state has said otherwise for some gambling contracts.

⁴¹ Alan Littler et al., In the Shadow of Luxembourg: EU and National Developments in the Regulation. (Leiden: Brill., 2011), p. 246.

⁴² Joerg Hofmann et al, Germany: Gambling Laws and regulations 2021, <https://iclg.com/practice-areas/gambling-laws-and-regulations/germany>, (accessed March 1, 2021).

2.3.3 The concept of gambling obligations in Thailand

The Civil and Commercial Code of Thailand originated from the German Civil Code (*Bürgerliches Gesetzbuch*) and the Japanese Civil Code (民法). These two are the main templates for Thailand while the French Civil Code (*Code civil des Français* or *Code Napoléon*) and the Swiss Civil Code (*Zivilgesetzbuch*) are the secondary templates. The Law of Three Seals of Siam itself is also taken into consideration for writing both national and international laws.

The origin of civil regulations of gambling⁴³

Regulations on gambling in Thailand are, to a certain extent, based on the French Civil Code (*Code Napoléon*), the German Civil Code (*Bürgerliches Gesetzbuch*), and the Swiss Obligation Code (*Obligationenrecht*).

One provision in the French Civil Code states that gambling is an act where a debt at stake or the payment of a wager is prohibited by law. This is because it is in the good opinion of the state that gambling is an undesirable and improper act. Furthermore, the law also dictates that the loser of a bet is not entitled to a refund of the money he or she has willingly paid. These French provisions are the model for the regulation in Thailand which states that a gambling contract is unenforceable. However, there are specific gambling laws governing different gambling acts, such as casinos, lottery, horse racing, and stock exchanges, all of which are not under the Civil Code.

Any types of gambling not prohibited by the law are allowed in the household. Casino establishments are prohibited by the French Penal Code Articles 410, 475, and 477. They also forbid gambling on the streets and in public places, and some forms of gambling are also prohibited, such as fishing, raffles, stick roulette, rolling, and so on. If prizes are non-monetary, then in some cases, the state allows gambling at annual festivals.

Because of the different social environment, not all gambling provisions in the French Civil Code are adapted into the Thai law. Some gambling principles are not enacted in the Thai Civil Code, such as Section 1966 of the Napoleonic Code, which exempts gambling debt occurred in gambling proper in the exercise of feats of arms,

⁴³ Office of the Council of State, Drafting records of gambling civil regulation. No.7/2467 (Bangkok: Office of the Council of State, 1924).

footraces, horse or chariot-races, tennis and other sports, and the gambling debt must be wagered between player and player; the exemption does not include the audience.

Lottery and raffle authorized by the government is an exception that can be enforceable. This exception is influenced by the German Civil Law.⁴⁴

In the last part, every bill or other form of payment issued in whole or in part for money acquired by gambling or betting is void.⁴⁵ Such a principle is based on the Swiss Obligation Code. It protects third parties who have received bills in good faith, and has the authority to enforce bills.⁴⁶

The intent of civil regulations

According to the legislators, gambling is considered a socially dangerous and inappropriate activity, and using such an activity as the excuse to enforce debt should be avoided (*nemo auditur propriam turpitudinem allegans*). As a result, a winner of a bet cannot sue the loser in court to compel payment. What has been given because of gambling cannot be reclaimed because it is a dishonorable act.⁴⁷

After analyzing the origin for the legislation, it can be concluded that gambling has no debt in law, because gambling is only a game. It is simply a matter of the players placing their trust in one another (debt of honor), and therefore, if they sue each other in court, the court will not accept and enforce the debt. For a debt is only a natural obligation, not a legal obligation.⁴⁸

As a result, even if gambling is legal under the provisions of the Gambling Act BE 2478, it can only be determined that gambling is not a criminal offense under the Gambling Act, but neither is it a perfect contract in civil law.⁴⁹

⁴⁴ The Civil Code Germany, Section 763.

⁴⁵ The Civil and Commercial Code Thailand, Section 855.

⁴⁶ The Swiss Obligation Code, Art. 514.

⁴⁷ Jeed Sethabuttra, op.cit., p. 176-177.

⁴⁸ Thanongsak Tinsrinuan, "Gambling laws," (Master's thesis, Faculty of Law, Graduate School, Thammasat university, 1986), P. 95.

⁴⁹ Nantawat boramanand, op.cit., p. 12.

2.4 Conclusion

The definition of gambling and betting is when two or more individuals make an agreement to wager money or property on the unknown result of a future event in the hopes of winning something valuable.

Theories of contract include autonomy of will, freedom of contract, good faith, and agreements must be kept. Gambling is considered a contract when it is consistent with the terms and conditions dictated by the contract theories. It is certain that illegal gambling contradicts the rule of law, and therefore, not consistent with the contract theories. As a result, an illegal gambling contract is null and void.

The legal gambling contract has different legal consequences in different countries. In some nations, gambling contracts can be enforced in the same way as any other types of contracts. Some countries do not recognize the debt incurred by gambling as legal debt, while some, although the concept of gambling debt is not accepted by law, allows exceptions for certain types of gambling. To conclude this point, it is safe to say that the legal system of the country does not dictate the acceptance or rejection of gambling obligations. It depends on the concepts and perspectives of each country itself.

The regulation principles concerning gambling in Thailand originated in German, French, and Swiss laws. The intendment of the civil regulations on gambling is because gambling is a socially dangerous and inappropriate activity, and so using such an activity as the excuse to enforce debt should be avoided. This intendment came to be due to the fact that, while drafting the gambling and betting provisions of the Civil and Commercial Code, Thai individuals were, at the time, free to engage in any type of gambling as long as it was not prohibited by state order.

Chapter 3

Laws on Gambling in Thailand and Other Countries

Chapter 3 will explore the law relating to gambling in Thailand and offer the comparison between the gambling legislation of England, Germany, France, and Switzerland against those of Thailand. There will be a study of gambling contracts, outcomes of gambling contracts, and gambling contract exclusions, including rules for accepting gambling debts.

3.1 Laws relating to gambling in Thailand

In Thailand, there are several laws relating to gambling, including the Ministry of Interior Regulations, Ministerial Regulations of the Ministry of Interior issued under the Gambling Act, the Royal Decree on Gambling Conditions under the Gambling Act, and the Gambling Act itself. Each one has different functions; however, this study will focus only on the major gambling legislations.

3.1.1 The Civil and Commercial Code

The principles of gambling and betting are provided in Book III: Specific Contracts of the Civil and Commercial Code in Sections 853-855. Those provisions intend to enact civil consequences in relation to gambling contracts.

1. Non-contractual relationship provision in gambling

“Section 853. No obligation is created by gambling or betting. What has been given by reason of the gambling or betting may not be demanded back on the ground that no obligation existed.

These regulations also apply to a contract in which the losing party incurs an obligation to the other party to settle a gambling debt.”

The provision above can be divided as follows:⁵⁰

⁵⁰ Banthoon paiboon, The Civil and Commercial Code (load, deposit, warehousing, compromise gambling and betting), (Bangkok: Ramkhamhaeng University Printing House., 1991), p. 208.

1. No obligation: The benefit or loss of property or money because of gambling contracts do not create a debt. In other words, legal action is not possible following a gambling contract. For example: Mr. A and Mr. B agree to wager 100,000 Baht on the result of a boxing match. When Mr. A loses the bet, however, he does not pay the agreed amount. And Mr. B, despite being deceived, is unable to sue Mr. A for his fraud, for the law does not recognize the debt incurred by gambling.

2. What has been given cannot be requested back: Money or property that has already been paid as a result of a gambling debt cannot be reclaimed. For example: Taken from the same situation, but this time Mr. A actually pays Mr. B 100,000 Baht when he loses the bet. Now, no matter for what reasons, Mr. A cannot ask for the money back since it is paid as a result of gambling.

3. These regulations also apply to a contract in which the losing party incurs an obligation to the other party to settle a gambling debt: Other contracts, such as loan contracts, credit agreement, or land sale contracts, which are made in an attempt to pay for the stake caused by a gambling game also fall under this provision.

4. This provision applies to all gambling contracts, even illegal ones.

Supreme Court Judgment cases relating to this section are as follow:

1. In cockfighting betting, the participants places their bets in advance with the betting intermediary before knowing the result of a match. After the game, the betting intermediary gives the money to the owner of the winning chicken. This money is what the court calls “given by reason of gambling,” that means the participants of the game cannot request the money back, for such a contract is ruled by the law to be without obligation.⁵¹

2. A person who loses a bet in a horse racing game due to a mistake in the judgment of the race by the referee cannot sue the horse racing club's referee for causing he or she to lose the prize money. This is because the contract between the person and the referee is, in the first place, without obligation.⁵²

⁵¹ Supreme Court Judgment No. 832/2512 (AD 1969), <http://deka.supremecourt.or.th/search/index/4035>, (accessed March 15, 2021).

⁵² Supreme Court Judgment No. 1538/2518 (AD 1975), <https://deka.in.th/view-49237.html>, (accessed March 15, 2021).

3. This case is when the defendant is in charge of collecting the stakes from an underground lottery circle and paying it to the plaintiff who is the bookmaker. The defendant, however, does not bring the stakes in the amount of 236,000 Baht, to the plaintiff. To assure the payment, the plaintiff and the defendant then make a loan contract in place of the stakes. In a case like this, according to Section 853, such a loan contract has no obligations.⁵³

2. Contractual relationship provision in gambling

“Section 854. A lottery or raffle contract is enforceable if the government has specifically authorized or ratified the lottery or raffle. In all other cases, the provisions of Section 853 apply.”

The exception above can be divided as follows:⁵⁴

The first exception is government lottery: A method of generating funds by selling numbered tickets and awarding rewards to the winners of random numbers picked. In Thailand, the government is the sole monopoly who takes responsibility for distributing and printing the lottery tickets. Government lotteries sold to the public are legal.

The second exception is raffle: A method of generating funds by selling numbered tickets, one or more of which are then picked at random, with the winner or winners receiving a prize.

A lottery or raffle is a contract entered into between a lottery bookmaker and a gambler. When the government expressly approves a lottery or raffle, it becomes legally enforceable and can be utilized in civil actions; government lottery and raffle are not subject to Section 853. Government lottery is state-approved, and is organized by the Lottery Office Government of the Ministry of Finance.

For example, a Supreme Court Judgment case relating to this section is such as follows: A plaintiff files a lawsuit against the Government Lottery Office for not

⁵³ Supreme Court Judgment No. 1220/2537 (AD 1994), <https://deka.in.th/view-6179.html>, (accessed March 15, 2021).

⁵⁴ Banthoon Paiboon, op.cit., p. 209.

paying him or her the prize promised because the lottery ticket is burnt up. Such a lottery contract can be enforceable, and is not subject to Section 853.⁵⁵

3. Issue a bill or other instrument to pay gambling debts⁵⁶

“Section 855. Subject to the provisions of Sections 312 and 916, every bill or other instrument given in whole or in part for any money obtained by gambling or betting, or for repaying money lent for such gambling or betting, will be imperfect.

Any money lent to a person while gambling or betting on the time of such play will be assumed to have been lent for such gambling or betting for the purposes of this section.”

The principle above can be divided as follows:

1. Every bill or other instrument occurred from gambling contracts will be imperfect, such as the loser of a bet issuing a check to pay the stake, or the bookmaker issuing a check to pay for the prize to the gambler.

2. Every bill or other instrument issued to be borrowed for gambling or betting will be imperfect.

3. The last paragraph of Section 855 is a presumption of law that any money lent to a person at the time or at the place of betting is the money used to gamble or to bet on something.

For example, a Supreme Court Judgment case relating to this section is as follows: The defendant writes a check to pay for his or her horse racing betting debt. According to Section 855 of the Civil and Commercial Code, the check is considered imperfect, and the plaintiff cannot force the defendant to pay for such an obligation.⁵⁷

3.1.2 The Gambling Act BE 2478 (AD 1935)

The Gambling Act BE 2478 (AD 1935) has a total of 17 sections: Gambling Prohibition (Sections 4-4 bis), Organizer and Player (Sections 5-6 bis), Gambling License

⁵⁵ Supreme Court Judgment No. 3409/2529 (AD 1986), <https://deka.in.th/view-1008.html>, (accessed March 15, 2021).

⁵⁶ Banthoon paiboon, op.cit., p. 209.

⁵⁷ Supreme Court Judgment No. 613/2521 (AD 1978), <https://deka.in.th/view-37035.html>, (accessed March 15, 2021).

(Section 9), Sale of Lotteries and Over-sale (Section 9- 9ter), Forfeiture of Gambling Property (Section 10), Penalties for Offenders (Sections 12-14bis), Grant Reward to the Arrested Informer (Section 15), and Gambling Tax (Section 16).

Provisions on prohibition of gambling

1. Section 4, paragraph 1: Participation in or gambling in any of the games included in List A, which is attached to this Act, or similar games is prohibited. However, if the government deems it suitable to allow any type of gambling in a specific location under certain conditions, the license will be granted by a royal decree. Only government-permitted casinos created by the Minister of Finance may be allowed to play casino games.

2. Section 4, paragraphs 2 and 3: The gambling games mentioned in List B attached to this Act, or similar gambling, can be authorized when the competent Minister or licensing officer thinks it suitable, or when a Ministerial Regulation authorizes the play of such games without a license.

3. Section 4bis: Other gambling games besides from those listed in Section 4 can be authorized only when they are established in a Ministerial Regulation.⁵⁸

3.1.3 The Government Lottery Office Act, BE 2517 (AD 1974)

This Act has a total of 40 sections: Establishment and Objectives (Sections 5-9), Supervision, Control and Management (Sections 10-21), Finance, Accounting and Auditing (Sections 22-35), Obligations and Prescription (Sections 36-37), Aids for Officers and Employees (Sections 38), Penalty Provisions (Sections 39), and Transitory Provisions (Section 40)

The Government Lottery Office Act is a specific law concerning the government lottery. It gives the government the authority to issue government lottery tickets and make it legal.⁵⁹

“Section 36. Government lottery tickets issued by the Government Lottery Office under this Act shall be regarded as those issued with the Government's authorization, and obligations arising from the said lottery tickets shall be treated as

⁵⁸ Sawang Mana, op.cit., pp.14, 15.

⁵⁹ Avikarat Niyomthai, “Law reform,” journal of law (September-October 2014):

lawful obligations; and the issue of the said lottery tickets shall be regarded as that licensed and sealed by the competent official under the law on lottery tickets.”

Such provision complies with Section 854 of the Civil and Commercial Code. Lottery shall be treated as lawful obligations because of the government's authorization. Moreover, lottery has its own prescription unrelated to what is stated in the Civil Code. Under this Act, a period of claim for the obligation occurred from the issue of a government lottery ticket is two years.

3.2 English law

Gambling has long been a popular recreational pastime in England. For almost three centuries, horse racing has been popular. There has been a lot of regulation to control gambling.

3.2.1 Background

English law is England's common law legal system but there are written laws to keep gambling from becoming a cause of crime and disruption, protecting other vulnerable people from being hurt or exploited by gambling by ensuring that gambling is done in a fair and open manner. As a result, enacting a written law is required to maintain control and keep up with changing circumstances of gambling.

King Richard I of England established the first recorded gambling regulations in 1190, defining who may bet and how much they could wager. King Henry VIII outlawed gambling in England in 1509. However, under the reign of Queen Elizabeth I, parliament accepted the first gambling act in the UK, and the first lottery was held in England on January 11, 1569. In 1760, horse betting had become a popular hobby among the nobility but it was an illegal conduct for the public. The gaming Acts were established in 1739 and 1745, prohibiting wagering on a wide range of bar games, including darts and roulette.⁶⁰

In the late 20s, England realized that its gambling regulations were obsolete since the Gaming Act of 1968 and other related laws were too obsolete to control the gambling market. And in 2001, there was a report called the A Safe Bet for Success -

⁶⁰ Michael Johnson, Magazine: A Brief History of Gambling Laws in the UK, <https://casinomir.com/magazine/a-brief-history-of-gambling-laws-in-the-uk/>, (accessed March 15, 2021).

Modernizing Britain's Gambling Laws Report, a report that contributed to the review of gambling laws in the UK. And give advice on the law that should be amended. The goal of the advice is to help people understand the gambling laws, to allow people of legal age to bet, and to give more information. This covers remote betting, spread betting, and other forms of gambling included in this report.⁶¹

On April 7, 2005, the Gambling Act of 2005 was passed and signed by the King, and it came into force in September 2007. The Betting, Gambling, and Lottery Act of 1963, the Gambling Act of 1968, and the Amusements Act of 1976 were all repealed by this law.⁶²

3.2.2 The Gambling Act 2005

The purpose of the Gambling Act 2005 is to make all gambling illegal. Except for gambling permitted under the Gambling Act 2005, includes bingo, gambling, arcades, society lotteries, remote betting, casinos, and gambling machines. This Act has a total of 18 parts and the part involved in this gambling obligation is Part 17 Legality and Enforceability of Gambling Contracts.

Part 17 Legality and Enforceability of Gambling Contracts: begins with section 334 repealed earlier legislation that made it illegal to enforce contracts linked to gambling activities such as the Gaming Act of 1710, Section 1 (void of a security for wins or repayment of a gaming loan), section 18 of the Gaming Act 1845 (voiding of gaming contracts), section 1 of the Gaming Act 1892 (voiding of a debt repayment commitment), section 412 of the Financial Services and Markets Act 2000 (gambling contracts)⁶³ and the repeals will not go into effect retroactively. As a result, any gambling contract formed before this section takes effect, or any right arising from an agreement made before this section takes effect, will be unenforceable.⁶⁴

⁶¹ Ronnavit Simasathira, Policy proposals prescribe definitions of gambling and betting, ICGP (Bangkok: Sodsri-Saritwong Foundation, 2013), p 25.

⁶² Government, H M, Gambling Act 2005, Chapter 19, Explanatory Notes. (UK: The Stationery Office., 2005), p 140.

⁶³ The Gambling Act 2005 of England, Section 334.

⁶⁴ Government, H M, op.cit., p.140.

1. Contractual relationship provision in gambling

Section 335 is regarded as an important provision that makes the gambling contract enforceable. Such a section clearly establishes that a contract can be enforced regardless of type of gambling.⁶⁵ This provision, however, is without prejudice to any rule of law prohibiting the execution of a contract based on its illegality. Therefore, gambling contracts may be invalid the same as any other contract such as an illegal gambling contract.⁶⁶

2. The Commission of gambling

Section 336 gives the Commission the authority to declare a wager void because the bet was substantially unfair. Any contract or other agreement pertaining to the bet will be void when the commission declares a wager void, and any money paid in relation to the bet must be refunded to the person who paid it. Repayments in this manner will be enforced as a debt.

The bet was substantially unfair is 1. That one or both gamblers provided insufficient, inaccurate, or misleading information. 2. That the race or event on which the bet was placed was conducted in violation of the applicable industry regulations. 3. The fact that one or both gamblers believed, or should have believed, that cheating had been committed, or was likely to be committed. 4. One or both gamblers' participants had been convicted of cheating.⁶⁷

3.3 Singapore law

There are five major laws that regulate gambling in Singapore: The Common Gaming Houses Act, the Betting Act, the Private Lotteries Act, the Betting Sweepstakes Duties Act, and the Remote Gambling Act. Another important law that is civil law provides for the contract consequences related to gambling. in which each law is

⁶⁵ The Gambling Act 2005 of England, Section 335.

⁶⁶ Government, H M, op.cit., p.140.

⁶⁷ Ibid. p.140.

presented and how to enforce it differently. In addition, different forms of gambling can be subject to more than one prohibition or regulation of the law.⁶⁸

3.3.1 Background

Singapore's gambling history dates to colonial times, when cockfighting (known as gambling farms) was popular, but it was discovered that it increased gambling addiction and social delinquency, until the British government made it illegal in 1856. According to the Police Act XIII of 1856, such a law was the first anti-gambling legislation to be enacted in Singapore.⁶⁹ On 4 October 1842, the Singapore turf Club was created, and the government granted them permission to build a racecourse. The Singapore Turf Club is licensed to organize horse racing events and take bets on them. Other gambling was allowed in Singapore in 1923, however the experiment resulted in gambling addiction and increased crime. The gambling was prohibited again in 1926.⁷⁰

In 1960-1961, Singapore enacted two acts, including the Betting Act of 1960 and the Common Gaming Act of 1961. Such two laws have the goal of suppressing common gambling establishments, public gambling, and public lotteries.⁷¹ Singapore Pools was established on May 23, 1968, to provide Singaporeans with a legal way to gamble in lotteries. It was the country's first legal betting platform according to the Singapore Pools of 1968. In 2005, in an effort to increase tourism to the region, the government decided to build an entertainment complex, which consists of two casinos on the island of Sentosa and Marina South according to the casino control Act of 2006,

⁶⁸ Joyce A. Tan et al., Report of The Law Reform Committee on Online Gaming and Singapore, Law Reform Committee (Singapore: Singapore Academy of Law, 2010), p.13.

⁶⁹ Elliot Nield, Singapore Online Gambling Guide, <https://www.gambleonline.co/singapore/>, (accessed March 15, 2021).

⁷⁰ Owlapps, Integrated resort, https://www.owlapps.net/owlapps_apps/articles?id=1938040&lang=en, (accessed March 15, 2021).

⁷¹ David Lenton, Online Betting in Singapore: Laws & Legislation, <https://www.cheekypunter.com/country/singapore/>, (accessed March 17, 2021).

such law allowed for the licensing and operation of two casinos in Singapore.⁷² Casinos opened in the country on February 14, 2010.

In 2011, the government established the Private Lotteries Act 2011, which imposes a duty on any lottery promoted by a club or society. The Remote Gambling Act of 2014 made online gambling illegal in Singapore. It is the fundamental regulation controlling any type of remote gambling, such as gambling on the internet, radio, telephones, or any other electronic equipment.⁷³ However, Singapore Pools and Singapore Turf Club are the only It has two exempt organizations that allow it to provide online and telephone gambling and motorsports, football, and lotteries.⁷⁴

3.3.2 The Civil Law Act (Cap 43)

1. Non-contractual relationship provision in gambling

The Civil Law Act (Cap 43) prescribes the civil regulations for gambling agreements in section 5(1): All gambling or wagering contracts and agreements are null and void. The case: In *Star Cruise Services Ltd v Overseas Union Bank Ltd* [1999] 3 SLR 412, the Singapore High Court decided that gambling and wagering debts would not be enforced by the Singapore courts.⁷⁵ Furthermore, civil law prohibits the recovery of any money or valuable items in a wager or being placed in the hands of any person to abide the event on which any wager has been made. When any gambling contract or agreement is null and void, it result in any commitment to pay any person by means of commission, fee, or reward for any services shall be null and invalid.

⁷² World Casino Expert, *Casinos and Gambling in Singapore*, <http://www.worldcasino.expert/casinos-and-gambling-singapore>, (accessed March 17, 2021).

⁷³ Arnold Stone, *Online Gambling in Singapore*, <https://rescuebet.blog/is-online-gambling-legal-in-singapore/>, (accessed March 17, 2021).

⁷⁴ World Casino Expert, *Casinos and Gambling in Singapore*, <http://www.worldcasino.expert/casinos-and-gambling-singapore>, (accessed March 15, 2021).

⁷⁵ POH Chu Chai, *Banking Law*, 2nd ed. (Singapore: LexisNexis., 2011), p. 97.

2. Contractual relationship provision in gambling

Not all gambling contracts are null and void because civil law has made an exception for some gambling contracts that can be enforced. There are six exceptions prescribed in section 5(3,3A).

The first exception is any subscription or donation, or promise to subscribe or contribute, for or toward any plate, prize, or sum of money to be awarded to the winners of any lawful sport, game, exercise, or leisure.

The second exception is a contract for gambling that is controlled or supervised by a person or an organization that is exempt from the requirements of section 24 of the Common Gaming Houses Act.

The third exception is a contract for betting that is operated, organized, promoted, administered, or held by a person or an organization that is exempted from the provisions of the Betting Act in respect of such betting under section 22 of that Act, but only if the betting takes place under that person's or organization's control or supervision.

The fourth exception is a contract for gambling by remote communication that is organized, marketed, conducted, or directed by an exempt operator or a person who is exempted according to the Remote Gambling Act 2014.

The fifth exception is a contract for gambling performed by or on behalf of the Singapore Totalizator Board or a turf club in accordance with an approved scheme on a totalizator.

The sixth exception is a contract to participate in a private lottery marketed or operated by the holder of a permit issued according to section 8 of the Private Lotteries Act 2011.

However, the exceptions in the second to sixth exclude a contract that entails the loan of any money or other valuable item for the purpose of gambling or wagering, as well as the extending of any kind of credit for the purpose of gambling or wagering and the giving of security in respect.

3.3.3 Special law related to gambling

1. The Common Gaming Houses Act (Cap. 49)

An Act prohibiting common gambling establishments, public gambling, and public lotteries from operating. Moreover, the Act's interpretation and design are particularly focused on the lottery and public places. Any location used for gambling that the public or any class of the public has or may have access, and any place can be kept for habitual gambling, and any place can also be kept or used for the purpose of a public lottery, as described in definitions of common gaming house. For the purposes of this Act, a place where lottery tickets are offered for sale, sold, or distributed for the purpose of a public lottery will be regarded to be utilized for that purpose even if it is used for that purpose only once.⁷⁶

Section 24 of this Act is related to section 5(3A) (a) civil law gambling contract exceptions. The Minister may, by notification in the Gazette, exempt any person or organization from all or any of the provisions of this Act in respect of any public lottery or gaming conducted under their control or supervision, either generally or in any particular case, and subject to such conditions as he may impose. Furthermore, any person may engage in any public lottery or gaming exempted from the legislation.

2. The Betting Act (Cap. 21)

The Betting Act of 1960 was enacted to prohibit common betting houses, public betting. It prohibits betting or wagering on any event connected to sporting events or any horse racing. Anyone who participates in a "betting information center" or "common betting-house" in specific circumstances is guilty of a crime, according to Section 3 (1) of the Betting Act 1954. Under the Betting Act, the phrases "common betting-house" and "betting information center" have a very broad scope, and

⁷⁶ Peeasu boonpeng. "Criminal liability of internet service provider and mobile phone network operators on online gambling in Thailand." (Master's thesis, Faculty of Law, Graduate School, Assumption university, 2018), p. 51-52.

they are meant to include a wide variety of operations related to horse racing and sports betting in Singapore.⁷⁷

Section 22 of this Act is related to section 5(3A) (b) civil law gambling contract exceptions. The Minister may, by publication in the Gazette, exempt any or all the provisions of this Act, either generally or in any particular situation, and subject to such restrictions:

1. The members and officers of any racing club or association in connection with any pari-mutuelor, totalizator betting, or any other system or method of cash or credit betting that the racing club or association operates, administers, organizes, promotes, or holds, where the betting is under the control or supervision of one or more officers of that racing club or association.

2. Furthermore, including any other person or organization with relation to any system or method of cash or credit betting held, marketed, organized, administered, or controlled by that person or organization, when the betting occurs under that person's or organization's control or supervision.

3. The Private Lotteries Act 2011

The regulations and taxes for private lotteries are established by this law. The definitions of Society, Ticket, Lottery, Ticket, and Private Lottery are prescribed in the Act. Firstly, a private lottery is one in which tickets or chances are sold exclusively to members of a society created for purposes unrelated to gambling, wagering, or lotteries, as well as such number of guests of each member as the Minister of Home Affairs may specify by rules. Secondly, the word "lottery" refers to any game, method, scheme, or device in which money or money's value is awarded or apportioned in any form based on or to be determined by chance or lot, whether held, drawn, exercised, or administered entirely or partially within or outside Singapore. Thirdly, any document showing a person's claim to participate in the chances of a lottery is referred to as a ticket in relation to any lottery or proposed lottery. Finally, a society includes an organization, an institution, a club, or any other association or group of individuals, and

⁷⁷ Paul M. Anderson, et al., *Sports Betting: Law and Policy*, Springer Science (Netherland: T.M.C. Asser Press, 2011), p. 691.

each branch or division of a society, whether local or connected, must be treated as a separate and distinct society.⁷⁸

Section 8 of this Act is related to section 5(3A) (d) civil law gambling contract exceptions. Section 8 prescribes that the Permission Officer has the authority to give a permit to any person or society for the promotion of a private lottery at his discretion.

4. The Remote Gambling Act 2014

This Act governs remote gambling and remote gambling services, with the goal of preventing being a source of crime or disorder, or being used to support crime or disorder, as well as protecting young people and other vulnerable people from being harmed or exploited by remote gambling or gambling services.⁷⁹

The rule has certain exceptions. Operators can apply for certifications that allow them to provide remote gambling services to Singaporeans. This is "in the public interest." When carrying out this 'public interest' test, factors such as where operators are situated and the ease with which any restrictions on certificates of exemption may be implemented will be considered. Where remote gambling services are exempted, operators will be limited to accepting bets on sporting events and running lotteries.⁸⁰ When the operator is legally allowed to do so, exceptions to section 5 (3A) (ba) of civil law apply to gambling contracts that occur between operators and gamblers can be enforceable.

⁷⁸ Peeasu boonpeng, op.cit., p. 53.

⁷⁹ Out-Law-Com, Curb and controls on remote gambling in Singapore proposed in new Bill, <https://www.pinsentmasons.com/out-law/news/curb-and-controls-on-remote-gambling-in-singapore-proposed-in-new-bill>, (accessed May 15, 2021).

⁸⁰ Into-Communications Media Development Authority [SG], Remote Gambling Act: Clarifications on the Scope of Social Games, <https://www.imda.gov.sg/news-and-events/Media-Room/archived/mda/Media-Releases/2015/remote-gambling-act-clarifications-on-the-scope-of-social-games>, (accessed May 17, 2021).

5. The Casino Control Act 2006

The Casino Control Act 2006 was established to regulate the operation and regulation of casinos as well as gaming in casinos. The Act's goals can be generally divided into three categories.

Firstly, it establishes the CRA's incorporation, which is overseen by the Ministry of Home Affairs. The CRA is authorized by the Act to license and regulate casino activities, to approve any system of casino controls and administration, and to investigate offenses committed in Singapore casinos.

Secondly, the Act establishes a regulatory framework for casino operators and connected parties. It imposes restrictions on casino operators' licenses and requires them to obtain permission for its internal controls, administrative, and accounting procedures.

Finally, the Act establishes social protections to prevent problem gambling.

3.4 French law

According to article L.320-1 of the French Code of Homeland Security, gambling is banned in France due to the country's Christian religion and it harms people and causes social disorder. Later, gambling was permitted and regulated by the government.

3.4.1 Background⁸¹

The Royal Decree of Saint-Louis, which prohibits gambling and penalizes gamblers, was established in 1254. It includes prohibitions on the manufacture of dice. Charles IV in 1319, Charles V in 1369, Charles IX in 1560, and Henri III in 1577 all renewed the prohibition with regulatory decrees issued by numerous parliamentarians. Prohibitions were more in the 17th century, and much more so in the 18th century.

In the 17th and 18th centuries, lotteries were popular in many countries in Europe. Ticket lotteries first appeared in the Netherlands in the 15th-century and were

⁸¹ Jean-Louis Harouel, From Francis I to Online Betting: The History of Gambling in France, https://www.cairn-int.info/article-E_POUV_139_0005--from-francis-i-to-online-betting.htm, (accessed May 18, 2021)

popular in 16th-century Italy. Lotteries proliferated in France in the 17th century without government approval, which in regulatory regulations issued in 1598, the Parlement de Paris banned lotteries until in 1656, the government issued a lottery to fund the construction of a bridge across the Seine, which would connect the Louvre's galleries. In 1660, as part of Louis XIV's wedding festivities, the first royal lottery was organized.

Except for lotteries, all other kinds of gambling remain prohibited. Until the Revolution in 1789, when the method of suppressing gambling was shifted to punishing gambling organizers according to the Act of July 19-22, 1791.

Gambling was legalized in the early 19th century, but only in specified resort zones. slot machines, card games, lottery tickets, horse racing betting tips, and other forms of gambling have grown popular. In 2009, the French government approved legislation that allowed operators from other EU nations to participate in remote gambling.⁸² Finally, the May 12, 2010, enactment of the Law No. 2010-476 establishes competition and sector regulation in the gambling and remote gambling industries. On May 13, 2010, this law came into force, allowing for the opening of the internet gambling sector as well as the establishment of an official regulatory agency - ARJEL (the French Gambling Authority).

In summary, French law prohibits the organization of gambling unless the state has approved it, and gambling that has received a license must comply with the license's conditions as well as with the law's provisions.

3.4.2 The Civil Code

Gambling contracts in France are "ALEATORY CONTRACTS" according to article 1104 and 1964. Aleatory contracts are a reciprocal agreement whose benefits and losses are contingent on an unpredictable occurrence, either for all parties or for one or several of them such as: Contracts for life annuity, gambling and betting, bottomry contracts, insurance contracts.

⁸² European commission, Online gambling: Commission welcomes France's decision to open its gambling market and closes infringement procedure, https://ec.europa.eu/commission/presscorner/detail/en/IP_10_1597, (accessed May 18, 2021).

1. Non-contractual relationship provision in gambling

The Civil Code (Cap 43) prescribes the civil regulations for gambling contracts in Article.1965: There is no legal action for a gambling debt or a bet payment under the law, gambling contracts are not legally binding. Moreover, Article.1967: The loser may not reclaim what has voluntarily paid such as money or property which has already been paid to one another because of gambling and cannot be reclaimed by the parties.

2. Contractual relationship provision in gambling

The first exception is when a gambling operator is authorized by the law and ruled by the public authorities to offer betting games. As a result, administrative permission converts a gambling obligation into a fully enforceable civil obligation.⁸³ The highest court of ordinary jurisdiction in France of Criminal and Civil Appeal, considers that licensed operators of licit gambling services should be entitled to pursue payment proceedings against their customers.⁸⁴ In 1958, it was determined that the legality of the national lottery means that all activities conducted by the national lottery operator during its responsibilities are legal.^{85 86}

The second exception is gambling between players in a game using the use of equipment, such as horse races, chariot races, tennis, and other comparable sports requiring skill and bodily exertion. However, the stakes must not be excessive according to Article. 1966 of Civil Act.

The third exception is the loser of the bet's money or property if the loser can prove that the winner participated in swindling, fraud, or deception. The loser

⁸³ Alan Littler et al., op.cit., p. 246.

⁸⁴ Judgement of the Cour de cassation, mixed chambers, 14 March 1980, 79-90.154.

⁸⁵ Alexandre Vuchot et al., The Gambling Law Review: France, <https://thelawreviews.co.uk/title/the-gambling-law-review/france#footnote-005>, (accessed June 19, 2021).

⁸⁶ Lawrence Andrew Melsheimer, "Knowing When to Walk Away: An Analysis of Gambling Debts Under Louisiana Law in Light," Louisiana Law Review, (Louisiana: LSU Law Digital Commons, 2001): 853.

may be entitled to retrieve the money and property he has paid for according to Article.1967 of the Civil Act.

3.4.3 Special law related gambling⁸⁷

1. In case overseas territory (territoire d'outre- mer)

According to The Act No. 83-628, of July 12, 1983, exempts several foreign territories from criminal penalties. Constituting instrument, Organic Law No. 99-209 of March 19, 1999. In the case of New Caledonia (Nouvelle-Calédonie), it provides for exceptions to the terms of Act No. 83-628 of July 12, 1983, except for article 1: Offenses connected to the establishment of a casino and the service of gambling in a public place, and article 2: Offenses relating to gambling devices. It may be permitted to temporarily open special premises for people to gamble, according to the restrictions set out in the declaration of state representatives.

In the case of French Polynesia (Polynésie française), the Act No. 83-628 of July 12, 1983 has come into force, resulting in gambling being prohibited in French Polynesia land. However, the decree (décret), allows casino operators to temporarily open special places for people to gamble or a passenger ship registered in French Polynesia can establish a casino on board, which passengers can use, and the gambling club is allowed to host other gambling games not available in the casino, according to articles 24 and 91 of the Constituting Instrument, Organic Law No 2004-192 of February 27, 2004 concerning autonomous states of French Polynesia.

2. The gambling club (cercles de jeux)

The gambling club is an association that was founded under the Act of July 1, 1901, to allow gambling. There is one gambling club in Paris and four in the countryside at the present. According to Article 47 of the Budget Expenditures the Act of June 30, 1923, the Minister of the Interior may authorize gambling clubs to operate play gambling. At any moment, the Minister has the authority to revoke the permission. The conditions for granting authorization must follow the rules outlined in Decree No.47-798,

⁸⁷ Supawat Singsuwong, Overview of French Gambling Laws, center for Gambling Studies (Bangkok: Chulalongkorn University, 2009), p. 1-20.

May 5, 1947 or the administrative guidelines. The operation is reported to the government, and income tax is paid. It includes a competent official to inspect at any time.

3. Casino

It is allowed to open a casino for people to gamble because article 1 of the Act of June 15, 1907 provides that “there may be temporary authorization to establish a specific location for the public to gamble in a casino or establishment known by other names according to the stated conditions...”. The stated conditions were specified in the Act of June 15, 1907 on Casinos, and the Ministry's Announcement of May 14, 2007 on Casino Gambling Rules, which must be approved and allowed by the city council (conseil municipal) in the area where the casino will be established. After that, the Minister of the Interior gave his approval to establish a casino.

The casino must be located in one of the following places:

- Municipalities area registered for a resort, seaside, place with mineral springs or resorts in the mountains
- Municipalities areas are registered for Tourism.
- Cities or tourist attractions as specified in the Tourism Code.
- Aside from the municipalities area listed above, where the casino was located prior to the implementation of Act No. 2006-637 of April 14, 2006.
- Municipalities are in the process of applying for registration as a seaside, resort, or mountain resort prior to the promulgation of Act No. 2006-637 on April 14, 2006 and have been registered as a tourist destination under the Tourism Code within five years of the date the relevant provisions come into force.

In the ship casino case, article 1 of the Act of June 15, 1907 prescribes ship casinos as “the temporary authorization to establish casinos aboard French-registered commercial passenger ships and such ships for travel time of more than 48 hours.” The licensee's qualifications must be a juristic person with prior gambling experience, as well as make an agreement with the ship owner and must be approved by the Minister of the Interior.

4. Remote gambling

The Act No. 2010-476 of May 12, 2010 on the liberalization and regulation of online gambling and gambling businesses is the first to distinguish between general and online gambling operators. Organizing online gambling was once considered a criminal offense with serious consequences. Even if the gambling organizers have a license from another European Union member country. However, such a law does not cover lotteries and sports betting organized by la Française des jeux, an online horse race organized by PMH and PMU.

The Act No. 2010-476 of May 12, 2010 intends to recover the situation of the online gambling market, which was formerly controlled by foreign firms. Included is the possibility of earning money from numerous sporting events. Article 14 of this law prescribes that a person who has been certified as an online gambling operator must comply with the law requirements. Consideration of certification is the authority of a gambling control board.

5. Lottery⁸⁸

The Act of May 21, 1836 prescribes three types of lotteries are legal: charity or art encouragement lotteries (Article 5), lotto lottery (Article 6) and festival lotteries (Article 7). Additionally, promotional lotteries are allowed under articles L.121-36 to L.121-41 of the Consumer Code, municipalities stage lotteries under article 1 of the legislation of April 29, 1930, and the National Lottery is authorized under the Act of May 31, 1933.

1) The Charity Lotteries Or Art Encouragement Lotteries

Lotteries with moveable prizes which are not money prizes that are purely for charity purposes or to promote arts or athletic events with a not-for-profit purpose must be authorized under the conditions prescribed. Authorization, it is the powers and duties of the governor of the province in which the lottery organization has its office or the Metropolitan Police Commissioner in the case of having offices in Paris.

⁸⁸ France embassy press and information division, "The national Lottery," France (New York: France embassy, 1976): 3-4.

2) Lotto Lottery

Lotto lotteries, as required by law, are: "Traditional lottos, known as "poules au gibier," "rifles" or "quines" if they are played in a confined space and have social, cultural, scientific, educational, sporting, or social gatherings. and each ticket is worth no more than 20 euros."

3) Festival Lotteries

Festival lotteries are allowed to be played on festival occasions during the festival period the prizes are distributed in the form of various goods and each ticket is worth no more than 1 euro and 52 cents. The licensee must be a person subject to the rules set forth by Articles 1 and 2 of Act No. 69-3 of January 3, 1969 and is a public entertainment establishment as prescribed in Article 1 of Decree No.87-264 of April 13, 1987.

4) Promotional Lotteries

Promotional lotteries are allowed under articles L.121-36 to L.121-41 of the Consumer Code.

5) Municipalities Stage Lotteries

After World War I, municipalities staged lotteries to compensate for war losses and stimulate the economy. That gave the government permission for municipalities to issue lotteries for "the acquisition of fire-fighting equipment or the organization of fire-fighting maneuvers in boroughs according to the Act of April 29, 1930.

6) National Lottery

The exception of The Act of May 21, 1836, which allowed the government to enact a decree that provided special conditions for playing lotteries. According to article 136 of the Act of May 31, 1933 on the 1933 Budget Expenditures allowed the government to enact a decree that provided special conditions for playing lotteries. Decree No.78-1067 on November 7, 1978 organizes the various forms of national lotteries. Allow the company la Française des jeux to have a monopoly on the organizing and operation of lotteries.

6. Horse Racing

The Act of June 2, 1891 prescribes opportunities for businesses for companies that meet conditions, and with the permission of the Minister of Agriculture,

horse racing betting can occur by paying tax to the government. Licensed companies are: The Southeastern Council of Foundations (SECF) and France Galop. A horse racing betting benefit companies have been established by both of these parent companies. The prize-paying companies are Pari Mutuel Urbain (PMU) and Pari Mutuel sur l'Hippodrome (PMH), which organize horse racing in Paris and in Deauville.

3.5 Swiss law

3.5.1 Background⁸⁹

The first records of gambling in Switzerland originate from the time of the Roman Empire. Games of chance were outlawed in general, although exceptions were allowed for festivals and celebrations.

In 1923, The Lotteries and Commercial Betting was enacted in Switzerland. Such a law banned lotteries but the granted government the right to legalize them for the public good. Later, the Gambling Houses Act was passed by the government in 1929, and casinos were not permitted in the country. However, casinos can be opened in certain areas to support tourism.

In 1993, the requirement to pay for healthcare for an aging population triggered a financial crisis in Switzerland. A referendum was approved by the government allowing casinos to collect tax revenue. In 1998, The Federal Act on the games of Chance and Casinos was passed in Switzerland. This legislation includes a casino referendum on the Swiss Constitution, established the Swiss Federal Gaming Board, and outlawed internet gambling in Switzerland. It also contained laws requiring casinos to have a problem gambling prevention plan.

In 2006, Gespa (which was formerly known as Comlot), a federal institution to manage lotteries and interactional gambling operations, was proposed by cantonal gambling authorities. In 2007-2009, poker tournaments were legalized outside of casinos when the Swiss Federal Gambling Board decided that they constitute skill games. The Gambling Board's view was found to be accurate by a Swiss Federal Administrative Court. Poker games were not regulated because they were considered

⁸⁹ Gambling sites, Gambling Laws in Switzerland, <https://www.gamblingsites.com/online-gambling-jurisdictions/switzerland/>, (accessed June 25, 2021).

skill games. However, in 2010^{po}, following a complaint from the Swiss Casino Association, the Federal Court reversed its poker decision. Outside of casinos, poker tournaments are not allowed.

In 2018, the new Federal Act on Money Games was approved by Swiss voters. It allowed land-based casinos to operate online casinos and allowed internet service providers to prevent access to international gambling sites. Such a law went into effect in 2019.

3.5.2 The Swiss Code of Obligation

The principle of gambling contracts is established in the Obligation Code instead of the Civil Code, as in other countries.

1. Non-contractual relationship provision in gambling

In Article 513: There are no claims for gambling or betting contracts. The same holds true for advances or loans provided knowingly for the purpose of gambling or betting, as well as contracts for difference and speculative delivery of commodities or securities. This principle clearly states that gambling debt has no actionable claim, including loans intended for gambling as well as a stake or property payment cannot be recovered.

2. Contractual relationship provision in gambling

Whenever a lottery or prize draw has been approved by the competent authorities, a claim may be made according to Article 515. If the lottery is not approved, the claim is treated as a gambling claim, and the results do not give rise to a claim. Lotteries or drawings that are authorized from outside Switzerland are not protected by Swiss law unless the sale of tickets is authorized by a Swiss authority.

Another exception is games of chance at casinos, for example, might give rise to claims if players are playing in a casino that has been licensed by the competent authority according to Article 515a.

The last exception is a voluntary payment may be reclaimed only when the planned gambling or betting activity could not take place due to chance or the recipient's conduct, or the winner has committed an irregularity.

3. Issue a bill or other instrument to pay gambling debts

A promissory note or bill of exchange signed by the gambler or bettor to pay the sum gamble or bet not be enforced even after delivery of the instrument. However, such principle is subject to the rights that securities confer on bona fide third parties.

3.5.3 Special law related to gambling

The Money Gambling Act (MGA)⁹⁰

This Act was approved by the Swiss voters in a vote on June 10, 2018 and went into effect on January 1, 2019. It combines the previous laws on casino games, betting, and lotteries into a single law. This law applies to all types of real money games such as online games, including betting, skill games, and card games.⁹¹

This law distinguishes between land-based casino licenses, land-based casino license extensions for online gambling, and lottery and betting licenses.

Only games of skill for sales promotion, in which there is no risk of excessive gambling and in which participation is purely via the purchase of products or services at market rates, are exempt from this law.⁹²

1. Casinos⁹³

Casino licenses can be divided into 2 types.

A-type casino: There are no restrictions on stake amounts or the number of tables and gambling machines available; they can provide 14 distinct table games, as well as limitless stakes, jackpots, and maximum winnings on all slot machines. An A-type casino is only allowed to open in a city with a population of one million or more.

⁹⁰ Simon Planzer, *The Gambling Law Review: Switzerland*, <https://thelawreviews.co.uk/title/the-gambling-law-review/switzerland>, (accessed June 25, 2021).

⁹¹ Andreas Glarner et al., *Lootboxes and Skin Gambling in Swiss Gambling Law* (USA: MME Legal Tax Compliance, 2019), pp. 2.

⁹² The Money Gambling Act of Switzerland, Art. 2 para. 2

⁹³ Andreas Glarner et al., "Switzerland," *The International Comparative Legal Guide to: Gambling 2019* (London: Global Legal Group Ltd, 2019): 224-226.

B-type casino: Spa or Resort Casino licenses have more restrictions, such as allowing just three types of table games and limiting stakes, jackpots, and maximum winnings for all slot machines. The maximum number of gambling tables per casino is three, while the maximum number of slot machines is 250. In B-type casinos, the maximum stake is CHF 25 and the highest prize is CHF 25,000. Jackpot games with progressive jackpots are not permitted.

A-type casinos have more options than B-type casinos. A-type casinos, on the other hand, is a little more difficult to permit. Many A-type casinos are found in major cities, B-type casinos in a small town. There are 21 land-based casinos. There are eight A-type casinos and thirteen B-type casinos.

2. Casinos online

There is no definition of online gambling. Existing land-based casinos with a current casino license can apply for an online license; the application procedure is identical to that of a terrestrial casino license. In the country, there are 21 licensed land-based casinos that qualify. Only a few casinos, however, have made the effort to create an online gambling site. Only eight online casinos will be operational in the country.

It is illegal to provide non-licensed online gambling within the country. The introduction of IP blocking measures to be applied by Internet access providers may prevent foreign, non-licensed operators from offering online gambling to Swiss citizens.

A gambling account with the operator is required to play online games. A player must be over the age of 18, a Swiss resident, and not be prohibited from gambling in order to establish an account. The online game provider must be able to identify the players. Gambling winnings can only be transferred to accounts in the player's name.

3. Lotteries, Sport betting, Bingo, Skill games

Lotteries are money games in which the outcome is chosen by a random drawing or similar procedure and can be played by an unlimited or at least a large number of people.⁹⁴

⁹⁴ The Money Gambling Act of Switzerland, Art. 3.

Sports bets are money games in which the prizes are dependent on correctly predicting the course or result of a sporting event. The term "sports event" should be considered cautiously. Only events that are closely related to a sports competition are considered as such.⁹⁵

Skill games are money games in which the winner is determined fully or primarily by the player's skill.⁹⁶

Gespa regulates non-casino gambling. In 2006, the cantons proposed the creation of this organization to administer lotteries. The primary focus of Gespa is the regulation of automated gambling machines and other types of gambling that cross cantonal borders. Lotteries, sports betting, bingo, and skill-based slot machines are all under Gespa's control under Swiss gambling regulations. Gespa was designed to work with the cantonal authorities. At the moment, Gespa provides lottery providers with licenses. Only Loterie Romande and Swisslos have received such permits so far, though.

Licenses will not be provided to any new providers. A cantonal license can be applied for by small lotteries and betting operators. In order to get such a license, small lotteries and small-scale betting cannot be conducted internationally or automatically. Licenses for lotteries, sports betting, and casinos cannot be transferred to a third party. Any legal transaction in which a lottery or casino license is transferred is null and invalid.

4. Online Sports Betting⁹⁷

Gespa has only given licenses to two companies: SwissLos and Loterie Romande. They are both lottery companies in Switzerland that also provide sports betting.

SwissLos - mainly serves customers in the German-speaking cantons of Switzerland (states). Their sports betting program is called Sporttip. The last one is horse race betting, which is also available through Pari Mutuel Urbain.

Loterie Romande- mainly serves customers in the French-speaking cantons of Switzerland (states). Their sports betting program is called JouezSport. The

⁹⁵ The Money Gambling Act of Switzerland, Art. 3.

⁹⁶ The Money Gambling Act of Switzerland, Art. 3.

⁹⁷ Gambling sites, Gambling Laws in Switzerland, <https://www.gamblingsites.com/online-gambling-jurisdictions/switzerland/>, (accessed June 25, 2021).

last one is horse race betting, which is also available through Pari Mutuel Urbain. The last one is horse race bets offered through Pari Mutuel Urbain.

Both of these companies provide a comprehensive selection of sports betting options. The most important distinction between the two organizations is the language in which they operate. Both of these companies are permitted by Swiss online betting laws to provide sports betting on their lottery websites.

5. Online lotteries, Online skills Games

The most significant aspects of the country's online gambling laws are online casinos and sports betting choices. However, there are a few more types of gambling available online.

Lottery - lottery tickets may be purchased online with SwissLos or Loterie Romande.

Bingo – SwissLos is the only online bingo operator that is legal.

Fantasy Betting – There are no specific laws that regulate fantasy sports betting. Individual operators are controlled by different organizations, depending on several factors.

Skills Games- Gespa maintains a list of skill-based games that they are responsible for. Gespa requires that online sites that provide certain specified games obtain a license.

6. Other Gambling Subject to Cantonal Law

The Money Gambling Act is complemented by cantonal law. For local gambling events, each of Switzerland's 26 cantons has the right to create its own Swiss gambling law. Any gambling that crosses cantonal borders, including internet gambling, is not subject to cantonal law.

The other gambling activities that may be subject to local laws.

- Small, local lotteries with low stakes and reward amounts. Raffles and tombolos are also included in this category.
- In-person sports bets on a specific event. These cannot be conducted by automated devices, and the prize amounts are limited.
- Local bingo games for small stakes.

- Small poker tournaments with a maximum entrance price of CHF200 are permitted, but the organizer must get a permit from their cantonal gambling authority.

- Fantasy betting may be covered by cantonal law; it is handled on a case-by-case basis.

Gespa and the Swiss cantonal gambling authorities are connected. These organizations cooperate to manage the same types of gambling on different scales.

3.6 A comparison between Thailand and foreign countries gambling legislation

Table 1: Comparative types of gambling

Types of gambling	Thailand	England	Singapore	France	Switzerland
Casino	Illegal	Legal	Legal	Legal (Some areas)	Legal (Some areas)
Remote gambling	Illegal	Legal	Legal	Legal	Legal
Lotteries	Legal	Legal	Legal	Legal	Legal
Sport betting	Legal (Some types)	Legal	Legal	Legal	Legal
Other gambling	-Allow some games in the Red Cross fair, or an annual event of the province. -Allow some animal fighting games.	-Animal fighting game is illegal	- Allow Animal fighting games is illegal.	-Allow Gambling club. -Allow Animal fighting games in some areas	-Allow cow fighting games -Allow local gambling events

Despite the fact that Thailand's gambling Act and royal decree provide the government the authority to establish casinos, the government has no policy in place to do so. Any casino or remote gambling owned and operated by the private sector is prohibited in Thailand. On the other hand, private-sector-owned and operated casinos and remote gambling are widespread in Thailand, despite the fact that it is prohibited.

The Gambling Act regulates some types of sport betting, such as boxing and wrestling, boat racing and rowing, fishing, and horse racing, on the condition that a gambler only bets in a particular location, such as a boxing stadium or racecourse. This Act also allows for some gambling at the Red Cross fair, which is held every year in the province. Gambling is legal in some animal combat activities, such as cockfighting, cow fighting, and fish fighting, and others.

In general, gambling in Thailand does not need betting with an operator, as it does in other countries, because there is no regulation requiring betting with an operator. As a result, gambling is widely played between players in Thailand. Only gambling related to horse racing and government lottery is required to make a bet with a bookmaker who is licensed by governmental authorities in Thailand, as specified by the Government Lottery Office Act and the gambling Act BE 2478 (1935).

The Gambling Act of 2005 regulates casinos, remote betting, lotteries, and sports betting in England. Such law gave businessmen and entrepreneurs the flexibility to engage in gambling-related operations. The following are the differences in gambling regulation between Thailand and England: To begin, casinos, as well as remote betting, are legal in England. Second, animal fighting games are prohibited by the Cruelty to Animals Act of 1835 and the Protection of Animals Act of 1911. Third, all legal gambling in England requires gamblers to play against the bookmaker, who is a gambling operator who is licensed by governmental authorities.

Singapore's casino is governed by the Casino Control Act and the Common Gaming Houses Act. The Remote Gambling Act regulates remote gambling, whereas the Common Gaming Houses Act and the Betting Act control sport betting, and the Common Gaming Houses Act and the Private Lotteries Act regulate lottery. The following are the differences in gambling regulation between Thailand and Singapore: For starters, remote betting is permitted in Singapore's casinos. Second, the Animals and Birds Act makes animal fighting games illegal. Third, all legal gambling in Singapore requires gamblers to

play against the bookmaker, which is a gambling operator licensed by government authorities.

Casino and sport betting are controlled in France by the Act of June 15, 1907, while remote gambling is regulated by the Act of May 12, 2010, lotteries are regulated by the Act of May 21, 1836, and gambling clubs are regulated by the Act of July 1, 1901. The following are the differences in gambling regulation between Thailand and France: For starters, remote betting and casinos are both legal in France. Second, the French Penal Code makes animal fighting games illegal, but cockfights are an exception to the rule in areas where they have been practiced for a long time, and cockfighting is also permitted in foreign territories. Third, all legal gambling in France, with the exception of cockfighting, requires players to play against the bookmaker, which is a gambling operation licensed by governmental authorities.

Casinos, remote betting, lotteries, sports betting controlled by the Money Gambling Act, and local gambling events betting regulated by the Money Gambling Act are all legal in Switzerland. The following are the differences in gambling regulation between Thailand and Switzerland: To begin with, casinos and remote betting are legal in Switzerland. Second, only cow fighting, which is categorized as a local gambling event, is permitted in Switzerland. Third, all legal gambling in Switzerland, with the exception of cow fighting, requires players to play against the bookmaker, which is a gambling operator licensed by governmental authorities.

Table 2: Comparative of legal consequence of gambling contract.

	Thailand	England	Singapore	France	Switzerland
Illegal gambling Agreement	No obligation according to section 853 Civil and Commercial Code.	Null and void because of prejudice to rule of law.	Null and void according to section 5(1) of The Civil Law Act.	Null and void according to Article 1131,1133 of Napoleonic Code.	Null and void according to Article 20 of Obligation Code.
Legal gambling Agreement	No obligation according to section 853 Civil and Commercial Code.	Enforceable according to section 335 of the Gambling Act 2005.	Null and void according to section 5(1) of The Civil Law Act.	Not allow any action for a gambling obligation according to Article 1965 of Napoleonic Code.	Not give rise to a claim according to Article 513 of Obligation Code.

Section 853 of the Civil and Commercial Code governs both legal and illegal gambling in Thailand, according to a Supreme Court judgment. According to Section 853, gambling does not create an obligation, and what has been given as a result of gambling or betting cannot be claimed back. The significance of no obligation is created is that gambling contracts still exist, binding both parties and enforceable between them; but, because gambling contracts do not establish any obligations, they cannot be enforced through civil court proceedings.

Illegal gambling and legal gambling in England have completely different gambling obligations. Because of the violation of the rule of law, the unlawful gambling agreement is null and invalid. Legal gambling, on the other hand, is governed under section 335 of the Gambling Act of 2005. This section makes it clear that an agreement can be enforced regardless of the sort of gambling involved. The following are the differences between Thai and English gambling obligations: First, Thailand's legal gambling agreement imposes no obligations, but England's illegal gambling agreement is

null and invalid. Second, Thailand's legal gambling agreement imposes no obligations, but England's legal gambling agreement can be enforced.

Section 5(1)(2) of the Civil Law Act governs all gambling agreements in Singapore, making any agreement both illegal and legal gambling in Singapore null and void. Furthermore, civil law prohibits the recovery of any money or valuable objects lost in a wager or their placement in the hands of anybody to abide by the outcome of the wager. The difference between gambling obligations under Thai law and gambling obligations under Singapore law is that all gambling agreements in Singapore are null and invalid, whereas all gambling agreements in Thailand create no obligation.

Under French civil law, the consequences of an unlawful gambling agreement and a legitimate gambling agreement are different. According to Napoleonic Code Articles 1131 and 1133, any illegal gambling agreement is null and invalid. Part of the legal gambling agreement governed by Articles 1965 and 1967 of the Napoleonic Code prohibits any action for a gambling obligation or wager payment. Furthermore, the loser may not reclaim what he has willingly paid, such as money or property, which has already been paid to one another due to gambling and cannot be reclaimed by the parties unless the loser can prove that the winner has engaged in swindling, fraud, or deception. The difference between gambling obligations in Thai law and gambling obligations in French law is that unlawful gambling agreements in France are null and invalid, but illegal gambling agreements in Thailand create no obligation. Second, a betting payment may be reclaimed if the winner cheats, but Thai law prohibits betting payment reclaim in any circumstance.

Under the Swiss Obligation Code, the penalties of an illegal gambling agreement and a legal gambling agreement are different. According to Article 20 of the Obligation Code, any illegal gambling agreement is null and invalid. A voluntary payment may only be recovered if the planned gambling or betting activity could not take place owing to chance or the recipient's conduct, or if the latter has committed an impropriety. The following are the differences between gambling obligations in Thai and Swiss law: first, illegal gambling agreements in Switzerland are null and invalid, but illegal gambling agreements in Thailand create no obligation. Second, a betting payment may be recovered if certain legal requirements are satisfied; nevertheless, Thai law prohibits betting payment reclaim in any situation.

Table 3: Comparative of the exception of legal gambling contract.

Thailand	England	Singapore	France	Switzerland
-A lottery or a raffle is binding if the lottery of the raffle is specially authorized by the Government.	-No exceptions because all legal gambling agreements can be enforced.	<ul style="list-style-type: none"> - Sum of money to be awarded to the winners of sport, game, exercise, or leisure. - Gambling controlled or supervised or operated, organized, promoted, administered, by a person or an organization permitted by law - Remote gambling that is organized, marketed, conducted, or directed by an operator or a person permitted by law - Gambling performed by or on behalf of the Singapore Totalizator Board or a turf club - Private lottery marketed or operated and permitted by law 	<ul style="list-style-type: none"> - A gambling operator is authorized by the law and ruled by the public authorities to offer betting games. The gambling obligation into a fully enforceable civil obligation. - A game using the use of equipment, such as foot or horse races, chariot races, tennis, and other comparable sports requiring skill and bodily exertion. 	<ul style="list-style-type: none"> - A lottery or prize draw has been approved by the competent authorities. - Games of chance in casinos licensed by the competent authority.

Section 854 of Thailand's Civil and Commercial Code provides an exemption to the gambling obligation. If the lottery or raffle is expressly authorized by the government, it is legally binding. A lottery or raffle is an agreement between a bookmaker and a gambler. When the government specifically permits a lottery or raffle, it becomes legally enforceable and is not subject to Section 853.

In England, there are no exceptions because all legal gambling agreements can be enforced.

The following are the exceptions provided in section 5(3,3A) of the Civil Law in Singapore that can be used to recover gambling debt through a court proceeding: First, gambling that is regulated, monitored, or conducted, organized, promoted, or administered by a person or organization that is legally allowed to do so. Second, gambling on behalf of or with the Singapore Totalizator Board or a turf club. Third, remote gambling that is organized, advertised, performed, or directed by a licensed operator or person. Fourth, a private lottery that is advertised or managed privately and is legal. Fifth, a monetary prize to be given to the winners of a sport, game, exercise, or leisure activity. However, a transaction involving the lending of any money or other valuable object for the purpose of gambling or wagering, as well as the extending of any type of credit for the purpose of gambling or betting and the offering of security in relation to the Act, is not included in the exceptions.

The exemption to the gambling obligation is provided by civil law and judgment in France. The French Supreme Court believes that licensed providers of licit gambling services should be able to claim payment from their clients. The exclusions do not apply if the debt is connected to loans or credit that were granted with the goal of engaging in gambling activities. A game involving the use of equipment, such as foot or horse races, chariot races, tennis, and other such activities requiring skill and bodily exertion, although the stakes must not be exorbitant, is another exemption specified by Article. 1966 of the Napoleonic Code.

Article 515 and Article 515a of the Swiss Obligation Code specifies an exemption to the gambling obligation. First, the appropriate authorities must approve a lottery or prize draw. Unless the selling of tickets is approved by a Swiss authority, lotteries or drawings that are authorized from outside Switzerland are not protected by Swiss law. Second, games of chance in casinos that have been granted a license by the competent authority.

3.7 Conclusion

There are three main laws in Thailand that regulate gambling, which are the Civil and Commercial Code, the Gambling Act BE 2478 (AD 1935), and the Government Lottery

Office Act BE 2517 (AD 1974). After Book III: Specific Contracts of the Civil and Commercial Code came into effect, all gambling contracts are subject to Sections 853-855. As dictated by the laws, gambling contracts do not create debt, and the stake or property that has been given because of gambling or betting cannot be demanded back. This, however, does not apply to the government lottery, since it is not subject to this provision.

In England, the Gambling Act 2005 is the main law regulating gambling in the country. Its regulations also cover both civil and criminal legal consequences. Legal gambling contracts are under Section 335, which clearly establishes that a contract can be enforced regardless of what type of gambling it is. This provision, however, is without prejudice to any rule of law prohibiting the execution of a contract based on its illegality. The difference between the Thai and the English gambling law is that Thailand's gambling agreement imposes no obligations, while England's legal gambling agreement can be enforced.

Even though Article 1965 of the Civil Code of France (Napoleon Code) prescribes that there is no legal action for a gambling debt, the highest court of ordinary jurisdiction defines that it does not cover any game of chance offered by a gambling operator that is authorized by the law and ruled by the public authorities. In addition, the court gives an opportunity to the loser's right to offer evidence or make an argument for the truth about whether the winner of the game has engaged in swindling, fraud, or deceit, hence, allowing the loser to reclaim the money or property he or she has lost. The difference between the Thai and the French gambling law is that Thailand's gambling agreement imposes no obligations, while in France, the court may accept some contractual gambling relationship if it occurs from licensed providers.

The Civil Act of Singapore prescribes that all gambling contracts and agreements are null and void, and recovery of any money or valuable items lost in a wager is not possible. This provision, however, does not apply to the five exceptions which are 1) Sum of money to be awarded to the winners of sport, game, exercise, or leisure, 2) Gambling controlled or supervised or operated, organized, promoted, administered, by a person or an organization permitted by law, 3) remote gambling that is organized, marketed, conducted, or directed by an operator or a person permitted by law, 4) Gambling performed by or on behalf of the Singapore Totalizator Board or a turf club, and 5) Private lottery marketed or operated and permitted by law. The following is the

difference between the Thai and the Singaporean gambling law: Thailand's gambling agreement imposes no obligations, but in Singapore, gambling contracts arise from gambling conducted under the control or supervision of a permitted operator can be enforced.

The Obligation Code of Swiss law, in Article 513, prescribes that there are no claims for gambling or betting contracts, and a stake or property payment cannot be recovered. This provision, however, does not cover games of chance at casinos for, according to Article 515a, it may give rise to claims if the casino is licensed by the competent authority. Moreover, according to Article 514, the same ability to reclaim the money also goes for when the winner has committed any irregularity. The difference between the Thai and Swiss laws is that, in Switzerland, gambling in casinos can give rise to claims if it occurs in a state-licensed casino, while the Thai law does not recognize any obligations arising from gambling at all and it is not enforceable.



Chapter 4

Analysis on the problem of gambling obligation in Thailand.

In Chapter 4, the researcher will analyze the problem of gambling obligation in Thailand, concentrating on legal issues and exceptions to the legislation in order to offer effective solutions.

4.1 Analysis of the problems of enforcing gambling contractual relationship under the Civil and Commercial Code and the Gambling Act B.E.2478 (A.D. 1935)

4.1.1 A contractual and non-contractual relationship of gambling under the Code and the Act

The study found that provisions of gambling and betting in the Civil and Commercial Code were influenced by the French Civil Code. In the past, gambling was widely practiced in Thai culture, while drafting gambling and betting provisions of Civil and Commercial Code, individuals were free to engage in any type of gambling and there were no laws in place to govern all forms of gambling. The government's position was more concerned with revenue collection than with gambling control and management; hence, there were no specific laws in place to regulate all sorts of gambling. Which the intent of law to not encourage people gamble because gambling is socially dangerous activity. it's necessary to legislate the law for control of civil consequences of gambling contracts. As a result, the law, specifically sections 853 of the Civil and Commercial Code, states that gambling creates no obligation, and any stakes or property given as a result of gambling or betting cannot be claimed back. In other words, gambling contracts do not create debt, and stakes cannot be recovered.

The role of provisions of gambling and betting in the Civil and Commercial Code is prescribed legal consequences of gambling contracts, as well as prescribed the exception of type of gambling in not subject to Section 853 of civil and commercial code.

According to section 854 prescribe exception of the types of gambling contracts that are permissible to contractual contract be enforced are limited to only

government lottery. Section 854 of the Civil and Commercial Code creates a connection between the civil gambling provisions of the Civil and Commercial Code and the Government Lottery Office Act. The government lottery is only type of gambling not covered by section 853 because government lottery is controlled by the Government Lottery Office Act, and it has been recognized as a state enterprise with a legal identity as a source of state revenue.

Which later, the passage of the Gambling Act is prescribes the types of gambling that are legal in Thailand and the penalties for illegal gambling. Furthermore, The Act divided gambling into three categories: casino games, general gambling games, and other gambling games. Each category has its own rule for permissions and penalties. This law's major goal is to control gambling in Thailand and to provide information on the various gambling categories' criteria.

It is interesting to note that no connection between civil provision of gambling in the Civil and Commercial Code and the Gambling Act same as the Government Lottery Office Act, even though state has approved gambling according to the Gambling Act, the legal consequences of a gambling contract have remained unchanged. Legal gambling, with the exception of government lottery, is still a non-binding contract. As a result, whether a gambler refuses to pay the stakes after losing a bet, or when bookmakers refuse to provide the reward to the winning gambler, the dispute cannot be resolved through the legal system.

Moreover, in the situation of a gambling game winner engaged in cheating, fraud, foul play, or other impropriety in order to exploit the loser of the game, The loser has no right to offer facts or make a case for the truth in court if the winner of lawful gambling makes a false declaration to get someone else to agree to a gambling contract, such as the winner participated in swindling or fraud.

According to the contract theory of good faith, the parties to a gambling agreement must be honest in their actions during the term of the agreement. When either a gambler or a bookmaker intentionally misrepresents the facts in order to cheat the other party of stakes or property, the other party has the right to revoke the agreement, and each party must restore the other to his previous state. As a result, the loser should be able to reclaim stakes. As a result, the loser should be permitted to reclaim stakes; therefore, Section 853 of the Civil and Commercial Code, which prohibits

the reclaiming of stakes given as a result of gambling, is inconsistent with the theory of Good Faith.

The findings of the research showed that the law on acceptance of gambling obligations in other countries differs from Thai law. Other nations' attitudes against gambling have altered in recent years; they now see gambling as a service industry that may benefit the economy; as a result, gambling is legal in such countries, and it is controlled and monitored by the government.

The Gambling Act 2005, for example, was enacted into English legislation in 2005. It stipulates that all lawful gambling agreements can be enforced; however, any gambling contract or right arising from an agreement established before the Gambling Act 2005 takes effect is unenforceable.

The acceptability of gambling in Singapore civil law was revised in 2006, 2011, and 2014 to exclude remote gambling, casino gambling, and other gambling operated by recognized operators from the gambling prohibition provision. Furthermore, the restriction on recovering stakes does not apply to gambling that is regulated, monitored, or conducted, organized, promoted, or managed by a person or organization that is legitimately entitled to do so, according to Section 5(3,3A) of the Singapore Civil Act.

The Swiss obligation law was also amended in 1998 to include games of chance in casinos as a cause of claims, and Article 514 of the Swiss Obligation Code stipulates that a voluntary payment may only be reclaimed if the recipient's conduct, or the winner's, is irregular.

For the mentioned reasons above, the Gambling Act BE 2478 (1935) must protect legal gambler by accepting gambling debts incurred as a result of legal gambling, as well as allowing the loser to be entitled to the money and property paid if the loser can prove the facts or make an argument that the winner engaged in swindling or fraud.

4.1.2 Judicial enforcement of gambling according to the Code and the Act

Because Section 853 of the Civil and Commercial Code does not specify the type of gambling that is subject to the provisions, the court applies them to all forms of gambling contracts, whether legal or illegal. Moreover, Thailand's judicial methodology also prevented the court from defining legal norms other than those specified by the

Code; hence, regardless of the consequences on legal gamblers in Thailand, the court must use the literal rule of interpretation in gambling provisions.

The judgement has a direct impact on legal gamblers. For example, if the winner of the game engages in cheating, fraud, foul play, or other misconduct, the loser cannot use judicial process to settle the matter or recover any stake. Similarly, if a gambler refuses to pay the stakes after losing a bet, or if the bookmaker refuses to give the reward to the winner, neither the gambler nor the bookmaker has a legal right to collect their stakes or prizes, because the only exception to the types of gambling contracts that can be enforced in court is a government lottery or a raffle authorized by the government.

Because the dispute arising from a gambling contract cannot be settled through the court system, many gamblers turn to self-help remedies to recover their losses, such as using violence or using an informal debt collector service, which can lead to a variety of problems, including informal debt problems or bodily harm or death to a debtor as a result of a debt collector's illegal actions.

Furthermore, prohibiting the settlement of disputes arising from lawful gambling contracts may provide a difficulty for the government in terms of future policy regarding the construction of a casino or remote gambling.

Because casino or remote gambling is a type of business in which there will always be disputes arising from the operation of the business, such as a dispute over claiming a prize or claiming for the stakes or property given as a result of an error gambling or betting, if the legal gambling contract still creates no obligation and thus cannot be enforced through court proceedings, the legal system will not be able to resolve any dispute related to the casino or remote gambling business. As a result, businesses may go out of business or turn to illegitimate dispute settlement methods.

In terms of judicial enforcement of gambling in other countries, despite the fact that the Napoleon Code of France prohibits an action for debt at play or payment of wager, the highest court of ordinary jurisdiction in France appears to believe that licensed operators of licit gambling services should be allowed to pursue payment proceedings against their customers, and that the court's judgment establishes a set of norm for being able to collect gambling debts. The exemptions do not apply, however, if the debt is related to loans or credit given with the intent of engaging in gambling activities.

Furthermore, the above-mentioned normed reappeared in 1958, when the court concluded that the legality of the national lottery indicates that all acts done by the national lottery operator within the course of its obligations are legal. If the loser can prove that the winner engaged in swindling, fraud, or deception, the court will permit him to retrieve the money and property he has paid for.

As a consequence, law-abiding gamblers should not be at risk of being scammed, and debts deriving from legitimate gambling contracts should be enforceable or recoverable through the judicial system. The judicial system is critical in safeguarding lawful gamblers.

4.2 Analysis of efficiency of enforcement of gambling Contractual Relationship through legislative and judicial approach

The above-mentioned issue, it is necessary to analyze the efficiency of the problem-solving legislative approach and judicial technique. This part, the researcher will analyze which approach is more appropriate and effective in the Thai legal system

4.2.1 Efficiency of legislative approach

The resolution of the issues through the legislative process would necessitate the modification of gambling law to recent situations. The current regulation may be amended/cancelled/ modified by the legislature can amend a statute of gambling in both of civil and commercial code and the Gambling Act. The powers of the legislature may include added, removed, or updated of the law related in gambling provision. In the amendment procedure, only the legislative branch is engaged.

The benefit of resolve the issues by legislative approach.

1. Acceptance of a gambling debt under the Act ensures consistency and predictability in the court. Because the court must evaluate the essential criteria, the law will be interpreted in the same manner by the court.
2. It is reliable and confident for gambler and bookmaker if gambling permitted by any laws.
3. By referring to written legislation, the gambler and bookmaker is or can be fully informed of the legal repercussions of his gambling contract.

The weakness of resolve the issues by legislative approach.

1. Depending on government rules or related organizations, the type of legal gambling changes. However, the law is incapable of keeping up with the fast-changing environment. Because of the lack of flexibility in written legislation, certain gamblers or bookmakers may not be protected by the law.
2. Some gambling contracts are not protected under the law. Gamblers who engage in legal gambling may not be protected by the law in some events and conditions that are not explicitly addressed by its laws.
3. A judge cannot intervene in the realm of law by adopting broad interpretations that apply to other types of gambling contracts. The court might interpret the law narrowly due to the limited interpretation of the law.

It may be seen in countries like England, Singapore, and Switzerland, who have been successful in resolving the problem through legislation. Which all recognize gambling debt in legislation. The reason those countries accept gambling debt in writing is to ensure legal clarity and to make judicial decisions based on the same criteria. The gambling industry in those countries is undeniably successful, the numbers and capacities of gambling business has rapidly grown. Since civil regulation of gambling amending, the type of legal gambling has changed significantly. Many laws have been enacted to legalize various types of gambling, such as casinos, private lottery, remote gambling, and sports betting.

4.2.2 Efficiency of judicial approach

The judicial method is resolving disputes based on the decisions of courts of justice. In the Thai legal system is use of Supreme Court decisions to set the norm of gambling provision. Even though Supreme Court rulings are not binding by other parties or lower courts. Furthermore, the Supreme Court of Justice is not bound by its own rulings, and subordinate courts are not bound by higher courts' precedents. In practice, however, the Supreme Court of Justice's rulings have a considerable impact on both the Supreme Court of Justice and lesser courts and set the norm in any case.

The benefit of resolve the issues by judicial approach.

1. Cases, facts, and situations that are not covered by written law can be addressed using the Judicial Method. In particular, the new form of gambling that the state has approved.

2. Written law is less flexible, speedier, and responsive than the judicial method. Judicial Method frequently adapts and responds quickly to rapid changes in the type of legal gambling.

3. A judge can broaden the law's interpretation, allowing it to cover more types of gambling contracts.

The weakness of resolve the issues by judicial approach.

1. The written legislation does not explicitly allow for the acceptance of gambling debt, which leads gamblers and bookmakers to lose faith while gambling. Whether a gambling contract creates obligations or not, it appears to rely more on a judicial decision, creating uncertainty about the enforceability of gambling contracts.

2. Even if gambling is legal, if the court upholds the principle of no obligation in gambling contracts, it will have no beneficial effect on the player or the bookmaker of civil consequence of gambling contract.

It may be seen in France have been successful in resolving the problem by judicial method, gambling debts are recognized in French courts. The highest court of ordinary jurisdiction in France allowed a gambling contract arising from a gambling operator to pursue payment proceedings because the court ensured fairness and judiciousness for gamblers and bookmakers, which is in accordance with the government's approval of the gambling industry in France. The efficiency of successful in judicial approach appear in the number of Act allow gambling in France such as the gambling club, casino, remote gambling, lottery, horse racing.

4.2.3 Analysis appropriate method for Thai law

When compared to the legislative method, the judicial method offers advantages such as being more flexible, faster, more responsive, and being able to cover more cases, facts, and circumstances. In the Thai legal system, Supreme Court rulings can set the standard for gambling provisions in practice, court standards can alter depending on the context and circumstances. In addition, judges usually resolve cases with regard for earlier supreme court of judgments.

However, judicial judgement is not binding to other case which judgement only have a persuasive influence in dispute resolution which there is no statute in place that requires a judge to follow precedents established by other judgement. Furthermore, the judge has the right to exercise his or her duties without interference. This right includes the ability to make a judicial decision or order without interference from the government or a state order. Therefore, a judge must base his or her judgment on own mind set and cannot construct his or her own interpretations to cover every form of gambling case. It can be said that judicial method is not appropriate in Thai legal system.

In contrast, legislative method is more appropriate solution because the legislation will be construed in the same way by the court since it must analyze the crucial concepts and it is reliable and confident for gambler and bookmaker since guarantee by written law. Even though legislative method has a weakness in flexibility and incapable of keeping up with the fast-changing environment in gambling industry, but secondary legislation such as ministerial regulation and emergency decrees issued under the Gambling Act can compensate for the legislative method's shortcomings. The Act must give powers to make secondary legislation to define the types of gambling contracts that can be enforced. Secondary legislation is easier to alter, add to, and change than main legislation.

As a consequence, situation-appropriate method in Thailand is legislative approach to settle issues with gambling contractual relationships. The Legislative Assembly is in charge of amending the Gambling Act BE 2478 (A.D. 1935),. The Gambling Act BE 2478 (1935) should be amended to allow the loser to recover the money and property paid if the loser can prove the facts or make an argument that the winner engaged in swindling or fraud, and to include the requirements for the acceptance of gambling debt in the Gambling Act B.E. 2478 (A.D. 1935), which will allow the bookmaker or gamblers to sue for debts incurred as a result of legal gambling.

4.3 Conclusion

The Gambling Act BE 2478 (1935) now defines the types of legal gambling as well as the conditions under which they can be played. The Government Lottery Office Act, B.E.

2517 (1974), is another statute that regulates only government lotteries. However, legal gambling, with the exception of government lotteries, still remains a non-binding contract.

As a result, when a party intentionally makes a false statement in order to persuade others to enter into a gambling contract, such as when a gambler refuses to pay the stakes after losing a bet, or when bookmakers refuse to award the prize to the victorious gambler, those disputes cannot be resolved through judicial approach or court procedures.

In other countries, the mechanism for accepting gambling debt are roughly classified into two categories: legislative and judicial approaches.

The first is the legislative method, which may be found in gambling laws in England, Singapore, and Switzerland. Because the law explicitly states that gambling debt is permitted, gambling contracts can be lawfully enforced. The establishment of a written provision accepting a gambling debt provides legal certainty and allows courts to make decisions based on the same standards. One downside is that the forms of legal gambling that are permitted change over time. Because written law may be unable to keep up with the fast-changing environment, courts cannot intervene in the legal system by adopting broad interpretations that apply to so many types of gambling contracts.

The second is a judicial approach, as evidenced by a judgment of France's Highest Court of Ordinary Jurisdiction. The court's decision to make a gambling contract enforceable is based on ensuring justice and prudence for both gamblers and bookmakers, as well as promoting the gambling industry in France. A gambling contract's drawback is that it creates obligations that are reliant on a judicial decision. Even though gambling is legal, if the court supports the idea of no obligation in gambling contracts, lawful gamblers are not secured.

To conclude, despite the fact that the judicial method has benefits such as being more flexible, speedier, more responsive, as well as being able to cover more instances, facts, and circumstances but a judicial decision is not binding on subsequent cases; it simply has a persuasive impact on dispute settlement; and there is no statute in force requiring a judge to follow precedents established by earlier decisions. In contrast, legislative approach is more appropriate in Thai law to settle issues with gambling contractual relationships because the court must study the important elements, the legislation will be understood in the same manner by the court, and it is dependable and confidence for gamblers and bookmakers because it is guaranteed by written law.

Chapter 5

Conclusion and Recommendations

In Chapter 5, the researcher will conclude the recommendations to resolve the legal issues related to gambling debt in Thailand.

5.1 Conclusion

5.1.1 Civil and Commercial Code and the Gambling Act B.E.2478 (A.D. 1935)

The principle of a gambling contract starts with Section 853 of the civil and commercial code, which states that gambling is a non-obligation contract because gambling is a socially harmful and humiliating activity, the state does not promote those who engage in gambling, and the state believes that gambling is inappropriate and should not be encouraged, and that the law should not protect the gambler to discourage gambling. Section 854 further states that the only types of gambling contracts that can be enforced in court are government lottery and raffle tickets.

Section 853 creates a contractual relationship issue in legal gambling contracts because presently, the Gambling Act BE 2478 regulates gambling, and some gambling is a legal service business with regulations in place to regulate and oversee it. However, both legal and illegal gambling agreements are still governed by Section 853 of the Civil and Commercial Codes. Gambling contracts, as a result, can only be enforced between the parties. In the situation that a gambling game winner participates in cheating, fraud, foul play, or other impropriety in order to take advantage of the loser, the loser has no right to present facts or make a case for the truth since the law does not allow the loser to reclaim any stakes or property or file lawsuits regarding the gambling contract. Additionally, Thailand's court system does not protect legitimate gamblers since judges must use a strict interpretation of gambling legislation.

To recover the loss, the party to the gambling contract may turn to aggressive self-help remedy, which may result in a number of issues, such as informal debt problems, bodily harm or death to a debtor as a consequence of an unlawful debt collector's actions, and so on.

The researcher was researching the definition, evolution, and progression of gambling, with a particular focus on foreign law. According to the findings, the two fundamental approaches in foreign law to resolve issues of gambling contractual relationships are legislative and judicial approaches.

The first approach is to fix the problem through legislative means, which would entail updating gambling laws to reflect current circumstances. The existing regulation may be amended/cancelled/modified by the legislature, which may change a gambling legislation in both the civil and commercial codes as well as the Gambling Act. For example, England, Singapore, and Switzerland are among the countries that recognize gambling debt in their laws.

The second is the judicial method of conflict resolution is based on the rulings of courts of justice. In the Thai legal system, Supreme Court judgements are used to establish the norm of gambling provision. In foreign counties, France recognizes gambling debt in judgment.

5.1.2 Efficiency of legislative and judicial approach

The effectiveness of legislative approaches may be seen in the gambling laws of England, Singapore, and Switzerland. Because the law explicitly states that gambling debt is permitted, gambling contracts can be lawfully enforced. The establishment of a written provision accepting a gambling debt provides legal certainty and allows courts to make decisions based on the same standards.

The effectiveness of the judicial approach is demonstrated in the France judgment. The court's decision to make a gambling contract enforceable is based on ensuring justice and prudence for both gamblers and bookmakers, as well as boosting the gambling business in France in a fast-changing environment.

5.1.3 Appropriate method for Thai law

In Thailand, the situation-appropriate approach is a legislative strategy to resolving issues with gambling contractual agreements since establishing a written provision recognizing a gambling debt offers legal clarity and allows courts to make decisions based on the same principles. In contrast, in the Thai legal system, Supreme Court judgements can set the norm for gambling rules in practice; nevertheless, court

standards might change based on the setting and circumstances. As can be seen, the legislative process is a more long-term answer than the judicial method.

5.2 Recommendations

5.2.1 Amendment of the Gambling Act B.E. 2478 (A.D. 1935)

The researcher proposes amending the Gambling Act BE 2478 to provide provisions to protect lawful gamblers from being exploited by the winner and accepting gambling debt occur from legal gambling to create clear and standard conditions for gambling debt acceptance based on the study of foreign law.

To protect lawful gamblers from being exploited by the winner, a prohibition on reclaiming stakes or property, as well as a provision stating that gambling debt does not give rise to a claim, should not apply to gambling permitted under the Gambling Act BE 2478. An imposition should also be changed to make it more appropriate.

The Gambling Act BE 2478 should be amended by adding the new Section in case of gambling contract such as "The section 853 of the civil and commercial code shall not apply in case: the winner has engaged in cheating, fraud, foul play, or committed an impropriety in gambling is permitted by this law."

5.2.2 Appropriate exceptional provisions for gambling contractual Enforcement

The researcher proposes adding the requirements for the acceptance of gambling debt by adapt from the foreign law. The Gambling Act BE 2478 should be amended by adding the new Section about " The section 853 of the civil and commercial code shall not apply in case: gambling is permitted by this law and such gambling operated by bookmaker, if bookmaker licensed by competent authority or by legislation, such as Government Lottery, Horse racing, Casino, or other gambling of the same description." And adding paragraph two about "The provisions of paragraph one not including the contract of advances or loans knowingly made for the purposes of gambling or betting" to protect a gambler from additional financial hardship.

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