

Indian Gaming Law

Indian Gaming Law

Cases and Materials

SECOND EDITION

Kathryn R.L. Rand

SCHOOL OF LAW
UNIVERSITY OF NORTH DAKOTA

Steven Andrew Light

DEPARTMENT OF POLITICAL SCIENCE AND PUBLIC ADMINISTRATION
COLLEGE OF BUSINESS AND PUBLIC ADMINISTRATION
UNIVERSITY OF NORTH DAKOTA

Co-Directors

INSTITUTE FOR THE STUDY OF TRIBAL GAMING LAW AND POLICY
UNIVERSITY OF NORTH DAKOTA



CAROLINA ACADEMIC PRESS
Durham, North Carolina

Copyright © 2019
Kathryn R.L. Rand and Steven Andrew Light
All Rights Reserved

ISBN 978-1-5310-3329-3
eISBN 978-1-5310-0980-9
LCCN 2019941689

Carolina Academic Press
700 Kent Street
Durham, NC 27701
Telephone (919) 489-7486
Fax (919) 493-5668
www.caplaws.com

Printed in the United States of America
2024 printing

For
Dorothy Light and Kate Light
and
Buggles, Margot, and LingLing

Contents

Table of Cases	xv
Preface	xxi
Copyright Acknowledgments	xxix

PART I

INDIAN GAMING IN CONTEXT

Chapter 1 · Introduction	3
A. Snapshot of the U.S. Casino Gaming Industry	3
B. Overview of Commercial Gaming	5
American Gaming Association, State of the States 2018: The AGA Survey of the Commercial Casino Industry	5
Notes and Questions	7
C. Overview of Indian Gaming	7
Alan Meister, Casino City's Indian Gaming Industry Report	11
Notes and Questions	13
D. History of Gambling	15
David G. Schwartz, Roll the Bones: The History of Gambling	15
John M. Findlay, People of Chance: Gambling in American Society from Jamestown to Las Vegas	16
National Gambling Impact Study Commission, Final Report	18
Notes and Questions	22
E. Gambling Law and Regulatory Models	23
Kathryn R.L. Rand & Steven Andrew Light, <i>Negotiating a Different Terrain: Morality, Policymaking, and Indian Gaming</i> in Gambling: Mapping the American Moral Landscape	23
Cory Aronovitz, <i>The Regulation of Commercial Gaming</i>	25
Anthony N. Cabot & Louis V. Csoka, <i>The Games People Play: Is It Time For a New Legal Approach to Prize Games?</i>	29
Notes and Questions	34
F. Tribal Governments and Federal Indian Law and Policy	37
Steven Andrew Light & Kathryn R.L. Rand, Indian Gaming and Tribal Sovereignty: The Casino Compromise	37
Notes and Questions	39
Robert N. Clinton, <i>There Is No Federal Supremacy Clause for Indian Tribes</i>	40
Wallace Coffey & Rebecca Tsosie, <i>Rethinking the Tribal Sovereignty Doctrine: Cultural Sovereignty and the Collective Future of Indian Nations</i>	42

Notes and Questions	44
U.S. Commission on Civil Rights, <i>A Quiet Crisis: Federal Funding and Unmet Needs in Indian Country</i>	45
U.S. Commission on Civil Rights, <i>Broken Promises: Continuing Federal Funding Shortfall for Native Americans</i>	46
Notes and Questions	48
Problem 1: A Regulatory Model for Indian Gaming	50
Chapter 2 · Pre-Statutory Law	51
A. Overview	51
B. Traditional Tribal Games	51
Paul Pasquaretta, <i>Gambling and Survival in Native North America</i>	51
Notes and Questions	54
C. Modern Roots	56
Carole E. Goldberg, <i>Public Law 280: The Limits of State Jurisdiction Over Reservation Indians</i>	56
Notes and Questions	59
D. Bingo in Florida and California	61
<i>Seminole Tribe of Florida v. Butterworth</i>	61
<i>Barona Group of the Capitan Grande Band of Mission Indians v. Duffy</i>	63
Notes and Questions	65
E. <i>Cabazon</i> : the Catalyst	66
<i>California v. Cabazon Band of Mission Indians</i>	66
Notes and Questions	75
Problem 2: Applying <i>Cabazon</i>	79

PART II

THE FEDERAL REGULATORY SCHEME

Chapter 3 · The Indian Gaming Regulatory Act of 1988	83
A. Overview	83
B. Legislative History	83
Steven Andrew Light & Kathryn R.L. Rand, <i>Indian Gaming and Tribal Sovereignty: The Casino Compromise</i>	83
Roland J. Santoni, <i>The Indian Gaming Regulatory Act: How Did We Get Here? Where Are We Going?</i>	85
Notes and Questions	91
U.S. Senator Harry Reid (D-Nev.), <i>Commentary in Indian Gaming and the Law</i>	91
Notes and Questions	94
Stewart L. Udall, Former Secretary of the Interior, <i>Commentary in Indian Gaming and the Law</i>	94
Notes and Questions	96
Senate Report No. 100-446	97
Notes and Questions	108

C. IGRA's Regulatory Framework	110
1. Findings and Policy Goals	110
2. Definition of "Indian Gaming"	111
a. Indian Tribes	112
Mary L. Kendall, Statement Before the U.S. Senate Committee on Indian Affairs on Federal Recognition of Indian Tribes	118
Notes and Questions	120
Renee Ann Cramer, Cash, Color, and Colonialism: The Politics of Tribal Acknowledgment	124
Notes and Questions	125
Problem 3.1: Tribal Recognition	128
b. Indian Lands	128
<i>Massachusetts v. Wampanoag Tribe of Gay Head (Aquinnah)</i>	129
Notes and Questions	133
<i>Carcieri v. Salazar</i>	135
Notes and Questions	140
3. Criminal Regulation	143
<i>Sycuan Band of Mission Indians v. Roache</i>	144
Notes and Questions	145
Problem 3.2: "Something for Everyone to Hate"	148
Chapter 4 · Class II and Class III Gaming	151
A. Overview	151
B. Conducting Class II and Class III Gaming	152
1. Statutory Requirements for Class II Gaming	152
Notes and Questions	154
2. Tribal "Self-Regulation" of Class II Gaming	157
Notes and Questions	159
3. Statutory Requirements for Class III Gaming	159
C. Defining Class II and Class III Gaming	161
<i>Shakopee Mdewakanton Sioux Community v. Hope</i>	163
Notes and Questions	164
<i>United States v. 103 Electronic Gambling Devices</i>	165
Notes and Questions	169
D. Class II Technologic Aids and Class III Facsimiles	171
<i>Cabazon Band of Mission Indians v. NIGC</i>	172
Notes and Questions	174
<i>Diamond Game Enterprises, Inc. v. Reno</i>	176
Notes and Questions	180
<i>United States v. Santee Sioux Tribe of Nebraska</i>	182
Notes and Questions	184
<i>Seneca-Cayuga Tribe of Oklahoma v. NIGC</i>	185
Notes and Questions	188
Problem 4.1: Class II Technologic Aid or Class III Electronic Facsimile?	194

E. State Public Policy and the Scope of Gaming	195
<i>Mashantucket Pequot Tribe v. Connecticut</i>	196
Notes and Questions	199
<i>Rumsey Indian Rancheria of Wintun Indians v. Wilson</i>	200
Notes and Questions	205
Problem 4.2: IGRA's "Permits Such Gaming" Requirement	209
Chapter 5 · Tribal-State Compacts for Class III Gaming	211
A. Overview	211
B. Statutory Requirements for Tribal-State Compacts	211
Notes and Questions	215
C. <i>Seminole Tribe v. Florida</i>	216
<i>Seminole Tribe of Florida v. Florida</i>	216
Notes and Questions	222
D. Post- <i>Seminole</i> Environment	225
1. Severability	225
Alex Tallchief Skibine, <i>Gaming on Indian Reservations: Defining the</i>	
<i>Trustee's Duty in the Wake of Seminole Tribe v. Florida</i>	226
<i>United States v. Spokane Tribe of Indians</i>	228
Notes and Questions	232
2. Administrative Procedures in Lieu of a Tribal-State Compact	236
Class III Gaming Procedures	237
Notes and Questions	242
E. Tribal-State Compacts	247
Tribal-State Compact for Control of Class III Video Games of Chance	
on the Shakopee Mdewakanton Sioux Community Reservation	
in Minnesota	248
Notes and Questions	261
F. Tribal-State Revenue-Sharing Agreements	267
Steven Andrew Light, Kathryn R.L. Rand & Alan P. Meister, <i>Spreading the</i>	
<i>Wealth: Indian Gaming and Revenue-Sharing Agreements</i>	268
Notes and Questions	271
<i>In re Indian Gaming Related Cases (Coyote Valley II)</i>	278
<i>Rincon Band of Luiseno Mission Indians v. Schwarzenegger</i>	291
Notes and Questions	299
Problem 5: Negotiating a Revenue-Sharing Agreement	305

PART III

GOVERNMENT AUTHORITY OVER INDIAN GAMING

Chapter 6 · Federal Authority	311
A. Overview	311
B. The National Indian Gaming Commission	311
1. Organizational Structure and General Authority	311

Jonodev Osceola Chaudhuri, Testimony Before the Senate Committee on Indian Affairs, U.S. Senate Oversight Hearing on Doubling Down on Indian Gaming: Examining New Issues and Opportunities for Success in the Next 30 Years	313
<i>Seneca-Cayuga Tribe of Oklahoma v. NIGC</i>	317
2. Defining Class II and Class III Gaming	319
National Indian Gaming Commission, Jackpot Blitz Texas Hold ‘Em Electronic Poker Game Classification Opinion	327
National Indian Gaming Commission Quarterback Draw Football Game Classification Opinion	330
Notes and Questions	333
3. Approval of Tribal Ordinances	335
4. Approval of Management Contracts	335
Kevin K. Washburn, <i>The Mechanics of Indian Gaming Management Contract Approval</i>	337
Notes and Questions	341
Matthew D. Craig, <i>The Negative Effects of Confusion over Collateral Agreements under the Indian Gaming Regulatory Act: Which Ones Need Review?</i>	344
Notes and Questions	346
5. Investigative and Enforcement Powers	349
Notes and Questions	351
6. Minimum Internal Control Standards and NIGC Authority Over Class III Gaming	355
<i>Colorado River Indian Tribes v. NIGC</i>	359
Notes and Questions	363
C. Secretary of the Interior	364
D. Other Federal Agencies	365
Problem 6: The Federal Regulatory Role	365
Chapter 7 · Tribal Authority	367
A. Overview	367
B. Modern Tribal Governments	367
Vine Deloria, Jr. & Clifford M. Lytle, American Indians, American Justice	367
David E. Wilkins & Heidi Kiiwetinepinesiiik Stark, American Indian Politics and the American Political System	371
Notes and Questions	374
C. Tribal Gaming Ordinances	376
National Indian Gaming Commission, Revised Model Gaming Ordinance (Bulletin No. 2018-1)	376
Notes and Questions	399
D. Tribal Gaming Commissions	403
Jamie Hummingbird, Testimony Before the U.S. Senate Committee on Indian Affairs Oversight Hearing on Safeguarding the Integrity of Indian Gaming	406

Notes and Questions	407
Kathryn R.L. Rand & Steven Andrew Light, <i>How Congress Can and Should “Fix” the Indian Gaming Regulatory Act: Recommendations for Law and Policy Reform</i>	408
Notes and Questions	409
E. Tribal Court Decisions	412
<i>DiMartino v. Mashantucket Pequot Tribal Nation</i>	413
<i>The Grandma Gebhard Co. v. Mashantucket Pequot Gaming Enterprise</i>	418
<i>Rogers v. Mashantucket Pequot Gaming Enterprise</i>	421
<i>Luond v. Mashantucket Pequot Gaming Enterprise</i>	425
Notes and Questions	430
Problem 7: The NIGC Revised Model Gaming Ordinance	431
Chapter 8 · State Authority	433
A. Overview	433
B. State Gaming Commissions	433
Sean McGuinness, <i>They Call It Gaming . . . and You Can Bet It’s Changed a Lot</i>	433
Notes and Questions	436
C. State Law	439
Kathryn R.L. Rand, <i>Caught in the Middle: How State Politics, State Law, and State Courts Constrain Tribal Influence Over Indian Gaming</i>	439
1. State Public Policy	440
<i>Panzer v. Doyle</i>	441
<i>Dairyland Greyhound Park, Inc. v. Doyle</i>	445
Notes and Questions	448
2. State Separation of Powers	452
<i>New Mexico ex rel. Clark v. Johnson</i>	453
Notes and Questions	457
<i>Taxpayers of Michigan Against Casinos v. Michigan</i>	459
Notes and Questions	461
Problem 8: Compacts and Changing State Law	466

PART IV

POLICY IMPLICATIONS

Chapter 9 · Socioeconomic Impacts of Indian Gaming	469
A. Overview	469
1. The Research Challenge	470
2. What Does the Research Show?	471
Robert J. Williams, Jürgen Rehm & Rhys M.G. Stevens, <i>The Social and Economic Impacts of Gambling</i>	472
Notes and Questions	477
B. Economic Impact Analysis	479
1. Methodology	479

Kathryn R.L. Rand & Steven Andrew Light, <i>Indian Gaming Law and Policy</i>	479
Notes and Questions	481
Alan Meister, <i>Casino City's Indian Gaming Industry Report</i>	483
Notes and Questions	485
2. Impacts	488
Alan Meister, <i>Casino City's Indian Gaming Industry Report</i>	489
Notes and Questions	491
C. Social Impact Analysis	492
1. Methodology	492
Kathryn R.L. Rand & Steven Andrew Light, <i>Indian Gaming Law and Policy</i>	492
Jonathan B. Taylor, Matthew B. Krepps & Patrick Wang, <i>The National Evidence on the Socioeconomic Impacts of American Indian Gaming on Non-Indian Communities</i>	494
Notes and Questions	496
2. Impacts	497
John W. Welte, Grace M. Barnes, Marie-Cecile O. Tidwell, Joseph H. Hoffman & William F. Wiczorek, <i>Gambling and Problem Gambling in the United States: Changes Between 1999 and 2013</i>	499
Notes and Questions	501
Douglas M. Walker, <i>Overview of the Economic and Social Impacts of Gambling in the United States</i> in <i>Oxford Handbook on the Economics of Gambling</i>	503
Notes and Questions	504
D. Indian Gaming and Reservation Communities	505
Jonathan B. Taylor, Matthew B. Krepps & Patrick Wang, <i>The National Evidence on the Socioeconomic Impacts of American Indian Gaming on Non-Indian Communities</i>	506
Notes and Questions	507
Problem 9.1: Economic Development and Quality of Life	516
E. Looking to the Future: Economic Development, Growth, and Diversification	517
Steven Andrew Light & Kathryn R.L. Rand, <i>Statement for the Record on "Indian Gaming: The Next 25 Years"</i>	517
Notes and Questions	519
Problem 9.2: Research Design	525
Chapter 10 · Pivotal Legal and Political Issues	527
A. Overview	527
B. Gaming on Newly Acquired Lands	528
1. Generally	528
Kevin K. Washburn, Assistant Secretary for Indian Affairs, <i>Statement Before the U.S. House Subcommittee on Indian and Alaska Native Affairs of the Committee on Natural Resources on Executive Branch Standards for Land-in-Trust Decisions for Gaming Purposes</i>	533
Notes and Questions	535

2. Exceptions to IGRA's General Prohibition Against Gaming on Newly Acquired Land	536
a. The Best-Interest Exception	536
Heidi McNeil Staudenmaier & Brian Daluiso, <i>Current Battles and the Future of Off-Reservation Indian Gaming</i>	536
Notes and Questions	537
b. Other Exceptions	543
<i>City of Roseville v. Norton</i>	544
<i>Wyandotte Nation v. NIGC</i>	549
Notes and Questions	557
Problem 10.1: Gaming on Newly Acquired Lands	561
C. Tribal Casinos as Businesses	561
1. Labor and Employment	561
<i>San Manuel Indian Bingo & Casino v. NLRB</i>	562
Notes and Questions	569
2. Tribal Sovereign Immunity	573
a. Generally	574
<i>Michigan v. Bay Mills Indian Community</i>	574
Notes and Questions	577
b. Federal Bankruptcy Laws	581
Steven T. Waterman, <i>Tribal Troubles—Without Bankruptcy Relief</i>	583
Notes and Questions	585
D. Next-Generation Gaming	586
<i>California v. Iipay Nation of Santa Ysabel</i>	588
Notes and Questions	590
Problem 10.2: Next-Generation Gaming at Tribal Casinos	596
Appendix · The Indian Gaming Regulatory Act of 1988	597
Index	625

Table of Cases

A

Alaska Airlines, Inc. v. Brock, 480 U.S. 678 (1987), 225
Alden v. Maine, 527 U.S. 706 (1999), 224
Andy's Oil Service, Inc. v. Hobbs, 125 Conn. App. 708, 9 A.3d 433 (2010), 419
Arizona v. Tohono O'odham Nation, 818 F.3d 557 (9th Cir. 2016), 561
Arkansas Game & Fish Comm'n v. United States, 568 U.S. 23 (2012), 560

B

B & B Bail Bonds Agency of Connecticut, Inc. v. Bailey, 256 Conn. 209, 770 A.2d 960 (2001), 425
Baker v. McCollan, 443 U.S. 137 (1979), 414
Barnhart v. Sigmon Coal Co., 534 U.S. 438 (2002), 138
Barona Group of the Capitan Grande Band of Mission Indians v. Duffy, 694 F.2d 1185 (9th Cir. 1982), 63
Big Lagoon Rancheria v. California, 741 F.3d 1032 (9th Cir. 2014), rev'd en banc and as amended on denial of further rehearing en banc, 789 F.3d 947 (9th Cir. 2015), 142, 143
Blatchford v. Native Village of Noatak, 501 U.S. 775 (1991), 575
Bd. of Trustees of the Univ. of Alabama v. Garrett, 531 U.S. 356 (2001), 224
Bryan v. Itasca County, 426 U.S. 373 (1976), 61, 67

C

C & L Enterprises, Inc. v. Citizen Band Potawatomi Indian Tribe of Oklahoma, 532 U.S. 411 (2001), 573
Cabazon Band of Mission Indians v. NIGC, 827 F. Supp. 26 (D.D.C.1993), 319
Cabazon Band of Mission Indians v. NIGC, 14 F.3d 633 (D.C. Cir. 1994), 172
Cachil Dehe Band of Wintun Indians of Colusa Indian Community v. Zinke, ___ F.3d ___ (9th Cir. 2018), 540
California v. Cabazon Band of Mission Indians, 480 U.S. 202 (1987), 66, 219
California v. Iipay Nation of Santa Ysabel, 898 F.3d 960 (9th Cir. 2018), 588
Carcieri v. Salazar, 555 U.S. 379 (2009), 135
Carter v. United States, 530 U.S. 255 (2000), 146
Celentano v. Mashantucket Pequot Gaming Enter., 6 Mash. Rep. 189 (2014), 414
Chemehuevi Indian Tribe v. Wilson, 987 F. Supp. 804 (N.D. Cal. 1997), 233, 236
Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc., 467 U.S. 837 (1984), 568
Cheyenne River Sioux Tribe v. South Dakota, 3 F.3d 271 (8th Cir. 1993), 224

- Cheyenne-Arapaho Gaming Commission v. NIGC, 214 F. Supp. 2d 1155 (N.D. Okla. 2002), 317
- Chickasaw Nation v. United States, 208 F.3d 871 (10th Cir. 2000), *aff'd*, 534 U.S. 84 (2001), 186
- Choate v. Trapp, 224 U.S. 665 (1912), 65
- Citizen Band Potawatomi Indian Tribe v. Green, 995 F.2d 179 (10th Cir. 1993), 148
- City of Roseville v. Norton, 348 F.3d 1020 (D.C. Cir. 2003), 544
- Cives Corp. v. Mashantucket Pequot Tribal Nation, 3 Mash. Rep. 309, 4 Mash. 196 (2001), 420
- Coeur d'Alene Tribe v. Idaho, 842 F. Supp. 1268 (D. Id. 1994), 442
- Colorado River Indian Tribes v. NIGC, 466 F.3d 134 (D.C. Cir. 2006), 359, 437
- Confederated Tribes of Siletz Indians v. United States, 110 F.3d 688 (9th Cir. 1997), 530
- Connecticut v. United States Dep't of the Interior, No. 1:17-cv-2564-RC (D.D.C. Sept. 29, 2018), 581
- Cotton Petroleum Corp. v. New Mexico, 490 U.S. 163 (1989), 146
- County of Oneida v. Oneida Indian Nation of New York, 470 U.S. 226 (1985), 129, 220
- County of Yakima v. Confederated Tribes & Bands of Yakima Indian Nation, 502 U.S. 251 (1992), 549
- D**
- D'Ambra v. Maikshilo, 12 Am. Tribal Law 216 (Mohegan Ct. 2014), 414
- Dairyland Greyhound Park, Inc. v. Doyle, 719 N.W.2d 408 (Wis. 2006), 445
- Deal v. United States, 508 U.S. 129 (1993), 138
- Diamond Game Enter., Inc. v. Reno, 230 F.3d 365 (D.C. Cir. 2000), 181, 318
- DiMartino v. Mashantucket Pequot Tribal Nation, No. MPTC-CV-PI-2014-174 (Mash. Pequot Tribal Ct. 2017), 413
- Donovan v. Coeur d'Alene Tribal Farm, 751 F.2d 1113 (9th Cir. 1985), 563
- E**
- EEOC v. Peabody Western Coal Co., No. 12-17780 (9th Cir. Sept. 26, 2014), 572
- F**
- Federal Power Comm'n v. Tuscarora Indian Nation, 362 U.S. 99 (1960), 563
- Fitzpatrick v. Bitzer, 427 U.S. 445 (1976), 219
- Florida House of Representatives v. Crist, 999 So. 2d 601 (Fla. 2008), 215, 465
- Franklin v. United States, 216 U.S. 559 (1910), 138
- G**
- Gaming Corp. of America v. Dorsey & Whitney, 88 F.3d 536 (8th Cir. 1996), 462, 463
- George v. Mashantucket Pequot Gaming Enter., 5 Mash. Rep. 322 (Mash. Pequot Tribal Ct. 2010), 427
- Graham v. Connor, 490 U.S. 386 (1989), 414
- Grossi v. Mashantucket Pequot Gaming Enter., 2 Mash. App. 19 (Mash. Pequot App. Ct. 1998), 430
- Guidiville Band of Pomo Indians v. NGV Gaming, Ltd., 531 F.3d 767 (9th Cir. 2008), 133
- H**
- Hafer v. Melo, 502 U.S. 21 (1991), 579
- Hans v. Louisiana, 134 U.S. 1 (1890), 218
- Hotel Employees & Rest. Employees Int'l Union v. Davis, 981 P.2d 990 (Cal. 1999), 279

I

- In re ‘SA’ NYU WA, Inc., BK 2:13-02972-MBW (Bankr. D. Ariz., Mar. 4, 2013), 585
- In re Indian Gaming Related Cases, 331 F.3d 1094 (9th Cir. 2003) (Coyote Valley II), 278
- In re Mastercard Int’l Inc. Internet Gaming Litigation, 313 F.3d 257 (5th Cir. 2002), 586
- In re Money Center of America, Docket No. 14-10603 (Bankr. D. Del. Feb. 28, 2017), 582
- In re Sac & Fox Tribe, 340 F.3d 749 (8th Cir. 2003), 352
- In re Santa Ysabel Resort & Casino, No. 12-09415-PB 11 (Bankr. S.D. Cal. Sept. 11, 2012), 585, 587

J

- Johnson v. Mashantucket Pequot Gaming Enter., 1 Mash. App. 21, 1 Mash. Rep. 15 (Mash. Pequot App. Ct. 1996), 427

K

- Kansas ex rel. Stephan v. Finney, 836 P.2d 1169 (Kan. 1992), 457
- Kansas ex rel. Stephan v. Finney, 867 P.2d 1034 (Kan. 1994), 458
- Kimel v. Florida Board of Regents, 528 U.S. 62 (2000), 224
- Kiowa Tribe of Okla. v. Mfg. Techs., Inc., 523 U.S. 751 (1998), 575
- Krystal Energy Co. v. Navajo Nation, 357 F.3d 1055 (9th Cir. 2004), 582

L

- Lac Courte Oreilles Band v. United States, 367 F.3d 650 (7th Cir. 2004), 531
- Lac du Flambeau Band of Lake Superior Chippewa Indians v. Wisconsin, 770 F. Supp. 480 (W.D. Wis. 1991), 441

- Landry v. Spitz, 102 Conn. App. 34, 925 A.2d 334 (2007), 420
- Lewis v. Clarke, 581 U.S. ___, 137 S. Ct. 1285 (2017), 578
- Lion Mfg. Corp. v. Kennedy, 330 F.2d 833 (D.C. Cir. 1964), 188
- Little River Band of Ottawa Indians v. NLRB, 788 F.3d 537 (6th Cir. 2015), 570
- Littlefield v. United States Dep’t of Interior, No. 1-10184-WGY (D. Mass. July 28, 2016), 580
- Luond v. Mashantucket Pequot Gaming Enter., ___ Mash. App. ___ (Mash. Pequot App. Ct. 2016), 425

M

- Magee v. Mashantucket Pequot Gaming Enter., 4 Mash. App. 40 (Mash. Pequot App. Ct. 2007), 427
- Marbury v. Madison, 1 Cranch [5 U.S.] 137 (1803), 221
- Martin v. Kavanewsky, 157 Conn. 514, 255 A.2d 619 (1969), 419
- Martyn v. Donlin, 151 Conn. 402 (1964), 414
- Mashantucket Pequot Gaming Enter. v. McDuffee, 6 Mash. Rep. 147 (Mash. Pequot Tribal Ct. 2014), 426
- Mashantucket Pequot Gaming Enter. v. Prentice, 6 Mash. Rep. 110 (Mash. Pequot Tribal Ct. 2013), 427
- Mashantucket Pequot Tribal Nation v. Kenneth Castellucci & Assoc., Inc., 4 Mash. Rep. 21, 5 Mash. 227 (2002), 422
- Mashantucket Pequot Tribe v. Connecticut, 913 F.2d 1024 (2d Cir. 1990), 126, 196, 581
- Massachusetts v. Wampanoag Tribe of Gay Head (Aquinnah), 853 F.3d 618 (1st Cir. 2017), 129

- Match-E-Be-Nash-She-Wish Band of Pottawatomis Indians v. Engler, 304 F.3d 616 (6th Cir. 2002), 215
- Match-E-Be-Nash-She-Wish Band of Pottawatomis Indians v. Patchak, 567 U.S. 209 (2012) (Patchak I), 141
- Mayes v. Cherokee Nation (In re Mayes), 294 B.R. 145 (10th Cir. B.A.P. 2003), 584
- McClanahan v. Arizona State Tax Comm'n, 411 U.S. 164 (1973), 65, 69
- MGM Resorts Int'l Global Gaming Dev., LLC v. Malloy, 861 F.3d 40 (2d Cir. 2017), 580
- Michigan v. Bay Mills Indian Community, 572 U.S. ___, 134 S. Ct. 2024 (2014), 574
- Moe v. Confederated Salish & Kootenai Tribes, 425 U.S. 463 (1976), 70
- Montana v. Blackfeet Tribe of Indians, 471 U.S. 759 (1985), 174
- Montana v. Kennedy, 366 U.S. 308 (1961), 138
- Morton v. Ruiz, 415 U.S. 199 (1974), 316
- Mourning v. Family Publications Serv., Inc., 411 U.S. 356 (1973), 362, 363
- Murphy v. National Collegiate Athletic Ass'n, 584 U.S. ___ (2018), 591
- Murphy v. Royal, 875 F.3d 896 (10th Cir. 2017) (cert. granted sub nom. Carpenter v. Murphy), 135
- N**
- Navajo Nation v. Dalley, 896 F.3d 1196 (10th Cir. 2018), 577
- New Hampshire Lottery Comm'n v. Barr, No. 1:19-cv-00163 (D.N.H. filed Feb. 15, 2019), 591
- New Mexico ex rel. Clark v. Johnson, 904 P.2d 11 (N.M. 1995), 453
- New Mexico v. Mescalero Apache Tribe, 462 U.S. 324 (1983), 70
- New Mexico v. United States Dep't of Interior, 854 F.3d 1207 (10th Cir. 2017), 235, 246, 247
- New York v. United States, 505 U.S. 144 (1992), 224
- Northern Arapaho v. Wyoming, 389 F.3d 1308 (10th Cir. 2004), 236
- O**
- Oklahoma Tax Comm'n v. Chickasaw Nation, 515 U.S. 450 (1995), 286
- Oklahoma Tax Comm'n v. Citizen Band Potawatomi Tribe of Okla., 498 U.S. 505 (1991), 574
- Oliphant v. Suquamish Indian Tribe, 435 U.S. 191 (1978), 65
- Oneida Tribe of Indians v. Wisconsin, 518 F. Supp. 712 (W.D. Wis. 1981), 64, 66
- P**
- Panzer v. Doyle, 680 N.W.2d 666 (Wis. 2004), 215, 441
- Passamaquoddy Tribe v. Maine, 75 F.3d 784 (1st Cir. 1996), 131
- Patchak v. Zinke, ___ U.S. ___, 138 S. Ct. 897 (2018) (Patchak II), 141
- Pauma v. NLRB, 888 F.3d 1066 (9th Cir. 2018), 570
- Pennsylvania v. Union Gas Co., 491 U.S. 1 (1989), 219
- Perez v. Mashantucket Pequot Gaming Enter., 3 Mash. Rep. 288 (2001), 414
- Ponca Tribe v. Oklahoma, 37 F.3d 1422 (10th Cir. 1994), 224
- Printz v. United States, 521 U.S. 898 (1997), 224
- R**
- Rhode Island v. Narragansett Indian Tribe, 19 F.3d 685 (1st Cir. 1994), 129
- Rice v. Rehner, 463 U.S. 713 (1983), 71

Rincon Band of Luiseno Mission Indians v. Schwarzenegger, 602 F.3d 1019 (9th Cir. 2010), 291

Rogers v. Mashantucket Pequot Gaming Enter., No. CV-PI-2014-157 (Mash. Pequot Tribal Ct. 2016), 421

Rumsey Indian Rancheria of Wintun Indians v. Wilson, 64 F.3d 1250 (9th Cir. 1994), 200, 278

S

Sac & Fox Nation v. Norton, 240 F.3d 1250 (10th Cir. 2001), 557

San Manuel Indian Bingo & Casino v. NLRB, 475 F.3d 1306 (D.C. Cir. 2007), 562

Santa Clara Pueblo v. Martinez, 436 U.S. 49 (1978), 156, 566

Saratoga County Chamber of Commerce v. Pataki, 798 N.E.2d 1047 (N.Y. 2003), 215

Schoonmaker v. Lawrence Brunoli, Inc., 265 Conn. 210, 828 A.2d 64 (2003), 425

Seminole Tribe of Florida v. Butterworth, 658 F.2d 310 (5th Cir. 1981), 61

Seminole Tribe of Florida v. Florida, 11 F.3d 1016 (11th Cir. 1994), 226

Seminole Tribe of Florida v. Florida, 517 U.S. 44 (1996), 196, 216

Seminole Tribe v. Florida, 219 F. Supp. 3d 1177 (N.D. Fla. 2016), 170, 304

Seneca-Cayuga Tribe of Oklahoma v. NIGC, 327 F.3d 1019 (10th Cir. 2003), 185, 317

Shakopee Mdewakanton Sioux Community v. Hope, 16 F.3d 261 (8th Cir. 1994), 163, 317

Sherman v. Mashantucket Pequot Gaming Enter., 5 Mash. App. 66 (Mash. Pequot App. Ct. 2012), 429

Shoshone-Bannock Tribes v. Reno, 56 F.3d 1476 (D.C. Cir. 1995), 233

Skidmore v. Swift & Co., 323 U.S. 134 (1944), 317

Soaring Eagle Casino & Resort v. NLRB, 791 F.3d 648 (6th Cir. 2015), 570

South Dakota v. Bourland, 508 U.S. 679 (1993), 164

Spokane Indian Tribe v. United States, 972 F.2d 1090 (9th Cir. 1992), 175

Spokane Tribe of Indians v. Washington, 28 F.3d 991 (9th Cir. 1994), vacated, 517 U.S. 1129 (1996), 231

Stand Up for California! v. United States Dep't of Interior, 879 F.3d 1177 (D.C. Cir. 2018), 141, 542

Sycuan Band of Mission Indians v. Roache, 54 F.3d 535 (9th Cir. 1994), as amended on denial of rehearing (9th Cir. Apr. 28, 1995), 144, 303

T

Taxpayers of Michigan Against Casinos v. Michigan, 685 N.W.2d 221 (Mich. 2004), 459

Texas v. United States, 362 F. Supp. 2d 765 (W.D. Tex. 2004), 244

Texas v. United States, 497 F.3d 491 (5th Cir. 2007), 245

The Grandma Gebhard Co. v. Mashantucket Pequot Gaming Enter., No. MPTC-CV-GC-2013-174 (Mash. Pequot Tribal Ct. 2017), 418

Thomas Jefferson Univ. v. Shalala, 512 U.S. 504 (1994), 541

Three Affiliated Tribes of Fort Berthold Reservation v. Wold Eng'g, 476 U.S. 877 (1986), 575

Timbisha Shoshone Tribe v. Kennedy, 687 F. Supp. 2d 1171 (E.D. Cal. 2009), 514

Tirreno v. The Hartford, 161 Conn. App. 678, 129 A.3d 735 (2015), 422

Tomlinson v. Bd. of Educ. of City of Bristol, 226 Conn. 704, 629 A.2d 333 (1993), 424

Town of Charlestown, Rhode Island v. BIA, 35 IBIA 93 (2000), 136

U

United States v. 103 Electronic Gambling Devices, 223 F.3d 1091 (9th Cir. 2000), 165, 189, 317

United States v. 162 MegaMania Gambling Devices, 231 F.3d 713 (10th Cir. 2000), 169, 176, 181

United States v. Anderson, 391 F.3d 1083 (9th Cir. 2004), 146

United States v. Gonzales, 520 U.S. 1 (1997), 137

United States v. Kagama, 118 U.S. 375 (1886), 220

United States v. Lara, 541 U.S. 193 (2004), 575

United States v. Livingston, 725 F.3d 1141 (9th Cir. 2013), 146, 147

United States v. Lopez, 514 U.S. 549 (1995), 224

United States v. Mazurie, 419 U.S. 544 (1975), 67

United States v. Morrison, 529 U.S. 598 (2000), 224

United States v. Santee Sioux Tribe of Nebraska, 135 F.3d 558 (8th Cir. 1998) (Santee I), 354

United States v. Santee Sioux Tribe of Nebraska, 324 F.3d 607 (8th Cir. 2003), 182

United States v. Seminole Nation of Oklahoma, 321 F.3d 939 (10th Cir. 2002), 353

United States v. Sisseton-Wahpeton Sioux Tribe, 897 F.2d 358, 365 (8th Cir. 1990), 197

United States v. Spokane Tribe of Indians, 139 F.3d 1297 (9th Cir. 1998), 228

United States v. Wheeler, 435 U.S. 313 (1978), 575

W

Walton v. Mashantucket Pequot Gaming Enter., 6 Mash. Rep. 20 (Mash. Pequot Tribal Ct. 2012), 426

Washington v. Confederated Tribes of Colville Indian Reservation, 447 U.S. 134 (1980), 67, 70

Wells Fargo Bank v. Lake of the Torches Econ. Dev. Corp., 658 F.3d 684 (7th Cir. 2011), 346

Whitaker v. Dakota Finance (In re Whitaker), 474 B.R. 687 (B.A.P. 8th Cir. 2012), 582

Wilson v. Layne, 526 U.S. 603 (1999), 414

Wisconsin v. Ho-Chunk Nation, 512 F.3d 921 (7th Cir. 2008), 452

Wyandotte Nation v. NIGC, 437 F. Supp. 2d 1193 (D. Kan. 2006), 549

Wyandotte Nation v. Sebelius, 443 F.3d 1247 (10th Cir. 2006), 558

Y

Yavapai-Prescott Indian Tribe v. Arizona, 796 F. Supp. 1292 (D. Ariz. 1992), 207

Preface

Although this is a legal casebook, it reflects an interdisciplinary approach to studying and understanding the law. Our collaboration on Indian gaming issues began more than two decades ago when we realized that tribal gaming gave rise to complex issues of law and public policy that crossed our respective disciplines of law and political science and public administration. At the University of North Dakota, we founded the Institute for the Study of Tribal Gaming Law and Policy in 2002 to foster research on Indian gaming and to understand its impact on intergovernmental relations and the lives of real people—Indian and non-Indian—across the United States.

We strongly believe in the importance of informing our pedagogy with our research, and vice versa. Years ago, one of us (Rand) taught one of the first Indian gaming law courses offered in a law school curriculum. She was surprised at how difficult it was to design the course, develop an easily understandable framework, and find appropriate readings. When the other of us (Light) sought to teach a short unit on the public administration of Indian gaming to graduate students, he was stymied by having to edit long law review articles or case law that didn't necessarily identify important underlying policy issues. At the same time, there is an abundance of inaccurate or incomplete information to be found on the Internet. Those experiences, along with requests for materials from other instructors in this rapidly expanding area of interest and practice, led us to author the first edition of this casebook.

Now, a decade later, Indian gaming is the largest segment of the U.S. casino industry. Some 500 tribal casinos in 28 states generate over \$32 billion—five times the gaming revenue of the entire Las Vegas Strip. Indian gaming is a fast-growing and fascinating area of legal practice, as attorneys face issues in contracts, corporate finance, government relations, regulation, taxation, torts, tribal sovereignty, and more. Lawyers, as well as state, tribal, and local regulators, public officials and policymakers, business leaders, and hospitality and tourism management executives all benefit from knowledge of the complex law, policy, and regulation of tribal gaming.

Indian gaming remains a particularly complicated and highly specialized topic for instructors, students, and practitioners alike to master. To meet the teaching and learning demands of the field, *INDIAN GAMING LAW: CASES AND MATERIALS* (2d ed.) provides a clear, comprehensive, and accessible platform designed specifically for Indian gaming law and similar courses, and suitable for tribal gaming modules in a wide range of curricula. This casebook is one-stop resource for understanding Indian gaming law and the regulations and public policy that flow from it. This in large part

is because our approach to the subject is informed by our sense that Indian gaming law and policy have evolved through political compromise as much as through litigation and law reform. Attention only to “black letter” law would be misleading as to the type and relative influence of extralegal variables that shape Indian gaming law. Similarly, discussion of the politics surrounding Indian gaming without grounding in the law would untether tribal gaming from its key legal context.

The focus of the few existing casebooks that incorporate some discussion of Indian gaming is either as a form of gambling regulation or as an example of the application of federal Indian law. Our own work has emphasized that understanding Indian gaming requires explanation and exploration of both of these contexts. In the second edition, we continue to fuse the necessary background on federal Indian law and the status of American Indian tribes in the American political system with legal approaches to regulating gambling, and provide a useful and usable overarching theoretical approach grounded in law, policy, and governance.

We also benefit from our respective administrative experience as deans (Rand at the School of Law and Light at the College of Business and Public Administration) and, in the case of Light, as a senior administrator in the university’s academic affairs office, over the course of the last decade. Our approach to the second edition of the casebook is enhanced by our heightened appreciation that each course necessarily must accomplish learning outcomes relevant to the institution’s mission and students’ career paths. As our own Indian gaming courses over the past several years have varied in credit hours and method of delivery; included simulation exercises, “flipped” classrooms, and other high-impact practices; and pivoted to “fit” within a focus on transactional practice or tribal government and business administration, we understand that an effective casebook must provide an instructor with flexibility to meet institutional and student needs.

Throughout the casebook, students, instructors, and other readers will hear from the legal, judicial, and political experts, American Indian and non-Indian alike, who shape Indian gaming today and will determine its future. We present excerpts from relevant case law, statutes, and regulations alongside congressional testimony and scholarly commentary by key authorities in the fields of law (including both academics and practitioners), Indian studies, political science, economics, gambling studies, and more. To assist readers in working through such complex issues, we have thoroughly updated the teaching problems, simulation exercises, and notes and questions throughout to reflect current issues and to encourage and aid pedagogical best practices. Accompanying the second edition is our revised *Teacher’s Manual*, in which we draw on our own experiences in the classroom to offer numerous suggestions to stimulate an engaging and exciting classroom environment, as well as to make recommendations for focusing a course’s or module’s coverage on, for example, gaming law, tribal economic development, business management and practice, law- and policymaking and implementation, or professional skills development, depending on a school’s curricular needs and the interests of the instructor and students.

This second edition includes thorough and wide-ranging updates of every chapter and subject to reflect current legal and political developments in the field. We provide current tribe- and state-specific examples and accounts throughout. The second edition's expanded and refined coverage of topics emphasizes new court decisions and agency actions, matters critical to practice, and dynamic and developing issues. Updates include:

- Important, informative, and engaging new case law from federal and state courts, and all-new tribal court cases illustrating intersections of gaming law with administrative and constitutional law, employment law, federal Indian law, contracts, and torts;
- Land-into-trust and gaming on newly acquired lands after *Carcieri v. Salazar*;
- In-depth analysis of key tribal-state compact negotiations and provisions, including current case law and administrative actions related to revenue sharing;
- Evolving and expanding regulatory roles of the National Indian Gaming Commission (NIGC), tribal gaming commissions, and state agencies, as well as the U.S. Department of the Interior, U.S. Department of Justice, Bureau of Indian Affairs, Office of Indian Gaming, and Office of Federal Acknowledgment;
- New interpretations of the federal Indian Gaming Regulatory Act of 1988 (IGRA), including the distinctions between Class II and Class III gaming, minimum internal control standards (MICS), management contracts and collateral agreements, tribal gaming ordinances, and compacts;
- State-of-the-art research on social and economic impacts of gambling (commercial, state lotteries, and tribal), including addiction, employment and income rates, per capita distributions, tax revenue, and tribal, state, and local economies;
- Sovereign immunity issues arising after *Michigan v. Bay Mills Indian Community*;
- Focus on tribal casinos as businesses, including analysis of issues related to labor, bankruptcy, commercial partnerships, and alternatives to operation under IGRA;
- Expansion of legalized gaming: online and mobile, sports wagering after *Murphy v. NCAA*, and betting on eSports, Daily Fantasy Sports, and other skills-based games; and
- Specific state updates from influential developments in Arizona, California, Connecticut, Florida, Massachusetts, Michigan, Minnesota, Mississippi, New Mexico, New York, Oklahoma, Texas, Virginia, and more.

A course in Indian gaming law has legal and political currency and thus can easily “connect” with students. But more than simply learning about current events, students should come away from such a course with a critical understanding of perhaps the most important legal and policy issues facing tribes today, and with a deeper sense of how tribal governments—the “third sovereign”—interact with the federal, state, and local governments in the American political system.

It is our sincere wish that students who use this casebook in a course on Indian gaming law will have the tools to enter the field as practicing attorneys, regulators,

or policymakers and face with confidence the day-to-day complexities and nuances of Indian gaming law and policy. We also recognize that one of the primary functions of a law school education is to foster in students a sense of the interactions between law and society, and the responsibilities of adopting an informed, ethical, and inclusive approach to career and citizenship. We hope to further that important goal through this casebook's approach.

* * *

INDIAN GAMING LAW: CASES AND MATERIALS (2d ed.) begins with Part I, Indian Gaming in Context. In this Part, we cover the necessary historical, legal, and political contexts for understanding the modern law of Indian gaming. In Chapter 1, we provide an overview of Indian gaming through multiple lenses. We discuss the growth and scope of tribal gaming and the legalized gambling industry in the United States before turning to a survey of how and why gambling is regulated. We then provide necessary background on the complicated area of federal Indian law and policy, situated in its historical and contemporary relationship to tribal sovereignty and tribal governments. Chapter 1 includes a new overview of the commercial casino industry along with updates to all industry data, with new excerpts on gambling policymaking and its socioeconomic context, including a 2018 U.S. Commission on Civil Rights report.

Chapter 2's focus is on the pre-statutory law that created the foundations for Indian gaming. We discuss traditional tribal games and Indian gaming's modern roots as a tool of reservation economic development, illustrated through case law arising out of state attempts to regulate tribal bingo operations in the 1970s and 1980s. The U.S. Supreme Court recognized the limits of state regulation in its landmark 1987 decision in *California v. Cabazon Band of Mission Indians*.

Part II, The Federal Regulatory Scheme, covers in detail the complex and comprehensive legal framework governing Indian gaming. In Chapter 3, we describe how *Cabazon* and the political activity it generated resulted in Congress's passage of the Indian Gaming Regulatory Act of 1988 (IGRA). IGRA's regulatory framework codified several key policy goals for Indian gaming while creating the basis for extensive civil and criminal regulation of tribal gaming at the tribal, state, and federal levels. IGRA also created a classification scheme for Indian gaming regulation. Chapter 3's discussion of IGRA's "Indian tribe" and "Indian lands" requirements includes updates related to the 2015 amendments to federal tribal acknowledgment regulations and recent congressional actions, as well as the significant impacts on land-into-trust of the U.S. Supreme Court's 2009 decision in *Carciari v. Salazar*. Teaching Problems 3.1 and 3.2 are revised to reflect current issues of tribal acknowledgment and Indian lands.

Chapter 4 is reorganized to describe the statutory requirements for conducting both Class II and Class III gaming. Revisions include an expanded discussion of per capita payments; new developments in tribal self-regulation of Class II gaming; and updated and focused discussion of Class II aids, including new and revised federal

regulations. Problems 4.1 and 4.2 capture the continued controversy over, respectively, the legal line between Class II and Class III machines and IGRA's "permits such gaming" requirement.

In Chapter 5 we focus fully on the tribal-state compact requirement for Class III, or casino-style, gaming. IGRA requires the negotiation in good faith of tribal-state compacts before a tribe can operate Class III games. In 1996, however, the Supreme Court in *Seminole Tribe v. Florida* held that tribes could not sue states without their consent to enforce IGRA's good-faith requirement. We examine how the post-*Seminole* environment has become increasingly politicized, impacting how states and tribes approach compact negotiations. The Chapter also includes an updated discussion of administrative gaming procedures under 25 C.F.R. pt. 291 and recent cases; an excerpt of a tribal-state compact along with numerous examples of various provisions from other compacts; an expanded discussion of the U.S. Secretary of the Interior's compact approval process and outcomes; and an updated discussion of revenue sharing with careful examination of several emerging issues raised through recent cases, current data, and examples of compact provisions as well as approval letters. Problem 5 is revised to reflect the increasingly complex and nuanced approach to compacting issues.

Part III, Government Authority Over Indian Gaming, explores in more detail the various government officials, agencies, and institutions that exercise power over Indian gaming at the federal, tribal, and state levels. Chapter 6 discusses the scope and extent of federal authority concerning tribal gaming. IGRA delegates to the National Indian Gaming Commission (NIGC) extensive powers to issue opinions and approve tribal gaming ordinances, management contracts, and consulting agreements, as well as to promulgate regulations and investigate and enforce various compliance provisions. The Interior Secretary and other federal agencies play key roles in determinations concerning tribal-state compacts, per capita payments, and other regulations. Updates in Chapter 6 center on the NIGC: its current strategic areas of focus; the mixed success of its efforts to promulgate game classification standards, including new Class II technical standards; examples of NIGC administrative opinions and other actions; its role in approving management contracts with recent cases and critiques; and its recent "guidelines" for Class III minimum internal control standards. Problem 6 similarly focuses on issues related to the NIGC's authority.

In Chapter 7, we consider the extent of tribal authority to formulate, implement, enforce, and interpret tribes' own gaming regulations and ordinances. Indian gaming has created many new challenges and opportunities for tribal governments to build effective and responsive governmental institutions. Chapter 7 includes the 2018 NIGC Revised Model Gaming Ordinance along with an updated discussion of tribal gaming commissions. We also feature selected examples of tribal court opinions, with which an instructor can choose to focus on tribal court practice, a particular area of tort or contract law, or the various kinds of cases that arise from the operation of a casino.

Chapter 8 turns to state authority regarding tribal gaming. IGRA's tribal-state compacting requirement allowed state gaming commissions and other agencies to become involved in the regulation of tribal gaming. State courts have interpreted IGRA's provisions related to state public policy and the scope of gaming, as well as decided which state actors are authorized to negotiate compacts. In state court litigation over Indian gaming, tribes may be forced to sit on the sidelines. Chapter 8 includes detailed and current descriptions of state regulatory authority with regard to Class III gaming as well as a focused discussion of state separation of powers in relation to compact validity.

In the casebook's final Chapters in Part IV, Policy Implications, we bring public policy and politics to the forefront. Chapter 9 focuses on tribal gaming's socioeconomic impacts, with an emphasis on research methodology and findings. In the past decade, more studies have focused on legalized gambling's impacts on individuals and populations, communities, and regions, including Indian gaming's economic and social costs and benefits that may accrue to tribal reservations and surrounding communities. The Chapter includes discussion of these and other recent studies, and posits how to use methodologically sound research to develop and implement effective Indian gaming law and public policy. The Chapter's discussion of gambling disorders is updated to reflect current Diagnostic and Statistical Manual (DSM-5) terminology and diagnostic criteria. The Chapter also includes expanded discussion of social impacts of Indian gaming with regard to per capita payments, intra-tribal disputes, and tribal disenrollment issues.

Chapter 10 explores in some detail several pivotal legal and political issues in Indian gaming: "off-reservation" gaming; issues related to the business side of tribal casinos, including application of the National Labor Relations Act and federal bankruptcy laws; and the expansion of Indian gaming into online and mobile gaming, sports betting, and other new games reflecting the changing demographics that are reshaping the casino industry. All are issues that continue to generate legal and political controversy throughout the United States. As the entire gaming industry—not just tribal—works to meet challenges and leverage opportunities presented by the continuing expansion of legalized gambling, it is fitting to close with issues that may particularly constrain or create opportunity for tribes as they reach beyond "bricks-and-mortar" operations to realize IGRA's policy goals.

* * *

INDIAN GAMING LAW: CASES AND MATERIALS (2d ed.) has benefited from numerous conversations and interactions we have had with academics, practitioners, regulators, public officials, and students. All mistakes, of course, are our own. We very much would appreciate hearing from those of you who use this book. Please feel free to contact us by e-mail at kathryn.rand@und.edu or steven.light@und.edu.

As always, we are grateful for the support of our colleagues at the University of North Dakota School of Law and the Department of Political Science and Public Administration in the University of North Dakota College of Business and Public

Administration. At Carolina Academic Press, our deepest thanks to Keith Sipe and Linda Lacy for their continued enthusiasm about our work, Ryland Bowman for guiding us through the publication process, TJ Smithers for his careful production assistance, Erin Matthews for her aid with marketing and promotion, and everyone else at the Press for their help along the way.

KATHRYN R.L. RAND
STEVEN ANDREW LIGHT
Grand Forks, North Dakota

May 2019

Copyright Acknowledgments

We are indebted to those whose noteworthy scholarship and commentary on Indian gaming and myriad related topics inform this casebook. We express our appreciation for the publicly available materials that we excerpt herein. We gratefully acknowledge the permission granted by authors, law reviews, journals, presses, and publishers to reprint excerpts from the following materials.

AMERICAN GAMING ASSOCIATION, STATE OF THE STATES 2018: THE AGA SURVEY OF THE COMMERCIAL CASINO INDUSTRY (2018). Copyright © 2018 American Gaming Association. All rights reserved. Reprinted by permission.

Aronovitz, Cory, *The Regulation of Commercial Gaming*, 5 CHAPMAN LAW REVIEW 181 (2002). Reprinted by permission.

Cabot, Anthony N., & Louis V. Csoka, *The Games People Play: Is It Time For a New Legal Approach to Prize Games?* 4 NEVADA LAW JOURNAL 197 (2004). Reprinted by permission.

Clinton, Robert N., *There Is No Federal Supremacy Clause for Indian Tribes*, 34 ARIZONA STATE LAW JOURNAL 113 (2002). Reprinted by permission.

Coffey, Wallace & Rebecca Tsosie, *Rethinking the Tribal Sovereignty Doctrine: Cultural Sovereignty and the Collective Future of Indian Nations*, 12 STANFORD LAW & POLICY REVIEW 191 (2001). Reprinted by permission.

Craig, Matthew D., *The Negative Effects of Confusion over Collateral Agreements under the Indian Gaming Regulatory Act: Which Ones Need Review?*, 8 UNLV GAMING LAW JOURNAL 185 (2018). Reprinted by permission.

CRAMER, RENEE ANN, CASH, COLOR, AND COLONIALISM: THE POLITICS OF TRIBAL ACKNOWLEDGMENT (Norman, OK: University of Oklahoma Press, 2005). Reprinted by permission.

DELORIA, VINE JR., & CLIFFORD M. LYTLE, AMERICAN INDIANS, AMERICAN JUSTICE (Austin, TX: University of Texas Press, 1983). Reprinted by permission of the University of Texas Press.

FINDLAY, JOHN M., PEOPLE OF CHANCE: GAMBLING IN AMERICAN SOCIETY FROM JAMESTOWN TO LAS VEGAS (New York, NY: Oxford University Press, 1986). Reproduced with permission of the Licensor through PLSclear.

Goldberg, Carole E., *Public Law 280: The Limits of State Jurisdiction Over Reservation Indians*. Originally published in 22 UCLA LAW REVIEW 535 (1975). Reprinted by permission of the author.

- LIGHT, STEVEN ANDREW, & KATHRYN R.L. RAND, *INDIAN GAMING AND TRIBAL SOVEREIGNTY: THE CASINO COMPROMISE* (Lawrence, KS: University Press of Kansas, 2005). Reprinted by permission.
- Light, Steven Andrew, & Kathryn R.L. Rand, *Statement for the Record on "Indian Gaming: The Next 25 Years,"* 18 *GAMING LAW REVIEW* 793 (2014). Reprinted by permission of Mary Ann Liebert, Inc.
- Light, Steven Andrew, Kathryn R.L. Rand, & Alan P. Meister, *Spreading the Wealth: Indian Gaming and Revenue-Sharing Agreements,* 80 *NORTH DAKOTA LAW REVIEW* 657 (2004). Reprinted by permission.
- McGuinness, Sean, *They Call It Gaming . . . and You Can Bet It's Changed a Lot,* *BUSINESS LAW TODAY* (July/Aug., 2006). Reprinted with permission of the author.
- MEISTER, ALAN P., *CASINO CITY'S INDIAN GAMING INDUSTRY REPORT* (2018 ed.). IndianGamingReport.com. Reprinted by permission of the author and Casino City Press.
- PASQUARETTA, PAUL, *GAMBLING AND SURVIVAL IN NATIVE NORTH AMERICA* (Tucson, AZ: University of Arizona Press, 2003). Reprinted by permission of the University of Arizona Press.
- Rand, Kathryn R.L., *Caught in the Middle: How State Politics, State Law, and State Courts Constrain Tribal Influence Over Indian Gaming,* 90 *MARQUETTE LAW REVIEW* 971 (2007). Reprinted by permission.
- Rand, Kathryn R.L., & Steven Andrew Light, *How Congress Can and Should "Fix" the Indian Gaming Regulatory Act: Recommendations for Law and Policy Reform,* 13 *VIRGINIA JOURNAL OF SOCIAL POLICY & THE LAW* 396 (2006). Reprinted by permission.
- RAND, KATHRYN R.L., & STEVEN ANDREW LIGHT, *INDIAN GAMING LAW AND POLICY,* 2d ed. (Durham, NC: Carolina Academic Press, 2014). Reprinted by permission.
- Rand, Kathryn R.L., & Steven Andrew Light, *Negotiating a Different Terrain: Morality, Policymaking, and Indian Gaming,* in *GAMBLING: MAPPING THE AMERICAN MORAL LANDSCAPE* (Alan Wolfe & Erik C. Owens eds.) (Waco, TX: Baylor University Press, 2009). Reprinted by permission.
- Reid, Harry, *Commentary in INDIAN GAMING AND THE LAW* 15–20 (William R. Eadington ed.) (Reno, NV: Institute for the Study of Gambling & Commercial Gaming, University of Nevada, Reno, 1998). Reprinted by permission.
- Santoni, Roland J., *The Indian Gaming Regulatory Act: How Did We Get Here? Where Are We Going?* 26 *CREIGHTON LAW REVIEW* 387 (1992–1993). Reprinted by permission.
- SCHWARTZ, DAVID G., *ROLL THE BONES: THE HISTORY OF GAMBLING* (New York, NY: Gotham Books, 2006). Reprinted by permission of the author.
- Skibine, Alex Tallchief, *Gaming on Indian Reservations: Defining the Trustee's Duty in the Wake of Seminole Tribe v. Florida,* 29 *ARIZONA STATE LAW JOURNAL* 121 (1997). Reprinted by permission.

- Staudenmaier, Heidi McNeil, & Brian Daluiso, *Current Battles and the Future of Off-Reservation Indian Gaming*, INDIAN GAMING LAWYER (Spring 2017). Reprinted by permission of the authors and the International Masters of Gaming Law.
- Taylor, Jonathan B., Matthew B. Krepps, & Patrick Wang, *The National Evidence on the Socioeconomic Impacts of American Indian Gaming on Non-Indian Communities* (2000). Reprinted by permission of the Harvard Project on American Indian Economic Development.
- Udall, Stewart L., Commentary in INDIAN GAMING AND THE LAW 22–28 (William R. Eadington ed.) (Reno, NV: Institute for the Study of Gambling & Commercial Gaming, University of Nevada, Reno, 1998). Reprinted by permission.
- Walker, Douglas M., *Overview of the Economic and Social Impacts of Gambling in the United States*, in THE OXFORD HANDBOOK OF THE ECONOMICS OF GAMBLING (Leighton Vaughan Williams & Donald S. Siegel eds.) (New York, NY: Oxford University Press, 2013). Reproduced with permission of the Licensor through PLSclear.
- Washburn, Kevin K., *The Mechanics of Indian Gaming Management Contract Approval*, 8 GAMING LAW REVIEW 333 (2004). Reprinted by permission of Mary Ann Liebert, Inc.
- Waterman, Steven T., *Tribal Troubles — Without Bankruptcy Relief*, XXVIII AMERICAN BANKRUPTCY INSTITUTE JOURNAL 10, 44-45, 87 (2010). Reprinted by permission.
- Welte, John W., Grace M. Barnes, Marie-Cecile O. Tidwell, Joseph H. Hoffman, & William F. Wiczorek, *Gambling and Problem Gambling in the United States: Changes Between 1999 and 2013*, 30 JOURNAL OF GAMBLING STUDIES 695 (2015). Reprinted by permission.
- WILKINS, DAVID E., & HEIDI KIIWETINEPINESIIK STARK, AMERICAN INDIAN POLITICS AND THE AMERICAN POLITICAL SYSTEM, 3d ed. (Lanham, MD: Rowman & Littlefield Publishers, Inc., 2010). Reprinted by permission.
- Williams, Robert J., Jürgen Rehm, & Rhys M.G. Stevens, *The Social and Economic Impacts of Gambling* (2011). Final Report prepared for the Canadian Consortium for Gambling Research, March 11, 2011. Reprinted by permission of the authors.