The UNLV Gaming Law Journal is published by students of the William S. Boyd School of Law, University of Nevada, Las Vegas, in conjunction with the International Masters of Gaming Law. Editorial and general offices are located at 4505 South Maryland Parkway, Box 451003, Las Vegas, Nevada, 89154-1003; 702-895-2370.

Domestic subscription rate: $40.00 per year. Foreign subscription rate: $50.00 per year. Subscription requests may be sent to the UNLV Gaming Law Journal at the general office address listed above. Checks should be made payable to “Board of Regents.” Subscriptions will be renewed automatically unless notice of cancellation is received. Changes of address notices should include old and new addresses and zip codes.

The UNLV Gaming Law Journal welcomes unsolicited manuscripts on topics regarding gaming law. Footnotes should conform to the standards as set forth in The Bluebook (19th ed. 2010). Manuscripts can be submitted to the general office address listed above; manuscripts will not be returned unless accompanied by a self-addressed, postage-paid envelope. Manuscripts can also be submitted to the Journal’s Business Editor at business.editor@unlvgaminglawjournal.org. Manuscripts accepted for publication must subsequently be submitted in Word format.

Unless otherwise noted, all articles are copyrighted © 2014 by the UNLV Gaming Law Journal.
UNLV GAMING LAW JOURNAL

Volume 5 Spring 2014 Number 1

ARTICLES

CASINO GAMING IN MACAU: EVOLUTION, REGULATION AND CHALLENGES
Jorge Godinho ............................................. 1

WHAT’S IN A GAME? A TEST UNDER WHICH WE MAY CALL A “VGT” A GAMBLING GAME IS NOT SO SWEET: WHY COURTS SHOULD NOT APPLY THE MATERIAL ELEMENT TEST TO VGTs
Erica Okerberg ........................................... 27

BOOK REVIEW

HOW SHOULD THE PAST INFORM THE FUTURE? REVIEWING REGULATING INTERNET GAMING: CHALLENGES AND OPPORTUNITIES
Keith C. Miller ........................................... 49

NOTES

TIP-POOLING AT NEVADA CASINOS—THE CASE AT THE WYNN AND WHY THE NEVADA STATE GAMING CONTROL BOARD AND GAMING COMMISSION SHOULD SET STRICT REGULATIONS ON TIP-POOLING TO PROTECT THE RIGHTS OF DEALERS, CASINOS, AND THE REPUTATION OF THE NEVADA GAMING INDUSTRY
Kandis McClure ........................................... 81

FENCING THE BUFFALO: OFF-RESERVATION GAMING AND POSSIBLE AMENDMENTS TO SECTION 20 OF THE INDIAN GAMING REGULATORY ACT
Tess Johnson ............................................... 101

INCOME OR LIABILITY: HOW CASINOS’ CLASSIFICATION OF OUTSTANDING CHIPS DETERMINE TAXABILITY
John Bulloch .............................................. 121
UNLV GAMING LAW JOURNAL

Published by the
William S. Boyd School of Law
University of Nevada, Las Vegas
in conjunction with the
International Masters of Gaming Law

BOARD OF EDITORS

Editor-in-Chief
ERIC D. WALTHER

Managing Editor
MADISON ZORNES

Business Editor
JOHN BULLOCH

Lead Articles Editor
CHANDLER POHL

Articles Editors
Tiffany Kahler
Conrad Soboniak
Ryan Gormley
Justin Allsop

Notes Editors
Kandis McClure
Kathryn Butler

Senior Staff
Katie Goldberg
Evan Simonsen
Lane Wood
Tess Johnson

Junior Staff
Michael Alires
Andrew Dunning
Joseph Grusman
Kerry Kleiman
Izaac Rowe
Taylor Simpson
Michael Trippedi
Brittany CermaK
Melissa Goldstein
Tonya Henderson
Keely Perdue
Ryan Saxe
Amanda Stevens
Nicholas Zicari

Faculty Advisors
Anthony Cabot
Ngai Pindell
Nancy Rapoport
Rachel Anderson

Editorial Office
4505 Maryland Parkway, Las Vegas, Nevada 89154-1003 • Tel: 702.895.2370
William S. Boyd School of Law, UNLV
Faculty and Administration for 2013-2014

ADMINISTRATION
Daniel W. Hamilton, Dean and Richard J. Morgan Professor of Law
Frank Durand, Associate Dean for Student Affairs
Thomas Main, Associate Dean for Faculty Development and Research, William S. Boyd Professor of Law
Ngai Pindell, Associate Dean for Academic Affairs, Professor of Law
Christine Smith, Associate Dean for Administration and External Relations

LAW FACULTY
Rachel J. Anderson, J.D., University of California, Berkeley, School of Law, Professor of Law
Ian C. Bartrum, LL.M., Yale Law School; J.D., Vermont Law School, Associate Professor of Law
Peter Brandon Bayer, LL.M., Harvard Law School; J.D., New York University School of Law, Associate Professor of Law
Linda L. Berger, J.D., Case Western Reserve University School of Law, Family Foundation Professor of Law
Mary E. Berkheiser, J.D., University of Arizona College of Law, Director, Juvenile Justice Clinic and Professor of Law
Bret C. Birdsong, J.D., University of California, Hastings College of the Law, Professor of Law
Christopher L. Blakesley, J.S.D., and LL.M., Columbia University School of Law; J.D., University of Utah College of Law, The Cobeaga Law Firm Professor of Law
Jennifer Carr, J.D., William S. Boyd School of Law, Director, Academic Success Program
Robert I. Correales, LL.M., Georgetown University Law Center; J.D., University of Kansas School of Law, Professor of Law
Linda Edwards, J.D., University of Tennessee College of Law, E.L. Cord Foundation Professor of Law
Eric Franklin, J.D., Cornell University Law School, Director, Community Economic Development Clinic and Associate Professor of Law
Ruben J. Garcia, LL.M., University of Wisconsin Law School; J.D., University of California, Los Angeles, School of Law, Professor of Law
Sara Gordon, J.D., University of Arizona College of Law, Associate Professor of Law
Leslie C. Griffin, J.D., Stanford Law School, William S. Boyd Professor of Law
Daniel W. Hamilton, J.D., George Washington University, Dean and Richard J. Morgan Professor of Law
Lori D. Johnson, J.D., Northwestern University School of Law, Lawyering Process Professor of Law
Michael Kagan, J.D., University of Michigan Law School, Co-Director, Immigration Clinic and Associate Professor of Law
Kay P. Kindred, J.D., Columbia University School of Law, Ralph Denton Professor of Law
Mary LaFrance, J.D., Duke University School of Law, IGT Professor of Intellectual Property Law
Sylvia Lazos, J.D., University of Michigan Law School, Justice Myron Leavitt Professor of Law
Francine J. Lipman, LL.M., New York University School of Law; J.D., University of California, Davis, School of Law, William S. Boyd Professor of Law
Elizabeth L. MacDowell, J.D., University of California, Berkeley, School of Law, Director, Family Justice Clinic and Associate Professor of Law
Thomas O. Main, J.D., Northeastern University School of Law, Associate Dean for Faculty Development and Research and William S. Boyd Professor of Law
Fatma Marouf, J.D., Harvard Law School, Co-Director, Immigration Clinic and Associate Professor of Law
Thomas B. McAffee, J.D., University of Utah College of Law, William S. Boyd Professor of Law
Ann C. McGinley, J.D., University of Pennsylvania Law School, William S. Boyd Professor of Law
Rebecca Nathanson, Ph.D., University of California, Santa Barbara, James E. Rogers Professor of Education and Law
Lydia Nussbaum, J.D., University of Maryland Francis King Carey School of Law, Director, Strasser Mediation Clinic; Associate Director, Saltman Center for Conflict Resolution and Associate Professor of Law
Ngai Pindell, J.D., Harvard Law School, Associate Dean for Academic Affairs, Professor of Law
Terrill Pollman, J.D., University of Arizona College of Law, Professor of Law
Jeanne F. Price, M.L.S., University of Maryland; J.D., University of Texas School of Law, Director, Wiener-Rogers Law Library and Associate Professor of Law
Nancy B. Rapoport, J.D., Stanford Law School, Gordon Silver Professor of Law
Addie C. Rolnick, J.D., University of California, Los Angeles, School of Law, Associate Professor of Law
Keith A. Rowley, J.D., University of Texas School of Law, William S. Boyd Professor of Law
Rebecca Scharf, J.D., Harvard Law School, Associate Professor of Law
Elaine Shoben, J.D., University of California, Hastings College of the Law, Judge Jack and Lula Lehman Professor of Law
Jeffrey W. Stempel, J.D., Yale Law School, Doris S. and Theodore B. Lee Professor of Law
Jean Sternlight, J.D., Harvard Law School, Director, Saltman Center for Conflict Resolution and Michael and Sonja Saltman Professor of Law
David Tanenhaus, Ph.D, University of Chicago Law School, James E. Rogers Professor of History and Law
Stacey Tovino, Ph.D., University of Texas Medical Branch; J.D., University of Houston Law Center, Lincy Professor of Law
Anne R. Traum, J.D., University of California, Hastings College of the Law, Associate Professor of Law
Marketa Trimble, J.S.D. and J.S.M., Stanford Law School; JUDr., Ph.D, Law School of Charles University in Prague, Associate Professor of Law
John V. White, J.D., Yale Law School, Executive Vice President and Provost and Professor of Law
Jean M. Whitney, J.D., William Mitchell College of Law, Interim Director, Externship Program

Emeriti Faculty
Richard L. Brown, J.D., Indiana University School of Law, Emeritus Professor of Law (1998-2013)
Douglas Grant, J.D., University of Colorado School of Law, Emeritus Professor of Law
Lynne Henderson, J.D., Stanford Law School, Emerita Professor of Law
Richard J. Morgan, J.D., University of California, Los Angeles, School of Law, Dean Emeritus, William S. Boyd School of Law

Library Faculty
Jennifer Gross, J.D., Pace University School of Law; M.L.I.S., University of Washington, Reference and Collection Management Librarian and Associate Professor
Andrew Martineau, J.D., DePaul University College of Law, Research Librarian and Assistant Professor
David McClure, J.D., University of Nebraska College of Law, Head of Research and curriculum Services and Assistant Professor
Sean Saxon, M.L.I.S., Wayne State University, Head of Cataloging and Innovative Systems and Associate Professor
Chad Schatzle, LL.M., University of Florida, Fredric G. Levin College of Law; J.D., University of Miami School of Law, Student Services Librarian and Associate Professor
Matthew Wright, J.D., University of Utah; M.L.I.S., University of Washington, Head of Collections and Associate Professor
VISITING LAW FACULTY
Hal Abramson, LL.M., Harvard Law School; J.D., Syracuse University College of Law (2012-2013)
Marc H. Greenberg, J.D., University of California, Hastings College of the Law (2013-2014)
Victoria Haneman, LL.M., New York University School of Law; J.D., California Western School of Law (2012-2013)
Angela Morrison, J.D., University of Nevada, Las Vegas, William S. Boyd School of Law (2012-2014)
Karen Sneddon, J.D., Tulane University, Tulane University Law School (2013-2014)

SENIOR FELLOWS
Honorable Jay S. Bybee, J.D., Brigham Young University Law School, Senior Fellow in Constitutional Law
Honorable Bruce A. Markell, J.D., University of California, Davis, School of Law, Senior Fellow in Bankruptcy and Commercial Law

ADJUNCT FACULTY
Greg Brower, J.D., The George Washington University Law School
Matthew J. Christian, J.D., University of Nevada, Las Vegas, William S. Boyd School of Law
Sean Claggett, J.D., University of Nevada, Las Vegas, William S. Boyd School of Law
Claudia Cormier, J.D., University of Arizona, School of Law
David Doto, J.D., Villanova University School of Law
John Entsminger, J.D., University of Colorado Law School
Robert D. Faiss, J.D., American University, Washington College of Law
Franny Forsman, J.D., Notre Dame Law School
John W. Garman, LL.M., McGeorge School of Law; J.D., University of LaVerne College of Law
Greg Gemignani, J.D., University of Wisconsin Law School
Brin Gibson, J.D., J. Reuben Clark Law School, Brigham Young University
Stanley C. Huntenton, J.D., Syracuse University College of Law
Michelle Juan, J.D., University of San Diego Law School
George Kelesis, LL.M., New York University School of Law; J.D., McGeorge School of Law
Eleissa Lavelle, LL.M., Pepperdine University School of Law; J.D., University of Utah College of Law
Leon Mead, J.D., Loyola Law School of Los Angeles, California
Honorable Mike K. Nakagawa, J.D., University of California, Davis, School of Law
Stanford B. Owen, J.D., Stanford Law School
Jose Padilla, J.D., University of Pennsylvania Law School
Tom Pitaro, J.D., University of California, Los Angeles, School of Law
Jennifer Roberts, J.D., University of Utah College of Law
Elham Roohani, J.D., University of Nevada, Las Vegas, William S. Boyd School of Law
Susan Roske, J.D., California Western School of Law
David P. Schwartz, J.D., Brooklyn Law School
Cassie Stratford, J.D., University of Nevada, Las Vegas, William S. Boyd School of Law
Frank P. Sullivan, J.D., DePaul University College of Law
Gregory Walch, J.D., Lewis and Clark Northwestern School of Law
Honorable Gregg Zive, J.D., University of Notre Dame Law School
UNLV GAMING LAW JOURNAL

Advisory Board

MARITA CARNELLEY
Professor, University of KwaZulu-Natal

JAMES B. DEUTSCH
Partner, Blitz Bardgett & Deutsch L.C.

J. KELLY DUNCAN
Partner, Jones Walker LLP

JUSTIN FRANSSEN
Head of Gaming, Sports & Entertainment Practice Group, Kalff Katz & Franssen

THOMAS JINGOLI
Sr. Vice President / Chief Compliance Officer, Konami Gaming Inc.

JAMIE NETTLETON
Partner, Addisons Lawyers

NICK NOCTON
Director, Jeffrey Green Russell Limited

KERRY PATTERSON
Partner, Lewis and Roca LLP

DAN R. REASER
Vice-Chair, Gaming & Regulatory Law Department, Lionel Sawyer & Collins

CARLOS FONSECA SARMIENTO
Partner, Varela & Fonseca Abogados

STEPHEN D. SCHRIER
Partner, Blank Rome LLP

ROBERT W. STOCKER II
Member, Dickinson Wright PLLC
GAMING LAW ADVISORY COUNCIL
WILLIAM S. BOYD SCHOOL OF LAW
2013-2014

JOSEPH ASHER
President, Brandywine Gaming

MARK AMODEI
Former State Senator and Nevada GOP Chairman

DR. BO BERNHARD
Associate Professor, William F. Harrah College of Hotel Administration, University of Nevada, Las Vegas

PETER BERNHARD
Chairman, Nevada Gaming Commission

ANTHONY N. CABOT
Lewis and Roca LLP

MARK CLAYTON
Lionel Sawyer & Collins

JACOB COIN
Director of Public Affairs, San Manuel Band of Mission Indians

CATHERINE CORTEZ MASTO
Attorney General, State of Nevada

ROBERT FAISS
Lionel Sawyer & Collins

SEAN T. HIGGINS
Of Counsel, Gordon Silver

MARK A. LIPARELLI
Chairman, Nevada State Gaming Control Board

FRANKLIN H. LEVY
Counsel to Las Vegas Sands Corp.

ROBERT C. MELENRES
Chief Legal Officer, International Game Technology

MICHAEL NEILSON
General Counsel and Company Secretary, Crown Limited

MAREN PARRY
Ballard Spahr Andrews & Ingersoll
The UNLV Gaming Law Journal would like to recognize the following sponsors for their generous contributions to the Journal.

**PLATINUM SPONSORS**

KONAMI

LEWIS ROCA ROTHGERBER
SILVER SPONSORS

JEFFREY GREEN RUSSELL

BRONZE SPONSORS

SANTIAGO ASENSI

ASENSI

ABOGADOS