



25 October 2017

PRESS SUMMARY

Ivey (Appellant) v Genting Casinos (UK) Ltd t/a Crockfords (Respondent) [2017] UKSC 67
On appeal from [2016] EWCA Civ 1093

JUSTICES: Lord Neuberger, Lady Hale, Lord Kerr, Lord Hughes, Lord Thomas

BACKGROUND TO THE APPEAL

This appeal arises out of a case where a professional gambler, Mr Ivey, sues a casino, Crockfords, to recover his winnings at Punto Banco. Mr Ivey claims for his winnings in circumstances where Crockfords refused to pay out because it believed Mr Ivey cheated. The appeal raises questions about the meaning of the concept of cheating at gambling and the relevance of dishonesty to that concept.

Punto Banco is a variant of Baccarat and is not normally a game of skill. The different odds applied to certain bets mean that the casino enjoys a small advantage, taken over all the play. In Punto Banco at Crockfords it was 1.24% if the player wins and 1.06% if the banker wins.

Edge sorting is possible when the manufacturing process of playing cards causes tiny differences to appear on the edges of the cards so that, for example, the edge of one long side is marginally different from the edge of the other. It is possible for a sharp-eyed person sitting close to a card shoe (the holder that dispenses the playing cards) to see which long edge it is. This information becomes useful only if things can be arranged so that the cards which the gambler is most interested in are all presented with one long edge facing the table, whilst all the less interesting cards present the other long edge. Then the gambler knows which kind of card is next out of the shoe. Using edge sorting to identify high value cards in Punto Banco will give the player a long-term edge of about 6.5% over the house if played perfectly accurately.

On 20 and 21 August 2012, Mr Ivey and his associate, Ms Sun, played Punto Banco at Crockfords. Mr Ivey openly admits to the use of edge sorting during this game. Mr Ivey asked the senior croupier that the same shoe of cards be re-used if he indicated to him that he won. Ms Sun (affecting superstition) asked the croupier to turn the cards in a particular manner if she indicated they were “good” or “not good”. The croupier had no idea of the significance of what she was being asked to do. In consequence, the long edge of the “not good” cards were oriented in a different way from the long edge of the “good” cards. This procedure was followed for each game of Punto Banco until the shoe was finished. Mr Ivey then indicated that he had won with that shoe and so the cards were reshuffled. The use of a machine shuffler ensured that the cards were shuffled without rotating any of the cards. Mr Ivey could now identify high value cards and his betting accuracy increased sharply. Mr Ivey’s total winnings over the two days was £7.7m.

Nine days after play, Crockfords told Mr Ivey they would not pay his winnings because the game had been compromised. The High Court held that Mr Ivey’s use of edge sorting was cheating. The Court of Appeal upheld this finding.

JUDGMENT

The Supreme Court unanimously dismisses the appeal. Lord Hughes gives the judgment, with which Lord Neuberger, Lady Hale, Lord Kerr and Lord Thomas agree.

REASONS FOR THE JUDGMENT

It was common ground that the parties' contract for betting contained an implied term that neither of them will cheat. [35] It would be unwise to attempt a definition of cheating. Its essentials normally involve a deliberate act designed to gain an advantage in the play which is objectively improper given the parameters and rules of the game in question. What amounts to cheating is a jury question. Dishonesty is not a concept that would bring clarity or certainty to a jury's assessment of whether certain behaviour is or is not cheating. [47-48]

It is an essential element of Punto Banco that it is a game of pure chance. Mr Ivey staged a carefully planned and executed sting. If he had secretly gained access to the shoe of cards and personally re-arranged them that would be considered cheating. He accomplished the same results by directing the actions of the croupier and tricking her into thinking that what she did was irrelevant. Mr Ivey's actions were positive steps to fix the deck and therefore constituted cheating. [50]

Dishonesty is included in the definition of some but not all acquisitive criminal offences. [52] *R v Ghosh* [1982] EWCA Crim 2 introduced a two-stage test for dishonesty for a jury to apply, with a subjective second leg. Firstly, the jury must ask whether in its judgment the conduct complained of was dishonest by the lay objective standards of ordinary reasonable and honest people. If the answer is no, that disposes of the case in favour of the defendant. But if the answer is yes, it must ask, secondly, whether the defendant must have realised that ordinary honest people would so regard his behaviour as dishonest, and he is to be convicted only if the answer to that second question is yes. However, the second leg of the rule adopted in *Ghosh* has serious problems. The principal objection is that the less a defendant's standards conform to society's expectations, the less likely they are to be held criminally responsible for their behaviour. The law should not excuse those who make a mistake about contemporary standards of honesty, a purpose of the criminal law is to set acceptable standards of behaviour. [54, 57-59]

In civil actions the law has settled on an objective test of dishonesty. There can be no logical or principled basis for the meaning of dishonesty to differ according to whether it arises in a civil action or a criminal prosecution. [62-63] The second leg of the test propounded in *Ghosh* does not correctly represent the law and directions based upon it ought no longer to be given. The test of dishonesty is that used in civil actions. The fact-finding tribunal must ascertain (subjectively) the actual state of the individual's knowledge or belief as to the facts and then determine whether his conduct was honest or dishonest by the (objective) standards of ordinary decent people. There is no requirement that the defendant must appreciate that what he has done is, by those standards, dishonest. [74]

If cheating at gambling required an additional legal element of dishonesty, it would be satisfied in this case. [75]

References in square brackets are to paragraphs in the judgment

NOTE This summary is provided to assist in understanding the Court's decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at: <http://supremecourt.uk/decided-cases/index.html>