

Wild Card! – Unusual Criminal Cases

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Unlawful
Locations for
Consuming
Tobacco

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Penal Code 48.01

- Cannot smoke (including e-cigarettes) in a:
 - School
 - Elevator
 - Enclosed theater or movie house
 - Library
 - Museum
 - Hospital
 - Bus, plane, or train

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Penal Code Sec. 48.01

- Defenses:
 - Sign not posted prohibiting smoking and showing \$500 max fine
 - Place must have facilities for extinguishing smoking materials

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Gambling Offenses

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Gambling Offenses

Gambling - Penal Code
Sec. 47.02

Lottery offenses – Gov't
Code Sec. 466.305-
466.-3053

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- Prohibited in Texas to:
 - make a bet on the partial or final result of a game or contest or on the performance of a participant in a game or contest;
 - make a bet on the result of any political nomination, appointment, or election or on the degree of success of any nominee, appointee, or candidate; or
 - play and bet for money or other thing of value at any game played with cards, dice, balls, or any other gambling device.

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Gambling – private place defense

Defense to Prosecution

- the actor engaged in gambling in a private place;
- no person received any economic benefit other than personal winnings; **and**
- except for the advantage of skill or luck, the risks of losing and the chances of winning were the same for all participants.

Bingo, the lotto, horse racing, and charitable raffles excluded

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Gambling Defense
– Tricky Issues
Table Discussion

Home poker tournament, host collects extra \$20 from each player to provide drinks/snacks, buy the cards/chips/etc.

Eldrick and Phillip play golf with the winner getting \$10,000 a hole

Club charges for memberships to allow access. While at the club, the person pays \$10/hour for access. There are poker games at the club, which the business doesn't take money out of the pot. The business does pay a dealer to deal the game.

Bar hosts a free poker game and awards a \$100 prize to the winner. The bar has increased sales on "poker night."

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Lottery Offenses

- Offense for a sales agent to:
 - Sell a ticket on credit or by lending money; or
 - Sell to someone under 18 (can give as gift to someone under 18)
 - Class c misdemeanor (\$500 max fine)
- Offense for someone under 18 to purchase a ticket or falsely rep age
- **\$250 max fine**

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- Offense to accept anything as payment for lotto ticket other than:
 - **U.S. currency**
 - **A check complying with B&C code 3.104**
 - **Debit card**
 - **Coupon/voucher issued by lotto commission**
 - **Mail order subscription authorized by lotto commission**

Lottery
offenses

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- Offense to purchase a ticket with:
 - **Check issued under aid to families with dependent children**
 - **Food stamp coupons**

Lottery
offenses

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Public Nuisance Cases

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Public Nuisance – Criminal Cases

- Public nuisance issues may be heard at administrative hearings or in criminal cases.
 - See P. 134-138 of the Criminal Deskbook and Chapter 7 of the Administrative Proceedings Deskbook
 - Who decides which is heard in your court?

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Four Offense Types

- General Public Nuisance – HSC 343.012(a) - \$50-200 fine, each day is a new violation (what should the complaint look like?)
- Violate Ch. 341 of HSC generally - \$10-200 fine, again each day
- Violate Ch. 341 related to safe drinking water – Class C, again each day, jailable if defendant convicted in past year (how do you know?)
- Water Code Ch. 7 offenses – Class C, but jailable if previous conviction, ***each day not new offense***

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Other Miscellaneous Offenses

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Miscellaneous Vices	Voyeurism (PC Sec. 21.17)
	Cockfighting (PC Sec. 42.105)
	Illegal Recruitment (PC Sec. 32.441)
	Disorderly Conduct (PC Sec. 42.01)
	Sexting (PC Sec. 43.261)
	Trans. of Explicit Material (PC Sec. 21.19)
	Obscene Display (PC Sec. 43.22)
	Advertising as Tanning (HSC Sec. 145.0096)

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voyeurism

- Offense to observe another without their consent
 - To arouse or gratify sexual desire
 - While person is in dwelling or other structure with privacy expectation
- Enhanced if 2 or more previous convictions, or victim is under 14 years old

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Cockfighting

Only related Class C misdemeanor is “Attending a Cockfight as a Spectator”

Defense that the person is 15 years old or younger.

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Illegal recruitment

- Solicit, accept, agree to accept a benefit, or
- Offer, confer, or agree to confer the benefit
- To influence conduct of college athlete
- Class C if benefit < \$100
- What about NIL?

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Disorderly Conduct

- List of prohibited activities in Penal Code Sec. 42.01
 - Cannot charge someone under the age of 12 with the offense if it occurs on a school campus during school hours
 - Two items are Class B misdemeanors (displaying or discharging firearm in public)

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Disorderly conduct

Breach of peace by abusive, profane, or vulgar language or offensive gesture or display

Creating, **by chemical means**, a noxious and unreasonable odor in public

Abuse or threaten another in offensive manner in public

Fight or make unreasonable noise in public

Exposing anus/genitals in public reckless re: offending/alarming others

Looking into a dwelling of another, a hotel room of another, or restroom or shower stall, for a lewd or unlawful purpose

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“Sexting” Offense

Illegal for a person under 18 to transmit or possess visual material depicting sexual conduct of a minor

Enhanced to Class B if transmitted for “bad” purpose, or prior offense

Justice court only has jurisdiction if exactly 17 years old

May enter order of education program

Defense if possession was unsolicited and they destroyed it, or

If material only depicts the minor and another actor with no more than 2 years age difference and they had a dating relationship (or married), and they are the only people to have the material.

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Unlawful Transmission of Sexually Explicit Visual Material

- Offense to knowingly send material that depicts:
 - Sexual conduct
 - Exposed intimate parts
 - “covered turgid male genitals”
- Without request or express consent of recipient.

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Obscene Display

Intentionally or knowingly displays or distributes an obscene photograph, drawing, or similar visual representation or other obscene material and is reckless about whether a person is present who will be offended or alarmed by the display or distribution.

F-bomb on a shirt at Six Flags?

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Tanning Advertising Prohibited

- A business operating as a sexually oriented business under LGC 243.007 may not use "tan" or "tanning" in any sign or advertising.
- Class C unless prior conviction, then Class A.

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Deferred Disposition

- Which of the offenses discussed in class are eligible for deferred disposition?
- What are some offenses that might lend themselves well to deferred disposition, and what would be good conditions to impose?