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Case No: HQ 13 X 05873

**IN THE HIGH COURT OF JUSTICE**  
**QUEEN'S BENCH DIVISION**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: Wednesday, 8<sup>th</sup> October 2014

**Before:**

**MR. JUSTICE MITTING**

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**Between:**

**PHILLIP IVEY**  
**- and -**  
**GENTING CASINOS UK LIMITED**  
**T/A CROCKFORDS CLUB**

**Claimant**

**Defendant**

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**MR. RICHARD SPEARMAN QC and MR. MAX MALLIN** (instructed by **Archerfield Partners LLP**) for the **Claimant**  
**MR. CHRISTOPHER PYMONT QC and MR. SIWARD ATKINS** (instructed by **Kingsley Napley LLP**) for the **Defendant**

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**Approved Judgment**  
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**MR. JUSTICE MITTING:**

1. The claimant is a professional gambler and a citizen of the United States. He is acknowledged to be one of the world's finest Poker players, a game which requires high mathematical ability and stern discipline. He also plays Blackjack, Craps, Roulette and Baccarat, in particular the variant known as Punto Banco, against casinos. Each of these games has a so-called "house edge" which means that played over a longish time the house should beat the individual punter.
2. The claimant's principle is, by a variety of techniques, to reverse the house edge and play at odds which favour him. He does so by means that are, in his opinion, lawful. He is what is known, in particular on the other side of the Atlantic, as an "advantage player". He is jealous of his reputation and is adamant that he does not cheat. His principle is to find and apply accurately "a legal way to beat the house".
3. He has given evidence in this case and been cross-examined at moderate length. I am satisfied that he is a truthful witness. He gave his answers directly and did not seek to explain away aspects of those answers that might damage his case. His frankness has meant that my task in describing what occurred is much easier than it otherwise would have been and it has reduced the need for me to refer extensively to sources of evidence other than his own to set out what happened.
4. Punto Banco is a variant of Baccarat. It is not normally, to any extent, a game of skill. Eight decks or, in English nomenclature, packs, sometimes six, of 52 cards are dealt from a shoe, face down by a croupier. She deals the cards in a sequence from which no deviation is permitted to two positions on the table in front of her, marked "player", the "Punto" in the name, and "Banker", "Banco": one card to player, one to banker; a second to player and a second to banker. In prescribed circumstances she must deal one further card, either to player or to banker or to both.
5. The basic object of the game is to achieve, on one of the two positions, a combination of two or three cards which, when added together, is nearer to nine in total than the combination on the other position. Aces to 9 count at face value, 10 to King inclusive count as nothing. Any pair or trio of cards adding up to more than 10 requires 10 to be deducted before arriving at the counting total. Thus 4 plus 5 equals 9, but 6 plus 5 (which equals 11) equals only one.
6. Punters bet before any card is dealt and can bet on player or banker. Winning bets are paid at evens on player, and at 19 to 20 on banker. It is possible to bet on a tie. In the event of a tie, all bets on player or banker are annulled, in other words, the punter keeps his stake and the only bet paid out on is the tie at odds set by the casino of either eight to one or, at Crockfords, nine to one. It is possible to place other types of bet, but this case does not concern them and it is unnecessary for me to describe them.
7. The house edge in Punto Banco is 1.24% if player wins and 1.06% if banker wins. The counter intuitive difference is accounted for by the different rules which apply to drawing a third card for player or banker. The play of each sequence of two or three pairs of cards is known as a "coup".
8. Before play begins, the cards are cut to eliminate a proportion of the shoe from those to be played. The cut is effected by placing a blank divider between the bulk of the

shoe and the remaining cards. Traditionally, seven cards out of 416 were cut from the shoe, but some casinos routinely eliminate more, typically about one deck of 52 cards. The croupier can deal a fresh shoe of cards as each is exhausted, or, after reshuffling, reuse the same cards.

9. The claimant aided by another professional gambler, Cheung Yin Sun (Ms. Sun), played 15 shoes of Punto Banco at Crockfords Club in Mayfair on the afternoon and night of 20 to 21 August 2012 and on the afternoon of 21 August. He won just over £7.7 million. There is no dispute about the means which he used to achieve that win, a technique known as "edge-sorting".
10. A deck of 52 playing cards is manufactured so as to present a uniform appearance on the back and a unique appearance on the face. The backs of some cards are, however, not exactly uniform. The backs of many packs of cards for social use have an obvious top and bottom, for example, the manufacturer's name may be printed once only, or the pattern may be obviously the right way up and upside down. In casino games in which the orientation of the back of the card may matter, cards which are in principle indistinguishable whichever way up they are when presented in a shoe are used. Cards with no pattern and no edge present no problem, they are indistinguishable. However many cards used in casinos are patterned. If the pattern is precisely symmetrical the effect is the same as if the card is plain: the back of one card is indistinguishable from any other. But if the pattern is not precisely symmetrical it may be possible to distinguish between cards by examining the backs.
11. "Edge-sorting" is possible when the manufacturing process 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. Some cards printed by Angel Co. Limited for the Genting Group (which owns Crockfords) have this characteristic. The machine which cuts the card leaves very slightly more of a pattern, a white circle broken by two curved lines, visible on one long edge than on the other. The manufacturers assert that this is not a defect but is within a contractually specified tolerance of up to 0.3 millimetres. Before a card is dealt from a shoe, it sits face down at the bottom of the shoe, displaying one of its two long edges. It is possible for a sharp-eyed person sitting close to the shoe to see which long edge it is. The information thus gained is only useful to the punter if he knows or has a good idea of what the card is.
12. In Punto Banco cards with a face value of 7, 8 and 9 are high value cards. If one such card is dealt to player or to banker, it will give that position a better chance of winning than the other. Thus a punter who knows that when the first card dealt, always to player is a 7, 8 or 9, he will know that it is more likely than not that player will win. If he knows that the card is not a 7, 8 or 9, he will know that it is more likely than not that banker will win. Such knowledge, it is agreed, will give the punter a long-term edge of about 6.5% over the house if played perfectly accurately.
13. According to Dr. Jacobson, a former Professor of Mathematics, currently an expert adviser to the gambling industry, the house edge on any particular coup varies and is not precisely the long-term edge thus described. It may be between 4.5% and 7%, using the edge-sorting technique which I have described. I accept his evidence.

14. Three conditions must occur before the punter can gain that knowledge: (1) the same shoe of cards must be used more than once; (2) cards with a face value of 7, 8 or 9 must be turned through 180 degrees by comparison with all other cards; (3) when reshuffled no part of the shoe must be rotated. Step (2) is the process known as edge-sorting.
15. As the claimant frankly, and without hesitation, admitted, if the casino realises that cards with a face value of 7, 8 or 9 are being turned, it will take one or more of the simple steps needed to avoid giving the punter an advantage: by covering the base of the shoe so that the leading edge is not visible before bets are placed; by only using one shoe of cards; or by turning a significant proportion of the cards when reshuffling. It is therefore essential for edge-sorting to work that the croupier does not realise that cards with a face value of 7, 8 or 9 have been differentially sorted unless of course she is complicit, of which there is no suggestion in this case whatever. Two people can rotate the cards -- the punter or the croupier. If the punter touches the cards, most casinos will not permit that shoe to be reused. That is Crockfords' invariable practice.
16. For edge sorting to work at Crockfords it is therefore essential that the croupier is persuaded to rotate the relevant cards without her realising why she is being asked to do so. Casinos routinely play on quirky and superstitious behaviour by punters. It is in the casino's interests that punters should believe, erroneously, that a lucky charm or practice will improve their chance of winning and so modify or defeat the house edge. Consequently a wide variety of requests by punters, particularly those willing to wager large sums on games which they must in the long run lose, are accommodated by casinos without demur or surprise.
17. All of the games of Punto Banco played by the claimant and Ms Sun on 20th and 21st August 2012 were captured on CCTV, mostly with contemporaneous audio recording as well. The moment at which they persuaded the croupier, Kathy Yau, to rotate the cards was at 9 p.m. on 20th August. It has been captured on video and the words spoken have been transcribed. Before then the claimant and Ms Sun had played part of four shoes, the first two plain backed, and the second two Angel cards but with no asymmetry on the back.
18. The claimant is a high stakes gambler. He began, by his standards, modestly: bets placed on those four shoes ranged from £4,000 to £75,000 per coup. He was losing. At 8.56 he requested a new shoe of cards. A new shoe was produced. The cards were blue Angel cards with the rounded pattern which I have described on the back. At 8.57 the claimant asked Jeremy Hillier, the senior croupier overseeing the game: "If I win, can I say I want the same cards again?" to which Mr. Hillier replied he could, "because he was not bending them". The claimant had in fact avoided touching the cards from either the first or second shoe onwards.
19. The croupier, Kathy Yau, then put the cards face down in blocks on the table to make the cut. She cut the cards so as to exclude about one deck from play. The claimant asked about the cut: "Why so big?" Ms Sun said: "They don't cut the seven cards", a reference to the traditional cut of seven cards from the end. Ms Yau asked if he wanted her to cut seven cards, to which he replied "yes", he wanted to play ninety hands, slightly more than the maximum likely to be possible with an eight-deck shoe with a seven-card cut.

20. Mr. Hillier asked the gaming manager, Louise Bennett, also present in the room if she could. She must have signified assent off camera, because Mr. Hillier said "yes". Ms Yau then dealt the first coup. Player won. Ms Sun then asked Ms Yau in Cantonese to do it, in other words turn the cards over so that the face showed, slowly. Ms Yau said "yes". Ms Sun then asked her again in Cantonese to turn the cards in a particular and differential way as they were being exposed and before they were put on the pile of used cards. "If I say it is good, you turn it this way, good, yes? Um, no good." (A slightly different sounding um). Ms Yau did not immediately understand what was required. She asked, "so you want me to leave it?" To which Ms Sun replied, "change, yeah, yeah, change luck". Ms Yau, "what do you mean?" Ms Sun gestured how to turn it. "Turn it this way". Ms Yau, "what, just open it? Yeah". Ms Sun, "um", signifying good in Cantonese. On that coup, banker won.
21. The claimant then chipped in, "yeah, change the luck, that's good. Anything to change the luck, it is okay with me." Ms Sun reiterated her request in Cantonese, "if I say it is not good, you turn it this way. If it is good, turn it this way, okay?" To which Ms Yau said "okay". When she turned over the cards of the second coup, Ms Sun said of four of them, "good", and of one, "not good", in Cantonese, Ms Yau did as requested and turned the "good" cards over, end to end and the "not good" card over side to side. In consequence, the long edge of the "not good" card was oriented in a different way from the long edge of the "good" cards.
22. This procedure was followed for each of the next 79 coups dealt from this shoe. The maximum amount staked by the claimant on the coups towards the end of the shoe reached £100,000. Self-evidently at no time during the play of this shoe did he derive any advantage from the rotation of the cards requested by Ms Sun because that occurred at the end, not at the beginning, of each coup.
23. At 10.03 p.m., when the shoe was exhausted, the claimant said that he had won with that deck, and said he would keep it. Mr. Killeen, who had brought in a new deck of cards was told by the claimant he did not want them, he "had won £40,000 with that deck", Mr. Killeen said there would be no problem. The original deck was reused. The defendant has not been able to calculate retrospectively whether that assertion by the claimant was true.
24. Before it was reused it had to be reshuffled. The claimant had earlier asked at about 6.10 p.m. Ms Yau's predecessor as croupier for a shuffling machine to shuffle the cards. The cards were reshuffled by a machine. For a punter using the edge-sorting technique this ensured that the shuffle would be effected without rotating any of the cards unless the croupier did so before they were put into the machine. Ms Yau did not rotate them.
25. Play with the reshuffled shoe recommenced at 10.12 p.m. and continued until Ms Yau went for a half hour break at 10.31 p.m. The claimant did not play during her break but resumed when she returned until 3.57 a.m. on 21st August. Ms Yau was the croupier throughout, the claimant's stake increased to £95,000 and then to £149,000 per coup. He won approximately £2 million.
26. The accuracy of his bets on player increased sharply. In the first two coups in which Angel cards were used, those without an asymmetric pattern on the back, he placed

respectively 11 and then one bet on player and a 7, 8 or 9 only occurred once in that 12 times.

27. On the fifth shoe, the one in which the edge-sorting was done in the manner that I have described, he placed 23 bets on player of which eight were 7s, 8s or 9s. On the succeeding shoes, those at least that were completed on that night, shoes four, five, seven, six, seven and eight, the record was as follows. Shoe four, 23 accurate bets out of 27; shoe five, 22 accurate bets out of 25; shoe six, 20 bets out of 26; shoe 7, 23 bets out of 30; shoe 8, 17 bets out of 19. A similar but slightly less pronounced pattern occurred on the following day.
28. At the end of play on the early morning of the 21st the claimant asked if he could keep the same shoe, which he referred to as a deck, if he returned on the following day. He was told he could. Ms Yau returned to duty at 2 p.m. on 21st August. The claimant resumed play with the same cards at 3 p.m. and played until 6.41 p.m. His average stake was never less than £149,000. For the last three shoes it was £150,000, the maximum that he was allowed to bet each time. In the middle of play of the last shoe, Mr. Hillier told the claimant that the shoe would be replaced when it was exhausted. When it was, the claimant and Ms Sun left. By then he had won just over £7.7 million. He was provided with a receipt for that amount and told that it would be wired to him.
29. Crockfords' practice when any large win by a punter occurs is to conduct an ex post facto investigation to work out how it happened. That was set in train on 22nd August by Michael Hoskins, managing director of security and compliance with Genting UK, formerly a police officer with the Metropolitan Police. He suspected that something was wrong and investigated possible collusion by the staff and the placing of a camera in the sorting machine and was soon satisfied that neither had occurred.
30. On 23rd August Jonathan Duffy, Head of Compliance and Money Laundering at Genting UK discerned the likely answer. He placed three cards from the Angel shoe used by the claimant and Ms Sun on plain paper and noticed that the long edges were not identical. This caused him to remember a card trick performed by his grandfather with a pack of bordered cards on which one border was wider than the other. He arranged the pack so that all the wide-bordered edges were on one side and then asked someone to pick a card, which he put face down in the pack with the border reversed. He was able, no doubt to the surprise of the person who had put it there, to find the card simply by looking at the backs of the cards.
31. Mr. Duffy then satisfied himself that he could achieve the same outcome by placing a sorted pack of cards face down in the shoe. He then re-reviewed the CCTV footage and saw the turning over of the cards by the croupier. He eventually persuaded his colleagues, including Mr. Hoskins, that this is what had happened. Neither he nor anyone else at Crockfords had heard of edge-sorting before.
32. On 30th August the claimant spoke to Tony Pearce, Managing Director of the London casinos of Genting UK, who told him that Crockfords would not be paying his winnings because the game had been compromised. The claimant said he had not touched the cards, but did not state that which he now freely admits, that he had used

the technique of edge-sorting. Arrangements were made to refund his deposited stake, £1 million, on 31st August.

33. The claimant sues for his winnings. The defendant denies liability on three related grounds:

(1) No game of Punto Banco was in fact played because the premise on which the game proceeds, that the cards will be dealt at random, was defeated because the player knew what the first card of any coup dealt was likely to be before it was turned face up;

(2) There was an implied term that the claimant would not cheat and that term was broken;

(3) The claimant committed the criminal offence of cheating under section 42 of the Gambling Act 2005 by interfering with the game or deceiving the Crockfords' staff and so is disentitled to found his claim on his own criminal conduct.

The claimant admits the implied term but denies cheating or committing a criminal offence and asserts that he acted throughout lawfully.

34. As to the first ground of defence, I do not accept that what was played was not Punto Banco. The game was played according to its rules, the cards were dealt in the prescribed sequence and bets were paid at the prescribed odds. All that happened was that by reason of the advantage gained by the claimant, knowledge that the first card to be dealt was or was not a 7, 8 or 9, the odds had changed and now favoured him. Even if his conduct amounts to cheating, he and Ms Yau were still playing Punto Banco.

35. The case therefore turns on the second and third grounds of defence. If the claimant cheated, he is not entitled to recover his winnings, if he did not, he is. There may be a difference between cheating in civil law at common law and cheating under the statutory definition in criminal law. There is a complete dearth of authority on cheating at common law, at least in the civil context. This is unsurprising. Although at common law gaming contracts were enforceable in principle, though sometimes not in practice on particular facts, section 18 of the Gaming Act 1845 provided that all contracts or agreements by way of gaming and wagering shall be null and void. No suit could therefore be raised by or against a party to a gaming contract alleged to have cheated. There is, therefore, no case law on what amounts to cheating.

36. Section 18 was repealed by Part 17 of the Gambling Act 2005 with effect from 1 September 2007. This is, as far as I know, the first case in which the question whether or not the conduct of a party to a gaming contract amounted to cheating has had to be determined in an English court. There is no commonly accepted view amongst those who play Punto Banco about whether edge-sorting does or does not amount to cheating.

37. David Mills, a levelheaded and experienced English expert in casino gambling considers that it does. Towards the end of 2013 he conducted a survey amongst seven of the eight biggest casino operators in the UK. He found that four out of the seven considered that it was cheating and two out of seven considered it was not a legitimate

practice. The remaining one considered that it was not cheating, nor illegitimate. Dr. Jacobson, to whom I have already referred, who has extensive experience in the USA of casino gambling both as a consultant to casinos and, between 1997 and 2005, as an advantage player himself, considers that it is not cheating. His informal survey, as he put it, of "hundreds of people" has provided the answer that the general but not universal view is that it is not cheating. I have not found these expressions of opinion to be helpful. Mr. Mills did not canvass gamblers and, as far as I can tell, Dr. Jacobson's survey was unsystematic. Neither establishes a generally accepted view.

38. Crockfords maintain that the claimant practised deception upon them by pretending to be superstitious when he was not, for example, by making a fuss over lucky Crockfords hats, which he and Ms Sun wore, and by asking for "lucky" cards and for a Chinese croupier on the ground that he got lucky when playing with Asian women. If this was a ploy it succeeded. The Crockfords staff believed that he was very superstitious and discussed it amongst themselves when he was not present.
39. A surprising and striking omission from the evidence called by Crockfords is Ms Yau. She has not given evidence. I cannot, therefore, safely infer what, if anything, she believed to be the situation when she agreed to sort the cards differentially. I cannot safely say precisely what caused her to do that beyond accepting, as I do, that she followed house policy in doing whatever a high rolling punter requested which did not corrupt the game. She said, when interviewed about the matter by Mr. Hoskins a few days after the event, that she thought that the claimant had played fairly. She, I am satisfied, was not to any extent complicit in what occurred and was wholly ignorant of the potential consequence of turning the cards in the manner that she did.
40. The claimant describes what he and Ms Sun did as legitimate gamesmanship. I am not satisfied that it amounted to deception of such a kind as to vitiate the gaming contract. What they did was to play up to Crockfords' staff's perception of what influenced his play, superstition. It was by itself on the right side of the line separating cheating from legitimate gamesmanship. By itself it was no different in principle from a shrewd and numerate poker or Blackjack player pretending to be a fool, a legitimate technique in playing games in which the perception of one player of another may influence his play.
41. His purpose, which succeeded, was no more and no less than to try to ensure that the casino staff, and in particular Ms Yau and her immediate supervisor, Mr. Hillier, did not depart from the usual practice of humouring high stakes gamblers by acceding to a request which did in their view not affect the outcome of the game. But it did. What the claimant and Ms Sun did was to persuade Ms Yau to turn some of the cards in a shoe so as to permit them to know that they were or were very likely to be - 7s, 8s or 9s - and to do so in circumstances in which they knew that she did not realise that she had done so and that if she had, she would immediately have stopped play and sought the advice of her supervisors who would inevitably have put an end to it.
42. The fundamental question that I have to decide is whether the conduct which I have just summarised amounts to cheating. There are a large number of criminal law definitions. In this jurisdiction, section 17 of the Gaming Act 1845 defined the criminal offence of cheating as:



"Every person who shall, by any fraud or unlawful device or ill practice in playing at or with cards ... win from any other person to himself ... any sum of money ...".

43. I have been shown Australian, New Zealand and US statutes which define it differently. Most of them require proof of dishonesty or fraud or deceit but not always. For example, the New Zealand offence is founded upon a breach of the rules of the game. From 1st September 2007 in England and Wales, for criminal law purposes the offence is defined by section 42 of the 2005 Act:

"(1) A person commits an offence if he —

(a) cheats at gambling, or

(b) does anything for the purpose of enabling or assisting another person to cheat at gambling.

(2) For the purposes of subsection (1) it is immaterial whether a person who cheats —

(a) improves his chances of winning anything, or

(b) wins anything.

(3) Without prejudice to the generality of subsection (1) cheating at gambling may, in particular, consist of actual or attempted deception or interference in connection with —

(a) the process by which gambling is conducted, or

(b) a real or virtual game, race or other event or process to which gambling relates."

This was gaming as defined by section 7, a game of uneven chance.

44. There are difficulties with the current English statutory definition. It appears to define deception and interference as cheating, but there is no attempt to define the overall concept of cheating as the explanatory notes make clear. It is not obvious whether *Glosh* [1982] QB 1053 dishonesty is a necessary element of the offence, or if it is, how in the unusual circumstances of a casino it is to be measured.
45. Mr. Spearman submits that for both criminal and civil purposes dishonesty is a necessary element of the act of cheating. As I have explained in that brief review of the criminal law of England and Wales and of other jurisdictions, that is not necessarily so and I am unconvinced that it is so in relation to the civil concept of cheating. As Professor Smith explained in the first edition of *Smith and Hogan on Criminal Law*, published in 1965, cheating at cards includes looking at your opponent's cards. That may or may not involve an element of dishonesty. It does not necessarily involve any deception.
46. Oddly, criminal law definitions of some antiquity drafted at a time when gambling debts were enforceable and which can therefore be taken to reflect the view of

moneyed or propertied society generally may assist. An act of Charles II's time, according to Hawkins Treatise on Criminal Offences, was in these terms:

"If any person shall by any fraud, unlawful device or other ill practice in playing at cards ... win any sum or other valuable thing, he shall forfeit treble the value in the manner the Act directs"

47. An Act of Queen Anne's time was a little sterner:

"If any person by any fraud or shift, cozenage, circumvention, deceit or unlawful device or ill practice whatsoever in playing at cards ... win, any sum of money or other valuable thing ...",

he was liable to a forfeit of five times the value and was deemed infamous and to suffer corporal punishment as in cases of perjury. The concept of ill practice was carried forward, as I have already noted, in to section 17 of the Gaming Act 1845.

48. I therefore derive from the criminal statutes, domestic and overseas, little more than that for some of the time at least winning at cards by ill practice has been acknowledged to amount to cheating.

49. I have already noted that as far as the civil law is concerned, there is no general agreement as to what one might term the industry standard of cheating or not cheating. It is ultimately for the court to decide, as it must in the case of the standard of honesty to be expected in dealing of businessmen and trustees, whether or not conduct amounts to cheating. The standard is objective. See, for example, paragraph 32 of *Starglade Properties Ltd v Nash* [2010] EWCA Civ 1314 per the Chancellor of the High Court. I accept and follow his statement that, "ultimately in civil proceedings it is for the court to determine what that standard is and to apply it to the facts of the case."

50. The fact that the claimant is genuinely convinced that he is not a cheat and even that that opinion commands considerable support from others, - see for example, Dr. Jacobson, - is not determinative of the question. It is necessary to analyse what the consequences are of what he did in relation to the game that he was playing. They were threefold.

(1) He gave himself an advantage, throughout the play of the sixth and subsequent shoes, which the game precludes – knowing, or having a good idea, whether the first card was or was not a 7, 8 or 9. That is quite different from the advantage which may accrue to a punter as a result of counting the cards, so that very near to the end of the shoe he may obtain a legitimate advantage by doing so.

(2) He did so by using the croupier as his innocent agent or tool by turning the 7s, 8s and 9s differentially. He was not simply taking advantage of an error on the part of the croupier or an anomaly produced by a practice of the casino for which he was not responsible.

(3) He was doing so in circumstances in which he knew that she and her superiors did not realise the consequence of what she had done at his instigation. Accordingly, he

converted a game in which the knowledge of both sides as to the likelihood that player or banker will win - in principle nil, - was equal into a game in which his knowledge is greater than that of the croupier and greater than that which she would reasonably have expected it to be.

51. This in my view is cheating for the purposes of civil law. It is immaterial that the casino could have protected itself against it by simple measures. The casino can protect itself by simple measures against cheating or legitimate advantage play. The fact that it can do so does not determine which it is.
52. Given that conclusion, which I can only express briefly and bluntly because it does not bear elaboration, it is unnecessary for me to go on to determine the casino's third defence. What precisely is condemned as cheating by section 42 of the 2005 Act and what must be proved to make out the offence is not, in my view, clear and it would be unwise if it is unnecessary, as it is, for me to attempt to determine what that might be. For the reasons which I have given, this claim fails.

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