

# WILL ISRAELI POKER PLAYERS SOON HAVE THEIR DAY AT THE TABLE?

*A recent development in Israel's court rulings regarding the legal classification of the game of poker may foretell a shift in paradigm, which could see a court-led change in poker's regulatory standing in the country*



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In late 2018, the Supreme Court of Israel issued an unprecedented court ruling pertaining to the game of poker. In it, the court debated the legal classification of poker under Israeli criminal law in obiter dictum.

The remarkable turn taken by the court was that unlike previous Israeli case law by magistrates' and district courts, the court majority held that under certain conditions poker should be classified a game of skill, and not a game of chance.

To fully grasp the significance of this decision, one must be familiar with the legal and political background of gambling activity in Israel.

## Regulatory background

Israel's approach towards gambling has always been restrictive. The Penal Law of Israel 5737-1977 (the Penal Law) places a general ban on gambling activity, including all forms of lotteries, betting and games of chance.

Although the Penal Law does not use the terms 'games of chance' and 'games of skill', the legal definitions of the different gambling variants are predicated on what is being referred to as the 'predominance test'. Put simply, activities in which the elements of skill or knowledge outweigh chance or randomness in determining the outcome will be excluded from the scope of gambling under Israeli law. This test was also applied by Israel's courts when applying the Penal Law's prohibitions.

## Tradition of ongoing restriction

Israel's aversion to gambling, stemming from both its religious and socialist values, remains prevalent to this day. In recent years, Israeli courts have expanded upon the language of the Penal Law, expanding its prohibitions on gambling to the online realm (despite the fact that the Penal Law predates the internet).

Israel's state comptroller had called on Israeli authorities and on the Knesset (Israel's parliament) to take action to reduce the availability of internet gambling in Israel. In 2017, the Bank of Israel issued a prohibition on Israeli financial institutions from

processing transactions related to online gambling. In 2017, the Knesset passed a law empowering district court judges to issue warrants to internet service providers to block or remove illegal gambling websites, at the request of the police or the state attorney's office.

In the same year, the Israeli minister of finance revoked the National Lottery's permit to operate a limited number of video lottery terminals, as well as the permission granted to the Israel Sports Betting Board to conduct horse race wagering. In short, Israel's authorities are actively seeking to preserve the gambling ban, both offline and online.

## The 2018 ruling

It is against this backdrop that the Supreme Court of Israel ruling, albeit in obiter dictum, is deemed remarkable. In the case at hand, the court presided over a tax appeal filed by a poker player considered a professional by the court. In its majority opinion, the court stated that poker is not to be considered a 'game of chance' when looking at professional players, taking part in poker tournaments and generating consistent profit over the years.

The court also questioned the validity of previous lower court rulings, which stated that in determining the classification of poker, the 'predominance test' must be applied to the game in relation to an amateur player playing a single hand.

Finally, one supreme court judge noted that the classification of poker under criminal law remains to be determined – and that any such determination would have to assess whether the 'predominance test' would yield different results when applied to a poker tournament as opposed to a single hand of poker.

## Outlook

In the short run, the ruling may make it harder for the Israeli police to indict organisers of poker tournaments, if the latter restricts participation to self-proclaimed professional players, requiring a minimum number of hands to be played.

In the longer run, other courts may accept the challenge and try to determine poker's classification under Israeli criminal law once and for all.