

## Trends in Overseas Sports Lottery/Betting Legal Frameworks (1) – United States (Vol. 1)

Sports Business Law Newsletter

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\* This Newsletter is an English translation of [a newsletter published in Japanese on April 1, 2024](#). Therefore, the content of this Newsletter is based on information existing as of April 1, 2024.

### I Introduction – Global Trends

Sports betting<sup>1</sup> is being legalized in an increasing number of places around the world. In December 2023, Brazil legalized sports betting, through the enactment of Law No. 14,790/2023. In addition, all G7 Nations other than Japan have legalized sports betting. For example, the United Kingdom has a long history of legalized sports betting, which began in the 1960s, followed by Italy in 2006, France in 2010, Germany in 2012, and Canada 2021. In the United States, the U.S. Supreme Court issued a decision on May 14, 2018, wherein the Court ruled that [the Professional and Amateur Sports Protection Act](#) of 1992 (“PASPA”), a federal law banning sports gambling, was unconstitutional and invalid.<sup>2</sup> As a result, each individual U.S. state has been given discretion to legalize sports betting. In fact, after the decision was announced, the State of New Jersey legalized sports betting, and other states followed suit. As of April 1, 2024, 38 of the 50 U.S. states and Washington, D.C., have legalized sports betting, with only 12 states still banning it.

Sports-betting markets outside Japan are growing rapidly. A forecast estimated that the compound annual growth rate between 2023 and 2030 will average approximately 10%, with the market reaching a value of approximately US \$182 billion (around 24 trillion yen) by 2030.<sup>3</sup> The Internet and other technological advancements have pushed online services into the mainstream, boosting sales from online sports betting to account for a majority of the global lawful sports-betting markets. The spread of online sports betting has reached sports events in Japan, making it a target of overseas betting, with total bets estimated at approximately five trillion yen per year.<sup>4</sup>

<sup>1</sup> “Sports betting,” as used in this Newsletter, refers to the placing of wagers on the outcomes, progress, and other elements of sports matches and events.

<sup>2</sup> Murphy v. Nat’l Collegiate Athletic Ass’n, 138 S. Ct. 1461 (2018).

<sup>3</sup> The Grand View Research website ([https://www.grandviewresearch.com/industry-analysis/sports-betting-market-report?utm\\_source=newswire&utm\\_medium=referral&utm\\_campaign=ICT\\_13-Feb-23&utm\\_term=sports\\_betting\\_market\\_report&utm\\_content=rd](https://www.grandviewresearch.com/industry-analysis/sports-betting-market-report?utm_source=newswire&utm_medium=referral&utm_campaign=ICT_13-Feb-23&utm_term=sports_betting_market_report&utm_content=rd)) (last viewed on April 1, 2024).

<sup>4</sup> Council for Sports Ecosystem Promotion (April 2022), “The Sports DX Factbook”, page 15 (<https://council-sep.org/resource/pdf/documents/share/bc080a09ec684cff1b2c61da6c4d3076.pdf>) (last viewed on April 1, 2024) (Japanese only).

Betting on overseas sports-betting websites by residents in Japan constitutes and is punishable as a crime under the Penal Code of Japan (Article 185), which prohibits gambling.<sup>5</sup> Moreover, online sports-betting business operators that provide services to residents of Japan may be charged with the crime of operating a gambling place for profit under the Penal Code (Article 186, paragraph (2)).<sup>6</sup> For this reason, companies like FanDuel and DraftKings, which are among the largest sports-betting business operators lawfully engaging in business in the United States, are taking certain proactive measures, including disabling access to their betting websites from Japan. However, the number of illegal sports-betting business operators, which provide services that allow residents of Japan to place bets online, has been increasing in recent years and is fueling the rapid growth of illegal sports betting markets in Japan.

Nevertheless, Japan has a legalized sports-lottery<sup>7</sup> market, which operates pursuant to the Act on Carrying Out, etc., Sports Promotion Vote, with the annual market size of prediction-type lotteries, such as toto and WINNER, being approximately 11.4 billion yen and the annual market size of non-prediction-type lotteries, such as BIG, being approximately 109 billion yen.<sup>8</sup> Neighboring jurisdictions, such as South Korea and Taiwan, have even larger sports-lottery markets: their respective market sizes in 2023 were approximately 6,136.7 billion won<sup>9</sup> (around 690.2 billion yen), and 59.2 billion New Taiwan dollars<sup>10</sup> (around 281.7 billion yen). Part of the profits from these lotteries in South Korea and Taiwan are contributed to sports-promotion funds, which are funds designed to promote the development and dissemination of sports in local communities. Similarly, in Japan, there are discussions about using government subsidies, comprising proceeds from sports lotteries, to fund sports-promotion initiatives, thereby bringing momentum to the expansion of the legalized sports-lottery

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<sup>5</sup> [Kaku Hirao, Hironori Inagaki, Toshiki Kitazumi, "Sports Betting Business: Latest Trends in the United States, and Legal Considerations for Expanding Services in Japan" \(Nishimura & Asahi Sports Business Law Newsletter, July 15, 2020\)](#) (Japanese only).

<sup>6</sup> [Kaku Hirao, Hironori Inagaki, Toshiki Kitazumi, "Whether the Involvement of Japanese Sports Organizations/Companies in Overseas Sports Betting Business Constitutes a Crime under the Penal Code" \(Nishimura & Asahi Sports Business Law Newsletter, September 4, 2020\)](#) (Japanese only).

<sup>7</sup> As used in this Newsletter, "sports lottery" refers to a government-regulated lottery system whereby participants purchase lottery tickets corresponding a particular sport. In Japan, sports lotteries can be classified into two categories: prediction type and non-prediction type. In prediction-type lotteries, a participant purchases a ticket and predicts the outcome of a series of matches. The greater the number of accurate predictions made, the greater the amount of the prize received. In contrast, in non-prediction-type lotteries, a participant purchases a ticket with the outcomes of the series of matches pre-selected at random. As with prediction-type lotteries, the greater the number of accurate selections, the greater the participant's prize.

<sup>8</sup> Sports lottery sales data for FY2023 released by the Japan Sport Council ([https://www.jpnsport.go.jp/sinko/Portals/0/sinko/sinko/pdf/happyyou20240329\\_1.pdf](https://www.jpnsport.go.jp/sinko/Portals/0/sinko/sinko/pdf/happyyou20240329_1.pdf)) (Japanese only).

<sup>9</sup> Result of our interview with the Korea Sports Promotion Foundation (KSPO)

<sup>10</sup> Website of the Sports Administration, Ministry of Education, Taiwan (<https://www.sa.gov.tw/Resource/1/1/1/7457/%E5%A8%81%E5%89%9B%E7%9B%88%E9%A4%98%E5%88%86%E9%85%8D%E8%A1%A8112.12.pdf>) (last viewed on April 1, 2024).

market.<sup>11</sup> Accordingly, monitoring the trends in legal frameworks governing overseas sports lotteries and sports betting will be advantageous to assessing a legal framework that aligns with Japan's culture. Moreover, if the sports-lottery markets are to expand, it will be vital to implement integrity-bolstering measures to prevent match fixing and other risks, as well as to implement countermeasures to gambling addiction.

As a running series, our Sports Business Law Newsletter will explore the trends in overseas legal frameworks governing sports lotteries and sports betting. We also will share the systems adopted by governments and sports organizations in order to foster integrity-bolstering measures and countermeasures to gambling addiction.

As a first step, separate volumes in this series of newsletters will explore developments in the U.S. legal framework. Recent news articles drew widespread public attention when they reported that the interpreter for Los Angeles Dodgers player Shohei Ohtani was fired for his alleged involvement in illegal gambling. Against this backdrop, we hope that this Newsletter will help readers gain an accurate understanding of the U.S. legal framework for sports betting.

## **II Reasons That More U.S. States Are Legalizing Sports Betting: Effects of Legalization**

In Japan, the act of gambling is a crime, pursuant to Article 185 of the Penal Code. Accordingly, betting on sports is essentially prohibited. However, government-controlled sports, such as horse, bicycle, speedboat, and motorcycle racing, are lawful, based on Article 35 of the Penal Code. Article 35 contains a provision to the effect that if a law is established to legalize an otherwise-criminal act, the act is no longer regarded as illegal or criminal and is termed "a justifiable act." Due to the passage of special laws, such as the Horse Racing Act, these government-controlled sports do not constitute crimes under Article 185.

Unlike Japan, the United States allows each state the discretion to determine whether gambling is lawful, as well as to determine the types of gambling that are lawful. For example, gambling in any form is illegal in the states of Utah and Hawaii, whereas most other states have legalized casinos (in facilities) and horse racing, subject to certain conditions. As of April 1, 2024, only seven U.S. states have legalized online casinos.

Sports betting has long been illegal in the United States, due to concerns about (i) repeated incidents of match-fixing in professional and college sports, as typified by the scandal commonly known as the Black Sox Scandal, as well as (ii) an influx of profits to criminal organizations. Against this backdrop, a federal law, PASPA, was enacted in 1992 and explicitly stated that sports betting was illegal in all states, except for Nevada, where betting already was lawfully conducted, in casinos and elsewhere, under state law.

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<sup>11</sup> For example, an interim report released in July 2023 by the Sports Future Development Conference (Second Phase), co-hosted by the Japan Sports Agency and the Ministry of Economy, Trade and Industry, states on page 35: "[s]ports-promotion lotteries are a valuable means to secure revenue sources for sports-promotion funds, and also encourage interest in sports. We will expand revenue sources for sports-promotion funds through initiatives aimed at further expanding sports-promotion lotteries, such as by developing attractive products appealing to sports fans. We also will proactively seek to enhance a virtuous cycle where those sources are used to support a variety of sports activities by sports organizations or in local communities, thereby boosting the attractiveness of sports." ([https://www.mext.go.jp/sports/content/20230705-spt\\_spouseisy-000027339\\_2-1.pdf](https://www.mext.go.jp/sports/content/20230705-spt_spouseisy-000027339_2-1.pdf)) (Japanese only). "Proposals by Nippon Sport Kaigi 2024: Challenges Toward New Sports," released by the Nippon Sport Policy Commission in January 2024, proposes on page 2, in "Proposal 2. Securing and Expanding Sports Promotion Revenue Sources," that "With the amendment of the sports-promotion lottery system bringing increased revenues, there must be initiatives to secure revenue sources to subsidize entities, such as sports organizations" (<https://nsk.nspc.or.jp/wp-content/uploads/2024/01/03f02c897a59300b081af0f1233332ae.pdf>) (Japanese only).

However, when the U.S. Supreme Court ruled on May 14, 2018 that federal laws, specifically PASPA, that made sports betting unlawful were unconstitutional, and contravene the Tenth Amendment to the U.S. Constitution,<sup>12</sup> each state was given the discretion to determine whether sports betting is lawful and, if so, on what conditions, as with other forms of gambling. Underlying the judgment is said to be NBA Commissioner Adam Silver's article in the *New York Times* on November 13, 2014. In his article, Mr. Silver advocated for the legalization of sports betting, subject to regulations and appropriate surveillance, on the fundamental assumption that integrity be protected.<sup>13</sup> His claim was based on (i) domestic trends, pursuant to which insufficiently surveilled illegal markets were rampant in the United States, with estimated betting of close to US \$400 billion per year, and (ii) global trends, pursuant to which other countries broadly regulated markets for sports betting. The article sparked heated debates in the United States.<sup>14</sup>

The judgment prompted states to consider legalizing sports betting. Currently, 38 states and Washington, D.C., have legalized sports betting, as stated in section I., *supra*.<sup>15</sup> Some of those states apply part of the profits from sports betting to funds established for the purpose of resolving social challenges facing those states, such as education, welfare, and countermeasures against gambling addiction. However, those funds are general-purpose funds and are not always allocated for the specific purpose of sports promotion. This general-purpose characteristic differs from sports lotteries in Japan, where it is guaranteed that part of the profits are returned to fund such sports-promotion initiatives. There are varying reasons for which U.S. states have made sports betting illegal—for example, California has conducted multiple local referenda on a bill to legalize sports betting, each of which was rejected. In 2022, more than 80% of Californian voters disapproved of the latest referendum, and sports betting remains illegal in the state.

In the United States, in addition to “pre-game” betting, in which bettors predict the results of games, such as wins and losses, in advance, another type of betting, known as “in-game” bets, is drawing attention. In this latter type of betting, bettors predict mid-game results or phenomena in the middle of the game. For example, bettors place bets by predicting the winning team as the game progresses, or, specifically with respect to an NBA game, how the next point will be scored.<sup>16</sup> As “in-game” bets allow bettors to place bets while watching games, the legalization of sports betting has had the effect of boosting the value of broadcasting rights for sports events.<sup>17</sup> On the other hand, there is also a down-side, in that, in some states, soaring broadcasting rights fees have

<sup>12</sup> The Tenth Amendment to the U.S. Constitution states, “[t]he powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.” Accordingly, any powers not exhaustively listed as reserved to the Federal Government belong to the states. The Supreme Court ruled that, because each state has the power to determine what types of gambling are lawful, it contravened the Tenth Amendment for the Federal Government to prevent individual states from legalizing sports betting using PASPA.

<sup>13</sup> Legalize and Regulate Sports Betting By Adam Silver (The New York Times, November 13, 2014) (<https://www.nytimes.com/2014/11/14/opinion/nba-commissioner-adam-silver-legalize-sports-betting.html>) (last viewed on April 1, 2024)

<sup>14</sup> The impact of Adam Silver's sports betting op-ed five years later (ESPN, November 12, 2019) ([https://www.espn.com/sports-betting/story/\\_/id/28068000/the-impact-adam-silver-sports-betting-op-ed-five-years-later](https://www.espn.com/sports-betting/story/_/id/28068000/the-impact-adam-silver-sports-betting-op-ed-five-years-later)) (last viewed on April 1, 2024)

<sup>15</sup> 30 of those states, and Washington, D.C. have also legalized online sports betting.

<sup>16</sup> How Does Live In-Game Betting Work? (Forbes, February 6, 2024) (<https://www.forbes.com/betting/guide/in-game/>) (last viewed on April 1, 2024)

<sup>17</sup> TV's NFL Rights Gamble: Will the League Opt Out of Its New Deals? (Hollywood Reporter, March 31, 2021) (<https://www.hollywoodreporter.com/business/business-news/tvs-nfl-rights-gamble-will-the-league-opt-out-of-its-new-deals-4158535/>) (last viewed on April 1, 2024)

pushed local broadcasting stations into bankruptcy.<sup>18</sup>

The number of gambling addicts in the United States is reportedly rising since sports betting was legalized by various states in the wake of the U.S. Supreme Court decision. The U.S. National Council on Problem Gambling (NCPG) estimates that the risk of gambling addiction grew by 30% between 2018, when the legalization of sports betting commenced in certain states, and 2021.<sup>19</sup> This has led the NCPG and sports-betting business operators to bolster countermeasures against gambling addiction. On March 27, 2024, seven of the largest sports-betting business operators in the United States formed the Responsible Online Gaming Association (ROGA),<sup>20</sup> pledging to provide US \$20 million (approximately 3 billion yen) in order to advance research and initiatives aimed at resolving addiction and other gambling-related challenges.<sup>21</sup> It is expected that the industry as a whole will pursue further countermeasures aimed at addressing addiction and the other harmful effects of gambling.

In addition, in the wake of the 2018 judgment rendering PASPA unconstitutional, U.S. sports leagues have established rules, including those aimed at preventing match-fixing, in order to address the risk of rigging in games that are subject to betting. Sports leagues have also implemented measures, such as (i) providing integrity-awareness education to those involved in games, and (ii) monitoring games to ascertain whether there is any potential for illicit betting by using certain technologies, with the cooperation of integrity-service business operators. If signs of illicit activity are detected, strict countermeasures are taken. For example, according to a March 25, 2024, news report, a Toronto Raptors NBA player was under investigation by the NBA for suspected match-fixing. In certain games in which a large amount of money is wagered on certain elements of that player's performance, for example, the number of his successful three-point shots, the statistics for those elements shifted outside their normal parameters, thereby suggesting illicit behavior.<sup>22</sup>

In the United States, while illegal betting markets still remain active after the 2018 decision rendering PASPA unconstitutional, those markets are progressively shrinking in states that have legalized sports betting. For example, in the State of New Jersey, which was the first to legalize sports betting after the Supreme-Court decision, illegal markets are said to have shrunk rapidly, with approximately 80% of the bets placed in the state now taking place in legal markets.

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<sup>18</sup> In March 2023, a news report stated that Diamond Sports, which operated Bally Sports local broadcasting networks in the United States, filed for bankruptcy. One of the reasons was its failure to pay broadcasting rights fees to MLB team Diamondbacks (TIMELINE OF DIAMOND SPORTS GROUP'S CHAPTER 11 BANKRUPTCY (Sportico, February 28, 2024) (<https://www.sportico.com/business/media/2024/diamond-sports-group-bankruptcy-timeline-1234715961/>) (last viewed on April 1, 2024))

<sup>19</sup> NCPG website (<https://www.ncpgambling.org/news/ncpg-statement-on-the-betting-on-our-future-act/>) (last viewed on April 1, 2024)

<sup>20</sup> ROGA comprises seven members: BetMGM, bet365, DraftKings, Fanatics Betting and Gaming, FanDuel, Hard Rock Digital, and PENN Entertainment, whose combined market share reportedly accounts for 85% of the lawful online sports betting market in the United States.

<sup>21</sup> ROGA website (<https://www.responsibleonlinegaming.org/press-center/largest-us-sportsbooks-join-forces-to-tackle-problem-gambling>) (last viewed on April 1, 2024)

<sup>22</sup> NBA eyes Raptors' Jontay Porter for betting issues (ESPN, March 25, 2024) ([https://www.espn.com/nba/story/\\_/id/39808900/nba-eyes-raptors-jontay-porter-betting-issues](https://www.espn.com/nba/story/_/id/39808900/nba-eyes-raptors-jontay-porter-betting-issues)) (last viewed on April 1, 2024)

### III Demarcation between Illegal Gambling and Legal Sports Betting in the United States<sup>23</sup>

As stated in section I., *supra*, sports betting is legal in some U.S. states and illegal in others. That said, not all betting on sports events conducted in states that have legalized sports gambling are necessarily legal, nor are all bets placed by residents in states where gambling is illegal, necessarily illegal.

First, whether it is lawful for a person to bet on a sports event in the United States depends on the state in which the person was physically present at the time he placed the bet.

If a person bets on a sports event in a state where such betting is illegal (a “Non-Betting State”), the act is illegal, for example, as a violation of the criminal law of the state. Even if the bettor is a regular resident of a state where betting is lawful (a “Betting State”), a bet is illegal if the place in which the person was present when he placed the bet is a Non-Betting State. As sports-betting business operators in Non-Betting States constitute illegal entities, betting using their services is also illegal.

In contrast, betting is lawful in Betting States if the bet is placed using the services of sports-betting business operators lawfully engaging in business, such as with a license from the state. If a resident of a Non-Betting State travels to a Betting State and places a bet there, the act is lawful. In this case, even if the bettor’s payment account is based in a Non-Betting State, his bet is legal as long as he is physically in a Betting State.

For clarity, even in Betting States, business operators engaged in sports betting typically are limited to those granted a license for the activity, for example, by the gambling commissions in the relevant states. Accordingly, entities without licenses are illegal business operators, even in Betting States, and even if a bettor is present in a Betting State, placing bets using the services of an illegal sports-betting business operator constitutes an illegal act.

Next, we will discuss interstate betting on sports events, for example, via the Internet. We review the legality of each of the following situations:

- (1) a person in a Betting State places a bet online using a service provided by a sports-betting business operator located in a Non-Betting State;
- (2) a person in a Non-Betting State places a bet online using a service provided by a sports-betting business operator located in a Betting State; and
- (3) a person in a Betting State places a bet using a service provided by a sports-betting business operator lawfully engaged in a business in another Betting State.

Betting in each of cases (1) through (3) is illegal. A U.S. federal law (the Wire Act, 18 U.S. Code §1084) provides that betting or transmitting sports-betting information across state borders using a wire communication facility is illegal.<sup>24</sup> Consequently, it is a violation of that Act, and illegal, to place bets from Non-Betting States using the services of sports-betting business operators located in Betting States by methods such as the Internet.

<sup>23</sup> In this section, our discussion relies on opinions from Gamma Law (<https://gammalaw.com/>), a law firm with a prominent expertise in entertainment legal practice in the United States.

<sup>24</sup> <https://www.law.cornell.edu/uscode/text/18/1084>



Furthermore, it is illegal to place bets from a Betting State, for example, the State of New York, using the services of a sports-betting business operator in the State of Nevada, which is also a Betting State.<sup>25</sup>

Accordingly, in the United States, betting on sports events is lawful only if bets are placed using the services of sports-betting business operators lawfully engaged in business in Betting States, with appropriate licenses or other permissions from the relevant Betting State. As previously stated, even betting in a Betting State is illegal if the bettor uses an unlicensed, illegal sports-betting business operator, and all interstate sports betting using a wire-communication facility is illegal.

There is potential for certain persons within business operators engaging in the sports business, or their teams, to be exposed to sports betting during business trips, game tours, or personal travel to the United States. In order to ensure that they do not become involved in illegal gambling, it is necessary to take preventive measures, such as proactively taking measures to prevent the relevant risks and issues in advance.

## IV Conclusion

In this Newsletter, we have shared the background behind the legalization of sports betting in an increasing number of U.S. states, the effects of the legalization on U.S. sports, and the demarcation between illegal gambling and lawful sports betting in the United States.

In our next newsletter, we will examine the current status of countermeasures being implemented in the United States to prevent match-fixing and other misconduct (specifically, integrity measures), as well as the challenges in the context of recent global trends.

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<sup>25</sup> This situation normally does not occur in the case of business operators that run lawful online sports-betting businesses, by obtaining licenses from the relevant states, such as DraftKings and FanDuel, as these operators block access to services from outside those states (which blocking includes blocking access from Japan). Those business operators now also appear to be using technologies to block access by identifying users who attempt to engage in interstate betting using VPNs.