



**Enterprise**  
CHAMBERS

## UNLICENSED BOOKMAKER RECOVERS GAMBLING DEBTS - SOLOMON V SPENCE

Duncan Heath (instructed by Clarke Mairs) obtains judgment of £841,530.25 for the Claimant in five-day trial before Mr Stuart Isaacs KC sitting as a Deputy High Court Judge.

This case “*provides a glimpse into the world of unlicensed betting*” and “*raises previously undecided questions of interpretation under the Gambling Act 2005 (“the Act”)*”.

The Defendant owed the Claimant £582,144 in gambling debts arising out of bets he made with the Claimant over WhatsApp.

The Claimant also sought c. £259,000 in damages from the Defendant.

The Claimant was in the habit of placing bets for shrewd (or ‘sharp’) punters and then following their bets by placing his own identical bet. The Defendant agreed to place bets with bookmakers for the Claimant and his shrewd punters. The Defendant originally contended that he had complied with the agreement by placing bets with a bookmaker known to him only as George, for whom he had no contact details and could not trace. The Defendant abandoned that argument in closing but the Court nevertheless went on to find that the Defendant had fabricated the existence of George.

## Illegality defence

The Defendant contended that the contracts were unenforceable because the Claimant had committed a criminal offence under section 33 of the Act by providing unlicensed gambling facilities.

## Course of business

The Court agreed that the Claimant had breached section 33 of the Act. The Claimant unsuccessfully argued that his activities fell within the exception provided by section 296(3) of the Act because he was not acting in the course of a business when accepting or making bets.

This is the first reported case in which a Court has had to consider whether a person makes or accepts bets otherwise than in the course of a business within the meaning of section 296(3) of the Act.

The Court held that the Claimant was acting as a bookmaker. He accepted bets at bookmakers' odds, which includes a margin designed to achieve a profit over time. The fact that the Claimant was not operating in the same way as traditional bookmakers by making a "book" and therefore not strictly a "bookmaker" did not mean that he was not in fact operating a betting business.

## Statutory illegality

The Defendant submitted that, insofar as the Claimant committed offences under section 33 of the Act, the contracts giving rise to the offences were void *ab initio* and therefore unenforceable. The Court followed *obiter dicta* of the Court of Appeal in the recent case of *Gibson v TSE Malta LP (t/a Betfair)* [2025] EWCA Civ 1589 that a breach of section 33 does not render a gambling contract void *ab initio*. The Court rejected the Defendant's argument that *Gibson* could be distinguished on the grounds that the bookmaker in *Gibson* was licensed but acted in breach of its licence whereas here the Claimant never held a licence at all.

## Common law illegality and *Patel v Mirza*

The defendant also relied upon a defence of common law illegality.

The Court applied the test from *Patel v Mirza* [2017] AC 467.

The Defendant submitted that it would be contrary to the public interest for the Claimant to be able to enforce his claims as to do so would be harmful to the integrity of the legal system.

The Defendant drew attention to the three objectives set out in section 1 of the Act, namely

(a) preventing gambling from being a source of crime or disorder, being associated with crime or disorder or being used to support crime,

(b) ensuring that gambling is conducted in a fair and open way, and

(c) protecting children and other vulnerable persons from being harmed or exploited by gambling.

At paragraphs 81-85, Deputy High Court Judge Stuart Isaacs held:

*“81. In terms of the policy of the Act being to prevent exploitative gambling, making due allowance for the defendant’s at times compulsive gambling and his personal and health worries, I do not consider that he can properly be treated as a vulnerable person requiring protection by the claimant. There was no professional evidence of any vulnerability. The defendant is a multi millionaire, with a responsible position in the ROA (Racehorse Owners’ Association), who had the financial means to indulge his passion for owning and betting on horseraces and other sporting events. He was unconcerned about the financial impact on him of his gambling losses and he could afford to gamble and lose substantial sums without his lifestyle being affected. The defendant’s own evidence was that the claimant never put undue pressure on him to resume or increase his gambling. He engaged with the claimant with his eyes open, at first suspecting and then being clear that the claimant was not a licensed bookmaker. Even a licensed bookmaker would not necessarily have imposed controls on the defendant since his gambling was plainly affordable and there was no evidence to the contrary effect or that any mainstream bookmakers did in fact do so by closing*

*his accounts with them or otherwise, even though the defendant thought that this might have happened in the past.*

82. *With regard to ensuring that gambling be conducted in a fair and open way, that objective in my judgment is not of great weight in the present case. The present case is concerned with the conduct of betting between two individuals. As explained already, in their different ways neither the claimant nor the defendant acted with propriety and honesty towards each other and towards third parties but each transacted with the other knowingly and without qualms. I do not regard the deception practised by the claimant on bookmakers by the use of pseudonyms and otherwise not disclosing to third-party bookmakers that he was placing bets for sharp punters as sufficient to merit rendering his claims unenforceable.*
83. *Similarly, the nature of the betting about which the present case is concerned does not, in my judgment, give rise to any or any significant danger of preventing any risk of criminal or disorderly activities and certainly none which would be sufficient to merit rendering the claimant's claims unenforceable.*
84. *For those reasons, in my judgment, none of the matters relied on by the defendant would be harmful to the integrity of the legal system. I also accept the claimant's submission that there is no other relevant policy on which the denial of his claims might have an impact. On the contrary, it is clear from Gibson, in particular at [56] and [62], that in general gambling debts are enforceable and that a successful gambler should not be deprived of the fruits of his bet and, equally, that a losing gambler should not be able to escape the consequences of his decisions. I therefore do not accept the defendant's submission that the admitted public policy that individuals should be required to pay their gambling debts carries little weight because they only arise as the result of unlawful gambling.*

85. *Since the balancing of policy considerations in my judgment does not come down firmly in favour of the denial of the claimant's claims, the need to consider whether denial of the claim would be a proportionate response to the illegality does not arise. Had it arisen, I would have determined that denial of the claim would not have been a proportionate response. The sanction for the claimant's conduct lies in the offences committed under section 33 of the Act, if proved to the criminal standard of proof, and not to deny his claims against the defendant, who himself displayed dishonest conduct and who is far from blameless for the situation in which he finds himself".*

A link to the full judgment can be found here:

Duncan Heath  
Enterprise Chambers

**Disclaimer:** These notes are produced for educational purposes only. The views expressed in them are those of the author. The contents do not constitute legal advice and should not be relied on as such advice. The author and Enterprise Chambers do not accept legal responsibility for the accuracy of their contents. The contents of these notes must not be reproduced without the consent of the author.