

Munger, Tolles & Olson LLP

October 26, 2023

VIA E-MAIL AND U.S. MAIL

Director Yolanda Morrow
Manager Andreia McMillen
Bureau of Gambling Control
California Department of Justice
P.O. Box 168024
Sacramento, CA 95816-8024

Re: *Draft Blackjack Concept Language, September 11, 2023*

Dear Director Morrow and Ms. McMillen:

Our firm represents the California Gaming Association (“CGA”), an industry trade group whose members comprise the majority of the active cardroom tables in California. The CGA’s members provide tens of thousands of living wage jobs to working Californians and hundreds of millions of dollars of tax revenue to host communities.

Communities for California Cardrooms (“CCC”) and the California Cardroom Alliance (“CCA”) also join in this letter. The CCC is a nonprofit organization that provides a united voice for small businesses; advances and protects local jobs and the economy that is provided by cardrooms; and educates the public on the benefits and history of cardrooms in their communities. The CCA is a nonprofit organization that represents cardrooms from around the state while partnering with local communities.

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On behalf of the CGA, CCC, and CCA, we write to comment on the Draft Blackjack Concept Language, published on September 11, 2023 (“Blackjack Proposal” or “Proposal”). We strongly oppose the Proposal.

At the outset, the Department has not identified any grounds for the dramatic regulatory changes contained in this Proposal. Government Code section 11346.2 requires a regulatory agency that intends to promulgate new regulations to explain the “specific purpose” for each new or modified rule, including “the problem the agency intends to address.” (Gov’t Code, § 11346.2(b)(1).) The agency must also provide descriptions of reasonable alternatives and explain why those alternatives have been rejected. In discussions with the Department over many years, the industry has provided detailed written and oral comments explaining the legality of blackjack-style games. The Department has refused to provide any contrary law or otherwise explain its concerns regarding the licenses it has issued over the last 20 years. If the Department intends to engage in a meaningful discussion regarding the new Blackjack Proposal, the Department must provide actual reasoning and analysis to support the proposed changes in the manner in which it has approved games since the adoption of the Gambling Control Act (the “Act”).

Regardless, the Proposal is obviously based on a false premise, which has already been rejected by California courts. In 1885, Penal Code section 330 was amended to prohibit the game of “twenty-one.” But the Proposal does not define or prohibit twenty-one as it was played in 1885. The Proposal instead defines and prohibits the modern and markedly different game of “blackjack,” using the contemporary rules for multiple, and often distinctly patented, variants of that game. The Proposal, therefore, sharply conflicts with several decisions interpreting Penal Code section 330 that look to how a game was played when it was prohibited and hold that section 330 does not apply to games with different rules, even if those games evolved from a prohibited game.

Contrary to precedent, the Proposal eliminates any type or form of modern blackjack-style game currently approved by the Department, even if the games rules are significantly different from the established rules of twenty-one. The Department cannot interpret section 330 in this way. Nor can the Department unilaterally revoke the approvals for previously approved games, as the Proposal would require it to do. Consequently, the Proposal lacks the (1) necessity, (2) authority, (3) clarity, and (4) consistency required for adoption under the Administrative Procedure Act. (Gov’t Code, §11349.1.)

I. The Proposal Lacks Necessity, Authority and Consistency

The Proposal is premised on the erroneous belief that either (1) modern blackjack games are substantially the same as the game of “twenty-one” as it was played in 1885, or (2) Penal Code section 330 prohibits all games with features in common with prohibited games, regardless of whether the games have discernible or relevant differences. In either case, the Proposal lacks

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merit. The historical record clearly demonstrates that modern blackjack has substantial differences from the historical rules for “twenty-one.” The court decisions show beyond dispute that the definition of a prohibited game must be based on the *established rules* of the game *at the time the game was prohibited*. (See *People v. Gosset* (1892) 93 Cal. 641 (*Gosset*)). Games with more than slight differences are not prohibited under section 330 unless they are banking or percentage games.

A. Twenty-One and Blackjack Are Different Games

In 1885, the Legislature added “twenty-one” to Penal Code section 330’s list of prohibited games. “Blackjack,” meanwhile, has never been listed in section 330. In fact, it was not until decades after twenty-one’s prohibition that the term “blackjack” even came to refer to a card game with a 21-point count.¹ While the modern public may mistakenly think these games are the same, the game of “twenty-one” that was prohibited in 1885 was radically different from modern-day blackjack-style games.

According to *Hoyle’s Rules*, in twenty-one, the dealer exercised most of the discretionary playing decisions.² At the start of each round, each player received one card before placing a wager. After looking at her first card, the *dealer* could force the other players to double their wagers. Each player then received a second card. *Both dealer cards remained hidden* from the players. After seeing how each player wagered and played, the *dealer had discretion* whether to stand, hit or split. The dealer could hit on *any point total*, including 17 or 18. The *dealer could split any pairs*, including aces or 8s, which increased the dealer’s chances of a 21 and decreased the likelihood of going over 21. If the dealer drew to a 21 after hitting, then *the dealer would receive double* from every other player, including where the dealer had already forced the other players to double their wagers, thereby winning quadruple sums. More still, the dealer *won all ties*. All of these rules enhanced the dealer’s odds.

In contrast, blackjack-style games give the dealer no discretion on how to play their hand. Players make all the strategic decisions, including how much to wager, and whether to hit, double down, split, surrender, or take insurance. The sequence of play has also changed—players bet before receiving cards and act first. Players also see one of the dealer cards before making their decisions. The dealer, meanwhile, does not have the discretion to see her first card and then “force” a player to pay double. Dealers cannot split their cards and do not collect

¹ In *Webster’s International Dictionary of the English Language*, in the 1884, 1905 and 1930 editions, “blackjack” does not refer to any card games.

² A compilation of relevant excerpts from contemporaneous versions of *Hoyle’s Rules* is attached to this letter.

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double when they hit twenty-one. All ties are pushes with neither the player nor the dealer winning.

In sum, the game of twenty-one prohibited in 1885 was a fundamentally different game from the variants of blackjack played today. In twenty-one, the dealer had broad strategic discretion, both dealer cards were hidden, the dealer won ties, and the dealer could force the players to increase their wagers, thereby changing the odds, strategies, mathematics, betting, and manner of play.

Cardroom blackjack-style games have even more differences, and many of the games approved by the Department and played in cardrooms are patented. For example, many cardroom blackjack-style games have a “no bust” feature, meaning the player and player-dealer can tie at 22 or even 25 (a three-card hand). Other cardroom blackjack-style games are played with specially marked cards, which provide for unique point totals (like 21.5, 22 and 24), include bonuses, and/or change the pay outs, odds, and game results. Some games use a 60-card deck, and others add jokers that count as a 12 on the initial deal, which changes the highest-ranked hand and the odds. Each of these changes makes a variant of cardroom blackjack-style games a unique game, a fact acknowledged by the Department in its existing approvals which specify which version of a given game is approved at the cardroom.

The U.S. Patent Office recognizes the significance of these variations in gameplay. To qualify for a patent, a game must be sufficiently different from preexisting games, such that the differences are novel, non-obvious, useful and of patentable subject matter. (35 U.S.C. § 102(a)-(b), § 103(a); *Kimberly-Clark Corp. v. Johnson & Johnson* (Fed. Cir. 1984) 745 F.2d 1437, 1453-1454.) Applying this standard, the Patent Office regularly issues distinct patents for cardroom games that have different rules from related, preexisting games. (See, e.g., United States Patents Nos. 6,182,968; 6,170,828; 8,210,919.) The Department itself recognizes that there are multiple versions of blackjack style games by specifying which version of the game is approved at a given cardroom in its approval. For example, the Department approval might specify “No Bust 21st Century Blackjack version 4.0” or “No Bust 21st Century Blackjack (Jokers Wild)”, two different games from the same game developer.

Considering their different (and often incompatible) rules, the variations of modern blackjack set forth in the Proposal are plainly distinct from the historical game of twenty-one. These games are not prohibited—or even contemplated—by Penal Code section 330, and the Department has other no basis for banning them.

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B. The Blackjack Proposal Conflicts With Court Decisions

(1) The Proposal Badly Misapplies *Gosset*

The caselaw enforcing Penal Code section 330 further establishes that modern blackjack is not twenty-one. In *Gosset, supra*, 93 Cal. at p. 643, a defendant was refused a jury instruction that a prohibited game was played with 52 cards. Because there was no testimony that the defendant used fewer than 52 cards, and because there was no evidence that using one or two cards less affected the game, the court found no error. The Supreme Court wrote:

[W]hen a prohibited game is played in all other respects in the usual way, and according to its established rules, the purpose of the law cannot be thwarted by the simple devise of playing it with one or two cards less than the number usually employed.

(*Ibid.*) Accordingly, a slight change to the “established rules” of a prohibited game, such as removing one or two cards from the deck, does not remove the game from the ambit of section 330, where the game is “*played in all other respects in the usual way.*” (*Ibid.*, italics added.) But the converse proposition is what matters here: A more significant change to game rules *does* distinguish a new game from a prohibited predecessor.

First, by equating blackjack with the archaic game of twenty-one prohibited 138 years ago, the Department disregards *Gosset’s* reference to a game’s “established rules” and “usual way.” To apply section 330, any analysis must start by identifying twenty-one’s “established rules.” “Established” means “[t]o make stable or firm, to fix immovably or firmly...” (*Webster’s Internat. Dict. of the English Language* (Bell & Sons 1907), at p. 513.) The “established rules” of twenty-one cannot be divined by looking at how *blackjack* was played in 1960 or is now played in 2023—otherwise, the definition and scope of the prohibited games would never be fixed. Rather, under *Gosset*, games prohibited by section 330 must be defined by their “established rules” and “usual” method of play *at the time* they were added to that statute. (*Gosset, supra*, 93 Cal. at p. 643.) The Proposal makes no attempt to state the rules of twenty-one as that game was played in 1885. The Proposal is instead premised on an elastic and unstable interpretation of section 330 that permits the Department to redefine a game listed in a century-old statute any time the Department writes a new regulation.

Second, the Proposal ignores that *Gosset’s* holding was limited to games with slight deviations from the established rules of a prohibited game, such as playing the game with a few less cards. The court was merely making the point, in dicta, that the defendant could not evade the Penal Code by removing one or two cards so as not to strictly comply with the “established rules,” which required a full 52-card deck. The Proposal misapplies *Gosset* by prohibiting games with dramatic differences that affect game play or game odds. It also conflicts with the Department’s longstanding interpretation of *Gosset*. As early as 1903, the Department opined

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that, to charge a defendant with playing a prohibited game, the information must show that “the game is practically the same as the one charged in order to fall within the definition of the term.” (Ops.Cal.Atty.Gen. No. 914 (Nov. 28, 1903) [citing *Gosset*].)

(2) The *Tibbetts* Court Rejected the Argument That Games Which Have Evolved Since 1885 Are Prohibited

The court in *Tibbetts v. Van De Kamp*, held that section 330 prohibits only those games expressly listed in the statute, or games played as banked or percentage games. (*Tibbetts v. Van De Kamp* (1990) 222 Cal.App.3d 389, 395, review den. Oct. 18, 1990 (*Tibbetts*).)

Tibbetts challenged whether it was appropriate to rely on Penal Code section 330’s ban on Stud Horse Poker to prohibit the play of Texas Hold’em. The court first analyzed how Stud Horse Poker was played in 1885 and compared the rules and method of play of that game to contemporary Texas Hold’em. (*Id.* at p. 395.) Expert testimony showed that the games had “different mathematics, different odds, different strategies, different betting opportunities and sequence” (*Ibid.*) Consequently, the court found determinative differences in the games’ “format and strategy,” which meant that section 330’s prohibition on Stud Horse Poker had no bearing on the play of Texas Hold’em. (*Ibid.*)

The court expressly rejected the Department’s argument that section 330 prohibits games that are similar to, or share particular characteristics with, games enumerated in the statute. That interpretation of section 330 would mean that games “which have evolved since 1885 and which continue to evolve are prohibited.” (*Id.* at p. 396.)

Such result would also be contrary to fundamental rules of construction of criminal statutes: We cannot create an offense by enlarging the statute, or by inserting or deleting words, nor should we do so by giving false meaning to its words. Such a practice makes it impossible for anyone to rely on the written word of the legislature.

(*Tibbetts, supra*, 222 Cal.App.3d at p.396, quoting, *People v. Baker* (1968) 69 Cal.2d 44, 50 [cleaned up].)

Following *Tibbetts*, in 1991, section 330 was amended to remove Stud Horse Poker. In so doing, the Legislature is deemed to have agreed with and approved of the interpretation of section 330 in *Tibbetts*. (*Marina Point Ltd. v. Wolfson* (1982) 30 Cal.3d 721, 734.) The Legislature itself stated: “It is the intent of the Legislature, by this act, to clarify the effect of Section 330 of the Penal Code on card room gaming in conformance with the holding in *Tibbetts v. Van de Kamp*, 222 Cal.App.3d 389.” (1991 Cal. Legis. Serv. Ch. 71 (A.B.97) § 2.)

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The Proposal conflicts with *Tibbetts*. It is settled that a game cannot be banned because it shares features with, or is a derivative of, a game prohibited by section 330. By prohibiting contemporary blackjack, without addressing the significant differences between that game and the historical version of twenty-one as played in 1885, the Proposal enlarges section 330 and gives false meaning to the plain language of the statute.

(3) *Oliver* Reaffirmed That Penal Code Section 330 Does Not Ban Variants of the Named Games

The Proposal's mistaken premise is further illustrated by *Oliver v. County of Los Angeles*, (1988) 66 Cal.App.4th 1397 (*Oliver*.) As in *Tibbetts*, the respondents in *Oliver* argued that a new style of blackjack, "Newjack," ran afoul of section 330's ban on twenty-one because the statute supposedly prohibited "all variations" of the games enumerated therein:

By prohibiting "any game of... twenty-one" the legislature prohibited all variations of "twenty-one."... Because NewJack was designed as a close substitute for twenty-one, is played in a fashion very similar to twenty-one, and provides very similar risks and rewards to twenty-one, it is merely a poorly disguised version of twenty-one which section 330 prohibits.

(*Oliver* Respondents' Brief at pp. 8, 12 (Mar. 24, 1998).)

The Court of Appeal disagreed. Because Newjack was not one of the games "specifically mentioned" in section 330, it was not prohibited by reason of the prohibition on twenty-one. (*Oliver, supra*, 66 Cal.App.4th at p. 1401.)³

The Proposal contravenes precedent and therefore exceeds the scope of the Department's authority.

³ Some cases note that, in contemporary dictionaries, blackjack is listed as an alternative name for twenty-one. (See *Oliver, supra*, 66 Cal.App.4th at p. 1401, fn. 1; *Kelly v. First Astri Corp.* (1999) 72 Cal.App.4th 462, 466; *Hotel Employees & Restaurant Employees Internat. Union v. Davis* (1999) 21 Cal.4th 585, 609 fn. 5; *Tokar v. Redman* (1956) 138 Cal.App.2d 350; see also, *Wallace v. Opingham*, (1946) 73 Cal.App.2d 25.) But none of these cases actually attempts to define twenty-one or examine the game rules. The Supreme Court has held that these sorts of conclusory and immaterial assumptions, even in its own opinions, are not instructive or binding. (See *Trope v. Katz* (1995) 11 Cal.4th 274, 284; *Stockton Theatres, Inc. v. Palermo* (1956) 47 Cal.2d 469, 474; *People v. Squier* (1993) 15 Cal.App.4th 235, 240.)

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C. The Department’s Loose Interpretation of Section 330 Violates Due Process and the Rule of Lenity

Section 330 prohibits a limited set of games that are enumerated in the statute—not new variations of those games or games with somewhat similar rules. Caselaw makes this clear:

Section 330, the principal statute on the subject, prohibits 12 specific games, as well as any ‘banking or percentage’ game. If the Legislature had intended to regulate the play of any game which is ordinarily played for money or other evidence of value, it would have been very simple to say just that. Not only did the Legislature fail to use the all inclusive phrase, but by other legislation it clearly indicated that it recognized the existence of gambling games not included in the prohibition of the code section. ... 330 was intended to ban betting or wagering only in regard to a limited number of games.

(*In re Hubbard* (1964) 62 Cal.2d 119, 126.)

Under the ordinary rules for statutory construction, a statute that contains a specific list of prohibitions must be construed to exclude others. (*Capistrano Union High School Dist. of Orange County v. Capistrano Beach Acreage Co.* (1961) 188 Cal.App.2d 612, 617 (*Capistrano Union High School*)). If the Legislature wants to ban games other than those listed in section 330, it “is a matter for the Legislature, not the judiciary.” (*Tibbetts, supra*, 222 Cal.App.3d at p. 393.) Thus, for example, in 1891, section 330 was amended to add “Hokey-Pokey,” a variation of Stud Horse Poker using a different number of cards. (See Ops.Cal.Atty.Gen 108 (1947).) Such a change would have been unnecessary if the Legislature interpreted section 330 to apply to variations on prohibited games.

Since 1891, the Legislature has not added to the list of games enumerated in section 330. Rather, the applicability of section 330 has rested on whether a game (1) is one of the few specifically prohibited games or (2) is played as a banking or percentage game. (*Tibbetts, supra*, 222 Cal.App.3d at p. 396.)

The Department’s new, expansive interpretation of section 330 conflicts with settled principles of due process and proper construction of criminal statutes. The basic principles are familiar: Statutes must be interpreted to give the public fair notice of what not to do. (*Papachristou v. City of Jacksonville* (1971) 405 U.S. 156, 162; *Grayned v. City of Rockford* (1972) 408 U.S. 104, 108; *Colautti v. Franklin* (1979) 439 U.S. 379.) And government regulation must be sufficiently clear so that ordinary people can understand what conduct is being prohibited. (*Chalmers v. City of Los Angeles* (9th Cir. 1985) 762 F.2d 753; *Walker v. Meehan* (1987) 194 Cal.App.3d 1292 (dis. opn. Newsom, J) [percentage game prohibition in section 330 is void for vagueness because “it does not adequately or reasonably define the conduct sought to be prohibited”].)

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First, the Proposal appears to assume that section 330 prohibits games similar to those enumerated in the statute. But if that were true, then it would be impossible for the public to know what games are prohibited by section 330. There are no standards in section 330 for determining whether two games are similar. For example, if there are 20 game rules in the definition of blackjack, then by what criteria does one decide which rules are material to the issue of similarity? And how different must rules be to no longer be similar? Absent clear principles for answering those questions, the Department seems to assume it has complete discretion to decide whether a particular game is legal. That interpretation conflicts with the ordinary rules for statutory construction, longstanding judicial precedent involving section 330, and the Department's own prior application of that law.

Second, if games are not defined by their established, historical rules for purposes of section 330, the statute is unconstitutionally vague because it is impossible for the public to know how to identify one of the games specifically prohibited by the statute. In other words, for the Proposal to have any basis in section 330, the meaning of "twenty-one" would need to change from year to year. As explained above, California courts have already rejected this unconstitutional approach: To prevent the scope of section 330 from changing as games evolve over time, games enumerated in the statute must be defined by the rules in use at the time those game were prohibited. (See *Tibbitts, supra*, 222 Cal.App.3d at p. 396.) Indeed, section 330 must be interpreted in that manner to avoid the constitutional problem that would otherwise arise. (See, e.g., *Gomez v. United States*, (1989) 490 U.S. 858, 864; *Santa Clara County Local Transportation Authority v. Guardino*, (1995) 11 Cal.4th 220, 230.)

Third, as a criminal law, Penal Code section 330 is subject to the rule of lenity, which requires any ambiguity in criminal laws to be interpreted in favor of the persons subjected to them. (*Tibbetts, supra*, 222 Cal.App.3d at 395; see also 1 Witkin, Cal. Crim. Law (4th ed. 2012), § 37, p. 70.) The lenity problem is acute in this instance since the Department—the agency tasked with applying section 330—has itself approved blackjack-style games for decades.

D. The Department's Proposed Approach Is a Radical Departure From Longstanding Practice

Since 1903, the Department has interpreted section 330 to apply only to those games with "slight" variations in their game rules. For decades, the Department has approved dozens of blackjack-style games consistent with *Gosset and Tibbetts*, and no justification exists for the radical change in interpretation proposed here.

At least as early as 1903, the Department interpreted section 330 as follows:

... the vital question in this case is whether or not the playing of hokey-pokey, with the banking or percentage element eliminated, brings the game within the definition of the word hokey-pokey, for your proofs under information must show

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that the game is practically the same as the one charged in order to fall within the definition of the term. The trend of the decisions, under gaming, seems to be that the offender cannot evade the law by simply changing the name of the game, or by effecting a slight change in the manner in which it is played.

(Ops.Cal.Atty.Gen. 914 (Nov. 28, 1903), emphasis added.)

Applying that standard, the Department has approved cardroom blackjack-style games for more than twenty years. Those card games had already been played permissibly for decades before the Act was adopted in 1997 (which required the Department to review and approve games for play at licensed cardrooms). Indeed, for **120 years**, the Department has interpreted section 330 to apply only to games identical to, or with only slight differences from, those listed in the statute. There has been industry-wide reliance on that interpretation. All of this creates a presumption against the interpretation of section 330 reflected in the Proposal:

While the ultimate interpretation of a statute is an exercise of judicial power and it is the responsibility of the courts to declare its true meaning even if it requires rejection of an earlier administrative interpretation ... the contemporaneous construction of a statute by an administrative agency charged with its administration and interpretation, while not necessarily controlling, is entitled to great weight and should be respected by the courts unless it is clearly erroneous or unauthorized This is true particularly where there has been continued public reliance upon and acquiescence in such interpretations.

(*City of Santa Ana v. City of Garden Grove* (1979) 100 Cal.App.3d 521, 530.)⁴ There are no new court decisions or statutes, and no other basis to adopt a regulation that contradicts the Department's longstanding interpretation of section 330.

II. The Department Lacks Authority to Adopt a Regulation Defining Blackjack or to Revoke Previously Approved Games

The Department, "like all administrative agencies, has no inherent powers; it possesses only those powers that have been granted to it by the Constitution or by statute." Accordingly, if

⁴ (Compare *Yamaha Corp. of America v. State Bd. of Equalization* (1998) 19 Cal.4th 1, 13 [additional deference due if an "agency has consistently maintained the interpretation in question, especially if it is long-standing"], with *Murphy v. Kenneth Cole Productions, Inc.* (2007) 40 Cal.4th 1094, 1106, fn. 7 [minimal deference due when agency adopts a new statutory interpretation that "flatly contradicts its original interpretation"].)

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the Department “takes action that is inconsistent with, or that simply is not authorized by [statute], then its action is void.”⁵

The Act does not contain any authorization for the Department to define the games listed in section 330, let alone to define them inconsistently with their established rules, as precedent requires. (*Tibbetts, supra*, 222 Cal.App.3d at p. 395.)

Moreover, the Department cannot—under any circumstances—unilaterally revoke *existing* game approvals, without any adjudicatory determination that such games are unlawful. The Act allows the Department to restrict or limit how a controlled game is played only *when the game is approved*. (Bus. & Prof. Code § 19826 [“Responsibilities of department . . . (g) Approve the play of any controlled game, including placing restrictions and limitations on how a controlled game may be played.”].) The Act does not authorize the Department to place restrictions on a game after approval or permit the Department to revoke or invalidate any game approvals. Instead, the Act assigns the Department a prosecutorial role, while the Gambling Control Commission (“Commission”) adjudicates whether a game approval should be withdrawn. (See Bus. & Prof. Code § 19842 [supplying a legal standard for the Commission’s decision to prohibit a game].)

Accordingly, even if the Department could somehow redefine section 330 to include modern blackjack, it would still lack the authority to unilaterally revoke the approval of a game it previously authorized. If the Department wishes to revoke a game approval, it must bring a formal accusation and succeed in proving to the Commission that the game violates federal, state, or local law.⁶ That process is essential to preserving the due process rights of cardrooms.

⁵ (See *Sec. Nat. Guar., Inc. v. Cal. Coastal Comm’n* (2008) 159 Cal.App.4th 402, 419 (*Sec. Nat. Guar., Inc.*); see also *Louisiana Pub. Serv. Comm’n v. FCC* (1986) 476 U.S. 355, 374 [“[A]n agency literally has no power to act . . . unless and until [the Legislature] confers power upon it.”]; *BMW of North America, Inc. v. New Motor Vehicle Bd.* (1984) 162 Cal.App.3d 980, 994 [“It is fundamental that an administrative agency has only such power as has been conferred upon it by the constitution or by statute and an act in excess of the power conferred upon the agency is void.”]; *B. C. Cotton, Inc. v. Voss* (1995) 33 Cal.App.4th 929, 955-56 [“[A]n attempt by an administrative agency to enlarge the scope of the powers conferred upon it is unlawful and void.”].)

⁶ (See Bus. & Prof. Code § 19826 [defining DOJ’s responsibilities under the Gambling Control Act—to “receive and process”, “monitor”, “investigate”, “initiate disciplinary actions”, “adopt regulations”, “approve”—but not mentioning revoking game approvals]; § 19930(a)–(b) [providing for Department investigation, followed by Department accusations with the Commission]; § 19932 [providing for judicial review of Commission decisions].) The

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For the foregoing reasons, the Proposal as a whole lacks the necessity, authority, clarity, and consistency required for adoption under the Administrative Procedure Act. The following sections identify additional flaws in specific elements of the Proposal.

III. Specific Comments on Section 2010(h) (“Round of Play”)

Section 2010(h) of the Proposal defines the term “round of play” as a single hand. It is unclear what this change is intended to accomplish, but as written, it creates confusion and contradicts Penal Code section 337j(f).

Section 337j(f) refers to determining fees “prior to the start of play of any hand or round.” Under the rules for statutory interpretation, “hand” and “round” in section 337j(f) cannot be defined to be the same because both words are used in the statute. Each word or phrase in a statute must be given meaning and effect. (*Dyna-Med, Inc. v. Fair Employment & Housing Com.* (1987) 43 Cal.3d 1379, 1387.) By equating “hand” and “round of play,” the proposed regulation is in considerable tension with section 337j(f) and would apparently narrow when the fee must be determined and collected for each hand. And yet, because section 337j(f) states that it is “dispositive of the law relating to the collection of player fees in gambling establishments”; the Department is not free to alter that law.

The only use of “round of play” is in current Department regulation, section 2070(e), which makes it an unsuitable method of operation to fail to determine or collect fees before a hand or round of play. Section 2070(e) copies the terminology and requirements of Penal Code section 337j(f). Both the statute and existing regulation provide that collection of the fees shall occur before every hand or round of play. But if a round of play is defined to be one hand, then the section 2070(e) will conflict with section 337j(f). At the very least, the Department’s use of different meanings in its regulations from what is in Penal Code section 337j(f) raises questions about whether the two provisions would embody different standards.

Commission’s regulations also point against the Department’s unilateral authority to revoke game approvals. (See, e.g., Cal. Code Regs., tit. 4 § 12550 [“Nothing in [the Commission’s disciplinary regulations] precludes the Department, in its discretion, from issuing warning notices, notices to cure, advisory letters regarding violations or possible violations of law, or from withdrawing such upon further investigation.”]; making no mention of Department authority to withdraw game approval]; *id.* at § 12552(c) [envisioning a prosecutorial role for the Department; “Any settlement of an accusation shall be submitted by the Department for approval by the Commission”].)

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In any event, the purpose of the Department’s language is unclear. We are aware of no controversy over how to apply section 337j(f), yet this definition in a regulation dealing with blackjack could be understood to affect rules that apply to many other games. As explained above, the Government Code requires the Department to articulate the basis for any rule change. If the Department believes that this change is necessary, it must explain its reasoning so that the industry can offer more meaningful comment.

IV. Specific Comments on Section 2073 (Defining Blackjack)

Section 2073(a) defines “blackjack” by listing 20 rules that correspond to the contemporary version of that game. No mention is made of twenty-one—the game that is actually prohibited by section 330—or its rules.

Section 2073(b) lists several types of game modifications that do not distinguish a game from blackjack, as defined in subpart (a). No justification is offered for why any of these modifications alone or in combination can never be sufficient to distinguish a game from the prohibited version of blackjack.

Section 2073(c) provides the prohibition on blackjack includes any game with a “variation of the number ‘21’ or the word ‘blackjack’ in its name.”

The premise of this section is that a game is prohibited by section 330 if it shares certain elements with one of the prohibited games. As explained in Section I, above, this is not the law. Subpart (b) transgresses the well-settled rule that only slight variations on prohibited games fall within the ambit of section 330.

Moreover, by dismissing different potential game rule modifications, subpart (b) violates the settled principle that whether a game violates section 330 is a fact-specific issue, which requires an individualized determination based on the game rules and evidence. (See *Huntington Park Club Corp. v. County of Los Angeles* (1988) 206 Cal.App.3d 241, 249 [“Whether a particular game falls within the proscription of section 330 presents a factual question.”].) Under the Proposal, the Department would no longer consider the rules of a particular game on their own terms when determining whether a game is permissible. It would not, for example, consider whether certain rules create significant differences in game play, strategy or odds. The Proposal establishes a novel framework that erroneously treats entire categories of game modifications as irrelevant.

In practice, section 2073(b) will conflict with precedent by barring approval of games that have discernible differences from twenty-one. For example:

- The game of twenty-one is marked by a “bust” rule: players who hit to more than 21 automatically lose. A game with a “no bust” rule, which allows a player to

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push when they hit to more than 21, is clearly different. The rule significantly changes the strategy for a player hitting on 12 to 14 because there is less risk to hitting. Yet, the Proposal states that a “no bust” modification makes no material difference.

- Adding jokers that have a point value of 2 or 12, act as a wild card with any value of 1 through 11, or automatically result in a player win or bonus can dramatically change the odds and strategy of the game. Yet, the Proposal makes a categorical determination that adding jokers is never a relevant game modification, regardless of how the joker is used.
- The game of twenty-one has the same target point count throughout the hand. Yet, the Proposal prohibits variations of blackjack even if those games use more than one target point count: one on the initial deal, and one or more on the subsequent stages of play. For instance, a game where a proposed number card could be 2 or 12 or 3 or 13 would automatically be barred, even though such a rule would change the strategy and odds of the game. No legal justification exists for a categorical rule that adding multiple point counts can never be a material change. Nor is there a basis to find that a game that gives cards multiple point values is somehow an illegal game under section 330.
- Assigning cards different values on the initial deal can affect player odds and strategy, leading to new betting opportunities. Again, without any legal justification, the Proposal states that this kind of modification makes no material difference.

Any of the modifications above, alone or in combination with other rules, will affect a game’s format, sequence, odds, and player strategies—making the game discernibly different from twenty-one. By removing these modifications from consideration, subpart (b) misinterprets *Gosset*—which was concerned only with slight and inconsequential deviations—and contradicts *Tibbetts*.

As for subpart (c), categorical restrictions on game names are unjustified and legally invalid, as explained in Section VIII below.

V. Specific Comments on Section 2074 (Variations; Required Rules)

Section 2074(a) provides that a game that meets the definition of blackjack in section 2073 may only be approved if it has four specific features. There is no legal justification for requiring any one of these features, let alone all four.

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Subpart (1) requires that the game lack a “bust” feature, meaning the winner must be judged solely by whichever player is closest to the target point count. Yet, the historic rules for twenty-one and modern blackjack both prescribe that a player who exceeds a specific number (21) automatically loses, even if the dealer later also exceeds 21. There is no rationale for why a game with a different bust number, even 25, is not sufficiently different from the game of twenty-one, especially when the game rules are considered as a whole.

Subpart (2) requires that the target point count remain the same throughout the game. But there is no legal reason why a different game cannot use more than one target point count: one on the initial deal and one on the subsequent stages of play. A game could even have a third target point count for hands with 4 or more cards. Such differences could have a material effect on the odds and strategy of the game.

Subpart (3) prohibits a two-card 21 from automatically winning. There is no plausible justification why a game should be prohibited based on this feature alone, regardless of whether the game has other, much more significant modifications.

Subpart (4) requires that the player win in the event of a tie. This is wholly inconsistent with *Oliver’s* analysis of Newjack. In that case, the game rules provided that the player and player-dealer tie or push if they each have the same value hand, yet the Court still did not find that Newjack violated section 330’s prohibition on twenty-one. (*Oliver, supra*, 66 Cal.App.4th at p. 1409.)

As a whole, section 2073(a) errs by establishing categorical rules for game differences. The Proposal looks at each element in isolation and superficially, without considering whether a combination of rule changes makes a game materially or discernibly different in terms of odds, strategy or play.

Section 2073(b) provides that a game cannot be approved if the name includes the number “21” or the word “blackjack.” Again, such restrictions on game names are invalid, as explained in Section VIII below.

VI. Specific Comments on Section 2075 (Modification and Revocation)

Section 2075(a) requires a cardroom that offers a blackjack-style game prohibited by the proposed regulation to submit an application to modify that game. But a cardroom should be able to submit a *substitute* game for expedited review rather than being compelled to modify an existing game. Another person or cardroom may develop or have a suitable or newer game that the cardroom wishes to use. Moreover, if these regulations are overturned or enjoined, the cardroom may wish to continue using the previously approved game, rather than be limited to a game that has been modified to accommodate a regulation that is no longer in effect. The regulation should not prevent cardrooms from using currently approved rules in the event the

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regulation is enjoined or struck down. The review needed by the Department is the same in either case because we understand that the Department's practice when reviewing modifications is to re-review all the game rules.

Section 2075(d) requires modification of games with names that include the number "21" or the word "blackjack." Again, these restrictions on game names are invalid, as explained in Section VIII below.

Section 2075(e) provides that, if the Department does not receive a request to review or application to modify within a certain timeframe, it shall deem the corresponding game non-compliant. This section lacks due process protections, including notice of the reasons for denying a game or game modification and the right to a hearing before a neutral decision-maker before an existing game approval is revoked. The revocation of an existing game approval described in Section 2075 involves no hearing at all; unilateral notice from the Department is all that would be required to revoke an approval. This is clearly unconstitutional. The Department must specify why a game is being revoked or rejected, and there must be a hearing on that decision. The procedures outlined in the Act, under which revocations proceed to a neutral hearing before the Commission, are not optional statutory paths—they are the embodiment of the fair and neutral process that is due to cardrooms, their employees and the communities those cardrooms support. (See *Bauer v. City of San Diego* (1999) 75 Cal.App.4th 1281, 1294 [providing that the State may revoke a business permit "only upon notice to the permittee, upon a hearing, and upon evidence substantially supporting a finding of revocation"].)

VII. Potential Alternative

The Department does not have the authority to adopt the proposed rules discussed above. Even if it did, the Department still could not adopt the Proposal, as written, because the Proposal does not rely on a definition of twenty-one that is consistent with case law and the "established rules" of the historical game. A more defensible regulation might look like this:

Section 2073. Game of Twenty-One Prohibited.

- (a) The game of twenty-one shall not be approved for play.
- (b) As used in and for the purposes this Article, the game of twenty-one:
 1. Is played with one or more standard decks with 52 cards composed of four suits of spades, hearts, diamonds, and clubs, with each suit containing 13 cards with one of each of the following: ace, 2, 3, 4, 5, 6, 7, 8, 9, 10, jack, queen, and king;
 2. Numbered cards are assigned point values that correspond with their face value; jacks, queens, and kings are assigned a value of 10 points; and aces are assigned a

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value of one or 11 points at the discretion of the player in whose hand the ace is present; and,

3. Each player receives two cards. The first two cards to the players and dealer are dealt face down.
4. After receiving a first card, each player places their wager.
5. The dealer looks at his or her first card. If it has a 10-value card or ace, the dealer may declare all wagers doubled before he deals the second card to every player.
6. If the dealer's second card completes a natural 21, the dealer collects double the original player wagers.
7. If the dealer does not have a 21 in the first two cards, then each player may take additional cards.
8. If the dealer does not have a 21 in the first two cards, then each player may take additional cards.
9. The players do not see any of the dealer's cards.
10. There player has no option to take insurance or surrender.
11. The dealer or a player may split two cards of the same denomination (pairs).
12. Any player that has 21 collects double their wager if the dealer has declared the hand to be a double payout hand. This is true even if the player has hit their hand to reach 21.
13. If a player's point total exceeds 21, the player has "overdrawn" and must pay their wager to the dealer.
14. When it is the dealer's turn, they may take additional cards at their discretion.
15. The dealer has discretion whether to stand, hit or split.
16. If the dealer achieves a 21 with additional cards, they collect double the wager from any player who does not tie on 21 or has not yet overdrawn.
17. If the dealer overdraws, then the dealer pays the wagers of the other players and pays double to any player with a 21.

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18. The dealer may split pairs (e.g., two aces or two 10s). If the dealer achieves a twenty-one with any split, the dealer can collect double. If the dealer split results in two twenty-ones, the dealer collects 4 times the player wager from each player who lacks a twenty-one and who has not overdrawn.
 19. For hands under 21, whoever is closer to 21, the dealer or the player, wins the player wager.
 20. The dealer wins all ties.
- (c) Game rules that use one or two cards less than the number usually employed, or other slight differences from the game rules in subpart (b) that are immaterial to the game's format, mathematics, odds, strategies, betting opportunities or sequence do not distinguish the game from the game of twenty-one.

(Reference: Penal Code section 330, *People v. Gosset* (1892) 93 Cal. 641; *Tibbetts v. Van De Kamp* (1990) 222 Cal.App.3d 389, rev. den., 1990 Cal. Lexis 4733.)

VIII. Specific Comments on Sections 2073(c), 2074 (b) and 2075(d) (Game Names)

As discussed above, three sections of the Proposal categorically restrict the use of certain terms in game names. Section 2073(c) defines any game that uses the number “21” or the word “blackjack” in its name, or variations on those names, to be the game of blackjack that is prohibited under section 2073(a), *regardless of the game rules*. Section 2074(b) prohibits game names using the number “21” or the word “blackjack.” Section 2075(d) provides that, where an approved game includes “blackjack” in its name, the cardroom must submit an application to modify the game name.

These sections lack authority, necessity and consistency. First, these sections conflict with the Act, which vests the Commission—not the Department—with the authority to regulate advertising. They also violate the industry’s commercial speech rights. Moreover, these sections rely on the same faulty interpretation of section 330 that conflates twenty-one as played and prohibited in 1885 and blackjack as played legally today. The Department cannot craft a rule that prohibits a game based on the name of the game or that controls game names in this fashion.

A. The Prohibition on Game Names Violates the Gambling Control Act

The Department has not provided a rationale for banning games because they have the number “21” or the word “blackjack” in their names. If the rationale is based on the assumption that game names can be deceptive to the public, then the process for disapproving names must be addressed first in Commission regulations.

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Section 19841(f) of the Act gives the Commission the authority to regulate advertising in gaming. (See Bus. & Prof. Code, § 19841(f).) Such regulations may “[p]rovide for the disapproval of advertising by licensed gambling establishments that is determined by the *department* to be deceptive to the public.” (*Ibid.*, italics added.) But it is, in every instance, the Commission’s role to draft and adopt the regulation—not the Department’s. When a statute gives different, even coordinated, responsibilities to two agencies, one agency cannot assume the other agency’s authority. (See *Assn. for Retarded Citizens v. Dept. of Developmental Services* (1985) 38 Cal.3d 384, 391-392 [“the regional centers and DDS have distinct responsibilities in the statutory scheme: ... that of DDS is to promote the cost-effectiveness of the operations of the regional centers, but not to control the manner in which they provide services.”].)

B. The Prohibition on Game Names Violates Commercial Speech Rights

A government regulation that tells a business owner what words cannot be used to name or promote a good or service undeniably affects commercial speech rights.

Commercial speech is protected by the United States Constitution. (U.S. Const., amend. I; *Virginia State Bd. of Pharmacy v. Virginia Citizen’s Consumer Council, Inc.* (1976) 425 U.S. 748.) Under the California Constitution, free speech similarly embraces “all subjects,” including commercial speech. (Cal. Const., art. I, § 2, sub (a); *Gerawan Farming, Inc. v. Lyons* (2000) 24 Cal.4th 468.) Casino advertising is entitled to free-speech protections. Consequently, the power to regulate gambling does not include the power to prohibit or regulate truthful speech about gambling. (Cf. *Greater New Orleans Broad. Ass’n v. United States* (1999) 527 U.S. 173, 193 [“...the First Amendment mandates closer scrutiny of government restrictions on speech than of its regulation of commerce alone.”] (*Greater New Orleans*).)

The government can regulate potentially misleading commercial speech only if: (1) the regulation serves a substantial government interest, (2) the regulation *directly and materially* advances the government’s substantial interest, and (3) the regulation is *narrowly tailored* to serving that interest. (*Central Hudson Gas & Elec. Corp. v. Public Serv. Comm’n* (1980) 447 U.S. 557, 566 (*Central Hudson*).) Advertising restrictions on “vice” activities like alcohol or gambling are subject to the same standard. (*44 Liquormart v. R.I.* (1996) 517 U.S. 484, 510-513.) The necessity for and effectiveness of a commercial speech regulation must be based on substantial evidence. “In this analysis, the Government bears the burden of identifying a substantial interest and justifying the challenged restriction.” (*Greater New Orleans, supra*, 527 U.S. at p. 183.)

The law protecting commercial speech requires a government agency to articulate the government’s interest in restricting the speech at issue and provide evidence in support of the proposed regulation. At this point, the Department has not done either. Once the Department meets its threshold burdens, we will comment further on these sections.

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C. The Prohibition on Game Names Is Inconsistent With Penal Code Section 330

Setting aside speech issues, the Proposal is also improper because it prohibits games based on their names, rather than their rules. Doing so is not consistent with or necessary to effectuate section 330.

For example, if a cardroom wanted to operate a Texas Hold'em-style poker game and decided to call it "Poker 21" because any player that received a 2 and an ace in their initial two cards would receive a \$21 bonus, that game would be prohibited—even though the game rules would be entirely different from *any* blackjack-style game. The same would be true of a Pai Gow Poker game that was called "Pai Gow 21," because any player with a two-card hand of a 2 and ace received a bonus. Once again, the game would be denied approval although it had nothing to do with blackjack. Furthermore, a blackjack-style game could use a target point count of 22, comply with every other requirement of the Proposal, and *still* be denied approval because it has a name like "21st Century Jackpot."

Applying section 330 to a game without regard for the game's rules conflicts with the entire body of precedent construing section 330 and, therefore, lacks necessity, authority and consistency with law. After all, *Tibbetts* was not decided on the ground that Stud Horse Poker and Texas Hold'em had different names—the court examined the *rules* of each game. Indeed, if the application of section 330 depended on the name of the game and not its rules, then all of the other restrictions in sections 2073 and 2074 would be unnecessary.

There also is no authority for banning the name of a game, like blackjack, that is not specifically mentioned in section 330. *Oliver* held that the game of Newjack is not prohibited by reason of being the game of twenty-one. (*Supra*, 66 Cal.App.4th at p. 1409.) Yet, the Proposal would prohibit both blackjack and variations of blackjack, in conflict with *Oliver*. The Department cannot expand section 330 and add to it by prohibiting names that are not used in that section. (*Capistrano Union High School, supra*, 188 Cal.App.2d at p. 617.) It is well established that, when the Legislature specifies things in a statute, an agency cannot construe the statute to include other things.

... under the doctrine of *expressio unius est exclusio alterius*, "the expression of one thing in a statute ordinarily implies the exclusion of other things." (*In re J. W.* (2002) 29 Cal.4th 200, 209 [126 Cal.Rptr.2d 897, 57 P.3d 363] (*J. W.*)). Penal Code section 23 allows an entity like CSLB to make recommendations about *probation*, but not about bail conditions.

(*Naidu v. Superior Court* (2018) 20 Cal.App.5th 300, 307 [citing *Gray v. Superior Court* (2005) 125 Cal.App.4th 629].) An agency lacks authority to expand a specific statutory list. (*Bearden v. U.S. Borax, Inc.* (2006) 138 Cal.App.4th 429, 436-437 (*Bearden*)); *People v. Koester* (1975)

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53 Cal.App.3d 631, 642; *Morse v. Municipal Court* (1974) 13 Cal.3d 149, 159.) “[A]n administrative regulation must ‘be within the scope of authority conferred... [N]o regulation adopted is valid or effective unless consistent and not in conflict with the statute and reasonably necessary to effectuate the purpose of the statute...’” (*Bearden, supra*, 138 Cal.App.4th at pp. 435-436 (citations omitted).)

D. A Regulation Cannot Vest the Department with Unfettered Discretion

The Proposal is also unduly vague because it does not explain what constitutes a “variation of the number ‘21’ or the word ‘blackjack.’” Indeed, it provides no indication of how the Department will determine whether a game name includes an impermissible variation on those words. For example, is “Jackpot”, “Billy Jack” or “Super Jack” prohibited? For this reason, the regulation lacks the requisite clarity under the Administrative Procedure Act and violates the First Amendment. (See *City of Lakewood v. Plain Dealer Pub. Co.* (1988) 486 U.S. 750, 757 “[A] licensing statute placing unbridled discretion in the hands of a government official or agency constitutes a prior restraint and may result in censorship...”; *Near v. Minnesota ex rel. Olson* (193) 283 U.S. 697, 713-714.)

IX. The Proposal Will Have a Significant Negative Economic and Fiscal Impact

Government Code section 11346.3 mandates that the Department summarize the economic and fiscal impact on local and state governments and perform an analysis if the impact is \$50 million or more. CGA’s October 2019 economic study pegs its contribution to state and local governments at \$5.6 billion. Although the effects on individual cardrooms would vary, it is clear that a substantial amount of lawful gaming activity at cardrooms would be eliminated by the Proposal creating negative economic impact on the industry and the communities it supports well in excess of \$50 million.

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CONCLUSION

The Department has for many years approved blackjack-style games for play in licensed cardrooms because those games are legal under California law. Nothing in the Proposal offers any reason to believe otherwise. To the contrary, the Proposal plainly conflicts with settled judicial precedent and the Department's own interpretation of section 330, dating back 120 years.

Very truly yours,

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Vingt-un.

VINGT-UN, or Twenty-one, is a very interesting game, and may be played by two or more people. It is essentially a family game, and when played as such, the stakes are usually represented by counters, which may be of any value say sixpence the dozen, or more. It is common to limit the stakes to be laid to a dozen of counters, or the amount in money which they represent. As the deal is advantageous, and often continues long with the same person, it is usual to determine it at the commencement by the first ace turned up, or any other mode that may be agreed upon.

The deal is retained by the person who commences, until a natural Vingt-un occurs, when it passes to the next in rotation.* (The old mode of play, however, is, that in the case of a natural Vingt-un the deal passes to the holder, and many still adhere to this custom. This item of the game must, therefore, be regulated by the custom of the table, or be previously agreed.) The poney or youngest hand should collect the cards that have been played, and shuffle them together ready for the dealer against the period when he shall have distributed the whole pack.

The dealer begins by giving two cards, one at a time, face downwards, to each player, including himself. After the first card has been dealt round, each places his stake upon it (which may, if he chooses, be as low as a single counter), and then receives the second card; but the dealer, upon the stakes being all laid, and before proceeding with the deal, looks at his own card, and if he thinks proper (having perhaps an ace, ten, or court-card), he may double the stakes, which he announces by crying "double." He then distributes a second card to each, and lastly to himself. Should he chance to have a natural Vingt-un, he declares it at once, before any more cards are dealt, and collects the stakes (which, by a Vingt-un, are doubled), but should he have drawn less than 21, the game proceeds thus: The dealer inquires of each player in rotation, beginning with the eldest hand on the left, whether he stands, or wishes for another card, which, if required, must be given from off

* Should a natural Vingt-un occur in the first round it does not put out the dealer being allowed a *misericorde*.

the top (face upwards) of the pack, and afterwards another or more, if requested, till the points of the additional card or cards, added to those dealt, exceed or make 21 exactly, or such a number less than 21 as the player may choose to stand upon; but when the points exceed 21, the player is technically said to have overdrawn, and his cards are to be thrown up forthwith, and the stake laid on them, paid to the dealer. When the dealer has gone the round of the table in this manner, he turns up his own cards to the view of the company, and should he have any number of points between, say from 17 to 20, he usually "stands," that is, pits his cards against the other players. Those under his number, as well as ties,* pay—those above it, receive.* If the dealer should have only 14 or 15 points in his first hand, the chances would be against him were he to stand on so small a number. He would therefore draw another card, and should this be a very low one (an ace or a deuce), and he have reason to suppose, by the extra cards dealt round, that he had to contest high numbers, he would draw again, and if he obtained 19 or 20 points would then probably win on more than he loses, the average of chances being in his favor; if by drawing he should happen to make up 21, he would receive double from all, excepting from the ties and those who had already thrown up; if more than 21, he would have to pay all who stand, paying the Vingt-uns double.

Should either the dealer or a player happen to turn up two cards of the same denomination, for instance, two aces, deuces, or any other number, or two kings, two queens, &c., he would have the choice of going on both, and should the next card he draws be a triplicate, he may go on all three. If the cards happen to be aces, which count either as 1 or 11, at the option of the player, and if by great luck he should successively draw three tens, or court-cards, thus making three natural Vingt-uns, he would obtain double stakes upon each, therefore six times as much as the stakes placed on the various hands; and should he, on laying his first card, have cried "double," the stakes payable would, in such case, be twice doubled, therefore upon the three cards twelve-fold. This is an extreme case, cited merely to show the nature of the game. It commonly happens, however

* Ties are the principle advantage of the dealer

that when either dealer or player "goes" on several cards, he loses on one or more, and thus neutralizes his gains. Players, as already intimated, have the same right of "going" on several cards, as the dealer.

When any player has a Vingt-un, and the dealer not, then the player wins double stakes from him; in other cases, except a natural Vingt-un happens, the dealer pays single stakes to all whose numbers under 21 are higher than his own, and receives from those who have lower numbers; players who have similar numbers to the dealer pay; and when the dealer draws more than 21, he overdraws, and has to pay to all who have not thrown up, as already stated.

Twenty-one, whensoever dealt in the first two cards, is styled a natural Vingt-un, and should be declared immediately. Hoyle says that this entitles the possessor to the deal, besides double stakes from all the players, unless there shall be more than one natural Vingt-un, in which case the younger hand or hands so having the same, are exempted from paying to the eldest. But this rule, like that mentioned at page 73, is nearly obsolete. It is not now customary to allow any except the dealer to take double stakes from the company, in respect to his natural Vingt-un.

One of the first thoughts of the dealer, after the cards have been cut, should be to look for *brulet*, which is a natural Vingt-un formed by the bottom and top card, when they happen to be an ace and tenth card. The card or cards looked at must be thrown out, and mixed with those collected by the poney. *Brulet* either clears the board of the stakes laid (usually one or two counters levied on each player, at the commencement of every game, and collected into a tray), or takes the amount of the limit from each, as may be agreed.

The deal, it should be observed, may be sold to the best bidder, and, as it is undoubtedly of some advantage, a buyer will generally be found. But should a timid player object to the deal, and no buyer be found, he may decline it, and so let it pass to the next.

[N. B. An ace, as already intimated, may be reckoned either as 11 or 1; every court-card is counted as 10, and the rest of the pack according to their points.]

The odds of this game merely depend upon the average quantity of cards likely to come under or exceed 21: for

example, if those in hand make 14 exactly, it is 7 to 6 that the one next drawn does not make the number of points above 21, but if the points be 15, it is 7 to 6 against that hand; yet it would not therefore always be prudent to stand at 15, for as the ace may be calculated both ways, it is rather above an even bet that the adversary's two first cards amount to more than 14. A natural Vingt-un may be expected once in seven coups when two, and twice in seven when four people play, and so on according to the number of players.

All Fours.

THIS game, usually played by two people, sometimes by four, with a complete pack, derives its name from the four chances therein, for each of which a point is scored, namely, *high*, the best trump out; *low*, the smallest trump dealt; *jack*, the knave of trumps; *game*, the majority of pips reckoned from such of the following cards as the respective players have in their tricks, viz.: every ace is counted as 4; king, 3; queen, 2; knave, 1; and ten for 10. Low is always scored by the person to whom it was dealt; but jack being the property of whoever can win or save it, the possessor is permitted to revoke and trump with that card and when turned up as trump the dealer scores; it is also allowable for the player who lays down a high or low trump to inquire at the time whether the same be high or low.

After cutting for deal, at which either the highest or lowest card wins, as previously fixed, six cards are to be given to each player, either by three or one at a time, and the thirteenth turned up for trump; then if the eldest does not like his card, he may, for once in a hand, say, *I beg*, when the dealer must either give a point or three more cards to each, and turn up the seventh for trump; but if that should prove of the same suit as the first turned up, then three cards more are to be given, and so on did a different suit occurs. The cards rank as at Whist, and each player should always strive to secure his own tens and court-cards, to take those of the adversary, to obtain which, except when commanding cards are met, it is usual to play

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cards are re-cut and the dealer deals again. If, however, the pack be faulty; or if either of the other players touch their cards; or if a card is faced in the pack, the dealer deals again without penalty. If the dealer expose any of his own cards the deal stands good.

PASSING AND ANNOUNCING.

6. If a player once decline to announce, he cannot afterwards do so in that hand; this does not debar him from assisting as whister if called on.

7. If a player make an announcement which is superseded by another, he can, when his turn comes round again, augment his bid.

8. If all pass, the hand is played without any trump, and the player who takes the least number of tricks wins the pool.

REVOKING.

9. Each player must follow suit if possible, and if a suit is led and any one of the players having a card of the same suit shall play one of another suit to it, and the trick has been turned and quitted, that constitutes a revoke; but the error being discovered before the trick is quitted, or before the party having so played a wrong suit shall play again, the penalty only amounts to the card being treated as *exposed* and being liable to be called.

10. If a player make a revoke, his side forfeits three tricks to the opposing side.

LEADING AND PLAYING OUT OF TURN.

11. Should either of the players opposing the bidder *lead* a card out of turn, upon the demand of the bidder the card must be taken up, and it may be called any time during the hand; and the bidder may at his option call for a lead of any suit from the player whose proper lead it is. If the player called upon to lead a suit have none of the suit, the penalty is paid.

12. Should either of the players opposed to the bidder *play* a card out of turn, the bidder may call upon him to take his card up and play one of a lower rank, provided it does not cause a revoke. When a card is played out of turn, no player opposed to the bidder may win that trick.

EXPOSED CARDS.

13. All exposed cards are liable to be called, and must be left face upwards on the table. (See Laws of Whist, 46, etc., page 17.)

14. Being called on to play any suit or the highest or the lowest of any suit you may hold, should you fail to do so, you have made a revoke, and become liable to the penalty.

VINGT-UN.

Vingt-un may be played by any number of persons. A pack of fifty-two cards is required.

The tens and court cards are each reckoned for ten, and the other cards according to the pips on each; but *the Ace in each suit may be valued as one or eleven*, at the option of the holder, according to the exigencies of his hand.

DEALING AND BETTING.

The deal having been determined, and the cards properly shuffled and cut, the players make their stakes, which must not exceed the limit agreed on.

It is sometimes agreed that the players may all look at the first card dealt to them before making their bets. The dealer also has the privilege of seeing his first card, and may insist on all the players doubling their bets. (See English Vingt-un, page 242.)

The dealer, holding the pack face downwards, takes the top card and places it upon the bottom of the pack, *back downwards*. This is called the *burnt card*, or *brulet*.

The dealer then delivers one card, face downwards, to each player in rotation, beginning to his left; he then repeats this operation, thus giving each player two cards.

CONDUCTING THE GAME.

The players all examine their hands, and the dealer asks each in rotation, the eldest hand first, whether he will take any cards. The usual phrase is, "Are you content?" If the player is satisfied with his hand, he says, "Content," and places his hand upon the table, face downwards. If the player is not content he calls for a card. The dealer then deals him a card face upwards on the table, and again asks "Are you content?" This operation is continued until the player is satisfied, and so on until each is served.

If the hand of a player who takes a card or cards amounts, including the cards drawn, to more than twenty-one, he throws his hand face downwards in the middle of the table, and delivers his stake to the dealer.

After all the players have stood or drawn, the dealer turns his hand face upwards on the table, and either stands or draws. If he overdraws he pays, according to the sums staked, to each player who has not over-

drawn. If he stands, or draws so that his hand does not exceed twenty-one, he receives from or pays to each player in rotation, the one winning whose cards amount most nearly to twenty-one. Ties stand off. Players who have to pay the dealer throw their cards in the middle of the table without showing them. Players who claim anything from the dealer show their cards. When a player overdraws he is said to be *burst*.

If a player has an Ace and a court card dealt him, which reckons twenty-one (called a *natural Vingt-un*), he turns his hand face upwards on the table and receives double his stake from the dealer. The dealer, however, need not pay until he has looked at his own cards, as, if he also has a natural, it is a stand off. When the dealer has a natural, he similarly receives (except from naturals). No one draws, there being no chance of beating the dealer's hand.

If a player or the dealer has a pair dealt him originally, he may stake and draw on each card separately or not, as he pleases. If he goes on each, he separates the cards and puts a stake on each, and when it comes his turn to draw he says "I go on each." In this case each party pays and receives on both hands. But if a natural occur in a double hand, the holder receives only a single stake on each, because to obtain a natural the first two cards only may be counted.

When the hand is over, the same dealer continues to deal afresh from the portion of the pack that remains undealt. The cards previously dealt are collected and shuffled (or *made*) by the player to the right of the dealer, called the *pone*. At the end of each deal the pone similarly *makes* all the used cards, that they may be ready for the dealer when the pack is exhausted. When the dealer comes to the last, that is, the burnt card, he throws it face downwards into the middle of the table, and the *pone* cuts the cards already made, for the dealer to go on with.

The first natural puts the dealer out, but it is often agreed that the deal shall consist of a certain number of rounds; for example, that it shall be over when the pack has been twice dealt out. When this rule obtains, the game is often played with two packs of cards shuffled together, the deal being over when the whole of the two packs has been dealt out.

CHANCES OF THE GAME.

The odds at Vingt-un of course depend upon the average number of pips and Tens on two cards under twenty-one. For example: If the two cards in hand make fourteen, it is seven to six that the one next drawn does not make the number of points above twenty-one; but, if the points be fifteen, it is seven to six against that hand. Yet it would

not, therefore, always be prudent to stand at fifteen; for, as the Ace may be calculated both ways, it is rather an even bet that the dealer's first two cards amount to more than fourteen. A natural Vingt-un may be expected once in eight deals, when two, and twice in eight, when four, play, and so on, according to the number of players. The principal advantage to the dealer arises from the fact that all bursts have to pay, irrespective of his own hand.

LAWS OF VINGT-UN.

DETERMINATION OF DEAL.

1. When the players have taken their seats, one of them must be deputed to shuffle the pack, and (after having it cut by the player to his right) to deal a card face upwards to each player in rotation, beginning to his left. The player to whom an Ace first comes has the deal.

SHUFFLING AND CUTTING.

2. When the deal has commenced, only the dealer and the pone have a right to shuffle. The dealer has a right to shuffle last. The cards remaining undealt may not be shuffled, but only those presented to the dealer by the pone when the pack is exhausted.

3. In cutting at least four cards must be separated, and at least four left on the bottom packet.

4. If a card is exposed in cutting or in re-uniting the cut packets, or if there is any confusion of the cards, the pack must be re-shuffled and cut again.

DEALING.

5. After the cards have been cut by the pone, and before the deal is commenced, the dealer must take the top card from the pack and place it on the bottom of the same, back downwards. This card is called the burnt card, or *brulet*. The cards must be dealt face downwards, one at a time to each player in rotation, beginning with the player to the dealer's left.

6. If two cards are dealt together to one player, the mistake may be rectified before a third card is dealt. But if a third card is dealt before the error is discovered, the player who has the surplus card, having looked at his hand, must reject one card and give it, face downwards, to the pone.

7. If the dealer deals himself two cards together and then deals a third, the pone must draw a card at random from the dealer's hand.

8. If a card is exposed in dealing, the player may keep it or reject it; if he reject it, the rejected card is given to the pone. If the dealer expose one of his own cards, he must keep it.

9. Drawn cards must be dealt one at a time, face upwards on the table. Each player in rotation must be content before the next can draw a card. In drawing separately on pair cards, the player must be content on one card before drawing on another.

10. If two drawn cards are dealt together, the player may keep either or both. If he keeps only one, he cannot draw another card. The rejected card is given to the pone.

11. If the dealer in drawing gives himself two cards together, he must keep them both.

12. If a player is missed in dealing or drawing, he may have his hand completed from the pack, or may throw it up.

13. If the dealer in dealing miss himself and a player draws cards before the error is discovered, the dealer must pay to each player the amount of his stake, and double to a natural. If the error be discovered before any cards are drawn, the dealer may complete his hand from the top of the pack, and there is no penalty.

14. The burnt card must not be dealt or drawn.

15. If there is a faced card in the pack it must be rejected and given to the pone.

13. Should the dealer sell his deal, the buyer deals, but without changing his seat.

17. If a player (not the dealer) holds a natural Vingt-un, it puts the dealer out. The holder of a natural has the next deal, except it is the first hand of the deal, or the dealer also has a natural.

[Sometimes by agreement the dealer has a given number of deals; for example, he deals the pack twice out. If, when the pack is a second time nearly exhausted, he has cards left with which to commence a deal, he is entitled to complete the deal.]

STAKING AND PAYING.

18. Each player is bound to place his stake in front of him, distinct from his other counters or coins, before a card is dealt. When content with his hand, he puts it face downwards on the table, and places his stake on top of it. No stake can be withdrawn, added to, or lessened after it has been once made, but must be allowed to remain until the dealer declares he stands. No stake higher than that agreed to at the commencement of the game is allowed.

[Sometimes the English custom of staking is adopted, when it is agreed that each player may look at the first card dealt to him before making a bet. The

dealer also has the same privilege, and may insist on all the players doubling their stakes. See English Vingt-un.]

19. A player or dealer having a pair dealt may draw and stake on each separately. Tenth cards only pair with tenth cards of the same denomination, that is, Kings with Kings, and so on (see Law 9).

[In England the custom is as follows: If the first card drawn, or if the first and second cards are of the same denomination as the pair first dealt and split, the player may go on three or on all four cards.]

20. If a player draws on cards separately which do not pair, he pays the dealer on each hand.

21. When the dealer and a player tie, the two cancel or stand off, and neither receives from or pays to the other.

22. Overdraws pay the dealer at once. The player who overdraws, throws up his cards without exposing them, and the pone should not look at them.

23. When all the players have stood or drawn, the dealer must expose his hand face upwards on the table.

24. If the dealer overdraws, he pays all the players except those who have already overdrawn.

25. A player having a claim on the dealer, is bound to expose his hand to satisfy the dealer of the correctness of his claim. If a player mixes his hand with those thrown up without first exposing it, he must pay the dealer.

26. A natural Vingt-un must consist of an Ace and a tenth card dealt in the first two rounds. The dealer pays to and receives from a player for a natural, unless a tie should occur. In case of a double hand (see Law 19), an Ace and a tenth card form acquired and not natural Vingt-uns, and receive and pay only single stakes.

THE PONE.

27. The player to the right of the dealer must act as pone, and must collect and shuffle the used cards (called making them). When the pack is exhausted, he must present the made cards to the dealer and cut them.

AFTERCOMERS.

28. The place of an aftercomer is decided by the pone dealing, from the made cards, one card between each of the players, commencing to his left. The aftercomer takes the place where the first Ace falls, or, if there be no Ace dealt in the round, where the highest card falls.

ENGLISH VINGT-UN.

The *English* game is played as follows: Any player may look at the first card dealt to him previous to making a bet. The dealer has also the privilege of seeing his first card, and may insist on all the players doubling their stakes, in which case he pays double, if he loses. This he commonly does if he has an Ace or a tenth card in the first round, or when the stakes are too low to please him. Ties pay to the dealer; but when the dealer and another player both have a natural dealt in the same hand it becomes a stand off, the principle being that it is contrary to all card games for the best possible hand to lose. If any player draws cards that make his hand amount to twenty-one exactly (a *drawn Vingt-un*), he receives double his stake; and, similarly, if the dealer has a drawn Vingt-un, he receives double the players' stakes.

ROUNCE.

Rounce may be played by any number of persons not exceeding nine; but five or seven make a good game.

The game is played with a pack of fifty-two cards, which rank as at Whist.

DEALING.

One of the players must be deputed to shuffle the pack, and (after having it cut by the player to his right) to deal a card face upwards to each player in rotation, beginning to his left. The player to whom the lowest card is dealt has the deal.

After the cards have been shuffled and cut, the dealer gives five cards to each player in rotation, beginning with the player to his left, by alternate rounds of two and three at a time, or *vice versa*. He also deals an extra hand of six cards in the centre of the table, called *dumby*.

The dumby must be dealt before the dealer takes the full complement of cards himself, and should be filled immediately preceding his own hand. When the cards have been dealt in the manner described, the dealer turns up the top card on the pack, which is the trump. After the first hand, the deal passes to the left.

DECLARING TO PLAY.

After the deal has been completed, each player in rotation, beginning

with the eldest hand, looks at his cards, and declares whether he will play his hand, take dumby, or resign. If he is satisfied with his cards, he says "I play," if he resigns, he says "I pass," and throws down his cards. If a player resigns, his interest in the pool ceases, unless he elects to exchange his hand for dumby.

The eldest hand has the first privilege of taking dumby, and if he elects to do so, he must place his hand in the centre of the table, face down, and discard one card from his new hand. If he declines to take dumby, then the option passes to the next player to his left, and so on in succession to the dealer.

Whoever takes dumby must play it. Any other player who thinks he cannot take a trick, may decline to play his hand.

When all refuse to play, then the player to the *right* of the dealer must play his hand, take dumby, or, in default of doing either, give the dealer five points.

The dealer, when he elects to play, may discard any card in his hand, and substitute for it the card turned up for trump.

PLAYING THE HAND.

After all have declared, the player first in hand of those who declare to play leads a card, and each person in rotation (to the left) plays a card to the lead; the cards thus played constitute a trick. The trick is won by the highest card of the suit led, or, if trumped, by the highest trump played. The cards rank as at Whist.

Suit must be followed; but if this is not possible, a player may trump or not, at his option.

The winner of a trick must lead a trump, if he can; if, however, he holds no trump, he may lead any card he chooses.

SCORING.

At the beginning of the game each player commences with fifteen points. The player who is the first to reduce his score to nothing wins the game.

The score is marked by means of three crosses, in the following manner: $\times \times \times$. Each cross represents five points. When a player makes one point he rubs out the centre of the cross, thus: $\times \times$, and when he makes another point he rubs out one of the remaining portions of the cross, and so on, until all are wiped out.

Each trick taken in play counts one point, and if a player fail to take a trick after entering to play his hand, he is *rounced*, that is, five points are added to his score.

VINGT-UN

Is played with a single Die, each player throwing it as many times as is necessary to get the sum of the spots equal to or as near as possible, but not over, twenty-one. Throwing twenty-two or more *bursts* the player, depriving him of further participation in the game for that round. The thrower of twenty-one, or failing that, the nearest to it, wins the game; but where a forfeit is played for, the player who fails the most in approaching to twenty-one, loses the game. We will suppose B playing at Vingt-un, and throws as follows, viz. : Six, Four, Ace and Five; he now has sixteen, and should his next throw be a Five, he will be just twenty-one, but if his last throw, instead of Five, had been Six, it would have *burst* him, as it would be twenty-two.

The payments are made in the same manner as in the card game (*see* page 237).

HELP YOUR NEIGHBOR.

This is played by any number of players, and with one Die. Each player chalks on the table in front of him the numbers 1, 2, 3, 4, 5, 6.

One of the players then throws the Die, and wipes off the number he throws; he continues throwing so long as he is able to wipe out the number thrown; when he throws a number that he has not got his neighbor to his left wipes it out instead, and the latter takes the Die and throws in the same manner.

The throwing goes round in regular rotation to the left.

When a number is thrown which neither the thrower, A, nor his next neighbor, B, has got, both having already wiped it out, then the next player to the left, C, or if *he* has not got it, the next, D, etc., wipes the number out, and B then throws.

The player who first wipes out all his numbers wins the game.

BILLIARDS.

This is one of the most fascinating games of skill in existence, and has gained a footing in all the civilized countries of the world. Billiards, Chess and Whist are cosmopolitan, and may be classed among the evidences of civilization. The improvements introduced in the furniture of the Billiard table and its accessories, have resulted in a degree of perfection that has brought the game into the greatest popularity with all classes, and more particularly so in the United States.

All that pertains to the mechanical part of the game is well known and thoroughly understood, and description is therefore unnecessary; with the remark, however, that time has worked great and rapid improvements in all its details. The old style of pocket-table is rarely used now, except for the purposes of Pool playing; the disuse of the pockets being doubtless due to the infinitely greater skill attained by the players of the present day, as compared with the Billiard players of twenty years ago. The shining lights of those days would now be scarcely a match for many of the youths of the present age.

The average modern table is generally ten feet long, and of course half that width; this is the usual size, although some are eleven feet, and still a few as small as nine feet. It is not considered at all necessary to enter into any dissertation on the comparative excellence of any size or make of table; but simply to give the general instructions and rules that pertain to the various games of Billiards, as practised in this country at the present day.

Like all other branches of science, there is no royal road to proficiency at Billiards. It requires great practice and no small degree of talent to cope with the average players that frequent the first-class Billiard parlors of our cities; and this is not from any new astounding improvements in the practical rudiments of the game, but due entirely to a more widespread appreciation and a keener competition for honors in the world of Billiards. This is so completely the fact, that there is no better source of instruction in the game than was afforded by Mr. Michael Phelan many years ago, from whose standard work on Billiards we are permitted to quote *in extenso*.

INSTRUCTIONS FOR BEGINNERS.

In Billiards, as in all other games of skill, there is nothing that can fully replace the personal supervision and instruction of a competent

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Two-Hand Hearts

Each player begins with 13 cards, dealt from a full pack. The remainder of the pack is placed face down on the table between them, and the winner of each trick draws a card from the top of the stock, the loser drawing the next card, until the stock is exhausted.

Discard Hearts

Black-Jack, or Black-Lady

In this variety, the J of spades counts as 10 hearts; or if the lady is the card selected, the queen of spades is worth 13 hearts.

Each player at the table discards three cards, face down, and then picks up the three that have been discarded by the player on his right. As each must discard first, each knows three cards in the hand on his left, when it comes to the play.

The jack or lady ranks in its natural place among the spades, and if spades are led, it must be regarded as a spade; but the moment any other suit is led, in which the player cannot follow suit, the jack or lady may be discarded, just as one would discard hearts. It can be played on hearts if the player has no hearts, as it ranks below the deuce of hearts if hearts are led.

Progressive Hearts

This is a game for large parties. At the end of each hand the two ladies at the same table compare, and the one with the lesser number of hearts goes to the next higher table and gets a punch mark on her score card.

THREE-CARD MONTE

THE banker takes three cards, two red and one black; usually the red aces and the ace of spades. The cards are slightly bent lengthwise, so as to be easily picked up by the ends. They are placed on the table face down and separated. The one that is the black ace is distinctly shown, and then the banker shifts the cards about face down in such a manner as to confuse the players so that they cannot tell which is the black ace when the cards come to rest again. For this purpose a few skilful passes are usually sufficient.

If the banker pays 2 for 1, as he should do, it is a perfectly fair game; but if he pays even money only, the player is betting 2 to 1 against himself.

VINGT-ET-UN

Or Twenty-One

ANY number of players; 52 cards, dealt round for the first ace to take the bank. A betting limit is usually agreed upon. Each player except the banker puts up a certain amount in front of him, and the banker then deals to each a card, face down, and one to himself. The players look at this first card and increase their bets if they wish. The banker, after seeing his card, can call upon all the players to double the amount of their bets. If any refuse, he takes what they have already put up. A second card is then dealt to every player at the table, including the banker, also face down.

The object is to get 21, or as near to it as possible without passing it. The K Q J count 10 each, and the ace may be reckoned as 1 or as 11, at the option of the player. Other cards retain their pip value.

If any player finds exactly 21 in the two cards dealt to him, he shows it at once, and claims a "natural." The banker must then pay him double what he has staked, unless he also holds a natural, when it is a stand-off, and is called "paying in cards." If the banker is the only one that holds a natural, all the players pay him twice what they have staked.

If no one has a natural, the banker asks each player in turn if he wants another card or cards. If the player stands on the two cards first dealt him, he says so. If he draws cards, they are given to him one at a time, face up. If the first is not enough, he may take a second, and if that is not enough, another; but if the total pips on the two cards he has face down and those face up go beyond 21, he is "burst," and must pass his stake over to the banker. If he does not burst, he knocks on the table to show that he has drawn as far as he wants to. It is usual to stand at 17; but to draw with 16 or less, not forgetting that an ace may be 1 or 11, at pleasure.

After each player in turn is disposed of in this way, the banker turns his two cards face up, so that all may see what he had and what he draws. If he bursts, he must pay all who can show that they have not passed 21. If he stands at any number, he must pay all who are nearer 21 than he, and he wins from all who are not so many as he. Ties are a stand-off.

Twenty-one made by drawing is not a natural.

If the first two cards dealt to any player but the banker are a pair, he may divide them if he likes, and draw to each, but he must bet an equal amount on each.

It is usual to pass the bank to any player showing a natural when the dealer has none to offset it. Sometimes it is agreed to let each be the banker for a certain number of deals, or until the banker has won or lost a fixed amount. The modern practice is for each player in turn to the left to deal one hand, and be the banker.

Macao

In this variation of vingt-et-un, the K Q J and 10 count for nothing, and 9 is the number to be approached, instead of 21. There are three naturals: Any player holding 9 in the first two cards dealt him, wins 3 times his stake. If he shows 8, he wins double. If he shows 7, he wins even money. Ties stand off. If not naturals are shown, the players draw until they stand or burst.

Quinze

This is vingt-et-un for two players, and 15 is a natural, instead of 21. The K Q J are worth 10 each. The play is for an agreed and equal amount each deal. The dealer gives one card to his adversary and one to himself, and the non-dealer may stand upon his card or draw to it. The dealer stands or draws in his turn, and one nearer 15 wins. If it is a tie, or if both pass 15, the stakes are doubled and the deal passes. Each deals in turn, and there are no naturals.

THE OFFICIAL RULES
OF CARD GAMES

R. E. Cooper

970[♣] Kennedy[♠]

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BY

THE UNITED STATES PLAYING CARD COMPANY

AT CINCINNATI, OHIO, U. S. A.

Canadian Factories, Windsor, Ontario

Black Jack or Vingt-et-un

(TWENTY AND ONE)

The Pack.—Full pack, 52 cards.

Number of Players.—Any number may play.

Rank of Cards.—Cards have no relative rank, but the counting value is as follows: K's, Q's and J's, 10 each; Aces, 11 or 1; others are counted at pip value, 9's 9; 8's 8, etc.

Stakes and Counters.—Each player begins with an equal number of counters. A limit to the betting is decided upon before play.

Cutting.—Any player deals cards, one at a time, around to the left. Player first receiving an ace is dealer and banker for the first hand, after which the deal passes to the left; or he may be the banker until some other player turns up a natural, the banker having none to offset it.

There are various ways of changing the dealers, as, for instance, allowing dealer to deal a certain number of hands, or until he has won or lost a certain amount, or until pack is exhausted, or until some player holds a natural, and takes the bank. Usually, however, deal passes to the left, each player dealing one round, in turn.

Betting Before the Deal.—Before cards are dealt, each player, except the dealer, makes a bet, placing the counters or chips before him. This bet must not exceed the limit, and in some localities a fixed amount is set for this bet, such as one or two chips. (In one variation, player is allowed to look at the first card dealt him before staking. Another allows a player, when he gets a pair in the deal, to separate the two cards and place a stake upon each one.) Dealer makes no bet, but is the banker, who takes and plays all player's bets.

Objects of the Game.—To hold cards, the collective pip value of which most nearly approaches 21, without passing that number.

Dealing.—Dealer gives each player two cards, face down, one at a time, in rotation to the left. Deal passes to the left.

Drawing and Settling of Bets.—Each player examines cards dealt him. If dealer's cards consist of an ace and ten (or court card), it is called a "Natural," and each player (unless he also has a natural) loses twice the amount he has staked. Should a player have a natural and dealer none, dealer must pay player double. (In some localities, player holding a natural is allowed to take all stakes on table, but this custom is not general.)

If no player receives a natural (or after players, other than dealer, have been paid for naturals held), each player in turn may ask for a card so as to bring the pip value of his hand nearer to 21. Drawing begins with eldest hand, and he may draw one card at a time until he is satisfied, or until the pip value of his hand exceeds 21. In latter case he must abandon his hand and pay his stake to dealer. Next player to the left draws in same manner, and so on until each player is either satisfied or overdrawn. The dealer then turns his two cards face up, and draws. If dealer overdraws, he pays each player who has not overdrawn the amount of that player's stake. If dealer has 21 or less those holding same amount are tied, and neither win nor lose; those holding less lose their stake, while those holding more than dealer, but not more than 21, win the amount of their stakes.

A player having two Aces can separate them, making a bet of each. For Naturals the banker must pay double for each Natural if he does not also draw a Natural, if he does they are tied, neither winning nor losing.

Splitting.—When splitting a pair the player finishes drawing to the first card before drawing to the second.

Next deal is made with remainder of pack left over from previous deal. When entire pack is dealt out, all discards are gathered and shuffled, and deal continued.

MACAO.

A variation of Vingt-et-un, only one card being dealt. Tens and court cards do not count; aces count one. Nine is number to be reached instead of 21. A player receiving nine in the first deal, is paid three times amount of his wager; an eight twice the amount; or a seven, the amount he has staked. The dealer, if he receives a nine, eight or seven on the deal, is paid by each player three times, twice, or once the amount of such player's stake. Otherwise, the game is played on same principle as Vingt-et-un.

FARMER.

Use full pack, with the four eights and the sixes of diamonds, clubs and spades discarded. Spot cards count at their pip values, court cards 10, and aces 1. Each player places one chip in center of table, forming the Farm (or pool). This is sold to highest bidder, who must deposit in the Farm as many chips as he bid. He then becomes dealer and banker. One card is dealt to each player, and each must draw one card, and may draw more, if desired, as in Vingt-et-un, the object being, however, to reach 16 points, instead of 21. If a player overdraws, he does not announce it until the hands are exposed. Any player having exactly 16, wins the Farm and all it contains. If two or more players have 16, the one holding the six of hearts wins; or, if no one has this card, the 16 made with fewest cards wins. If this is a tie, eldest hand wins. If no one has exactly 16, the Farmer still remains in possession of the Farm, and thus holds it, deal after deal, until some one wins it by holding exactly 16. Whether Farm changes hands or not, after hands are exposed, all who have overdrawn pay dealer one chip for each pip they hold over 16. These chips are the Farmer's own property.

The
OFFICIAL RULES
of **CARD GAMES**



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INDUSTRIAL INTERESTS

HOYLE UP-TO-DATE

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BY

THE UNITED STATES PLAYING CARD COMPANY

AT CINCINNATI, OHIO, U. S. A.

Red Dog (High Card Pool)

Number of Players—Any number from two to ten.

The Pack—52 cards. Poker chips or suitable counters of any sort should be used.

Rank of Cards—A (high), K, Q, J, 10, 9, 8, 7, 6, 5, 4, 3, 2.

The Ante—A pool is formed by each player putting in one chip.

The Draw—Any player deals the cards one at a time, face up, to the players in turn until a jack shows, designating the first dealer.

The Shuffle and Cut—Any player may shuffle, the dealer last. The player at dealer's right cuts the cards, leaving at least four cards in each packet.

The Deal—Dealer gives five cards, one at a time, face down, to each player in turn, beginning with the player on his left. (*Variant.* Some deal only four cards to a player; with more than eight in the game, this is necessary.)

The Betting—The player at dealer's left, after looking at his cards, may bet any portion of the number of chips in the pool at the time. A player who does not wish to bet may pay one chip to the pool; however, he could if he wished bet one chip against the pool. No bet may exceed the number of chips in the pool at the time.

When the player has placed his bet, the dealer turns up the top card remaining in the pack. If the bettor has a card of the same suit and of higher rank, he shows the card and takes back the amount of his bet plus an equivalent amount from the pool. If he has no card which will beat the card shown, he must show his entire hand and the amount of his bet is added to the pool. The next player in turn then places a bet, another card is turned, and the same procedure is followed until all players including the dealer have bet.

If at any time the pool has no more chips in it (because some player has "bet the pot" and won), each player again puts up one chip to restore the pool.

When every player has had his turn to bet, the turn to deal passes to the player at the dealer's left.

(*Variant.* In some games, the dealer does not turn up the top card of the pack; he removes or "burns" this card, face down, and turns up the next card. If five cards are dealt to each player, this procedure is possible only when there are no more than seven in the game.)

Irregularities—If a player is dealt too few cards, he does not have to play if he does not wish to; but he may bet if he wishes. If no hand is dealt to a player, he is out of the play for that deal and there is no penalty on the dealer. A player dealt too many cards is out of the deal, and there is no penalty on the dealer.

Money once put in the pot may not be removed.

A player's bet is final when, in turn, he names the amount he is betting.

Black Jack

(Twenty-One or Vingt-et-Un)

Black Jack traditionally rivals Poker for popularity in the United States Army, and is one of the most widely played games in homes and clubs. It has two main forms: *With a permanent bank*, the same player always deals and all bets are placed against this player; *with a changing bank*, every player in the game has a chance to be dealer. The latter form is the one most often played in homes.

BLACK JACK WITH A PERMANENT BANK

Number of Players—As many as can sit at the table; but usually seats are provided for no more than seven or eight players besides the dealer.

The Pack—104 cards (two 52-card packs shuffled together). In addition, the dealer uses a joker or blank card which is never dealt, but is faced up at the bottom of the pack to mark the location of the last of the shuffled cards.

The Shuffle and Cut—Dealer and any other player who wishes to may shuffle portions of the pack until all cards have been shuffled and combined. Any player may cut the pack. The extra card is placed face up at the bottom.

Betting—Before the deal begins, each player places a bet, in chips, in front of him on the table; usually minimum and maximum limits are placed upon betting, so that, for example, no player may bet less than one chip nor more than ten.

The Deal—When all players have placed their bets, dealer gives one card face up to each other player in rotation; then one card face down to himself; then another card face up to each player including himself. Thus each player except the dealer receives two cards face up, and dealer receives one card face up and one card face down.

Object of the Game—Counting any ace as 1 or 11, as he wishes, any face card as 10, and any other card at its pip value, each player attempts to get a count of 21, or as near to 21 as possible, without going over 21.

Naturals—If a player's first two cards are an ace and a face card or ten, giving him a count of 21 in two cards, he has a *natural* or *black jack*. If any player has a natural and dealer does not have a natural, dealer immediately pays that player one and one-half times the amount of his bet. If dealer has a natural, he immediately collects the bets of all players who do not have naturals, but no player need pay any more than he bet originally. If dealer and any other player both have naturals, the bet of that player is a stand-off (he takes back his chips, and neither pays nor collects).

If dealer's face-up card is a ten, face-card or ace, he may look at his face-down card to see if he has a natural; if his face-up card is anything else, he may not look at his face-down card until his turn comes to draw.

Drawing—If dealer did not have a natural, when he has settled all bets involving naturals he turns to the player nearest his left. That player may *stand* on the two cards originally dealt him, or may require the dealer to give him additional cards, one at a time, until after receiving any such card he stands on the total already dealt to him if it is 21 or under; or *busts* (goes over 21), in which case he immediately pays the amount of his bet to the dealer. Dealer then turns to the next player in turn to his left and serves him in the same manner.

When dealer has thus served every player, he turns up his own face-down card. If his total is 17 or more, he must stand. If his total is 16 or under, he must take a card and must continue to take cards until his total is 17 or more, at which point he must stand. If dealer has an ace, and counting it as 11 would bring his total to 17 or more (but not over 21), he must count the ace as 11 and stand.

Settlement—A bet once paid and collected is never returned. If dealer goes over 21, he pays to each player who has stood the amount of that player's bet. If dealer stands at 21 or less, he pays the bet of any player having a higher total; collects the bet of any player having a lower total; and is at a stand-off with any player having the same total.

Reshuffling—As each player's bet is settled, dealer gathers in that player's cards and places them face up on the bottom of the pack. Dealer continues to use the originally shuffled pack until he comes to the face-up blank card, which signifies the end of the shuffled cards. At this point he interrupts the deal, shuffles all cards not in play, has them cut by any player or players, again places the blank card face up on the bottom, and continues the deal. Before any deal, if the dealer does not think there are enough cards to go around in the next deal, he may gather up all cards for a new shuffle and cut.

Splitting Pairs—If a player's two first cards are of the same denomination—as, two jacks, or two sixes—he may choose to treat them as two separate hands. The amount of his original bet then goes on one of the cards, and he must place an equal amount as a bet on the other card. When this player's turn to draw comes, dealer first gives him one card face up to each. The player may then require dealer to give an additional card or cards to either hand, in whatever order he wishes, until he has gone over or stood on both hands. The two hands are treated separately, dealer settling with each on its own merits.

Irregularities—Since all players' cards are dealt face up, there is no penalty for any irregularity, but an irregularity must be corrected if discovered before the bet has been settled; after the bet has been settled, there can be no correction. If dealer has a natural, but fails to announce it before dealing an additional

card to any player, his hand constitutes a count of 21 but can be tied by the hand of any other player whose total is 21 in three or more cards.

BLACK JACK WITH A CHANGING BANK

Number of Players—Two to fourteen.

The Pack—52 cards.

Values of Cards—Ace 1 or 11 (at holder's option); any face card, 10; any other card, its pip value.

Determining the First Banker—Any player picks up the pack and deals the cards in rotation, face up, until a black jack (spades or clubs) falls to any player. That player is the first dealer.

The Shuffle and Cut—Dealer shuffles the pack and any other player may cut. Dealer then turns up the top card of the pack, shows it to all players, and places it, face up, at the bottom of the pack; this is called *burning* a card, and when that card is reached in the deal there must be a new shuffle and cut before dealing continues, in the manner described on page 232.

First Round of Dealing—Dealer gives one card face down to each player in rotation, including himself.

Betting—After looking at his card, each player places a bet, which may not be less than one chip nor more than the betting limit established for the game, usually not more than three chips. After all players other than the dealer have bet, dealer may require that all bets be doubled. Any player may then redouble his bet. *Example.* A player bets two chips. Dealer doubles, requiring that player to put up two more chips. The player redoubles, putting up four more chips and making his total bet eight chips.

Completion of the Deal—Dealer then gives one card face up to each player in rotation, including himself.

Naturals—If dealer has a natural (ace, and face card or ten) every player pays him double the amount of his bet, except that another player having a natural pays the dealer only the amount of his bet. If any other player has a natural and the dealer has not, the dealer pays that player double the amount of his bet.

Drawing Cards—If the dealer does not have a natural, he starts with the player nearest his left and gives each player in turn as many cards as that player requests, one at a time, until that player goes over 21 and pays, or stands.

When all players have gone over or have stood, dealer turns up his face-down card and may draw cards until he wishes to stand. Dealer is not bound by rules to stand on or draw to any total. If dealer goes over 21, he pays all players who have stood; if dealer stands on a total of 21 or less, he pays all players who stood with a higher total, and collects from all players who stood with the same or a lower total—"ties pay the dealer."

A player against dealer may split a pair (see page 232).

Bonus Payments—Any player who forms one of the following combinations collects immediately from the dealer, and cannot later lose his bet even if the dealer has a higher total:

If a player has five cards and his total is 21 or under, he collects double his bet; with six cards totaling 21 or under, four times his bet; and so on, doubling for each additional card.

A player who makes 21 with three sevens receives triple the amount of his bet.

A player who makes 21 with eight, seven and six receives double the amount of his bet.

The dealer does not collect more than the amount of the players' bets for making any one of these combinations, nor does he necessarily win if he has five or more cards with a total under 21.

Changing the Bank—Dealer continues as dealer until another player is dealt a natural and dealer has no natural; in this case, after all bets in the current deal have been settled, the player who had the natural becomes the next dealer. If two or more players have naturals and the dealer has none, the one nearest the dealer's left becomes the next dealer. A player entitled to deal may, if he wishes, sell the privilege to another player.

Irregularities—If dealer fails to burn a card, he must, on demand, shuffle the remainder of the pack and burn a card before continuing the deal.

If dealer fails to give any player a card on the first round of dealing, he must on demand supply that player from the top of the pack unless attention is called to the error after dealer begins the second round of dealing, in which case the player lacking a card stays out for that deal.

If dealer gives any player his first card face up, that player must still make his bet, but dealer must give him his next card face down. If dealer fails to give him his next card face down, the player may withdraw his bet and drop out for that deal.

Any player who stands must expose his face-down card as soon as dealer has stood or gone over. If that player has in fact a total of more than 21, he must pay dealer double the amount of his bet even if dealer has gone over.

If the dealer gives a player two cards on the first round of dealing, that player may choose which card to keep and which to discard; or may keep both cards, play two hands, and place a bet on each. He may not, however, play both cards as belonging to the same hand.

If dealer gives a player two cards on the second round of dealing, the player may choose which to keep.

If a card is found faced in the pack, the player to whom it would fall may accept it or refuse it.

If dealer gives a card to a player who did not ask for it, that player may keep the card if he chooses, or may refuse it, in which case it is a discard and is placed face up at the bottom of the pack. The next player in turn may not claim it.

Chemin de Fer

Chemin de Fer is a variant of the game of Baccarat, which is a favorite game in the famous casinos on the French Riviera. It is also called Chemmy, Shimmy, and by similar diminutives.

Number of Players—Any number from two up to thirty or more.

The Pack—Six 52-card packs shuffled together and dealt from a dealing box, called a *shoe*, which releases one card at a time, face down.

The Shuffle and Cut—Any player takes a portion of the six packs, shuffles it, and offers it to any other player to cut. The cards so shuffled and cut are placed in the shoe until all six packs are there.

The Deal—There is usually a croupier who does not participate in the game except to assist the players in making and settling their bets, and to advise them on the proper procedure of the game and to quote to them the mathematical advisability of alternate plays. When there is such a croupier, the right to deal first is put up at auction; the player bidding the highest number of chips as the amount of his bank becomes the first dealer.

Before dealing, the dealer must announce the amount of his bank—that is, the number of chips he places at stake. Other players, in order or precedence to the left, may then bet against him all or any portion of his bank, but the dealer is never responsible for the payment of bets exceeding the amount of the bank.

If any player calls "Banco" it means that he accepts the dealer's entire bank as a wager, and all smaller bets must be withdrawn. If two or more players banco, the one nearest the dealer's left makes the bet.

When all bets are placed, or when the bets are equivalent to the dealer's entire bank, the dealer deals one card face down to the player who made the largest bet against him; then one card face down to himself; then another card face down to the player against him, then another card face down to himself.

Object of the Game—To form, in two or three cards, a combination counting as nearly 9 as possible. Face cards and tens count 10 (or 0), aces 1, other cards their pip value; but the tens are disregarded in the total. Thus, a five and a six, totaling 11, count merely as 1.

If either player has a count of 8 or 9 in his first two cards, he has a *natural* and shows his hand immediately. If dealer alone has a natural, dealer wins all bets. If the opponent alone has a natural, dealer pays all bets. A natural 9 beats a natural 8; two naturals of the same number are a stand-off, cards are tossed in, all bets are withdrawn, and players place their bets for the next deal (called a *coup*).

If neither dealer nor his opponent has a natural, the opponent may on demand draw one card, which is dealt face up. Dealer