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Introduction

The inaugural issue of the Gambia Law Review (GLR) was formally established by the Faculty of Law, University of The Gambia in September 2017. This edition: Volume 5, Issue 1, 2023, is a culmination of international legal and academic expertise in the field of Law, and features 10 articles. The journal is freely accessible in soft (EISSN 0796-1952) and hard copies.

This issue begins with an Editor's Note, to introduce the contributions, followed by the academic articles as per the sub-categories and sub-themes listed in the contents. Through this publication, the Faculty of Law, University of The Gambia hopes to advance legal education, research, and intellectual collaborations in the Gambia.

The Editorial Board welcomes the submission of articles, commentaries, book reviews, and case notes for publication in Volume 6, from new and returning authors. A call for papers will be issued in due course, and all entries should be sent by email to lawreview@utg.edu.gm.

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COMPARATIVE ANALYSIS OF THE LEGALITY OF SPORTS-BETTING UNDER COMMON AND ISLAMIC LAWS

Owoade Abdul-Lateef Adekunle,* Ariyoosu Dauda Adeyemi,**
Abdulazeez Hamza Okene,*** & Sarumi Dauda Ridwan****

Abstract

Sports industry remains one of the fast-growing industries that contribute massively to the revenue generation of countries. The reason being that the industry houses different activities that could boost its host economy. Undoubtedly, sports-betting is one of the frontline sport activities that positively affect governments and help citizens of various governments to evade the problem of unemployment and joblessness, although it is not without its disadvantages. The legal status of sports-betting is the germane focus of this article, within the context of the realm of the common and Islamic laws' perspectives. In examining the common law position on sports-betting, the study restricts its scope to the Nigeria and USA extant laws. Importantly, there is always difficulty in examining the legal status of sports-betting because of its nearness in meaning to concepts like gambling and lottery. The article comparatively examined the concept of sports-betting under common and Islamic laws. The article adopted the doctrinal research methodology, which is library-based. For the common law discussion, primary data were gathered from the Nigeria and USA statutes, while secondary data were gathered from books, articles, newspapers and magazines. On the other hand, the primary data for Islamic law discussion were gathered from the Quran and

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Sunnah, while the secondary data were gathered from reputable books of Islamic jurists and articles published by Shariah experts.

Introduction

One of the means of generating revenue in the sport industry is sports betting. The prevalence of sports betting globally can be assessed through the huge population that participates actively in it. In common law countries, the rate of sports-bettors skyrockets day by day. In 2022, it was reported that 19% of US adults bet money on sports following the legalization of some forms of sports betting by 35 states in the US.¹ Statista reported the 19% as equal to 19 million American adults which is forecast to increase to 23.1 million sports at the end of 2023. Globally, sports betting market was reported as accounting for 83.65 US Dollar in 2022, but it is anticipated to increase with 10.3% by 2030.²

In 2023, the number of Nigerians that actively participates in sports-betting was reported to be 60 million.³ In fact, over two billion US Dollar is daily spent in Nigeria on it.⁴ The active participation of Nigerians may be attributed to lack of job opportunities and prevailing unemployment rate in the countries which induced Nigerians to engage in it for daily survival.⁵ Commonly, it is perceived as gambling because they both involve “risk”, “prediction” and “wager”. Therefore, some countries treat sports-betting as gambling and lottery, while some countries differentiate them. In fact, countries like United Arab Emirates, Saudi Arabia, Brunei, Brazil and North Korea do not

¹ Pew Research Centre, ‘As More States Legalize the Practice, 19% of US Adults say they have bet Money on Sports in the Past Year’ (2022) <<https://www.pewresearch.org/short-reads/2022/09/14/as-more-states-legalize-the-practice-19-of-u-s-adults-say-they-have-bet-money-on-sports-in-the-past-year/>> accessed 11 November 2023.

² Grand View Research, ‘Sports Betting Market Size, Share & Trends’ (2018-2021) <<https://www.grandviewresearch.com/industry-analysis/sports-betting-market-report>> accessed 11 November 2023.

³ Betensured, ‘32+ Gambling Statistics in Nigeria (2023): Trends and Data’ (2023) <<https://www.betensured.com/blog/top-10-nigeria-gambling-statistics/>> accessed 08 November 2023.

⁴ *Ibid.*

⁵ Akinlosotu NT and others, ‘Sports Betting and Nigerian Youths: A Study of Sports Betting in Edo State’ (2019) 4(9) *International Journal of Business Marketing and Management (IJBMM)*, 32 <https://www.academia.edu/40477018/Sports_Betting_and_Nigerian_Youths_A_Study_of_Sports_Betting_In_Edo_State> accessed on 08 November 2023.

legalise any form of gambling, while countries like United Kingdom, Ghana, Mexico, Philippines, South Africa and most of the states in the USA legalise gambling. However, the scope of this study is restricted to the examination of the legal position of sports-betting specifically in Nigeria and USA (as common law countries) and in comparison with the position under the Islamic law.

Aside USA, Nigeria demography shows that the country comprises of 99 million Muslims that belong to Islamic denomination.⁶ Although, the extent to which Islamic laws apply in Nigeria is restricted to Islamic personal laws, Muslims in the country, however, remain interested in employing Islamic laws to regulate their entire lifestyle.⁷ In other words, notwithstanding the restriction on the applicability of Islamic criminal laws in Nigeria in pursuance to the country's secularism, most Muslims remain committed to the observance of the rules of Shariah in their daily activities. Sports-betting is not also an exception as Muslims tend to avoid it because of its supposed proscription under the Shariah.

Therefore, this study aims at comparing the position of common law and Islamic laws on sports- betting. The study discusses the meaning of betting and gambling, including their similarities and dissimilarities. Relevant common and Islamic law provisions are also explored in order to determine the legality or otherwise of sports-betting under the two legal systems. Also, the study explores the juristic views of Shariah experts in sports-betting, especially on its relatability with the concept of “*iwad*” (consideration in athletic contracts).

⁶ Saifaddin G, ‘Muslim Population in Africa as of 2023, by Country’ (Statista, 2023) <<https://www.statista.com/statistics/1368589/muslim-population-in-africa-by-country/>> accessed 08 November, 2023.

⁷ See Constitution of the Federal Republic of Nigeria 1999, section 262 and 277. The provisions restricted the appellate and supervisory jurisdiction of the Shariah Court of Appeal of the Federal Capital Territory Abuja and Shariah Court of Appeal of a State to civil matters, particularly Islamic personal laws.

Meaning of Betting and Gambling

The two words are mostly used interchangeably due to their nearness in meaning and commonness in usage. However, there is thin line difference between them. According to Black's Law Dictionary, gambling refers to the act of risking something of value, especially money, for a chance to win a prize.⁸ It involves wagering of valuable thing on a predicted future outcome with the aim of winning what is more valuable.⁹ In other words, gambling is a game of luck upon which parties wager their properties. Betting on the other hands refers to the activity of forecasting an event using calculation, past experience, and skill and placing wager on the outcome of the forecast event. Betting involves two or more parties who wager valuable property on the occurrence of an event through skillful prediction and the party whose prediction is correct takes the agreed prize. The major differences between gambling and betting are:

- i. While risk is involved in both gambling and betting, gambling has higher risk compared to betting. The reason for this is that in gambling, the gambler has no special skill that could help him calculate probable prediction. However, in betting, the bettor usually has reasonable experience about the game or a skill which could help him predict what is probable.
- ii. Gambling involves game of luck or chance, while betting is a game of skill.
- iii. Betting is more organised compared to gambling.

Nature of Sports-Betting in Nigeria

Historically, sports-betting dates back to the ancient days of Greece where lovers of sports bet on their favourite bet competitions as a way of increasing the fun catchable from sports watching.¹⁰ Even the Romans also have the history of engaging in sports-betting, especially on the fights of gladiators. The popular film known as "Gladiators" definitely gives a recapture of how betting was practiced in the old

⁸ Garner B. A, *Black's Law Dictionary* (10th edn, Thomson Reuters, 2014) 793.

⁹ Paul L, 'Gambling vs. Betting: What is really the Difference' (2021).

¹⁰ Turcu I and others, 'Impacts of the Betting Industry on Sports' (2020) 13(62) *Bulletin of the Transilvania University of Brasvo*, 252
<<https://doi.org/10.31926/but.shk.2020.13.62.2.32>> accessed 09 November 2023.

roman days. The practice has now escaped to several parts of the world.

Sports-betting industry is now a sub-market in the sports industry which is growing day by day. Sports-betting involves prediction of outcome of sports before they are played. The predictions of the bettors are mostly guided by the previous performance of the teams, the formations of the team, and other calculative permutations that may be useful to determine the team with higher tendency and propensity of winning. Sports-betting is actively engaged in Nigeria by both low-income earners and high-income earners.¹¹ Due to modern advancement in technology, bettors can now place their bets on sport-games through their internet access devices such as phones, laptop, desktop and so on. Online betting is characterised by anonymity of the identity of the bettors, tax avoidance, and increased accessibility.¹² Popular sports-betting outlets include: Bet9ja, Nairabet, WinnersGoldenBet, SureBet, EboneyBet, Bet360, Bet1960, 1xBet, Betway, Melbet, Wazobet, Frapapa.¹³ These outlets are massively patronised by Nigerians to the extent that the National Lottery Trust Fund (NLTF) disclosed that over 65 million Nigerians spend millions on sports-betting despite the worsening condition of the economy.¹⁴ Hence, it is not a gainsaying that Nigeria generates huge revenue from sports-betting as disclosed by the NLTF. It reported that Nigeria generated 2 billion US Dollar in 2021 out of the daily 5.5 million US Dollar spent by Nigerians on sports-betting.¹⁵ Specifically, Statista

¹¹ Akinlosotu N. T and others (n 5) 25.

¹² Araromi M. A, 'Regulation of Gambling in Nigeria: A Need to Review the Status Quo' (2018) 11 <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3286593> accessed 09 November 2023.

¹³ National Lotter Regulatory Commission, 'List of Approved Gaming Operators' <<https://nlrc.gov.ng/list-of-approved-gaming-operators/>> accessed 09 November 2023.

¹⁴ Vanguard Nigeria, 'More than 65m Nigerians engage in Betting amid Economic Hardship' (2023) <<https://www.vanguardngr.com/2023/10/more-than-65m-nigerians-engage-in-betting-amid-economic-hardship/>> accessed 09 November 2023.

¹⁵ *Ibid.*

reported that a sum of 256.90 million US Dollar is projected to be realised as revenue from online sports-betting market in 2023.¹⁶ Importantly, sports-betting market has rendered some advantages and disadvantages for Nigerian economy. For instance, the potential of making profit from sports-betting is one of the advantages of sports-betting. As explained above, betting generally requires skills and versatile understanding of the particular sports. So, there is high propensity and potential probability that experienced sports bettors will make profit from engaging in it. In addition to that, the government also generates income from sports-betting through taxation of the prizes won by sports bettors, and taxation of sports-betting outlets. It also generates employment opportunity to owners of sports-betting entity as self-employment. Most sports-betting entities also employ some Nigerians to work for them as employees, which is another form of advantage derivable from sports-betting. Also, sports-betting is part of the means of leisure and enjoyment of sports. Since, sports are ordinarily meant for fun-catching, socialisation and enjoyment, betting on sports makes it more fun-filled. In fact, it increases the number of spectators of various sports matches as many people become willing to watch the sports competition out of curiosity about which of the team wins the match, and which of the bettors go(es) with the prize.¹⁷ Also, multinational companies mostly engage in sponsorship contracts with teams that attracted the interest of highest number of bettors, because they believe that the highest the number of bettors who bet on a team, the highest the popularity of the team and sponsoring such popular team will definitely increase their profit indirectly.

In as much as sports-betting has its advantages, one should not close his eyes to the disadvantages inherent in sports betting engagement. The risk of loss in sports-betting cannot be overlooked. Many bettors lose their money to sports-betting which worsens their economic

¹⁶ Statista, 'Online Sports Betting-Nigeria' (2022)

<<https://www.statista.com/outlook/dmo/eservices/online-gambling/online-sports-betting/nigeria#:~:text=Revenue%20in%20the%20Online%20Sports,US%24366.70m%20by%202027>> accessed 09 November 2023.

¹⁷ Turcu I and others (n 10) 256.

stability and deprive them of having reasonable savings.¹⁸ Another major evil that comes with sports-betting is addiction. Most sports bettors become addicted to it. In fact, some sports bettors place their last stipend on sports games. Even, some go to the extent of borrowing money from others (including loan-sharks) in order to place on sports games. Thus, one can say in as much as sports-betting served as revenue-generating means for the country, it has also deprived many Nigerians of economic stability. An addict of sports-betting, *Femoje*, posted in 2015 on popular Nigerian-based website known as "NairaLand" that:

Am very sad cos I've lost so much to betting. I started betting three months ago, every week I spend at least ₦3000, on different games. I play 8-to 12 games weekly and I've not won any game at all, am fed up I dnt knw what to do anymore. I just want to get back the money I have spent so far. Pls I need ur help and advice.

In some countries where sports-betting is not illegal, sports bettors face the sanction of the law. The mental instability that comes with sports betting is another disadvantage. Most sports bettors are not at rest as they become mentally curious about the outcome of the game. This seriously affects their mental health.

Furthermore, due to the widespread of sports-betting in the sports industry, there have been categories of sports betting which are popular in the industry. Sports-betting has been typified into: (i) live betting or in-running bets and (ii) classic bets.¹⁹ Live bets are bets placed during the actual event, or while the sport is ongoing. On other hands, classic bets are bets that can only be placed before the commencement of the sports event. In Nigeria, classic bets are the most popular.

¹⁸ Punch News, 'How Addiction to Sports Betting Ruins Finances, Devastates Lives' (2022) <<https://punchng.com/how-addiction-to-sports-betting-ruins-finances-devastates-lives/>> accessed 09 November 2023.

¹⁹ Turcu I and others (n 10) 253.

Legality of Sports Betting Under the Nigerian Law

Beyond the grammatical or literal difference between betting and gambling as noted above, sports-betting is mostly regarded as gambling by most legal scholars. Thus, in legal field, sports-betting is part of gambling and the question as to the legality or otherwise of sports-betting depends on the legal position of the concerned country. In Nigeria, the default position of law is that gambling is criminalised under the Criminal Code Act.²⁰ This default position is not absolute as there are some exceptions explained later in this paper. It is important to note that the word "gambling" is not used in the Code, rather the word "lottery" is used.²¹ A lottery is defined as²² any game, method or device whereby money or money's worth is distributed or allotted in any manner depending upon or to be determined by chance or lot.

Since both lottery and gambling are literally games of chance as they do not require any skill, it can be submitted that the above provision contemplates gambling also. Another provision of the Criminal Code that captures the word "gambling" and "lottery" is section 236(2) which categorises them as part of "Unlawful gaming" in Nigeria. The section defines unlawful gaming as every game of dice, except backgammon, every game of card which is not a game of skill, the game known as Chacha and other games of cowries, and any game the chances of which are not alike favourable to all the players, including the banker or other person or persons by whom the game is managed or against whom other players stake, play or bet.

It is important to note that all the exceptions noted in the section are games of skill. That is, any game of chance or luck is regarded as an unlawful gaming in Nigeria the wager of which is also automatically prohibited. However, games of skill which sports-betting is part are not unlawful according to above provision. Another relevant provision of the Code on the prohibition of lottery is section 240A which provides that any person who gives or sells or offers for sale or delivers any lottery ticket or pays or receives directly or indirectly any money or money's worth for or in respect for any chance in or event

²⁰ CAP C. 38, LFN 2004.

²¹ *Ibid*, section 240A.

²² *Ibid*, section 240.

or contingency connected with a public lottery or in any manner carried on, or assists in carrying on, or invites or solicits any person to take part in, a public lottery, is liable to a fine not exceeding one hundred naira or to imprisonment for a period not exceeding six months.

Public lottery mentioned in the section refers to any lottery to which the public or any class of the public has access.²³ However, the unlawfulness of lottery in Nigeria takes another look with the promulgation of the National Lottery Act, 2015, which became the primary and specific law regulating lottery in Nigeria. Another definition of lottery was given which is more expansive compared with the definition given under the Criminal Code Act. Section 57 of the National Lottery Act, 2015 defines lottery or lotteries to include "any game, scheme, arrangement, system, plan, promotional competition or device for the distribution of prizes by lot or chance, or as a result of the exercise of skill and chance or based on the outcome or sporting events, or any other game, scheme, arrangement, system, plan, competition or device, which the President may by notice in the Gazette declare to be lottery and which shall be operated according to a licence". This provision does not only expand the meaning of lottery as contained originally in the Criminal Code Act, but it has also given it another uniform. By the provision of the National Lottery Act 2015, both game of chance and game of skills may be regarded as lottery in as much as the President declares it as lottery through a Gazette. Therefore, the unlawfulness of lottery as noted in the Criminal Code is not absolute, because the National Lottery Act, 2015 being the specific Nigerian law on lottery business makes provisions for national lottery licence. The licence is grantable by the President of the Federal Republic of Nigeria upon the recommendation of the National Lottery Regulatory Commission (NLRC).²⁴ A prospective licensee (individual or body corporate) is to apply for national lottery licence to the President through the Commission after complying with the necessary formalities prescribed by the commission.²⁵ Before the President

²³ *Ibid*, section 240.

²⁴ National Lottery Act, 2015, section 17; The Commission is established under section 1 of the National Lottery Act, 2015.

²⁵ *Ibid*, section 18.

could grant lottery licence for lottery business in Nigeria, he must be satisfied that the applicant: (i) is fit and proper to manage such business; (ii) has relevant knowledge, expertise and experience to manage such business; (iii) is capable of mobilising sufficient financial resources to ensure financial viability of such business; and (iv) has undertaken to conduct the business in a proper, corrupt-free, accountable, transparent and public interest-based manner.²⁶ It is important to also note that the licence is usually subject to such terms and conditions that are incidentally necessary for sane operation of lottery business in Nigeria. The Act further declares that such lottery licence will automatically be between 10 to 15 years,²⁷ although the President is empowered to extend the term of the licence to another period which should not exceed 10 years.²⁸

Notably, the lottery licence grantable in Nigeria by the President through the recommendation of the NLRC involves sports-betting. The meaning of lottery as provided in the interpretation section of the National Lottery Act, 2015 covers wager placed on the outcome of "sporting events". However, there is no express provision on the legality of online sports-betting,²⁹ even though the National Lottery Regulation Commission still takes charge of the regulation of online sports-betting in Nigeria. In fact, the Commission has given sports-betting permit to 57 sports- betting operators in Nigeria, and some of them are: Bet9ja operated by KC Gaming Ltd, SportyBet operated by Sporty Internet Limited, Betway operated by Digi Bay Limited, Cloud Bet by Interactive Gaming Solutions Limited, BetLion operated by VisaTech Limited, BETPAWA operated by Calgary Online Limited and 1XBet by Beaufortbet Nigeria.

Legality of Sports-Betting in the United States of America

Issue of sports-betting in the United States of America can be traced to the Professional and Amateur Sports Protection Act, 1992 (PASPA,

²⁶ *Ibid*, section 19(1).

²⁷ *Ibid*, section 20(1).

²⁸ *Ibid*, section 20(2).

²⁹ Ezinne N, 'The Legal Implications of Online Gambling in Nigeria' (2022) 3-4

<<https://omaplex.com.ng/legal-implications-of-online-gambling-in-nigeria/>>

accessed 10/11/2023

1992) which makes it unlawful for any person (natural or artificial) or governmental entity to sponsor, operate, advertise, or promote lottery, sweepstakes or other betting, gambling or wagering scheme-based which arises from either professional or amateur sports.³⁰ The Act goes further to bar all states from making any law that legalises sports-betting except where such state has a statute legalising sports-betting already before the enactment of the PASPA, 1992.³¹ It is also important to note that this Act does not contemplate online gambling or remote sports-betting which is largely through the use of internet. However, the constitutionality of the relevant provision of PASPA 1992 on the restriction placed on the legislative powers of the states to make laws legalising sports-betting has been contested in the US Courts.³² Interestingly, the US Supreme Court in a 2018 case of *Murphy v National Collegiate Athletic Association*³³ declared the said provisions unconstitutional for violating the 10th amendment of the US Constitution, especially its anti-commandeering rule which disallows the federal government from encroaching into the residual matters left for the states. In consequence of that, sports-betting is now lawful in states like New York, New Jersey, Illinois, Massachusetts, Arizona, Colorado, Virginia, Maryland, Michigan, Kentucky, Wyoming, Nevada and West Virginia.³⁴

Notably, the US Interstate Wire Act, 1961 prohibits online sports betting which is interstate. However, some arguments are already being raised that it is also unconstitutionally implied by the US decision in *Murphy v. National Collegiate Athletic Association* cited above. Another relevant law is the Unlawful Internet Gambling

³⁰ Professional and Amateur Sports Protection Act, 1992, section 3702.

³¹ *Ibid*, section 3704.

³² Michelle MM 'Legalizing Sports Betting in the United States' (2018) 243 *Competitive Enterprise Institute*, 6-7 <<https://cei.org/wp-content/uploads/2018/03/Michelle-Minton-Legalizing-Sports-Betting-in-the-United-States-1.pdf>> accessed 12 November 2023.

³³ 138 S. Ct. 1461; 200 L. Ed. 2d 854.

³⁴ Bengel C and McCarriston S, 'US Sports Betting: Here's Where all 50 States Currently Stand on Legalizing Online Sports Betting Sites' (2023) <<https://www.cbssports.com/general/news/u-s-sports-betting-heres-where-all-50-states-currently-stand-on-legalizing-online-sports-betting-sites/>> accessed 12 November 2023.

Enforcement Act, 2006.³⁵ The Act has been construed to mean that it bans all forms of online gambling. However, a crucial look at the decision would reveal that it only bans the internet gambling operators from accepting payments of any online gambling that violates any state or federal law.³⁶ By implication, where a state prohibits gambling, it is illegal for any internet gambling operator to receive online gambling payment from such state.

Legality of Sports Betting Under the Islamic Law

Participation in sports activities is highly enjoined in Islam, except that the main objective of sports is to prepare Muslims for defence purposes. In other words, Islam does not regard sports as means of leisure, recreation, entertainment and fun. Rather, the objective of indulging Muslims to engage in sports activities in Islam is to strengthen and train Muslims for defence purposes. The reason for this objective is that at the early time of prophethood, the non-Muslims attacked the Muslims incessantly and it became necessary that Muslims are taught, trained and prepared to engage in defensive war to save their lives and properties. However, it does not mean that Islam frowns at business-oriented sports, except that they must be in conformity with the Islamic fundamentals, ethics, rules and regulations. In the modern time, sports-betting is one of the means of revenue generation in the sports industry. In Islam, before Muslims could engage in any activity, they are duty-bound to inquire into the Shariah position on the permissibility or otherwise of such activity. Therefore, sports-betting must be examined from the lens of the Shariah.

Under the Islamic law, there is no difference between games of chance and games of skills as they are all regarded as gambling which is

³⁵ Cabot A and Cloward G, 'Federal Wire Act Should Adjust to State-Regulated Sports Wagering, Not the Other Way Around: A Proposal for Change' (2021) 3 *GLR*, 110-111 <<https://www.liebertpub.com/doi/pdf/10.1089/blr2.2021.0004>> accessed 12 November 2023.

³⁶ Rainey B. P, 'The Unlawful Internet Gambling Enforcement Act of 2006: Legislative Problems and Solutions' (2009) 35(2) *Journal of Legislation*, 150 <<https://scholarship.law.nd.edu/cgi/viewcontent.cgi?article=1043&context=jleg>> accessed 12 November 2023.

called, in Arabic language, "*al-Qimar*" or "*al-Maysir*". Islamic law is not swayed by the use of skills that permeate some games; rather it is more concerned with the uncertainty and risk (*al-Gharar*) that permeate such games. Under the Islamic law, a contract is invalid if it has element of uncertainty or risk. In gambling, sports- betting and lotteries, the parties engage in contracts on an uncertain future event or based on risk. The Prophet (SAW) clearly explained the impermissibility of risk-based contracts in the Hadith narrated by 'Abdullah bn 'Umar, that risk-based contract (contract of uncertainty) is forbidden.³⁷

Also, Islamic law forbids unjust contractual relationship. It is forbidden to deprive others of their properties (money inclusive) unjustly without any legal transaction between the parties. In lottery, gambling and sports-betting, there is tendency that a party unjustly eats the property of another. This is highly forbidden in the Quran, especially where Allah (SWT) said:³⁸ "And do not eat up your property among yourselves for vanities nor use it as bait for the judges with intent that ye may eat up wrongfully and knowingly a little of (other) people's property."

As earlier noted, under Islamic law, both gambling and sports-betting are classified as *al-maysir* which is an exploitative means of generating money/fund without working for it. Allah (SWT) expressly declared gambling prohibited without exception. The major verses on the prohibition of gambling and all other games of chances and skills are:³⁹

O ye who believe! intoxicants and gambling (dedication of) stones and (divination by) arrows are an abomination of Satan's handiwork: eschew such (abomination) that ye may prosper. They ask thee concerning wine and gambling. Say: "In them is great sin and some profit for men; but the sin is greater than the profit." They ask thee how much they are to

³⁷ Ahmad bn Hanbal, *Musnad Imam Ahmad bn Hanbal*, Hadith 6307.

³⁸ Q 2: 188.

³⁹ Q 5: 90 and Q 2: 219.

spend; say: "What is beyond your needs." Thus, doth Allah make clear to you His Signs: in order that ye may consider.

The above verses of the Holy Quran have been strengthened by the Hadith of the Prophet which says that: "Verily, Allah has forbidden for my nation; alcohol and gambling...".⁴⁰ The punishment of gambling (sports-betting inclusive) is not expressly mentioned in the Quran. However, it falls within the confine of discretionary punishment called "*at-ta'zir*".⁴¹ By implication, the Imam or Qadi of the Muslim community has the unfettered discretionary power to determine the punishment to be meted on any Muslim that engages in gambling practices.⁴² Invariably, Islamic law finds the prohibition of gambling, lottery, sports-betting necessary for the protection of wealth which is one of the five salient objectives of the Shariah.

Nexus between Sports Prize (*Iwadu-L-Musabaqot*) and Gambling (*Al-Maysir*)

Islamic law recognises athletic contracts or sports-related contracts which are wide as it is obtainable in common law. Athletic contracts in Islam must possess some pillars and conditions. The pillars are: (i) parties (*al-muta'aqidaan*), (ii) tool of the sports (*'adaatu-s-sibaaq*), (iii) form (*as-seegah*), (iv) place of the sport event (*makaanu-s-sibaaq*), (v) time of the sports event (*zamanu-s-sibaaq*), and prize for the winner(s) (*al-'iwad*).⁴³ The relevance of these pillars to this paper is the prize. It refers to the valuable given to the team or player that

⁴⁰ Al-Bayhaqi, Haidth 21520.

⁴¹ International Crisis Group, 'Islamic Law and Criminal Justice in Aceh' (2006) *Asia Report No. 117*, 15 <<https://www.refworld.org/pdfid/44e9ae8f4.pdf>> accessed 10 November 2023.

⁴² Nasimah H, 'Revisiting Islamic Punishment and Its Implementation in the Contemporary World' (2018) 14-15 *International Conference on Humanity, Law and Shariah*, 2 <<https://core.ac.uk/download/pdf/328166701.pdf>> accessed 10 November 2023.

⁴³ Dauda R. S, 'A Critical Analysis of Sports Law under the Common and Islamic Laws' (LL.B Thesis, Faculty of Law, University of Ilorin, 2023) 137 <https://www.researchgate.net/publication/374198663_A_CRITICAL_ANALYSIS_OF_SPORTS_LAW_UNDER_THE_COMMON_AND_ISLAMIC_LAWS> accessed 10 November 2023.

wins a sports game/competition. The conditions attached to a valid sports-prize in Shariah are outlined by Dauda as follow:⁴⁴

- a. It must be known to the contesting players or clubs;
- b. It must be valuable in the sight of the Shariah;
- c. It must be a permissible item;
- d. The prize given to the first winner should not be lower in value to that given to the second winner and so forth; and
- e. It must not have similarity with gambling.

The implication of the above is that the prize given to the winner of a sports competition (i.e. sport player or club) is different from the prize won by gamblers and bettors. However, it does not mean that such prize won by sports-players and clubs in a sports contest cannot also fall within the purview of gambling. Thus, As-Shathri categorised prizes in sports contest into four:⁴⁵

- a. Prizes volunteered by the government or Imam;
- b. Prizes volunteered by one of the contesting parties;
- c. Prizes volunteered by a third party who is among the contesting parties; and
- d. Prizes volunteered by all the contesting parties.

According to Islamic schools of Jurisprudence, prizes volunteered by the Imam for the contesting parties to win is consensually allowed.⁴⁶ The consensus of these schools also exists on the validity of the prize volunteered by a third party to be one by the winner among the contesting parties.⁴⁷ However, Shaykh Ibn Qudamah made a reservation that such prize is not valid because it amounts to confiscation of Imam's duty.⁴⁸ On the third form of prize, there is divergent view on the permissibility of prizes volunteered only by a

⁴⁴ *Ibid*, 142.

⁴⁵ As-Shathri S. N. H, *Al-Musabaqot wa Ahkaamuha fi-s-Shariah al-Islamiyyah: Dirasatan Fiqhiyyatan Usuliyyatan*, 63.

⁴⁶ Ibn Taymiyyah A. H. H, *Majmu' Fatāwah Shaykhu-l-Islām Ahmad bn Taymiyyah* (Wizāratu-s-Shuhūni Al-Islāmiyyah, 2004), vol.28, 22.

⁴⁷ Ibn Taymiyyah A. H. H, *Majmu' Fatāwah Shaykhu-l-Islām Ahmad bn Taymiyyah* (Wizāratu-s-Shuhūni Al-Islāmiyyah, 2004), vol.28, 22.

⁴⁸ Ibn Qudāmah M. A. D, *Al-Mughni* (Dār 'Ālamu-l-Kutob Beirut, 1997), vol.8, 654.

contesting party. The majority view held by the Hanafi school,⁴⁹ Hanbali school,⁵⁰ and Shafi' school⁵¹ is that such prize is valid. However, the Maliki school (excluding Imam Maliki himself) validates such prize with the condition that where the volunteer party to the sports contest emerges as the winner of the competition, the prize will not go back to him but it will be shared by the spectators.⁵² However, where the other parties win the sports-contest, they are allowed to take the prize. Lastly, there are divergent views on the validity of the prizes contributed or volunteered by all contesting parties. The majority view held by Hanbali school,⁵³ the Hanafi school,⁵⁴ the Shafi' school,⁵⁵ and some Maliki jurists⁵⁶ is that it is not permissible as it will have resemblance with gambling. However, in order to validate such prize, there should be a *Muhallil* who is a contesting party who does not contribute or volunteer any prize before participating in the contest. The authority relied upon is the Hadith of the Prophet that says:⁵⁷ "Whoever races with a horse between two horses, that is he does not know whether his horse will lead or not, then such race is not gambling. And when he races between two horses, but he is sure of leading, then it is gambling."

Contrarily, contemporary Hanafi jurists like Ibn Quayyim⁵⁸ and his teacher, Iby Taymiyyah⁵⁹ argued that such prize is valid even without a *Muhallil*. Their authority is based on the Hadith of Rukanah who

⁴⁹ Ibn 'Ābidīn M, *Hāshiyatu bn 'Ābidīn* (Dār 'Ālamu-l-Kutob Beirut, 2003), vol.6, 403.

⁵⁰ Ibn 'Ābidīn M, *Hāshiyatu bn 'Ābidīn* (Dār 'Ālamu-l-Kutob Beirut, 2003), vol.6, 403.

⁵¹ Akuhaji A, *Zādu-l-Muhtāj bi Sharhi-l-Minhāj*, vol.4, 439.

⁵² *Ibid.*

⁵³ Jamālu-d-Dīn Y. H. H, *Mughni Dhawi-l-Afhām* (Maktabatu Dār Tobariyyah, 1995), 98.

⁵⁴ Abdullah H. M. M, *Al-Ikhtiyār li Ta'līli-l-Mukhār* (Dāru-l-Kutob al-'Ilmiyyah, Lebanon, 1937), vol.4, 278.

⁵⁵ Al-Bagawi H. M. M, *Sharhu-s-Sunat* (Al-Maktab Al-Islāmi, 1983), vol.10, 395.

⁵⁶ Abu Abdillāh M. Y, *At-Tāj wa-l-Iklīl* (Dāru-l-Kutob al-'Ilmiyyah, Lebanon, 1994), vol.3, 391.

⁵⁷ As-Sijistāni S. A. B, *Sunan Abi Dawood*, Hadith 2579.

⁵⁸ Ibn Al-Qauyyim M. A. D, *Al-farūsiyyah al-Muhammadiyyah*, 20.

⁵⁹ Ibn Taymiyyah A. H. H, *Majmu' Fatāwah Shaykhu-l-Islām Ahmad bn Taymiyyah*, vol.28, 22.

challenged the Prophet to engage him in a wrestling contest. The Hadith showed that both the Prophet and Rukanah volunteered valuables as prize for the winner of the contest. The Prophet engaged him and won.⁶⁰ Thus, the Prophet did not require any Muhallil before engaging in such contest. Therefore, Islam considers gambling and its varieties, including sports- betting, as an invalidating element of an athletic agreement. Thus, Muslims are disallowed from participate in any gambling related contracts and activities.

⁶⁰ Al-Bayhaqi A. H. A. *Al-Sunan-l-Kabir*. Hadith

Conclusion

This study concludes that gambling is not expressly mentioned in the Nigerian law as part of prohibited activities in the country. However, the word "lottery" seems to have captured "gambling". Also, lottery itself has been removed from the criminalised items contemplated in the Nigerian Criminal Code Act, in as much as the lottery operator obtained national lottery licence from the President of Nigeria upon the recommendation of the National Lottery Regulatory Commission. The study has found that sports-betting is captured in the interpretation section of the National Lottery Act, 2015 as part of lottery businesses that can be legally engaged in upon the obtainment of lottery licence. The legal position under the USA is also the same because most of the states in the USA have legalised sports-betting. However, the position is different in Islamic law because the Islamic legal system does not differentiate between game of chance and game of skill. Both are considered as gambling (*al-maysir*) which is highly prohibited and punishable with *ta'zir* (discretionary punishment). Islam, therefore, forbids gambling generally, sports-betting (including online sports-betting) particularly.