

CRIMINAL LAW JOURNAL

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EDITORIAL

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ARTICLES

IS ADDICTION TO GAMBLING RELEVANT IN SENTENCING?

Greg Taylor

This article considers, first, Australian case law about the relevance of gambling addiction in sentencing. The case law is confused and contradictory, unlike the case law of Canada, which has developed recently to allow a significant role to gambling addiction in sentencing. On the basis of current psychological and other research into the causes of gambling addiction, it is then suggested that most addicted gamblers will have a good claim to their addiction being seen as a mitigating factor, and in all cases rehabilitation should have primacy. The fallacies involved in the equation of gambling addiction with drug addiction, as is found in some case law, are also exposed..... 141

THE PRIVILEGE OF SILENCE AND THE PERSISTENT RISK OF SELF-INCRIMINATION: PART I

David Hamer

This article employs probability theory to make sense of the authorities of Australia, the United Kingdom and Canada. It distinguishes the weak confirmatory use of silence from the stronger use of a genuine adverse inference. The latter is warranted where an innocent accused would be expected to testify. The natural urge for self-preservation may lead to such an expectation where the prosecution case calls for a response, the accused has advanced a positive defence or has peculiar knowledge, and has no other innocent explanations for his silence, such as ill health. The High Court's restriction of the inference to circumstantial prosecution cases is criticised, as are its recent contradictory statements on the logic of the inference. This article is published in two parts: Part II will feature in Number 4 of *Criminal Law Journal*. 160

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