

*What you do (and
don't) need to know
about Atlantic Lottery
Corporation v
Babstock*

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Overview of Claim

Class proceeding based on deceptive nature of VLTs

Claims in negligence, breach of contract, unjust enrichment

No claim that any gamblers suffered financial loss or addiction

Plaintiffs seeking disgorgement of profits, punitive damages

*What you
don't need
to know*

Theory of claim for
“waiver of tort”

No claim in negligence if
no loss suffered by
plaintiffs

No independent action
for disgorgement

What you do need to know: unjust enrichment

- Unjust enrichment can allow plaintiffs to claim the profits made by defendants
- Elements of an unjust enrichment claim
 - *enrichment to defendant*
 - *corresponding loss to plaintiff*
 - *lack of juristic reason for the enrichment*
- Here, there was a “juristic reason” for the enrichment (the contractual exchange between the parties)

*What you
do need to
know:
breach of
contract*

Majority: disgorgement of profits available in exceptional circumstances only

deficient performance

other remedies inadequate, do not vindicate the plaintiff's interests

not just because of plaintiff's preferences

Dissent: exceptional circumstances can include

need for deterrence, especially where breach was self-interested, deliberate, or in bad faith

impracticable to assess loss

plaintiffs' vulnerability

*What you
do need to
know:
punitive
damages*

Can be awarded for breach of contract, but only where breach is an independent actionable wrong

No implied duty of good faith in the contract between the ALC and users of VLTs

Dissent: allegations of dishonesty may “put the duty of honest performance in issue”

Implications for Gaming Industry



No claims in unjust enrichment



Plaintiffs pleading negligence must prove loss



Uncertainty re: claims for breach of contract, duty of honest or good faith performance



No Potential Conflict of Interest