

## **Poker is a Game of Skill**

In order to determine whether poker is a game of chance or a game of skill, one must begin with a working definition of "skill."

"Skill" has been defined as "an ability acquired by training and experience", "the ability to successfully perform a task or activity consistently over a period of time" or "ability, coming from one's knowledge, practice, and aptitude, to do something well."

It may be helpful to review what another jurisdiction has to say about skill v. luck. In *State v. Stroupe*, 238 N.C. 34, 76 S.E.2d 313 (1953), a case involving the legality of the game of pool, the Supreme Court stated: It would seem that the test of the character of any kind of a game of pool as to whether it is a game of chance or a game of skill is not whether it contains an element of chance or an element of skill, but which of these is the dominating element that determines the result of the game, to be found from the facts of each particular kind of game. Or to speak alternatively, whether or not the element of chance is present in such a manner as to thwart the exercise of skill or judgment. (*Id.* at 38, 76 S.E.2d at 316-317.)

### **Purposeful Decision-Making**

Like any successful business, adept poker requires the ability to engage in **purposeful decision-making**. In order to be a winning poker player, there are many specific skills that must be learned and practiced over a period of time in order to make purposeful, informed decisions. They include, but are not limited to the following:

1. Mathematical skills (Odds and probabilities)
2. People-Reading Skills (Learning to detect "tells".)
3. Personal Discipline
4. Understanding Table Position
5. Keeping Records (the more data you have the better decisions you make.)
6. Understanding variances
7. Inducing action (staring, fiddling with chips, grabbing chips as if to bet) and
8. The art of bluffing.

In the United States Supreme Court decision of *Commissioner of IRS v. Groetzinger*, 480 U.S. 23; 107 S. Ct. 980; 94 L. Ed. 2d 25 (1987) the

high court held that most states permit some form of gambling and that if one gambled for a living, that ought to be considered a profession:

"Today ... the vast majority of States permit some form of public gambling ... If a taxpayer ... devotes his full-time activity to gambling, and it is his intended livelihood source, it would seem that basic concepts of fairness (if there be much of that in the income tax law) demand that his activity be regarded as a trade or business just as any other readily accepted activity, such as being a retail store proprietor or, to come closer categorically, as being a casino operator or as being an active trader on the exchanges." (Id. at 986.)

In other words, a professional gambler pays taxes on his income and writes off losses and business expenses, just like any other profession.

No one makes a living playing the lottery, bingo, slot machines, craps, baccarat, roulette or keno. The reason is that they all constitute games of chance. At a slot machine, one pushes a button and waits to see what happens, with no control as to the outcome.

If poker were played by putting all the money in the pot first and then dealing out all the cards, poker *would* be a game of chance. But that is precisely *not* what happens.

In a poker game, a player has control of the outcome of the game *in the long run* by making statistically correct decisions based upon probabilities, people reading skills, personal discipline, bluffing skills and table position. What this means is that when a poker player consistently makes the correct play, he will be a winning poker player.

Players do not have control over the specific cards that will be dealt much like the stock market does not have control of the weather or other factors which might harm a crop. A pharmaceutical company has no control over whether a new medicine will be successful. There is a risk and reward analysis based upon many factors before a decision is made. A business man doesn't have all the facts before he makes an investment, but based upon predictable variables, informed decisions are made. Those who have the best grasp of the facts, who also possess good decision-making skills, will be the most successful.

Poker is no different. A no-limit Texas Hold'em player is dealt two cards. Thereafter, he engages in a complicated decision making process before he makes a decision to call, raise or fold. How good is his hand, statistically speaking? How high does his hand "rank"? Let's say the player has KK, one of the best starting hands in Texas Hold'em. What

has he observed his opponents to have done in this session? What kind of player is each player at the table? Where is he sitting relative to when it will be his turn to make a decision? What do the other players do before it is his turn to act? After analysis on many levels, the first decision is made: call, check, raise or fold. (This is similar to business. Do I come out with a new product not having all the facts as to whether or not it will be successful?) He must read his opponent and figure out the cards in his opponent's hand based upon the way the opponent bets, the amount he bets, his body language, his past betting habits, and the sound in his voice. Let's say, he opines his opponent holds Ace-Queen. If he is holding two kings, he is about a 70-30 favorite, so he should raise his opponent.

Thereafter, three community cards are dealt face up. A new decision must be made based upon the statistical probability of winning the hand relative to other hands, a "read" on his opponent and a myriad of other factors.

There are countless books teaching players the fine art of poker playing. One of the most famous books is Doyle Brunson's *Super System*. As the cover story author for *Card Player Magazine*, I have personally interviewed such poker greats as Doyle Brunson himself, Daniel Negreanu, Mike Sexton, Gus Hansen, Annie Duke, Hasan Habib, Carlos Mortenson, Antonio Esfandaria, Layne Flack, Barry Greenstein, Dan Harrington, John Juanda and others. They have all read Doyle's book and consider it the "poker bible." They have similar answers regarding their consistent success. Poker is a job. They study and work diligently at their job. They are all winning millions playing tournament poker and they continually fine tune their skills. Let's take a look at just some of the skills.

**Mathematical skills:** Mathematical skills include odds and probabilities. If I have a 66 and you have an Ace-Queen or even Ace-King, my small pair is a slight mathematical favorite. However, if you have five times as many chips as I do in a tournament, I might not call your bet because I don't want to lose the tournament on something that is essentially a coin flip. On the other hand, there is the concept of "Pot Odds", which basically addresses the amount of money in the pot relative to what I will win. If I have to call a small amount with the possibility of winning a big pot, it is usually correct to call.

**People-Reading Skills:** People reading skills includes learning to detect "tells". If one player always puts one chip on his cards before it is his turn to act and then he raises, this tiny piece of information could be crucial. If a player is silent when he is bluffing, this is important to

note. If the "rock" who never bets, makes a big bet, then I might fold, notwithstanding the pot odds.

**Personal Discipline:** The issue of personal discipline is an important factor for a successful poker player. Don't play when tired, troubled, on a losing streak or frustrated. Don't play after drinking, after a fight with a loved one, or with any other emotional stress. Have the discipline to walk away from a table when the cards are not "breaking even", that is, when probabilities don't turn into realities. Winning poker players all realize that it is not the money won in one poker session, but over time that measures the success of a good poker player. One must not play in a poker game that is too expensive when one cannot afford it. That is called playing over your bankroll. One must play at a level where one feels comfortable and can take the natural financial swings of poker.

**Understanding Table Position:** Table position means where you sit in relation to the dealer button. In Hold'em, the dealer button moves every hand. The first and second people after the dealer button, have to put in blinds, or forced bets. The next person is first to act. Those first three players are in "early position", the second three are in "middle position" and the last three are in "late position." Immediately it becomes obvious that the people in late position have an advantage because before they act, they will have seen what every other person has done before they make their decision. Players in late position can play more hands and raise more when they see that most of the other players have folded their hands. This is a very important aspect of a tournament, because every player gets good and bad cards. Sometimes a good player will not play his cards, but he will do what is known as "play the player". He senses weakness in the player so he bets with whatever hand he has. Understanding these dynamics and becoming skilled in this area is crucial.

**Keeping Records:** A player must keep business records. Just like any other business model, the more data one has, the better decisions one makes. Successful poker players keep records in order to analyze which game, what stakes, what time of day and in what venues he finds the most success.

**Understanding Variances:** Crucial to successful player is the understanding of variances. Even if there is only one card with which that player can lose a hand, it is a normal part of poker that the one dreaded card will come. Realizing these variances and understanding the concept of the cards "breaking even" assists even the best poker players.

**The art of bluffing:** This is a skill that gets better with age, like a fine wine. There is an appropriate time, place, player and amount to bluff. Every player will get good and bad cards, so it isn't getting lucky by having lots of good cards that allows a player to win consistently; it is how you play all the other hands as well and how you maximize the amount you will win in a particular hand.

**Inducing action:** Inducing action is similar to bluffing except that instead of being the actor, you are inducing action by your behavior. Staring, fiddling with chips, grabbing chips as if to bet are a few of the ways one induces action by another player.

In sum, many jurisdictions recognize poker as a game of skill, the IRS recognizes that people have the necessary skill to make a living playing poker and the players with the most skill consistently win over and over again.

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