FROM THE IUSTORIA BLOG

Chess, Poker, Monopoly — and Snakes and Ladders: Four Games You Play in Court Without Knowing It

> *A lawsuit is often played as one of four games: with full information, with hidden cards, over resources, or in hope of a six. What game theory says about each.*

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A client came in with a clear brief: "I'm suing. I'm right, I have the evidence, and I want the court to decide." Two hours with the documents showed that this was no courtroom battle. It was a negotiation with a counterparty that had deeper pockets and plenty of time, a situation where what matters most is who can hold out longer. The client had walked in with a chess strategy in mind and was about to play Monopoly against someone who already owned half the board. Left uncorrected, he would have lost precisely because he was right and relied on nothing else.

In my piece on the psychology of the parties I looked at who actually makes the decisions in a dispute, and in the article on psychology and tactics in legal disputes at how behavioural economics changes the way we think about strategy. Here I want to go one layer deeper: what game is this dispute in the first place? A lawyer who plays chess at a poker table will lose, however good a chess player he is. A client who thinks he is playing Snakes and Ladders will lose almost every time.

Part one: Chess, where everything is visible

The board lies open between you and your opponent. You both see every piece and know the rules. No dice, no bluffing. The winner is whoever sees more moves ahead and knows which piece to sacrifice. Game theory calls this a **game of perfect information**: at every moment each player knows the whole position.

When law is chess

Corporate transactions, due diligence (a systematic review of a company's legal, financial and operational position before a purchase or investment) and contract negotiation. Both sides have access to the same information, the position is built move by move, and the result depends more on analysis than on luck.

Over a draft contract, both sides see every clause. The one who does better is the one who notices that the contractual penalty on page 7 is worth little, because the limitation of liability on page 12 effectively wipes it out. And who sees that a concession in one area opens a stronger position in another. That is a chess gambit: you sacrifice a clause to win the contract.

What research says about chess

In *Think Like a Grandmaster* (Batsford, 1971), grandmaster **Alexander Kotov** advises first picking a few candidate moves and then calculating each one systematically, branch by branch, instead of jumping between variations. Something similar holds in law: a fifteen-page letter about everything is usually weaker than three paragraphs aimed at the point where the matter is decided.

Why strong players see faster was studied by the Dutch psychologist Adriaan de Groot (*Het denken van den schaker*, Noord-Hollandsche Uitgevers Maatschappij, 1946; expanded English edition *Thought and Choice in Chess*, 1965). He showed players a position from a game for a few seconds. Grandmasters and masters reconstructed almost all of it (about 93% of the pieces), weaker club players roughly half. Herbert Simon, who later won the Nobel Prize in economics, and William Chase explained this by **chunking**, grouping individual pieces of

information into recognisable units (Chase & Simon, *Perception in Chess*, *Cognitive Psychology*, 4(1), 55–81, 1973). When they showed players randomly placed pieces, the masters' advantage largely disappeared. A master does not remember pieces; he remembers structure.

In the same way, an experienced lawyer finds the few sentences in a two-hundred-page report that change the whole transaction. He does not read faster; he recognises a familiar pattern.

What chess asks of the client

Patience. A transaction takes months and negotiations come in rounds, so a client who wants "to sort it out right now" is playing the wrong game. And a willingness to sacrifice. The answer to "Why are we giving way on this clause?" is: because it buys us a position worth more elsewhere. Anyone who measures success by the number of clauses "won" sees a list of points instead of a board.

Chess in law does not begin at the negotiating table. It begins months earlier, with gathering information and quietly building alternatives. Whoever comes to the table without a prepared position has nothing to move.

Part two: Poker, where what you don't know decides

In poker you cannot see your opponent's cards and he cannot see yours. You both know the rules and the odds, but what decides is what you don't know, and what you can make your opponent believe. Game theory speaks of a **game of imperfect information**.

When law is poker

Litigation, pre-action negotiation, out-of-court settlements. You have no idea what evidence the other side holds, they have no idea what you hold, and both of you act as if you knew more.

A pre-action letter is a bet. You say: "We have the evidence and we will sue." Maybe you hold strong cards, maybe you are bluffing. The other side decides whether to call (let it go to court), raise (counter-attack) or fold (pay). And it decides mainly on the signals you send, not on the cards you actually hold.

Only a small share of civil disputes ever reaches trial. In US federal courts just 1.8% of civil cases ended in a trial in 2002, compared with 11.5% in 1962 (Galanter, *The Vanishing Trial*, *Journal of Empirical Legal Studies*, 1(3), 459–570, 2004). A case that never reaches trial need not end in a settlement, though: the court may dismiss the claim or decide it in some other way without a trial. Theodore Eisenberg and Charlotte Lanvers estimated the settlement rate in two federal districts at roughly two thirds and pointed out that no reasonable estimate supports an aggregate settlement rate above 90% (*What is the Settlement Rate and Why Should We Care?*, *Journal of Empirical Legal Studies*, 6(1), 111–146, 2009). Comparable Czech data on settlements are not available. Even so, a large share of the poker games in law end with a fold or a deal before the court rules on the merits.

What research says about poker

In prospect theory (*Prospect Theory*, *Econometrica*, 47(2), 263–291, 1979), **Daniel Kahneman** and **Amos Tversky** showed that people judge outcomes against a reference point. A loss hurts more than an equal gain pleases, and someone with a sure gain within reach does not want to gamble. Jeffrey Rachlinski drew an awkward asymmetry for litigation from this (*Gains, Losses, and the Psychology of Litigation*, *Southern California Law Review*, 70, 113–185, 1996). A plaintiff chooses between a sure sum and an uncertain win, so he often takes the certainty even below its expected value: a client with a 60% chance of CZK 500,000 accepts CZK 250,000 now. A defendant, by contrast, chooses between a certain payment and an uncertain loss and is often more willing to risk court. The threat of a lawsuit on its own therefore does not push him towards settlement. What works better is an offer he can see as a smaller loss than the one he expects from the court.

In *Theory of Games and Economic Behavior* (Princeton University Press, 1944), **John von Neumann** and **Oskar Morgenstern** used a simplified form of poker to show that bluffing is part of the optimal strategy and should be used with a certain frequency. A player who never bluffs is easy to read; so is one who bluffs all the time. The same goes for law: a lawyer who never sues loses leverage, and one who always sues loses credibility. The strongest position is an unreadable one. The other side does not know whether you are bluffing and cannot afford to fold cheaply.

What the bet costs and what the other side gives away

Poker players weigh what they risk against what they can win. If the pot holds CZK 100,000, you have to call CZK 20,000 and your chance is 30%, then on average you win 0.3 × 100,000 = CZK 30,000 and lose 0.7 × 20,000 = CZK 14,000. The expected value is +CZK 16,000, so in the long run the call is a good one.

In a dispute the same question looks like this: is it worth putting another CZK 200,000 into the case when the chance of winning is 40% and CZK 800,000 is at stake? On average CZK 320,000 comes back, so on paper, yes. Before a Czech court, though, add that the losing party usually also pays the other side's costs (Section 142(1) of the Czech Code of Civil Procedure), while the winner gets at least part of his own costs back. And the client does not feel the average. He feels the CZK 200,000 he pays now and the 60% risk of losing. In *Thinking, Fast and Slow* (2011) Kahneman calls this narrow framing: we judge each decision on its own instead of as one of many. A professional player knows a single hand means nothing. A client need not know that, which is why he needs a lawyer who will tell him: "We play this hand. Over a long run of similar decisions it pays off, even if this particular one goes badly."

Involuntary signals (*tells* in poker) exist in disputes too, but they need to be read with care. A quick reply to a pre-action letter often signals concern. Weeks of silence may mean the other side feels no real exposure, but just as well that it is waiting for an expert report or a board decision. In my experience an aggressive first letter points to a weaker position more often than people expect. Whoever holds strong cards has no need to write in capitals.

The same caution applies to facial expressions. **Paul Ekman** became known for his research on microexpressions, brief flickers of the face that are supposed to betray hidden emotions (*Emotions Revealed*, Times Books, 2003). Stephen Porter and Leanne ten Brinke found only about 2% microexpressions among 700 genuine and falsified

emotional expressions (*Psychological Science*, 19(5), 508–514, 2008), and Judee Burgoon concludes that they are not suited to catching liars (*Frontiers in Psychology*, 9, 1672, 2018). So do not infer a lie from a witness's brief hesitation. Treat it as a reason to ask a follow-up question.

Acquisitions: chess that turns into poker at the price

The buyer commissions due diligence. It takes three months and the report maps every contract, liability and looming dispute. (I write about this in more detail in Due diligence: what we look for when you buy a company and Cross-border acquisition.) Then comes the price negotiation, and the buyer announces: "We found twelve risks, so we are cutting our offer by 30%."

He thinks he is still playing chess. The price, however, is negotiated mostly as poker. The seller knows the buyer wants to buy, otherwise he would not have invested three months in the review, and that knowledge is one of the seller's strongest cards. **Max Bazerman** and **Margaret Neale** (*Negotiating Rationally*, Free Press, 1992) advise entering every negotiation with a clear view of your best alternative to a negotiated agreement, known in negotiation theory as the BATNA. A buyer without a credible alternative usually loses, because the other side knows he will not walk away. So play due diligence as chess and the price negotiation as poker. Switching between the two is harder than it sounds.

Poker in law is not played against the judge. It is played against the other side over whether the case gets to court at all. A large share of disputes are decided long before the first hearing.

Part three: Monopoly, where whoever holds out wins

In Monopoly the winner is whoever has more: more streets, money and leverage. Deals are struck from a position of strength, because the stronger side can. Whoever owns Mayfair collects from everyone else.

When law is Monopoly

Insolvency, dealings with banks, disputes between unequal business partners, insurance disputes. In short, situations where one side has more money, lawyers and time, and that advantage is a weapon in itself: the bank against the debtor, the insurer against the injured party, the large company against the sole trader. The question here is less who is right and more who can hold out longer.

According to Ministry of Justice statistics, civil proceedings before a Czech district court took 247 days on average in 2024, roughly eight months (median 157 days; the slowest tenth of cases took more than 393 days). Appeal proceedings before a regional court took 114 days on average, and in 2024 the Supreme Court decided extraordinary appeals (*dovolání*) in civil and commercial matters within 150 days on average. Disputes that go to a regional court at first instance, such as corporate, unfair competition or intellectual property disputes, are slower: 662 days on average, just under two years. Each figure covers a single instance only and leaves out time limits and the time between instances, so a dispute that goes through every level can easily take two years or more. For a corporation with an in-house legal team that is an operating cost. For a sole trader even a shorter dispute can be an existential crisis.

So the stronger player need not win the dispute. Sometimes it is enough to drag it out until the weaker one can no longer pay the rent.

What research says about Monopoly

Richard Thaler described the **endowment effect**: we value something we own more than we would pay for it if we did not have it (*Toward a Positive Theory of Consumer Choice*, *Journal of Economic Behavior & Organization*, 1(1), 39–60, 1980). A client refuses to sell a stake for CZK 5 million, even though he would never buy it for CZK 5 million himself, because "it's my company, after all". A counterparty that knows this simply waits. And meanwhile the client pays his lawyers.

In *Why the "Haves" Come Out Ahead: Speculations on the Limits of Legal Change* (*Law & Society Review*, 9(1), 95–160, 1974), **Marc Galanter** put forward a thesis that the subtitle itself calls speculation, but which every experienced lawyer knows by instinct. Repeat players (banks, insurers and large companies that litigate regularly) have an advantage over one-shotters, the individuals and small firms with one dispute in a lifetime. They know the process and, above all, they can afford to lose a single case, because what matters to them is the result across the whole portfolio. A one-shotter has one case, and if he loses, he has nothing to offset the loss.

Insolvency: predicting is not enough, you need to have

A debtor is heading into insolvency and his lawyer suggests: "Let's study the insolvency court and the insolvency administrator and look at how they handled past cases." A sensible step, but not to be mistaken for a solution. Insolvency has a strong Monopoly element, and there predicting is not enough; you need funds, assets and creditors willing to talk.

The insolvency administrator is not an opponent you can outwit with a clever move. He manages the assets, reviews the filed claims and realises the estate. It is the insolvency court that decides on the insolvency and on how it will be resolved, and it decides according to what is available. A debtor with a perfect analysis but no resources is like a chess player without pieces. He ends up in debt relief (*oddlužení*, the Czech form of personal bankruptcy), where he repays as the court decides, or his assets are sold, and only once he has complied does the court release him from the rest of his debts. Or in bankruptcy liquidation (*konkurs*), where the assets are sold off for the creditors. In Galanter's terms, the bank as creditor is a repeat player and the debtor usually a one-shotter.

What Monopoly asks of the lawyer

Honesty. Telling the client: "On the arguments your position is solid. But you have no reserves for four years of litigation, and the other side knows it." And then looking for a strategy that changes the game: moving the dispute to chess, where position decides, or to poker, where information does.

Sometimes the best move in Monopoly is to leave the street where you cannot afford the rent. In law this often means not suing for the full amount and negotiating a settlement that secures part of the claim instead of risking all of it. I wrote a separate piece on this, Not every battle is worth fighting. The same applies to dividing property after a divorce, see Uncontested vs. contested divorce.

Occasionally the best move is to overturn the board, for example with your own insolvency petition or a publicly fought dispute. Such steps change the rules, but they are risky and irreversible. Without a carefully weighed strategy they tend to deepen the defeat.

Part four: Snakes and Ladders, where only the dice are left

Nobody plays this game on purpose, and yet a surprising number of people end up in it. You roll the dice, move your counter and hope for a six.

When people think law is Snakes and Ladders

When they come to a lawyer believing that "the court will see the truth". That it is enough to turn up, tell their story, and the judge will decide correctly. As if the courtroom were a vending machine: put in a case, out comes justice.

"But we're right." I hear this sentence regularly and give the same answer every time: being right is a necessary condition, but it is not enough. Being right and unable to prove it is, in practice, almost the same as not being right. Being right and unable to afford a lawyer is a reality that has long distorted the outcomes of civil justice. Judges are not to blame; the system simply runs on evidence, deadlines and procedural steps that someone has to know how to operate.

What research says about Snakes and Ladders

In *The Belief in a Just World: A Fundamental Delusion* (Plenum Press, 1980), the social psychologist **Melvin Lerner** described the belief in a just world: the need to believe that the world is orderly and that people get what they deserve. Lerner sees it as a way people make sense of their experience. In a legal dispute, though, that belief easily becomes a trap. A client who believes the truth will win on its own does not prepare. He does not secure evidence, does not think through the procedure and does not get documents to his lawyer in time. Then he loses, often because the other side prepared and played chess while he rolled the dice.

Chance does exist in disputes, it just looks different. **Shai Danziger, Jonathan Levav and Liora Avnaim-Pesso** (*Extraneous Factors in Judicial Decisions*, *PNAS*, 108(17), 6889–6892, 2011) analysed the decisions of Israeli parole boards. The share of favourable rulings fell during each session from about 65% to nearly zero and recovered after the food break. The study became famous as proof that a judge's hunger or fatigue affects the outcome. That reading is contested, however. The order of cases was not random: the board tried to finish the cases from one prison before the break, and prisoners without legal representation came up at the end of a session (Weinshall-Margel & Shapard, *PNAS*, 108(42), E833, 2011). Simulations by Andreas Glöckner show that much of the decline can also be explained by favourable decisions taking longer and by judges not starting a case before a break that they could not finish (*Judgment and Decision Making*, 11(6), 601–610, 2016). And the theory of ego depletion (Baumeister et al., 1998), on which the fatigue explanation relied, failed a preregistered replication across 23 laboratories (Hagger et al., *Perspectives on Psychological Science*, 11(4), 546–573, 2016). All that safely follows is that outcomes can be influenced by circumstances unrelated to the case itself, such as the order of the hearing list.

You cannot prepare for circumstances like that. For everything else, as a rule, you can.

What a client playing Snakes and Ladders needs to hear

"You're right. The other side thinks the same about itself, and the judge knows neither of you. That's why we need evidence, a strategy and time." Sentences like "the truth will prevail" or "you'll see, it will turn out fine" come from a lawyer who is quietly playing Snakes and Ladders himself.

And sometimes the hardest thing has to be said: "You're right, but proving it will cost more than you would gain. This game is not worth playing." Because even Snakes and Ladders has a rule people forget: you don't have to play.

"Justice will prevail" is a belief, not a strategy. A court decides on evidence, deadlines and procedural steps. A client who understands this before filing a claim saves years, and often money he would otherwise spend on moral satisfaction.

Part five: The wrong game in two typical stories

The most common reason for losing is not a weak position, a bad lawyer or a "bad" judge, but the wrong choice of game. Two examples, stylised but typical.

Bluffing on a house purchase: poker where chess is played

At the viewing the buyer likes the house and wants it. But he tells the agent: "I'll pay 15% less, take it or leave it." He thinks he is playing poker: feigning indifference and pushing the price down. Buying property, though, is closer to chess. Both sides know the market price from valuations and comparable sales, so the buyer's bluff hides nothing. The seller sees through it, says no and sells to someone else. The buyer loses the house he wanted, even though he could afford it.

Why a bluff sometimes works is explained by the **anchoring effect**: the first number mentioned shapes both sides' estimates (Tversky & Kahneman, *Judgment Under Uncertainty: Heuristics and Biases*, *Science*, 185(4157), 1124–1131, 1974). Laypeople are not the only ones affected. In an experiment by Gregory Northcraft and Margaret Neale, even estate agents with detailed information about a property were swayed by the listing price, while denying that it had influenced them (*Organizational Behavior and Human Decision Processes*, 39(1), 84–97, 1987). But an anchor only pulls within a plausible range. An offer 15% below market price, made to a seller holding three valuations, is more likely to end the talks than to shift his expectations.

It is better to analyse the position. How long has the house been on the market, how many interested buyers does the seller have, and what does he need more than the highest price: speed, or certainty? Those are chess moves.

A small supplier against a large customer: Snakes and Ladders inside Monopoly

A small supplier completed an order for a large customer, who did not pay. The supplier has the contract, delivery notes and invoices; he is right. And he tells himself: "I'll sue, the court will see it."

That is where he starts playing Snakes and Ladders. He files a claim without a procedural strategy and does not reckon with the customer bringing in lawyers who will spend months challenging every piece of evidence, betting that the small supplier will tire. He believes he is playing chess, because he has the evidence. In reality he is playing poker (he does not know what the other side will do) inside Monopoly (the other side has more resources for the dispute), and approaching it as Snakes and Ladders.

After two years he often accepts a settlement for part of the claim and pays his lawyer and the court fee. He could have played differently from the start: in poker, credibly showing that he really will go to court, and in Monopoly, working out what the dispute will cost against what he can realistically recover from the claim. A court does not search for the truth on its own. It decides on what a party asserts and proves.

Before you file the first document or accept an offer, say out loud which game you are playing. If you cannot put it in one sentence, you are probably playing several games at once and none of them on purpose.
Look for the other side's advantage. If it has a structural edge in resources, time or litigation experience, the strategy of "we'll convince them with arguments" usually fails.
If you are convinced you are right, ask a second question: what will it cost to prove it, and what will you be left with if you succeed?

Part six: How to recognise and change the game

The best players are not necessarily those who play a given game best. They are the ones who recognise which game they are in and can change it when it does not suit them. Due diligence looks like chess, but if the other side hides information it becomes poker, and if the other side has unlimited resources, Monopoly joins in.

In *The Strategy of Conflict* (Harvard University Press, 1960), **Thomas Schelling**, winner of the Nobel Prize in economics, described how a party can strengthen its position by visibly and credibly limiting its own options to back down. In a dispute, a client who visibly invests in preparation, for instance in an expert report, has that effect and signals that he means business. The risk is obvious: whoever fails to honour such a commitment in the end loses credibility faster than he gained it.

In practice this leads to four rules:

1. The first question is not "are we right?" but "what game are we playing?". Being right decides whether it is worth playing. The game decides how.

2. Diagnose the game with someone else. Sit down with a colleague and look at the matter through the other side's eyes. The game you think you are playing is often just the one you see from your own angle. The other side's signals (silence, an aggressive letter, insisting on "the principle") hint at what it is playing, but they give no certainty.

3. Changing the game is a legitimate strategy. If you are losing at Monopoly, move the dispute to chess (position) or poker (information). If poker is not working for you, go back to chess and fight a transparent dispute over position. And sometimes the best move is not to play at all. A client who stays out of a Monopoly game he cannot afford often gains more than one who hopes to hold out.

4. Name the game openly with the client. A dispute is a joint decision by client and lawyer. A client who understands which game he is playing and why decides together with us. A client who does not understand it becomes a hostage of his own dispute.

Game	Client's main task	Lawyer's main task	What typically spoils it
Chess	Patience, willingness to give up minor points	In-depth analysis, recognising patterns	Trying to "score" on every clause
Poker	Discipline over what to reveal and when	Reading the other side, credible signals	Showing too early how badly you want something
Monopoly	Realism about your own resources	Looking for a different game, changing the rules	Trying to "outspend" the stronger side
Snakes and Ladders	Understanding that this game leads nowhere in law	Saying so clearly, even if the client does not want to hear it	Believing that "justice will prevail" on its own

Are you facing a dispute, transaction or negotiation and unsure which game you are actually playing? In our practice we start every larger matter by naming the game, and only then draft the pleadings. Write to us before you commit to a strategy you would no longer choose six months from now.

Why rational economic logic fails completely in some disputes is the subject of my piece on the irrational adversary. For the practical follow-up, see What litigation and business negotiation have in common.

Recommended reading

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This text is a general discussion and popular-science writing, not an academic study. The application of the cited works to legal practice is the author's own interpretation and should not be confused with the views of the cited authors. Figures on the duration of civil proceedings come from the statistics of the Czech Ministry of Justice (České soudnictví 2024) and the Czech Supreme Court for 2024 and change over time. The examples are stylised and do not describe specific client cases.

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