

DIVISION 6 - CARIBBEAN STUD POKER

Section 1	Interpretation
Section 2	Application
Section 3	Table Layout and Equipment
Section 4	Playing Cards; Ranking of Hands
Section 5	Wagers
Section 6	Opening of Table for Gambling
Section 7	Shuffle and Cut of Cards
Section 8	Dealing the Cards
Section 9	Betting Round
Section 10	Final Settlement
Section 11	Progressive Jackpot
Section 12	Irregularities
Appendix	Caribbean Stud Poker Table Layout

1.0 Interpretation

1.1 In these rules, any words and expressions used that are defined in the Gambling Act 2003 have the same meaning as in that Act.

1.2 In this division, unless the contrary intention appears:

“Ante Wager” means the initial wager made by a player pursuant to subparagraph (a) of rule 5.1;

“Bet Wager” means an additional wager made by a player on his/her hand pursuant to subparagraph (b) of rule 5.3;

“Fold”, in relation to a hand of cards, means to continue no longer with the hand;

“Jackpot Wager” means a wager made in relation to the progressive jackpot;

“Poker Value” means, in relation to a hand of cards, the ranking of that hand as determined in accordance with section 4; and

“Progressive Jackpot” means a progressive jackpot game conducted in accordance with section 11 and all other applicable provisions of these rules.

2.0 Application

The rules contained in this division, together with the general rules contained in division 1, shall apply to the game of Caribbean stud poker.

3.0 Table Layout and Equipment

3.1 Caribbean stud poker shall be played at a table having on 1 side up to 7 sets of wagering areas for the players and on the opposite side a place for the dealer. Each Caribbean stud poker table shall have a drop box attached to it.

3.2 The layout cloth covering the table shall:

- (a) bear an inscription to the effect that the “Dealer only plays with ace and king or higher”; and
- (b) be marked in a manner substantially similar to that shown in the appendix.

3.3 The wagering areas shall be designated as follows:

- (a) for ante wagers by the word “Ante”;
- (b) for bet wagers by the word “Bet”;
- (c) for wagers on the progressive jackpot by either:
 - (i) when the progressive jackpot is being operated electronically, the slots provided for such wagers, or
 - (ii) when the progressive jackpot is being operated manually, the areas for such wagers as shown in the appendix.

3.4 The following equipment shall also be used in the game:

- (a) 1 deck of playing cards;
- (b) 1 cutting card;
- (c) either:
 - (i) a card shoe capable of holding all of the cards used in the game, or
 - (ii) an automatic shuffler capable of holding 2 decks of cards, from which the cards will be dealt; and
- (d) a discard rack capable of holding a single deck of cards.

3.5 When the progressive jackpot is being operated electronically, the Caribbean stud poker table shall be fitted with electronic equipment which shall:

- (a) be programmed to record the amounts wagered at the table on the progressive jackpot, and the amount of the jackpot prize pool;

- (b) be linked to 1 or more progressive meters, being electronic jackpot displays, which shall display the amount of the jackpot prize pool applicable to the table; and
- (c) include an indicator light at each progressive jackpot slot which shall light up to indicate that a wager on the progressive jackpot has been deposited in the slot.

The electronic equipment and the progressive meter or meters shall be of a type approved by the Secretary, contain components necessary for the performance of their respective functions, and comply with the applicable provisions of Division IV of the Rules of Casino Keno and Gaming Machines, as amended from time to time, approved for use in the casino and set out in the Supplement dated Tuesday, 1 November 1994 to the *New Zealand Gazette* of Thursday, 27 October 1994, or any provisions approved in substitution for those provisions.

4.0 Playing Cards; Ranking of Hands

4.1 All suits of cards shall have the same rank.

4.2 Cards shall rank, from lowest to highest, as follows:

2, 3, 4, 5, 6, 7, 8, 9, 10, jack, queen, king, ace,

except as provided in rule 4.3, where aces may be counted low.

4.3 Hands of cards shall rank, from lowest to highest, as follows:

- (a) **Odd Cards** for example, ace, king, 6, 4, 2
- (b) **1 Pair** 2 cards of the same value, a higher pair beating a lower pair. Aces shall be high
- (c) **2 Pairs** 2 different pairs, with a pair of aces and a pair of kings being the highest ranking 2 Pair. Aces shall be high
- (d) **3 of a Kind** 3 cards of the same value
- (e) **Straight** 5 cards of any suit in sequence. An ace may be counted as high or low
- (f) **Flush** 5 cards of the same suit, not in sequence. The value of the highest card in the hand shall decide the ranking between 2 flushes; where the highest cards in both hands are the same value, the next card; and so on

- (g) **Full House** 3 cards of the same value and a Pair. The hands take their rank from the threesome
- (h) **4 of a Kind** 4 cards of the same value
- (i) **Straight Flush** 5 cards of the same suit in sequence
- (j) **Royal Flush** ace, king, queen, jack and 10 of the same suit.

4.4 Hands of the same poker hand value, but consisting of different card values, shall be ranked according to the card values prescribed in rule 4.2. For example:

- (a) in the case of odd cards, the respective card values of the highest card in each hand shall determine the ranking, if these are the same the values of the next highest cards, and so on;
- (b) where 2 hands hold single Pairs of the same card value, the respective values of the highest of the remaining cards in each hand shall determine the outcome. If the highest of the remaining cards in the hands are of the same card value, the respective values of the next highest cards shall determine the outcome, and so on;
- (c) in the case of 2 hands each containing 2 Pairs, the hand holding the highest pair in terms of card value shall be ranked the higher. If the highest pair in each of the hands is of the same value, the respective card values of the second pairs shall determine the outcome. In the case of a draw, the respective card values of the fifth cards in the hands determine which hand shall be higher;
- (d) a Straight (or Straight Flush) consisting of king, queen, jack, 10 and 9 beats one consisting of jack, 10, 9, 8 and 7.

4.5 A player is responsible for declaring his/her optimum poker hand.

5.0 Wagers

5.1 Before the first card is dealt in a round each player:

- (a) shall make an ante wager;
- (b) subject to these rules may, where the casino operator offers a progressive jackpot, make a jackpot wager; and
- (c) subject to these rules may, where the casino operator allows a blind betting option, make a bet wager.

5.2 All jackpot wagers shall be made and disposed of in accordance with rules 5.5, 5.10 and 5.11 and section 11.

- 5.3 After the required number of cards have been dealt to the players and the dealer, the players may pick up their cards and either:
- (a) fold; or
 - (b) make a bet wager of twice the amount of the ante wager on the hand.
- 5.4 All ante wagers and bet wagers shall be made by placing chips, with the smaller denomination chips on the top, in the appropriate wager area of the layout.
- 5.5 Orally declared wagers shall be accepted only when accompanied by chips and if the dealer has enough time to place the wager on the layout before “No more bets” is called.
- 5.6 At the discretion of the casino operator, a player may place a wager on more than one betting area in accordance with rule 5.6.1 and 5.6.2.
- 5.6.1 A player may only place a wager on more than one betting area provided that no other player(s) is excluded from participating in the game.
- 5.6.2 Where a player places a wager on more than one betting area in accordance with rule 5.6, the casino operator or their delegate may direct that players will only be permitted to view one hand and that hand will be the one dealt to the betting area at which the player was seated when the cards were dealt. In this event, any additional hands must be played ‘blind’, i.e. no person, including the player who placed the wager or the dealer, will be permitted to view the cards until the hand is settled in accordance with rule 10.
- 5.7 Only 1 wager shall be accepted on any 1 wagering area.
- 5.8 Winning ante wagers and bet wagers shall, subject to rule 5.9, be paid at the following odds:

Ante Wagers	Payout Odds
All ante wagers	1 to 1
Bet Wagers	Payout Odds
Ace and king	1 to 1
1 Pair	1 to 1
2 Pairs	2 to 1
3 of a Kind	3 to 1
Straight	4 to 1
Flush	5 to 1
Full House	7 to 1
4 of a Kind	20 to 1
Straight Flush	50 to 1
Royal Flush	250 to 1.

- 5.9 The payout odds on bet wagers shall be subject to any maximum payout limit set by the casino operator. The amount of such limit shall be approved by the Secretary and be displayed on a notice at the table.
- 5.10 Except as permitted by these rules, once the dealer has called "No more bets" no player shall:
- (a) make any ante wager or jackpot wager; or
 - (b) handle, alter or withdraw any wager until a decision has been made and implemented with respect to the wager except that where the casino operator allows a blind betting option, the bet wager may be withdrawn if the player folds.
- 5.11 No player shall handle, alter or withdraw a losing wager.

6.0 Opening of Table for Gambling

- 6.1 After receiving the designated number of decks of cards at the table (1 deck if a card shoe is used, 2 decks if an automatic shuffler is), both the dealer and the game supervisor shall sort and inspect the cards independently of each other.
- 6.2 After the cards have been inspected they shall be spread out face up on the table for visual inspection by the first player or players to arrive at the table. The cards shall be spread out in horizontal fan-shaped rows according to suit, in sequence within the suit.
- 6.3 After the first player has or players have had an opportunity to inspect the cards visually, the cards shall be turned face down on the table, stacked and shuffled.
- 6.4 When an automatic shuffler is used:
- (a) each of the decks of cards shall be turned face down on the table, chemmy shuffled, stacked and riffle shuffled separately within the deck by the dealer;
 - (b) each of the decks shall then be loaded into the automatic shuffler and shuffled separately by it; and
 - (c) the cutting card shall be used in accordance with approved procedures.

7.0 Shuffle and Cut of Cards

- 7.1 The cards shall be shuffled so that they are randomly intermixed within the deck:
- (a) immediately before the start of play;
 - (b) at the end of each round;
 - (c) at the recommencement of play following any period during which the table has been vacant; and
 - (d) at the direction of a game supervisor or casino supervisor where there is reason to suspect that the randomness of the shuffle has been compromised; and
 - (e) if any card has been exposed prior to the cards entering the shoe; and
 - (f) at the direction of a game supervisor or casino supervisor, at his or her discretion.
- 7.2 Where a card shoe is used, after the cards have been shuffled a casino employee shall cut the cards once, place them on the cutting card and then place all of the cards in the shoe for the commencement of play. No player ever cuts the cards.
- 7.3 The dealer may at any time check and verify that the deck of cards or any of the decks, as the case may be, contains the correct number of cards, namely 52.
- 7.4 The casino operator may, after any round of play, direct that the cards be replaced, in which event the new cards shall be checked, shuffled and cut in accordance with sections 6 and 7.

8.0 Dealing the Cards

- 8.1 Immediately before the start of each round of play and after all ante wagers and jackpot wagers (if any) have been made, the dealer shall:
- (a) call "No more bets"; and then
 - (b) starting on his/her left and continuing clockwise around the table, deal the cards.
- 8.2 All cards shall be dealt face down except for the dealer's last card, which (subject to rule 8.4) shall be dealt face up.

- 8.3 When a card shoe is used the cards shall be dealt as follows:
- (a) 1 card to each wagering area containing an ante wager and then 1 card to the dealer; followed by
 - (b) a further card to each such wagering area and the dealer,
- and so on until every player and the dealer have 5 cards each.
- 8.4 When an automatic shuffler is used the cards shall be dealt as follows:
- (a) 5 cards at a time to each wagering area containing an ante wager; followed by
 - (b) 5 cards to the dealer.
- The dealer's bottom card shall then be turned over to face up.

9.0 Betting Round

- 9.1 After the cards have been dealt the players may pick up their cards and decide whether to fold or make a bet wager.
- 9.2 A player who decides to fold shall place his/her cards face down on the table. The dealer shall then, in relation to each player who has folded:
- (a) when the progressive jackpot is being operated manually, collect the player's jackpot wager (if any);
 - (b) collect the ante wager and the player's cards;
 - (c) individually spread out the cards, face down, and count them; and
 - (d) place the cards in the discard rack.
- 9.3 When the players remaining in the game have made their bet wagers, the player shall place his/her cards face down on the layout. Then, the dealer shall turn all the remaining cards in his/her hand face up and declare the highest poker value of the hand.
- 9.3A The casino operator may, at its discretion, direct where players place their cards on the layout.
- 9.4 When handling the cards, players shall at all times ensure that the cards remain on or above the area of the table. The cards must not be removed from the table.

- 9.5 Except as expressly permitted by these rules, players may not exchange cards, nor exchange, communicate, nor cause to be exchanged or communicated any information regarding their respective hands.
- 9.6 At any time while a game is in progress the casino operator may direct that:
- (a) only English be spoken by the players at the table;
 - (b) there be silence while a hand is in progress;
 - (c) players suspected of collusion not play at the same table.

10.0 Final Settlement

- 10.1 If the dealer's hand does not have a poker value of an ace and king or higher, the dealer shall announce "No hand" or "Dealer does not qualify" and then, starting on his or her right and moving to each player:
- (a) turn each hand face up and pay the ante wagers of the players remaining in the game in accordance with rule with rule 5.8; and
 - (b) subject to rule 10.2, count and collect the cards of those players and place them in the discard rack.

All bet wagers shall be void.

- 10.2 Where a player has made a jackpot wager received a hand qualifying for a progressive jackpot payout, the dealer shall leave the qualifying hand face up on the table until the payout for the hand has been made in accordance with rule 11.9.
- 10.3 If the dealer's hand has a poker value of an ace and king or higher, the dealer shall, starting on his or her right, turn the cards of the players remaining in the game face up, and:
- (a) arrange the player's hand so that the highest poker value may easily be read;
 - (b) compare the player's hand with that of the dealer; and
 - (c) announce the value of the player's hand and whether it wins or loses.
- 10.4 A player's hand shall:
- (a) win if it has a higher poker value than that of the dealer's hand;
 - (b) lose if it has a lower poker value than that of the dealer's hand;

- (c) constitute a stand off if it has a poker value equal to that of the dealer's hand.

10.5 If a player's hand loses the dealer shall:

- (a) when the progressive jackpot is being operated manually, collect the player's jackpot wager (if any), unless the hand qualifies for a jackpot payout;
- (b) collect the ante and the bet wagers on the hand; and
- (c) subject to rule 10.2, collect and count the player's cards as described in rule 9.2.

10.6 If a player's hand wins the dealer shall:

- (a) when the progressive jackpot is being operated manually, collect the player's jackpot wager (if any), unless the hand qualifies for a jackpot payout;
- (b) pay the ante and the bet wagers on the hand in accordance with rules 5.8 and 5.9; and
- (c) subject to rule 10.2, collect and count the player's cards as described in rule 9.2.

10.7 Subject to rule 10.2, if a player's hand constitutes a stand off the dealer shall:

- (a) when the progressive jackpot is being operated manually, collect the player's jackpot wager (if any), unless the hand qualifies for a jackpot payout;
- (b) collect and count the player's cards as described in rule 9.2.

10.8 Hands qualifying for a jackpot payout shall be settled in accordance with section 11.

11.0 Progressive Jackpot

11.1 The casino operator may at its discretion offer players the opportunity to participate in a progressive jackpot. A player may not make a jackpot wager unless he/she has made an ante wager on the hand during that round.

11.2 The amount of a jackpot wager shall be that displayed on the sign at the table indicating the minimum and maximum wager limits for the table.

11.3 Jackpot wagers shall be made by placing a chip of the correct denomination either:

(a) on or in the slot provided on the table; or

(b) on the designated wagering area,

in accordance with subparagraph (c) of rule 3.3, being the slot or wagering area corresponding to the wagering area for the player's ante wager.

11.4 When the progressive jackpot is being operated electronically, once a chip of the correct denomination has been placed in the slot the coin indicator light will be illuminated to indicate that the wager:

(a) has been made; and

(b) has been accepted into the jackpot.

11.5 When the progressive jackpot is being operated electronically, players making jackpot wagers are responsible for ensuring that the relevant coin indicator light is illuminated after the wager has been placed in the slot, and shall notify the dealer immediately if the light is not illuminated.

11.6 The jackpot prize pool to be distributed to players shall be established as provided by this part. The pool shall consist of:

(a) all jackpot wagers, less such portion of such wagers as the casino operator, with the approval of the Secretary, retains; and

(b) such further sum or sums as the casino operator may from time to time contribute to the pool or any part of it.

11.6A The casino operator may (with the Secretary's approval) divide the jackpot prize pool into two separate sub-pools:

(a) one for the payment of winning Flush, Full House, and 4 of a Kind hands (the "Minor Prize Pool"); and

(b) the other for the payment of winning Straight Flush and Royal Flush hands (the "Major Prize Pool").

On granting its approval the Secretary may impose such conditions as it thinks fit. The rate of increment to each sub-pool established under this rule shall be approved, and may be varied, by the Secretary.

11.6B The casino operator may (with the Secretary's approval) combine the separate sub-pools established pursuant to rule 11.6A into a single jackpot prize pool. On granting its approval the Secretary may impose such conditions as it thinks fit.

11.6C Where the casino operator has established separate jackpot sub-pools pursuant to rule 11.6A, the following rules in this division shall be modified as follows:

- (a) rule 3.5(a) is amended by inserting, after the words “prize pool”, the words “and of each jackpot sub-pool”;
- (b) rule 3.5(b) is amended by substituting “the amount of the Major Prize Pool” for “the amount of the jackpot”;
- (c) rules 11.9(a) and (b) are each amended by substituting the words “Major Prize Pool” for “jackpot”;
- (d) rule 11.10 is deleted and the following rule substituted:

“11.10 If 2 or more hands qualify for a progressive jackpot payout from the Major Prize Pool during a round of play at the same table:

- (a) all Straight Flushes (if any) shall first be paid in accordance with subparagraph (b) of rule 11.9;
- (b) all Royal Flushes (if any) shall be paid the greater of either:
 - (i) 10,000 to 1, or
 - (ii) an equal share (if there are 2 or more Royal Flushes), or the whole (if there is only 1), of the Major Prize Pool, being the amount remaining in the pool after deduction of the payouts (if any) referred to in the preceding subparagraph of this rule.”;
- (e) rule 11.11 is amended by inserting the words “from the Major Prize Pool” after “jackpot payout”, and by deleting the words “jackpot prize”;
- (f) rule 11.14 is amended by inserting the words “from the Major Prize Pool” after “payout”.

11.7 The following hands, as described in rule 4.3, shall qualify for a progressive jackpot payout:

- (a) Flush;
- (b) Full House;
- (c) 4 of a Kind;
- (d) Straight Flush; and

- (e) **Royal Flush.**

Any such payout is in addition to the payouts on ante and bet wagers described in rule 5.8.

- 11.8 A player who has made a jackpot wager and receives a hand which qualifies for a jackpot prize shall win whether or not the dealer has an ace and a king, or higher, in his/her hand.

- 11.9 Winning progressive jackpot wagers shall, subject to rules 11.10 and 11.11, be paid as follows:

- | | | |
|-----|-----------------------|---|
| (a) | Royal Flush | 10,000 to 1 or 100% of the jackpot prize pool, whichever is the greater |
| (b) | Straight Flush | 1,000 to 1 or 10% of the jackpot prize pool, whichever is the greater |
| (c) | 4 of a Kind | 500 to 1 |
| (d) | Full House | 150 to 1 |
| (e) | Flush | 100 to 1 |

- 11.10 If 2 or more hands qualify for a progressive jackpot payout during a round of play at the same table:

- (a) all 4 of a Kind, Full House and Flush hands (if any) shall be paid in accordance with subparagraphs (c) to (e) of rule 11.9, and the total of those payouts shall be deducted from the amount of the progressive jackpot prize pool; then
- (b) all Straight Flushes (if any) shall be paid in accordance with subparagraph (b) of rule 11.9, the jackpot prize pool being the amount remaining in the pool after deduction of the payouts (if any) referred to in subparagraph (a) of this rule;
- (c) all Royal Flushes (if any) shall be paid the greater of either:
- (i) 10,000 to 1, or
- (ii) an equal share (if there are 2 or more Royal Flushes), or the whole (if there is only 1), of the jackpot prize pool, being the amount remaining in the pool after deduction of the payouts (if any) referred to in the preceding subparagraphs of this rule.

- 11.11 If 2 or more hands qualifying for a progressive jackpot payout are received at approximately the same time on different tables, the order of priority for payment out of the jackpot prize pool shall be the order in which the players concerned received:

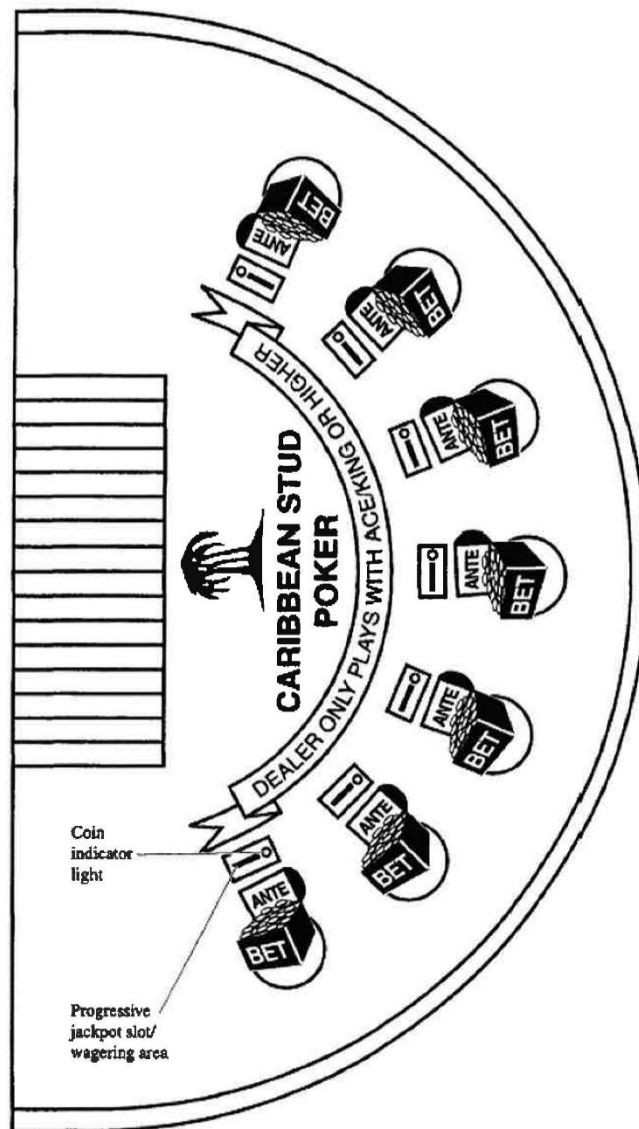
- (a) in the case of cards dealt from a shoe, the first card dealt to the hand;
and
 - (b) in the case of cards dealt from an automatic shuffler, all of the cards in
the hand.
- 11.12 Progressive jackpot payouts shall be made after all ante and bet wagers have been collected or paid. When the progressive jackpot is being operated manually and a hand qualifies for a jackpot payout, the wager on the jackpot shall be collected after the payout has been made.
- 11.13 Where a player has a hand qualifying for a jackpot payout, the dealer shall verify the hand and notify the game supervisor.
- 11.14 The dealer shall count the cards in the deck in use at the table whenever a progressive jackpot payout is made.

12.0 Irregularities

- 12.1 If a player fails to comply with rule 9.5 the casino operator may declare the player's hand void, in which event any ante, bet and jackpot wagers made by that player shall be void.
- 12.2 Except as specified elsewhere in these rules, if an incorrect number of cards is dealt to any player or to the dealer this shall constitute a misdeal.
- 12.3 Subject to rules 12.4 and 12.5, if an exposed card is dealt this shall not constitute a misdeal. The dealer shall turn the card over and continue dealing.
- 12.4 If a card is exposed in error to the dealer's hand, the card shall be left exposed as the dealer's face up card and the dealer's fifth card shall be dealt face down, and, where the cards are dealt from an automatic shuffler, shall not be turned over as provided in rule 8.4.
- 12.5 If more than 1 card is exposed in error during the dealing of the cards this shall constitute a misdeal.
- 12.6 If a player exposes 1 or more cards in his/her hand, this shall not constitute a misdeal, subject to rule 12.1.
- 12.7 Subject to rule 12.4 and notwithstanding rule 12.5, if the dealer exposes 1 or more cards in his/her hand in error before all of the players have made a decision in relation to their bet wagers, the players will be given the option to make a bet wager or to fold.
- 12.8 Subject to rule 12.9, if, before all cards are dealt, it is discovered that cards have been dealt to a wagering area without an ante wager, the round of play shall be declared a misdeal.

- 12.9 If it is discovered that a complete hand has been dealt to a wagering area without an ante wager, the cards dealt to that wagering area shall be counted and placed in the discard rack and the game shall then continue. In the case of a progressive jackpot wager having been placed by the player on that round of play, the progressive jackpot wager shall be deemed void.
- 12.10 If it is discovered that the deck in use at the table does not contain 52 cards, the round shall constitute a misdeal and be void.
- 12.11 Subject to these rules, in the event of a misdeal all wagers affected by the misdeal, shall be void. In the event of the entire round being void the hands shall be redealt after the players have had an opportunity to change their ante and progressive jackpot wagers.
- 12.12 If a player makes a wager and is dealt a complete hand but is not present at the table to make a decision on that hand, the player shall be deemed to have folded and the wagers shall be forfeited.
- 12.13 If the dealer collects a player's cards before the player has decided whether to make a bet wager or to fold, the player's hand shall be reconstructed where possible but otherwise shall be void.
- 12.14 Notwithstanding rule 10, when a player has laid his/her cards down on the table subsequent to the dealing of a complete hand, and those cards have been placed on the discard pile, that player's hand may be reconstructed providing those cards are the top five on the discard pile. The player shall otherwise be deemed to have folded pursuant to rule 9.2.
- 12.15 Where a player has placed an additional wager(s) in accordance with rule 5.6 and he/she contravenes the provisions of rule 5.6.2 by viewing a hand other than, or in addition to, the hand dealt to the area at which he/she was seated, the dealer will immediately notify the game supervisor (or above), who may:
- a) where the player has viewed one hand only, deem that particular hand to be the hand dealt to the area at which he/she was seated and continue the game; or
 - b) where the player has viewed more than one hand, deem all hands viewed by the player to be void.

Appendix
Caribbean Stud Poker Table Layout



The material included in this PDF document constitutes a 'fair use' of any copyrighted material as provided for in Section 107 of the U.S. Copyright law which allows for education, teaching (including multiple copies for classroom use), scholarship, or research and is not deemed an infringement of copyright in the eyes of the law.

§ 107 . Limitations on exclusive rights: Fair use⁴⁰

Notwithstanding the provisions of sections 106 and 106A, the fair use of a copyrighted work, including such use by reproduction in copies or phonorecords or by any other means specified by that section, for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright. In determining whether the use made of a work in any particular case is a fair use the factors to be considered shall include—

- (1) the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;
- (2) the nature of the copyrighted work;
- (3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
- (4) the effect of the use upon the potential market for or value of the copyrighted work.

The fact that a work is unpublished shall not itself bar a finding of fair use if such finding is made upon consideration of all the above factors.