

22.5 SETTING UP, PROMOTING, CONDUCTING A LOTTERY

§ 849.09(1)(a), Fla. Stat.

To prove the crime of [Setting Up] [Promoting] [Conducting] a Lottery, the State must prove beyond a reasonable doubt that:

(Defendant) [set up] [promoted] [conducted] a lottery for [money] [anything of value].

Definitions.

Little River Theatre Corp. v. State, 185 So. 855 (Fla. 1939).

A “lottery” has three elements: (1) consideration — that is, a bet or thing ventured; (2) a prize; and (3) the award or winning of the prize by lot or chance.

A “bet” is when money or other property is risked, pledged, wagered, or staked by a participant on the outcome of a game, contest, or uncertain or contingent event, with the expectation of gaining or losing as a result.

A “thing ventured” is when something other than money or property is risked by a participant on the outcome of a game, contest, or uncertain or contingent event, with the expectation of gaining or losing as a result, which includes but is not limited to the time, inconvenience, and effort required to attend or participate, at the expense of foregone alternatives and other opportunities.

A “prize by lot or chance” is when the award or winning prize is determined by a chance or uncertain or contingent event, the outcome of which is not influenced or controlled by a participant’s skill, such as by drawing numbers, entries, cards, or by rolling dice.

Lesser Included Offenses

LOTTERY — 849.09(1)(a)

CATEGORY ONE	CATEGORY TWO	FLA. STAT.	INS. NO.
None			
	Lottery	849.09(1)(f)	
	Lottery	849.09(1)(g)	22.9
	Lottery	849.09(1)(h)	22.10
	Lottery	849.09(1)(i)	
	Lottery	849.09(1)(j)	
	Lottery	849.09(1)(k)	22.11
	Playing at game of chance by lot	849.11	
	Gambling devices, etc.	849.231	
	Attempt	777.04	5.1

Comments

See *Blackburn v. Ippolito*, 156 So. 2d 550, 553 (Fla. 2d DCA 1963) (“[T]hings other than money can constitute a sufficient consideration, moving from the participants in such scheme to the operators without any cash outlay being made.”) citing to *Dorman v. Publix-Saenger-Sparks Theatres*, 184 So. 886 (Fla. 1938) (“The consideration required to support a simple contract need not be money or anything having a monetary value, but any consist of either a benefit to the promisor or a detriment to the promisee.”) and *Little River Theatre Corp. v. State*, 185 So. 855

(Fla. 1939)(holding that increased attendance and receipts at a theater offering a “bank night” drawing satisfied the element of consideration, even though persons could participate in the drawing without purchasing a ticket).

A special instruction will be needed if an exception, such as §§ 849.09(1), 849.092, 849.0931, or 849.0935, Fla. Stats., might apply.

This instruction was adopted in 1981 and amended in 2014 [143 So. 3d 893], 2015 [176 So. 3d 938], and 2019.