

## 22.7 [CONDUCTING] [ADVERTISING] A LOTTERY DRAWING

§ 849.09(1)(c), Fla. Stat.

To prove the crime of [Conducting] [Advertising] a Lottery Drawing, the State must prove the following beyond a reasonable doubt:

*Give as applicable.*

- a. (Defendant) **conducted a lottery drawing.**
- b. (Defendant) **advertised a lottery drawing [in a newspaper] [or] [by [a circular] [a poster] [a pamphlet] [radio] [telegraph] [telephone] [or otherwise]].**

*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)(c)

| 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    |
|              | 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 2015 [176 So. 3d 938] and 2019.