# SOME ASPECTS OF THE LAW OF GAMING IN MALAYSIA

by

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A Project Paper submitted in partial fulfilment of the requirement for the Degree of Bachelor of Laws in the Faculty of Law.

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Kuala Lumpur.

September, 1976.

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(SUAHRIZHAT BTE ABDUL JALIL)

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September 1976.

ACKNOWLEDGMENT

The writer wishes to express her deep appreciation to the following people for their help in making this paper possible. Without their assistance this dissertation would never have seen the light of dawn.

(1) Mr. Michael Lim - the Writer's supervisor, for his tremendous patience, guidance and great wisdom.

(2) Tuan Haji Jalil - my father, for his encouragement and also, reprimands. It was invaluable.

(3) Incik Lamin Yunus of Attorney General's Chambers.

(4) Mr. Kong Fook Yew - Records Division, Police Department.

(5) Encik Rusli of N.E.B.

(6) Cik Zutfiah Ismail, for her undying devotion to the project in more ways than one.

(7) The Librarians at the University of Malaya, Attorney-General(s Chamber's and the National Archives.

(8) And the last but never the least, [illegible] "NF", for making everything possible.

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# CHAPTER I

## INTRODUCTION

The subject of gambling has baffled and intrigued the writer for a very long time. What could have been a much more presentable paper was, however, foiled by the writer's deep ignorance of the very essence of gambling, i.e. how to gamble. Had the writer known of this important prereguisite she would probably have refrained from "meddling" in it.

However, after starting out with high aspirations and lofty deals of being a near 'expert' on the subject (even after losing out in the game from the very outset) the writer could not possibly abandon the whole idea.

What is finally presented in this paper is only a small part of what the writer actually gained. To begin with the writer found great difficulty in expressing her thoughts. Gaming may seemingly appear to encompass only the playing of cards and the like. This is not so. It includes, amongst other things, private and public lotteries, betting, card games and also "legalised gaming" like horse racing, Empat Number Ekor, Social Welfare lotteries, Sports Toto etc. Each of these could very well form a topic for a working paper.

Infact the writer conducted several interviews with some personalities involved in the area of legalised gaming.

However due to some difficulties she succumbed to the temptation of all times, i.e. to abandon it after failing to surmount the problems.

The writer wishes to emphasise again that what follows hereafter is not the whole or even half the story of gaming in Malaysia. Regard it as a small anecdote contained in each chapter and since the writer cannot even claim great originality, it is best taken with a pinch of salt.

The main piece of legislation governing gambling in Malaysia is the Common Gaming Houses Ordinance, 1953 complimented by the Betting Ordinance 1953.

The purpose of the Common Gaming Ordinance 1953 is to suppress common gaming houses, public gaming and public lotteries. It is of paramount importance to understand that it does not make a total prohibition of gaming or lotterie The same applies for betting under the Betting Ordinance 1953.

Gaming and lotteries are only illegal under certain circumstances which are described in the Ordinance with the qualifying words "public" or 'public place' or 'common gaming houses' Gaming in any other place is perfectly lawful. The Ordinance only lays down those aspects of

gaming and lottery which constitute offences. Aspects which do not constitute any offence under the Ordinance came under the adjective (private).

"Gaming" is defined in the Common Gaming Houses Ordinance 1953 in S.2.

("Gaming", with its grammatical variations and cognate expressions, means the playing of any game of chance or of mixed chance and skill for money or money's worth.)

A game of skill is one in which nothing nothing is left to chance and in which superior knowledge and attention or superior strength, agility and practice, gain the victory. The games of mere skill are exceedingly few for it excludes every game in which the element of chance enters. Chess perhaps and draughts and some few games ejusdem generis would be games of mere skill. No game of cards, no game in which dice were used, could, I submit, fall under such a category. Even billiards so long as points are scored for unintentional success, could hardly be called games of mere skill. But some people may regard billiards as a game of skill on the grounds that it does not cease to be such merely because sometimes points are scored unintentionally.

Games of skill are distinguished from games of chance in that the latter are games dependent upon chance or luck and in which adroitness has no place at all. And games of chance or of mixed chance and skill are illegal under the Common Gaming Houses Ordinance.

The meaning of the word 'gaming' must be considered in relation to :-

(a) gaming in public

(b) gaming in a common gaming house.

There are some popular gambling games mostly in the card category which do not usually form subjects of criminal charges as they are invariably played under circumstances which do not constitute any offence under the Ordinance. The main reasons being that the number of persons who may participate in them at one time is limited, more often than not to four persons only. It is obvious therefore that if only four persons are able to participate in a particular game at any one time, then there is no opportunity for participation therein by the public, and unless the game is played in a public place, ordinarily no offence is committed.

Gaming in a common gaming house is restricted to games of chance as games of skill are outside the bounds of law. The expression common gaming house is of English origin. They are nuisances in the eyes of the law, not only because they are great temptations to idleness but because they are apt to draw together numbers of disorderly persons.

It is illegal to keep a common gaming house as laid out in S.2 of the Common Gaming Houses Ordinance.

A common gaming house is either a place to which the general public are able to resort for the purpose of gaming or a place to which, though barred to the public, is kept or used by the owners or occupiers primarily for the purpose of gaming.

authority?

A practical question may arise as to whether social clubs could ever be deemed to be a common gaming house if facilities for gaming are catered for.

In REX vs. FONG CHENG CHENG[I] it was held that a place does not become a common gaming house merely because gaming habitually occurs in it. A private residence is not a common gaming house because the owner makes a practice of inviting his friends to it to gamble, nor do the premises of an ordinary social club become a common gaming house merely because the club provides facilities for its members to gamble and some of them habitually use the premises for that purpose.

This reasoning is consistent with common sense. For if it were otherwise no social club whose primary object is social intercourse, or spot of any description ~~description~~.

No thesis developed.

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I: (1930) SSLR 138.

would be within the law if it habitually permitted any of its members to gamble on its premises and provided facilities for that purpose. It is also logical because without the modification we will be left in a position where probably three quarters of the adult population of the Federation are unprosecuted criminals and in future then no man could play "old maid" with his family in his own house for a ten cents stake without committing a criminal offence.

However, notwithstanding that the avowed object of a club is to provide social amenities to its members if in fact the primary object of that Club is, or has become, gaming, and its premises are kept or used primarily for that purpose, then such a club is a common gaming house within the meaning of and subject to the provisions of the Ordinance.

It should be noted that there is a difference between the offence of gaming in a common gaming house in Singapore as compared to Malaysia.

'Gaming' is not defined in the Singapore Ordinance. It is defined in our country and is restricted to the playing of games of chance or if mixed chance and skill for money or moneys worth. Games of skill are outside the scope.

In Singapore the ordinary meaning of 'gaming' is used i.e. the playing of any game for money or moneys worth. Therefore it is immaterial whether the game is of skill or of chance or of mixed chance and skill. So long as it is played for money, it is an offence in our

country, unless the prosecution successfully invoke the presumption under S.19 of the Common Gaming Houses Ordinance 1953. They have to prove that the game played in the Common Gaming House was a game of chance or of mixed chance and skill.

## CHAPTER II

## THE VARIOUS PRESUMPTIONS CONTAINED IN THE COMMON GAMING HOUSES ORDINANCE 1953:

### SHORT STUDY

The Ordinance contains several sections which create presumptions and dispenses with the normal onus of proof placed on the prosecution (as required by the Evidence Ordinance 1950). These sections presume certain facts to exist and the onus of disproving them is thrown on the defence. The crown thus is given a powerful weapon to assist it in the suppression of crime.(1)

But it must be understood that these sections namely sections 4(2); 6(2); 7(3); 8(2); 9(2); 11(1) (2) & (3); 19 and 20(1) do not "make" offences. They exist to help the prosecution of persons who have been accused of an offence under the Ordinance. The offence is determined by the actual circumstances of the gaming i.e. whether the gaming was "public place" or "common gaming house" or in private. If the facts presumed do not actually exist then no offence is committed. For instance Section 16(1) empowers a police officer to enter a suspected place and

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(1) Objection has been expressed against this type of legislation although it has been held in SAMINATHAN VS. P.P. (1955) MJL 121 that these statutory presumptions are really nothing more than an extension of the provisions of S.106 of the Evidence Ordinance 1950 which provides that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him.

arrest persons found therein, provided that things or circumstances which are made by this Ordinance presumptive evidence of guilt are found in such place or on any person therein. This means that on presumptive evidence alone a police officer is empowered to arrest. But this does not necessarily imply that an offence has already been or is being committed.

I. S.19

The most difficult and important sections dealing with presumptions are S.19 and S.20. The sections provide presumptions that:

(1) a place is a common gaming house

(2) that it is so kept or used by the occupier

(3) under S.20, with the permission of the owner.

For S. 19 the circumstances which raise the above presumptions are provided for in the section, and if any one or more of them occurs, the presumptions come into force. The effect of the section is that it places on any person whose premises are entered under the Ordinance and found to contain instruments of gaming the burden of proving that those premises are not a common gaming house within the meaning of the law. Certainly these sections sound very alarming and extraordinary, giving great leeway for the police and prosecution to round up almost anybody in whose house instruments or appliances for gaming

are found, and charge them with keeping a common gaming house. However they exist in the Gaming Ordinance and the courts have therefore to utilize them though in their instructions of S.20 and S.19 they have done all in their power to prevent them bearing too hardly upon the subject.

a) ORIGIN OF S.19 AND S.20

In order to understand these two sections ~~the~~ better, it is necessary to note their origin and their appearance in other gaming laws analogous to this Ordinance.

S.8 of the 8 and 9 Vic. C.109 (English) provides that where any cards, dice, balls, counters, tables or other instruments of gaming used in playing any unlawful game are found in any place entered under the Act, it is evidence until the contrary be proved that such place is used as a common gaming house and that the persons found therein were playing, although no play was actually going on at the time of the entry.

However, the difficulty of getting such evidence of gaming was so great that this portion of the Act proved to be practically a "dead letter" because all the gaming houses were found to be provided with the means of secretly making away with the instruments of gaming on any

alarm being given. Therefore the 17 and 18 Vic. C.38 was passed, S.2 of which enacted that obstructing the entry of constables or fitting a house in order to obstruct the police should be evidence until the contrary be proved that the place so fitted or in which the obstruction took place was a common gaming house. These two sections are then the original sources from which S.19 and S.20 have ~~given~~ arisen.

In the Straits Settlement colonies, the initial sections to adopt the English counterparts were sections 58 and 60 of the Police Act XIII of 1856. Then was passed Ordinance XIII of 1870, Sections 14 and 15 dealing with the same presumptions. Next came Ordinance IX of 1870 S. 13 and S.14; Ordinance XIII of 1879, S.11 and S.12 and Ordinance V of 1888, S.14 and S.15. Finally it is all incorporated in the 1953 Ordinance under Sections 19 and 20. Some differences can be found in the wording of these various sections but it does not affect the crux of the matter hence authorities under any of these Ordinances should be applicable under the present Ordinance so far as the actual presumptions are concerned. It might not however, apply so far as the construction of some of the terms used in the sections.

Authority? why?

b) INSTRUMENTS OR APPLIANCES FOR GAMING: S.19

The above expression is not specifically defined in the Ordinance but S. 3 provides that the expression includes "all articles declared under sub-section (2) to be instruments or appliances for gaming and all articles which are used in or for the purpose of gaming or a lottery". By A.P. 29/66, the sub-section (2) referred has been changed to sub-section (3) with the word "Minister" used instead of "Chief Secretary".

Up to date no instruments or appliances for gaming has been gazetted by the Minister.(2) It leaves us to look at the other alternative given, for the word "includes" denotes that apart from gazetted instruments/ appliances there may be other means of gaming.

A question that arises is: Does the actual user of an article on a single occasion for the purpose of gaming make that article an instrument or appliance of gaming? Or is it restricted to articles which by their nature are used in for the purpose of gaming or a lottery? It is a difficult question which has never been actually decided in the Federation so far as can be ascertained.

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(2) In Singapore under S. 186 of the Common Gaming Houses Ordinance 1961 (No. 2 of 1961), the Minister for Home Affairs in the exercise of the powers conferred by sub-section (3) of S.2 of the Common Gaming Houses Ordinance declared the articles set out in a given schedule to be instruments or appliances for gaming. See appendix C.

The Bombay Act of 1887 (amended in 1890) contains an almost similar provision to our corresponding section. It reads

S. 2:"In this Act the expression 'instruments of gaming' includes any article used or intended to be used as a subject or means of gaming .....".

These words seem to import in themselves that it would be sufficient for the purposes of the act if an article were only used once as a subject or means of gaming. The leading case on the point is the QUEEN-EMPRESS vs KANJI BHIMJI.(3) This case decided that any article which is actually used as a means of gaming comes within the defination of instruments of gaming even though it may not have been specially devised or intended for that purpose.

However the contrary had been held in QUEEN-EMPRESS vs GOVIND.(4) Parsons J. held that there was no indication in the amending act of 1890 of any intention to restrict the meaning of the word "used". If the legislature had so intended, they would have surely indicated it. He went further to say that whether or not an article is used as

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(3) I.L.R. 17 BOM. 184

(4) I.L.R. 16 BOM. 283

a subject or means of gaming or wagering, is a question of fact which has to be determined upon the evidence in each case.

Telang J. was even more emphatic in his view that some enlargement of the scope of the words was intended. He held that the word "means" is a word with a wider signification than was given to the word "instruments" of gaming and when the former word is added by express separate legislation to the defination of the latter, the inference is that some widening of the scope of the old law must hav e been intended.

This view however cannot be applied to the construction of our local Ordinance because of the absence of the word "means" (which according to Telang J. enlarges the scope). Instead we use the word "articles". Furthermore, unlike the Bombay Act 1887, we have no subsequent amending act to enhance this need for a wider construction of the word. It is humbly submitted that the view held in the former case of Queen-Empress vs. Kanji Bhimji[5] is the better one. The purpose of the Act is to supress gambling because of its inherent evils, not because certain games are

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(5) I.L.R. 17 BOM. 184.

deemed to be distasteful. Therefore as long as a person gambles, even once, using a totally new instrument, may be hitherto unknown, then this single user of the instruments should be deemed that which is forbidden by the Act. If the instrument/appliance to be illegal must be that normally used or is for the purpose of gaming then it would be cutting down the object of the act. So long as the accused were found playing any game of chance of of mixed chance and skill for money or moneys' worth, the fact that the instruments which they used is a novel one, not usually used by gamblers, should not be a deterrent factor. Apart from normal instruments like the mahjong tiles for instance, the courts should be given scope to hold that any instrument of gaming, even though used only once, so long as it is used to game, then it is an instrument or appliance of gaming falling under the act.

Sir Roland Braddell however feels that the construction must be strict and in favour of the subject. He says that:

> "The Legislature in this colony had then no precise defination before them in 1888 and it may be possibly be that it was

considered safer not to define the expression at all but to interpret it as was done by a wide statement of what the expression was to include, and it may therefore never have been intended to make a single "user" sufficient for the purpose of the Ordinance." (6)

I humbly beg to differ in my opinion. The fact that there has been an obvious omission to define the phrase by the legislature could possibly mean that they are leaving the field open for a wide interpretation and 'wide' here I take it to mean to include a single user, unlike the interpretation of 'wide' given by Sir R. Braddell, restricting the phrase to exclude a single user.

It is curious to note that a place in the Ordinance shall be deemed to be 'used' for a purpose if it is used for that purpose even on one occassion only, as provided for in sub-section (2) also. Of course one can argue that there again if the Legislature intended to include a

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(6) Sir Roland Braddell, COMMON GAMING HOUSES - a Commentary on Ordinance No. 45, 2nd Edition at p.55

single user as an instrument of gaming under the Ordinance it would surely provide for it, as it provided for a 'place' used.

These are all possible arguments which in effect carry no legal precedence and the question can only be solved when it arises in court. Probably the best compromise is to adopt Parson's J's view in Queen Empress vs. Govind[7] that whether or not an article is used as a subject or means of gaming is a question of fact which has to be determined upon the evidence in each case. This was the basis upon which the case of Rex vs. Foo See Cheng [8] was decided. It was held that a pin table is not necessarily an instrument or appliance for gaming but if it has actually been used for gaming on any occasion then it at once falls within the defination and the presumption under S.19 of the Ordinance arises, and the court must infer until the contrary is proved that the place in which the pin table is found is a common gaming house and is so kept or used by the occupier thereof.

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(7) I.L.R. 16 BOM. 283

(8) [1938] MLJ 134; [1938] S.S.L.R. 431.

Some of the articles which has been held to be instruments of gaming includes lottery tickets (9), a pari-mutuel (10), a marked coin proved to have been used for the purpose of making a bet (11), and money (12) (although in the case of PYARELAL GOKUL PRASAD vs. EMP. (13) it was held that not all moneys are instruments of gaming. If a particular coin or a particular note has in fact been used as a means of gaming then that particular coin or particular currency note does fall within the defination).

c) "OCCUPIER"

There is a presumption under S.19 that a place is a common gaming house so kept by the occupier if upon entry into premises any instrument for gaming are found therein or if persons are seen or heard to escape therefrom on the approach or entry of a Magistrate or unlawfully prevented from entering.

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(9) R vs. Lee Hong Kang & Others (1882) 3 ky. 145

(10) Tallet vs. Thomas (1871) L.R. 6 QBD 514; see also Everett vs. Shand (1931) 2 K.B. 522

(11) P.X. DeSouza vs. Emp. [1932] BOM. 180

(12) Osman bin Trund vs. P.P. (1912) 1 FMSLR 84

(13) [1932] BOM. 94

This presumption is unsuitable if rebuttable some evidence to the contrary can be proved. In R vs. Khoo Seang Ju (14) where the only facts proved against the accused were that he was the occupier of the house and that persons escaped from it on the arrival of the police, which is statutory proof under S.19 that the house was so kept by the occupier as a common gaming house, Wood J held that it was not safe to convict where there was some evidence to the contrary.

Who is an occupier? Ordinarily the word means the tenant of the premises, although he may personally be absent from the premises. This is laid down in "Maxwell on Interpretation of statutes" 2nd Edition at page 81. It is to be noted that the word is not defined in this law, though it has been in other laws for the purposes of those laws. The defination was attempted by Wood J. in two cases although upon perusal the definations appear to conflict with each other. In R vs. Aw Eng Tho (15), he decided in 1884 that there must be proof of actual and not constructive occupation, and the man who really occupied the whole house we acquitted, while in the case of

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(14) (1888) 4 ky. 392

(15) 3 ky. at page 171.

TAN YOK LAN[16] six years later, he held that the actual occupant was not the occupier but her husband, who paid the rent and lived somewhere else. This was followed by Law (Ag. C.J.) in Rex vs. Liong Thye Hye[17]. The accused was a married woman who occupied the premises in question but whose husband paid the rent. The husband only went home once a week and at the time of the occurence in the case, was living at a place where he was working. Law (Ag. C.J.) considered that the accused was not the occupier.

It should be borne in mind that S.19 is merely a presumptive section which does not carry any conviction. If certain conditions provided for are found then a certain presumption arises. This could be if great help in the use of the convicting sections of 4(1) (9) + (b) [18]. In a prosecution on a charge under this section the Charge should specify the capacity in which the accused is charged. The charge should allege either that the

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(16) (1890) 4 kysche 668.

(17) B. Common Gaming House 147.

(18) The presumption (provided by S.19 and S.20) that a place is a Common Gaming House is a general one and may be invoked against any accused whenever it is necessary for the purposes of the prosecution to prove that a place is a Common Gaming House. The presumption that a place is so kept or used by

accused is the owner or that he is the occupier or that he is a person having the use temporarily or otherwise of the place in question. Where a section as in this case, comprises more than one act which constitute an offence, the prosecution should make up their minds with which of those offences they propose to charge the accused. If they are not sure which of the offences will be established by the facts they can prove against the accused, they should charge him ~~in the~~ with offences in the alternative.

d) "PERMITTING"

The presumption under S.19 of keeping or using a place does not apply when the charge is of "permitting". The presumption under S.19 of the Ordinance cannot be involved when the accused is charged with permitting another person to keep or use the place as a common gaming house.

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occupier can of course only be involved against the "occupier" of the premises under S.4(a) and the 3rd presumption that the place is so kept or used with the permission of the owner can be involved only against the "owner" under S.4(b).

That presumption only applies when the accused is charged with keeping or using the premises as a common gaming house under S.4(1) (a) of the Ordinance.

S.4(2) provides that "any person who occupies or has the use temporarily of a place which is kept or used by another person as a common gaming house shall be presumed until the contrary is proved to have permitted such place to be so kept or used". If a presumption under S.19 is raised that the place is a common gaming house then a further presumption arises under the same section that the place is so kept or used by the occupier thereof. It will be seen that the prosecution cannot rely simultaneously upon S.19 and S.4(2) of the Federation Ordinance. The two presumptions deal with entirely separate and distant kinds of cases.

II. Section 20

The section creates the following 3 presumptions in certain circumstances in regard to a place (similar to the presumptions in S.19)

(1) that it is a common gaming house

(2) that it is so kept or used

(3) that the occupier so keeps or uses it.

And of the notice prescribed in SS (2) has been served on the owner of the premises a further presumption arises:-

(4) that the place is so kept with the permission of the owner

The circumstances which raise the above presumption are any one or more of the following provided the place has been entered under the provisions of the Ordinance:-

(a) where any passage or staircase or means of access to any part of the premises is unusually narrow or steep or otherwise difficult to pass

(b) where any part of the premises is provided with unusual or unusually numerous means for preventing or obstructing an entry

(c) where any part of the premises is provided with unusual contrivances for enabling persons therein to see or ascertain the approach or entry of persons or for giving the alarm or for facilitating escape from the premises.

It is interesting to note that a petition was signed by owners of house property in Singapore in 1876 asking for exemption from liability which befalls them should their houses, rented out to tenants, be found to be a common gaming house by the Gaming Houses Ordinance 1870. In their report[19] (found at the National Ardtives) they complained that the Ordinance has been so framed and construed as to make innocent owners of houses responsible in fine and imprisonment for the use without their knowledge or consent of their houses for gaming purposes. At page lxxiii the petition reads:

> "..... indeed the 16th and 17th clause of the Act appear to be clearly intended to secure an owner having full notice of the use to which the tenants are putting his house, but unfortunately the 15th section is so framed as practically to over-ride the protecting provision of the 16th and 17th sections. This section provides that "whenever any passage, staircase or means of access, in a place lawfully entered as

(19) Proceedings of the Legislative Council of Straits Settlements from 1876, Monday 27th March 1876, page lxxiii.

aforesaid, to any part thereof is unusually narrow or steep, or otherwise difficult to pass, or any part of the premises is provided with unusual or unusually numerous means for preventing or obstructing an entry, with unusual contrivances for enabling persons therein to see or ascertain the approach or entry of persons, or for giving the alarm, or for facilitating escape from the premises, it shall be presumed, until the contrary be shown that the place is a gaming house, that the same is so kept or used by the occupier thereof, and that it is so kept with the permission of the owner thereof".

The petitioners requested for the repeal of the last 13 words of section 15 above (equivalent to our present S.20). Among the reasons given were that under this section, Magistrates have held that the presence of a ladder at the wall, which is common in Chinese houses, which could be made to give access to the roof, or the addition of a swinging bar to the usual trap door entrance, are sufficient to raise a presumption

under this section, that the house is a gambling house and is so used with the owners' permission, although these and similar fittings can readily be added by the occupier without the landlords' knowledge or suspicion, for a house once let, the landlord has no power whatever during the tenant's occpation to enter it without the tenant's leave.

In response to this appeal the Attorney General at the time, Mr. R. Braddell, replied that(20 at page ccxx

> "..... the petitioners have made out a fair ground for relief and at any rate they ought to be placed by the law in a position better suited to enable them to deal with the responsibility thrown on them as house owners. If such relief is given, I think the responsibility of them may properly be allowed to rest, for experience has proved that nothing but the strongest measures will suffice to compete with the astuteness of parties, who find it so much to their interest to break the law as to gaming".

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(2) Legislative Council Proceedings, Monday 11th September, 1876.

In order to give relief, he proposed (and it was accepted and hence the law amended to the position as if now)[21] to enact that the police, in every case when it comes to their knowledge that a house is fitted for gaming are to give notice thereof to the owners and occupiers and such notices to be served on the persons inscribed as owners in the Municipal Books, and if no names are there given, then the notices are to be fixed to the premises and a penalty is provided against every sub-tenant, who knowing of such notice, does not inform his landlord "With this provision as to notice, I propose to make the presumption at the end of S.15[22] applicable only in cases where notice has been served", he wrote.

It may be said that obliging the police to give such notices will interfere with their prospects of capture in certain cases but at the same time, as the object is to prevent gaming,

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(21) See S.20(2) and S.20(3) 1953 Ordinance.

(22) See S.20(1) 1953 Ordinance.

not merely to capture gamblers, it is hoped that the advantage gained through the landlords, if they omit to take proper steps to check their tenants will counterbalance the injury in preventing captures. With the amended law, the owners are put in a position to do right, then, if they do not do so, they will be themselves to blame, and less hesitation would be felt in putting the law in force against them. We may thus find the law to work as an actual pressure on the occupiers, who will soon find difficulty in the way of getting houses in which to carry on with their work.

Courts have held[23] that in the case of principal tenants of a house who let out rooms which becomes common gaming house can be convicted of having permitted the use of the room as a common gaming house, if he is shown to have known of the user and not taken steps to prevent it by determining the tenancy or otherwise. Sometimes knowledge of such user can be inferred from circumstances like the keys being in control of the principal tenant and infact if they were living closely together.

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(23) e.g. Tang Meon Sam vs. P.P. (1948) MLJ. 49

## CHAPTER III

## THE BETTING ORDINANCE 1953

### (1) INTRODUCTION

The Betting Bill 1953 was first presented to the Federal Legislative Council on the third of September 1953 to improve the existing law in the former Federated Malay States and Straits Settlement and to extend it throughout the former unfederated Malay States. The legal position then was that whilst there were measures to control betting in the Straits Settlements and the former Federated Malay States, there were no measures at all to control betting in the former Unfederated Malay States. The Straits Settlements Ordinance (Cap 29) and the Federated Malay States' Enactment (Cap.48) was substantially similar[*1] and the Bill presented followed closely the Betting Ordinance of the Straits Settlement (Cap.29). It is also complimentary to the Common Gaming Houses Ordinance 1953, six[*2] of the administrative provisions of which have been incorporated in the Bill in order to tighten up the law against betting.

For example in clause 8, which was new so far is the legislation in the former Federated Malay States and Straits Settlements were concerned. It was provided that any person accepting stakes or wages or found in possession of any

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(TABLE A) to show the substantial similarity between the various betting legislation.

1. ~~See Comparative Table~~

2. Up to date, the number has been increased to eight, see sections II and 24(2) of the CSHO 1953 and sections 14A and 18(2) of the Betting Ord. 1953 (as amended in 1967) ~~of the Comparative Table (Table A)~~

books, accounts, documents etc. which are used or appear to be used in connection with or to relate to the business of a bookmaker shall be presumed, if it is done in a public place to be frequenting or loitering on such places for the purpose of bookmaking. That is the presumption and its up to the accused to dispel that presumption.

The West Malaysian Ordinance was substantially amended in 1961 by Act 8 of 1961, which on the whole made it more similar to the Singapore Ordinance. Among the amendments made was the substitution of the definations of the terms "bookmaker" and "common gaming house". The new defination of "bookmaker" includes a runner and a penciller and these two latter terms are defined.

The Betting Ordinance 1953 seeks to suppress betting in public places, bookmaking and common betting houses. Otherwise betting is allowed, in fact some is legalised for example one being a member of the Turf Club, bets through the Tote. Betting with a "bookie" is illegal, [3] just as if its done in a common betting house, which is deemed to be a common nuisance and contrary to law under s.3. Any person found guilty of such an offence shall be liable to imprisonment.

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3 see S.6(1) (as amended by A.8/61).

for two years or to a fine of twenty thousand dollars or to both such imprisonment and fine.

2) BOOKMAKER

The defination of a bookmaker is wide. It does not only include an individual who

(1) receives or negotiates bets or wages, whether on a cash or credit basis and whether for money or money's worth

or (2) in any manner holds himself out or permits himself to be held out in any manner as a person who receives or negotiates such bets or wages,

but also envelopes such persons who help this individual either as a penciller, runner servant or agent.[4] Therefore anybody who forms part of the whole system, be it the Kingpin or a mere servant will be deemed a bookmaker.

Section 6 (3) is the penalty clause for any person who acts as a bookmaker or who for the purpose of bookmaking or betting etc. frequents, loiters in any street, roadway etc.

A question arises whether a punter (a person who places the bets ~~in~~ with the "bookies") would escape liability under this section. An ingenious argument was forwarded by defence Counsel in the case of P.P. vs. LEE YOKE KAI [5].
He argued that the Respondent might have placed his bets with a bookie (instead of the Respondent being a bookie himself

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4 "penciller" means a person who helps a bookmaker to keep his accounts or records of bets in connection with horse-races.

"runner" means a person employed by a bookmaker to collect and settle bets, either on salary or on commission.

5 (1967) 1 MLJ 213.

as charged by the Prosecution) in which case he would be a punter and could therefore not be caught by the provisions of section 6(3)(a) of the Ordinance.

It was held that if the bets had been placed with a bookie, then PI[6] would be a document which relates or appears to relate to the business of a bookmaker under section 8(1).

Section 8 (1) reads as follows:-

> "Any person accepting or receiving bets, stakes or wages, or found in possession of any books, accounts documents, telegrams, writings, circulars, cards orother articles which are used or appear to have been used, or intended to be used in connection with or which relate or appear to relate to the business of a bookmaker shall be presumed until the contrary is proved to be acting as a bookmaker".

In view of the presumption under this section it would be for the Respondent to prove that he did not act as a bookmaker but only as a punter, in which case then he would expose himself to prosecution under section 6 (1) of the Ordinance.

It can at one be seen that the law extends its hands both ways, i.e. both the one who bets and the persons who accepts the bets to make it more

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6. The document in issue.

difficult for a person, involved in any way in the business of bookmaking, to escape liability. Infact, an individual may not actually act as a bookmaker to be liable, suffice if he in any manner holds himself out or permits himself to be held out in any manner as a person who receives or negotiates such bets or wages[7].

Prior to the amendment made in 1961 from section 8 it would appear that time would be an essence of a change under it i.e. if the documents or articles seized relate to a past (or race or any other contingency) then it would not be "articles which are used or appear to be used in connection, with or to relate to the business of a bookmaker ....."[8]. Hence the presumption implicit in the section would not operate if the accused can show that the articles and documents relate to a past event. Thus lacunae seemed to have been remedied by the amendment, with the inclusion of the phrase "or intended to be used in connection" with obvious reference to a future

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7. See S.2(11).

8. See S.8 unamended by Act 8/61.

contingency.

In a Singapore case, TAN BIAN OUN vs. P.P.[9] the point was clarified. The accused had been charged with the offence of acting as a bookmaker under a S.5(3) (a) of the Singapore Betting Ordinance. The learned Magistrate acquitted the accused as he held that time was the essence of the charge, and as the races to which the document found on the accused related had been run he could no longer be a bookmaker in respect of them. The deputy public prosecutor appealed and it was then held that the section refers to the possession of documents or other articles which are used or appear to have been used or intended to be used for bookmaking and once possession of the document is established the time factor is immaterial and irrelevant and the person found in possession is presumed to be a bookmaker.

Since the amendments were specially enacted to run parallel to the corresponding legislation in Singapore, this case would be of strong persuasive authority. Thus a person cannot now escape by the mere fact that the articles found upon him relate to a race already run or a contingency already past.

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9. (1966) 1 MLJ 68.

10. See our amended s.8(1).

3) COMMON BETTINGS HOUSE (CBH)

As already mentioned, a common betting house shall by virtue of S.3 be deemed to be a common nuisance and contrary to law. And the offences relating to common betting house is laid down generally in section 4. A presumption arises against any person who occupies or has the use temporaily of a place which is kept or used by another person as a common betting house that he has permitted such place to be so kept or used. [11]

CBH is quite clearly defined in the Ordinance in S.2. It is specifically laid out in three sub sections when a place is held to be a common betting house. If a place falls under either one of the three then it would be deemed a common betting house. It was held in R vs. LI KENG CHUAN[12] that if a place is used for wagering it may be a common betting house even though the wagering is upon the result of a game of skill.

A very interesting discussion on the issue of what makes a common betting house can be found in the Supreme Court decision of R vs. LIN KIM POAT [13], in 1933 in Singapore. It appeared that the action of the Appellant amounted to this: that they being members of the Club made bets in the Members Enclosure with other members of the Clubs. The substance of the first change was that the Appellants

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11. See S.4(2)

12. (1933) MLJ 212.

13. (1933) MLJ 164.

used a place in front of the Totalisator as a common betting house. The second charge repeats this first charge with the addition of the words "which place" (i.e. the betting house) was habitually used for betting".

The defination of "place" and "betting house" are contained in S.2 of the Ordinance.

Common betting house means any place kept or used for betting or wagening on any event or contingency of or relating to any horse race or other race, fight, game, sport or exercise to which the public, or any class of the public has, or may have, access, and any place kept or used for habitual betting or wagening on any such event or contingency as aforesaid, whether the public has or may have access thereto or not".

"Place" is as defined in the present Ordinance.

MURISON C.J. Looked at a new angle in his decision, i.e. the long title of the Ordinance, which was "To suppress Betting Houses and betting in public [14] He held that the word "Place" which the Ordinance defines can refer prima facie only to public places, given by the title of the for

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14. The title of an ordinance can be looked at in deciding the construction and general scope of the Ord: CRAIG ON STATUTE LAW 7th EDITION p.36.

Cases: FIELDINGS vs. MORELEY CORPORATION (1899) 1 CH.3

But See IN THE GOODS OF GROSS (1904) 73 L.J.P. 82 as further authority that an Ord. is not limited by its title.

Ordinance the Legislature announce that (unless there is something else in the context) that is the only kind of place to which the Ord. shall apply. It was clear then, in his opinion, the Members Enclosures was not a public place. On the contrary it was a private place i.e. a place for members only.

The learned C.J. divided the defination of common betting house into 2 parts (1) the 1st part deals with a place where betting is carried on and the public or any class of the public has access to it. If his view was right then the Turf Club is not a class of the public this part does not involve the Appellant in any offence.

(2) The 2nd part deals with a place used for habitual betting whether the public has or has not access thereto.

These last words conflict with the title of the Ordinance but the operation of the Ordinance is not limited by its title. The result therefore is that betting, even in a place to which the public have no access, is an offence if the place is habitually used for gaming.

It would appear at first sight that this provision makes it an offence for anyone to play any game anywhere, even in one's own private house. It seems hardly possible that the legislature could have contemplated so extraordinary an event. The really essential word in both definations is the word "habitual". This word was expressed by Stevens J. in R vs. FONG CHONG CHENG;[15]

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15. (1930) SSLR 139.

as referring to a place to which the general public can resort for gaming or a place to which though barred to the public, is kept or used by the owners or occupiers primarily for gaming. A private residence, he says, does not become a common gaming house because the owner makes a practise of inviting his friends to it to gamble, nor do the premises of an ordinary social club become a common gaming house merely because the club provides facilities for its members to gamble and some of them habitually use the premises for that purpose. Using the above argument, his Lordship held that the Singapore Turf Club is primarily a bona fide Club for the sport of horse racing. At page 166[16] , he says:

"The Sport is the essential : betting the accident. The fact that many members of the club go to the races and bet can give us no right to strain an Act of Parliament which was passed foradifferent purpose, i.e. for the suppression of common betting house not for the suppression of horse racing. If this view given was correct then all the Appellant did was, as a member of a bona fide club, to make bets with other members of that club upon the result of horse races

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16. (1933) Vol. 2 MLJ.

which was the primary object of the existance of the club. And that then, for the reasons given above, is not an offence within the Ordinance.

It should also be noted that should the Appellant be found guilty, then the committee would likewise be liable in permitting the Appellant to keep a common betting house on the Club premises.

In the same case, a different conclusion was arrived at by Whitley J. His Lordship found the Appellant guilty, apart from other reasons, because the evidence established a clear case of betting by making a book on each race on two successive race days.[17]

He stressed on the fact that the place which they were charged with using was not the Turf Club premises nor the enclosure but this particular bench was within the enclosure. The definition of "place" was clearly designed to give the word the widest possible meaning. There can be no doubt then that the bench in question comes within the definition of "place" in S.2 of the Ord. In answer to the question of whether the place was a common betting house within the meaning of the Ordinance, His Lordship held that the first half of the definition cannot apply because only members of the Turf Club had access to the place in question and members

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17. The 2nd Appellant abetted him by bringing the slips to that spot thereby rendering himself under S.114 of the Penal Code guilty as a principal of any offence which the first Appellant may have held to have committed

of a club are not the public or a class of the public.[18] In order to bring this place within the second half of defination the Court must be satisfied that the place in question was "used by the Appellant for habitual betting on contingencies relating to horse races. The distinction between the first and second halves of the defination has in the addition of the word "habitual". If the place is a public one to which the public or a class thereof have access it is only necessary to prove use for betting on one occasion but if it is not public as in the present case it is necessary to prove that it has been used habitually. His Lordship was of the opinion that there can be no doubt on the evidence that the place was used by them for betting on such contingencies and the fact that it was so used during every race for two days is sufficient to establish that it was so used by them habitually. Hence he held that the Appellant committed the offence charged and was properly convicted.

His Lordship then ventured further to discuss certain cogent points which were raised in the course of the hearing as tending to show that it cannot have been the intention of the Legislature to bring within the Ordinance Acts such as those proved against the Appellant. He refuted the too narrow interpretation given to the long title of the Ordinance and held that the object is to suppress betting in public places and also in CBH and by the defination

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18. In the case of PP vs. LAU TING KAI (1955) MLJ 206 it was held that the evidence showed that the general public did not have access to the office of the manager and therefore the prosecution had failed to prove that the office was used as a common betting house. Persons having business with a certain office, even if they have access, are not a class

(continue next page)

of the public. This decision is consistent with the reasoning of the case being discussed above offered by Whitley J. If a club is held not to be a public place where the public a class of the public can have access, there's more reason then not to hold an office as a public place.

in S.2 a CBH may be either a place to which the public have access i.e. a public place or a place to which the public have no access which is a private place and would include a club. Upon the reasoning his Lordship was of the opinion that nothing in the Long title of the Ord. prevented the application of the Ordinance to the facts established in the case.

With regards to the case of FONG CHONG CHENG vs. P.P.[18] Whitley J agreed with the ratio decidendi of that case as being an accurate statement of the law and if applied to the particular facts of that case there can be no doubt that no offence was committed. But His Lordship felt that it did not follow that betting between members on the premises of a club can under no circumstances be illegal.

What was suggested was that in this case the 2 members not the club, were during those two days using the bench as a club and in his learned opinion the Lordship felt that the bench was used habitually, primarily and exclusively for betting and whether that betting was done with members or outsiders or both it seems to ~~me~~ him to come within the

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18. ~~See judgment of Stevens J (1930) SSCR 139.~~

18. (1930) SSLR 139 judgment of Stevens J.

mischief aimed at by the Ord. The 2 Appellants displayed great astuteness and set up their little betting saloon on a small corner of the club's premises and there encouraged betting by accepting commissions on credit, a far more dangerous and insidous form of vetting than that provided by the totalisator ..... ~~I should be prepared to hold that of on Race Days a member of the Singapore Club were to stand in the hall of the Club~~ throughout ~~the after-noon accepting bets on the cross from members he would be using the sopt as a CBH and would be punishable under this Ord.....~~

The matter stands as it is even with the amendment made to S.2. The defination of Club remains the same in substance although it has been broken up into 3 parts, the last being a new addition to encompass the places used by the bookmakers to accept or negotiate bets even though the transactions were made through the telephone or post or even telegrams.[20]

It is my humble submission that Whitley J's reasoning is preferable especially if our attention is drawn to the intention of the Ord. as a whole i.e. to either eradicate or otherwise control betting. Otherwise members of a club would shade behind the immunity afforded to them and they can then bet to their hearts content with fellow members -

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20. This added provision has thus overruled the decision laid down in the case of ABDUL KARIEM vs. R (1957) MLJ 185 where it was held that although there was evidence that bets were laid by telephone this did not amount to access within the meaning of the defination and as there was no other evidence that the public had access to the accused's room it was not a club within the first limb of the defination of club. This case is further multified because the word "access" has been defined to include access through the telephone, by post or by telegram by the amendment in 1961.

without the long aim of the law reaching them.

4) ON THE QUESTION OF EVIDENCE

In gaming cases the need for expert evidence is inevitable Usually the prosecution [21] in in trying to build its case would call up an expert witness to testify that a certain document is indeed a record of stake on horses etc. but the weight to be attached on these witnesses to a large extent seemed to depend on the totality of the evidence offered than in any particular point. Cogent reasons must be given to back up a fact, although sometimes self explanatory entries are accepted and requires no expert to say that they are a record of stakes and horses.[22]

A conviction was quashed on appeal in the case of TAN TUCK LOCK vs. R[23]. There was insufficient evidence to support the conviction. The judge felt that the evidence given by one of the two prosecution witnesses was entirely meritical and based on numbers and hieroglyphics found in the Race Books, in the spaces provided for making such entries. The only other witness was a clerk employed in the Turf Club and his evidence was inconclusive as to whether the Appellant was or was not a member of the Turf Club. There was no evidence of any person placing any bets with the accused or of any money parting out. The only evidence was that the second accused would come up and whisper to him.

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23. (1953) MLJ 60.

22. See P.P. vs. LEE YOKE KAI (1967) MLJ 213.

21. The relevant provision of the Betting Ord. renders it unnecessary for the prosuction in order to establish prima facie case, to prove anything more than that the document in question appeared to relate to bookmaking.

The learned Magistrate felt that all these things by themselves were nothing but matters arousing strong suspicion. However if they were taken in conjunction with the markings in the book, and the experts opinion on them, they build up into a formidable case against one of the two accused at least. The judge however, emphasised on the importance of the presence of real factual evidence against either of the accused. Had this been present, the further evidence tendered by the police officer would have been invaluable. In the absence of the former, he held that it was unsafe to convict the accused.

A new section was introduced in 1961 which was as follows:

"S.14A: In all proceedings under this Ordinance any evidence given by a police officer not below the rank of sergeant that any book, account, document, telegram writing, circular, card or other article produced before the Court had been used or intended to be used for betting or wagening shall until the contrary is proved, be deemed to be sufficient evidence of the fact."

It appears from the wording of this ection that the intention of the legislature was to deprive the court of its discretionary power to eject the evidence of any police officer not below the rank of a sergeant if he testified that the document before the Court had been used or was intended to be used for betting or wagening.

This possible interpretation appears to have provoked the consternation of H.T. ONG, F.J. in the case of LOH TECK CHONG vs. P. P.[24] where the learned Magistrate had convicted the accused despite the evidence of the police expert who had frankly admitted that it was impossible for him to say that the marks on the racing programme related to bookmaking. It was because of that H.T.ONG, F.J. when allowing the appeal remarked that the Appellant should have been acquitted at the close of the prosecution case.

He said that S.14A was a startling departure from standard practice as to expert evidence.

PER H.T. ONG, F.J. at p.8.: "The section was introduced by the Betting (Amendment) Act, 1961 Baldly stated, it dispenses completely with the need for expert evidence so that, in effect, any policeman, however unversed in the ways of the bookmaker, or in any form of betting whasoever, becomes qualified to testify in the capacity of expert on a subject in which he may be an absolute ignoramus and his opinion, a simple ipse dixit then suffices to raise a presumption of guilt until the contrary is proved by the hapless suspect. To say that I am astounded by this piece of legislation is to put

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24. (1966) LJ 7

it mildly. Parliament, it was said, can do anything except make a man a woman or a woman a man. The Act of 1961 must I think, be an egragious instance of omnipotence when the bray of an ass can be metamorphosed into the voice of the expert - the only limitations being that the policeman should have attained a certain rank, however he did it, including of course, climbing up by the ageing process.

He went on further to say, at the same page

".... however unfathomable the collective wisdom of the legislature should be to lesser men, the legal presumption raised by section 14A is a rebuttable one. It does not in any manner shut out closer scrutiny and evaluation of the evidence. On the contrary being so lightly raised, it imposes on the courts a correspondingly heavier duty to be even more diligent to satisfy itself of the guilt of an accused before convicting.

It is my humble submission that the strict interpretation given by ONG H.F., F.J. is binding on all related points. Hence then a heavier duty is imposed and the authority of the evidence should be checked first.

In fact, we can also ~~continue~~ construe it another way. The section says that "evidence" given by a police offer touching the matter in question shall be deemed sufficient evidence of the fact. But this section does not say that anything

short of evidence is sufficient evidence of the fact. It should logically follow then that if a police while purporting to give expert evidence bases his opinion on a hunch or intuition or where his opinion is unsupported by reason, the court will surely not be debarred from rejecting that opinion as not being evidence within the meaning of that word under the provision of the Evidence Enactment. Surely it does not mean that the Court is obliged to accept each and every evidence given especially where it has obviously been fabricated, where it is pure madness to accept it as a piece of admissible evidence .

Finally it is to be remembered that in accepting the evidence of an accomplice there is the need for corroboration "Corroboration" can take many form, for example, a marked note or as in SAMINATHAN vs. P.P.[25] the accused's conduct in swallowing a number of bits of paper and some note books and other documents found in his room.

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25. (1937) MLJ 39.

TABLE A

A COMPARATIVE TABLE DENOTING THE SUBSTANTIAL SIMILIRITIES IN THE VARIOUS BETTING LEGISLATION

| BETTING BILL '53 | BETTING ORD.1953 (revised 1961) | STRAITS SETTLEMENT BETTING ORDINANCE (CAP. 29) | F.M.S. BETTING ENACTMENT (CAP.48) | COMMON GAMING HOUSES ORDINANCE 1953. |
|---|---|---|---|---|
| CLAUSE | SECTION | SECTION | SECTION | SECTION |
| 1 | Short title | short title | - | - |
| 2(1) | S.2(1) | - | - | - |
| "Bookmaker" | 2(1) | 2 | - | - |
| common betting house | 2(1) | 2 | 2 | - |
| "Place" | 2(1) | 2 | 2 | - |
| "Senior Police Officer" | 2(1) | - | 2 | - |
| | access | - | - | - |
| | Penciller | - | - | - |
| | runner | - | - | - |
| 2(2) | 2(2) | 2 | 2 | - |
| - | 2(3) | - | - | - |
| 2(3) | 4 | 2 | 2 | - |
| 3 | 3 | 2 | 3 | - |
| 4(1) | 4(1):with increased punishment | 3 | 4 | - |
| (2) | 4(2) | - | - | 4(2) |
| 5 | 5 | 4 | 5 | - |
| 6(1) | 6(1) amended Act 8/61 | 5(1) | 5(1) | - |
| 6(2) | 6(2) | 5(2) | 6(ii) | - |
| 6(3) | 6(3)repealed and substituted by Act 8/61. | 5(3) | 11(i) | - |
| 6(4) | 6(4) | 5(4) | 11(i) | - |

| BETTING BILL '53 | BETTING ORD.1953 (revised 1961) | STRAITS SETTLEMENT BETTING ORDINANCE (CAP.20) | F.M.S. BETTING ENACTMENT (CAP. 9) | COMMON GAMING HOUSES ORDINANCE 1953. |
|---|---|---|---|---|
| 6(5)(a)(b) | 6(5)(a)(b) | 5 (5) | 11 (11) | - |
| - | 6A | - | - | - |
| 7(1)(2) | 7(1)(2) | 6(1) (2) | 7 | - |
| 8 | 8(1)(2)amended by 3!61 | - | - | 11 |
| 9 | 9 | 10 | 10 | - |
| 10(1)(2)(3) | 10(1)(2)(3) | - | - | 20(1)(2)(3 |
| 11 | 11 | - | - | 21 |
| 12(1)(2)(3) | 12(1)(2)(3) | 7(1)(2)(3) | 3(i)(ii) | - |
| 13 | 13 | - | - | 17 |
| - | 13A | - | - | - |
| 14 (1) | 14 (1) | 8 | 0 | - |
| (2) | 14 (2) | - | - | 18 (2) |
| - | 14A | - | - | 11 |
| 15(1)(2)(3) | 15(1)(2)(3) | 9(1)(2)(3) | - | - |
| 16(1)(2)(3) | - | 11(1)(2) | 12(1)(11) | - |
| 17 | - | 12(1)(2) | 13 | - |
| 18(1) | 18(1) | 13 | 14 (1) | - |
| - | 18 (2) | - | - | 24 (2) |
| 18(2) | 18 (3) | - | 14 (11) | - |
| 19 | 19 | 14 | 15 | - |
| 20 | - | 15 | 16 | - |
| - | 20 | - | - | + |
| 21 | 21 | 16 | - | - |
| 22 | 22 | repeal | repeal | - |

## CHAPTER IV

## POSSIBLE RECOMMENDATIONS

During the course of preparing for this project paper, the writer had the pleasure of having a short interview with a Mr. Kong Fook Yew, Superintendent of Police, Records Division, Kuala Lumpur. He was very helpful and enthusistic and we discussed some changes and recommendations which is necessary to help curb the rising rate of gaming in the country. With some help from him the writer was able to view things in a better perspective.

Illegal gaming is found to have increased steadily over the years. The figures in Appendix A show that in the year 1973 for instance, of which 2,682 raids were made, 6106 people were arrested. The number of arrests increased to 8,371 by the year 1975. This may not be a staggering figure by some standards but it is enough to warrant some concern by the authorities whilst it may be accepted that gambling is but a social vice nevertheless it leads to other criminal activities more dangerous, and for this reason it should be viewed with some concern.

Mr. Kong Fook Yew feels that there is in effect no way to stop gambling at all; it is well high

impossible to eradicate it totally. The evil is one of long repute for we read of Stamford Raffles taking stern measures to suppress gambling even in 1823. Legislation may match the cunning methods of evasion but it is very doubtful if the long arm of the law will reach the small and big time gamblers through legislation alone. This curse of gambling has its roots coiled around the Malaysian Society. It is at these roots that our efforts should be directed if gambling is to be suppressed.

I. ENHANCED PUNISHMENT

If we cannot eradicate gambling, we should at least try to contain or control it. One of the ways is through revising the penalty clauses and increasing the punishment meted out.

Records in the past have shown that courts have not imposed sufficiently heavy punishment to deter gamblers. This may be so because the maximum penalty provided for in the Common Gaming Houses Ordinance 1953 appears relatively light. Take for instance offences under S.4, 5 and 8 the maximum penalty is imprisonment for a term not exceeding 12 months or to a fine not exceeding $5,000 or to both such imprisonment and fine.

Under S.6, 7 and 9 the maximum penalty is a fine not exceeding $250.

The Common Gaming Houses Ordinance came into force in 1953 and the penalties mentioned above were considered adequate in those days. Times have changed and by today's standards the maximum for fines especially would seem negligible. What more if those arrested are under the employ of the big kingpins, they would not feel the brunt at all. Infact the normal course taken by the accused was to plead guilty and pay a stipend fine for the big bosses usually supply them enough to meet "emergencies".

It is proposed therefore that the maximum penalties be increased substantially. According to the police, for offences under S.4, 5 and 8 the maximum penalty should be increased to imprisonment for a term not exceeding 2 years or to a fine not exceeding $10,000 or to both such imprisonment and fine, and for offences under S.6, 7 and 9 the maximum penalty be increased to fine not exceeding five hundred dollars.

With the penalties increased, the courts may perhaps be encouraged to take a much more

serious view in such cases and mete out appropriate punishment to deter potential gamblers.

2. a) SCHEDULED INSTRUMENT OF GAMING

b) SCHEDULED GAMES OF CHANCE OR MIXED GAMES OF CHANCE AND SKILL

The prosecution depends to a great extent on the presumptions under the Common Gaming Houses Ordinance to secure a conviction against persons arrested for gaming in a common gaming house. Despite these presumptions the prosecution still finds it extremely difficult to prove its case.

There have been instances in the past where as a result of the prosecution's inability to identify the type of game played, the accused were acquitted and discharged before the defence is being called. Take for example where the raiding party merely recovered a set of dominoes and does not actually see the type of game in progress at the time of the raid. Now, a set of dominoes could be used to play more than one type of game for example, "Pai Kow" "Tien Kow" or "Tan Ngau"; and since the prosecution was unable to identify the type of game played at the time of the raid, the prosecution invariably failed.

The Home Minister could perhaps take up this issue because by virtue of the powers vested upon him under S.2(2)(b) he can by notification in the Gazette declare any game, method, device, scheme or competition specified or described in such notification to be a game of chance or mixed game of chance and skill for the purposes of this Ordinance and thereupon it shall be irrebutable presumption of law that such game, method, device, scheme or competition is a game of chance or mixed game of chance and skill as the case may be for the purposes of this Ordinance. This will bring our Common Gaming Houses Ordinance in line with the Common Gaming Houses Act (cap.96) of Singapore(1).

The Singapore Authorities have not stopped there for they have lightened the difficulties of the prosecution by scheduling fifteen sets of instruments or appliances for gaming(2). Hence there is not need for the prosecution to specially prove that a specific article is or is

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(1) See Appendix B for the schedule of games gazetted by the Minister under the Singapore Ordinance.

(2) See Appendix C for the schedule of the list of instruments.

not an instrument of gaming within the Ordinance.

3. ENGLISH GAMING ACT 1968(3)

It is proposed here to refer briefly into the recent amendment and repeal of the gaming laws in England and the adoption by them of a totally new outlook on the law of gaming. The writer does not wish this to be a direct proposal but it could be very enlightening to peruse the objects and reasons(4) of the new gaming laws there, for it has a lot of practical appeal. After all the emphasis in the 1968 Gaming Act is more on method of control than on the question of the legality of gambling at all.

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(3) The Gaming Act 1968 was passed on the 24th October 1968. It comprises 54 sections and 15 scheules. It also has four parts namely:-
Part I (SS 1 to 8) deals with gaming elsewhere than on premises licensed or legistered under the Act.
Part II (SS.9 to 25) deals with gaming on premises licensed or legistered under the Act.
Part III (SS.26 to 39) is concerned with gaming by means of machines.
Part IV (SS. 40 to 54) contains a no. of miscellaneous and supplementary provisions.
See: Shaws, Guide to the Gaming Act 1968, 2nd Edition, at page 3.

In the new act, Parliament has abolished the offence of "unlawful gaming" as uch, and, discarded the "conditions of lawful gaming" as a universal test of criminality. In their place it has introduced a system of permission and control akin to that under which betting offices are licensed and operated. But in order to make a fresh start and clear the way for the new system the Act has repealed the whole of the law of gaming.

The new act defines certain categories of places or premises and lays down the sort of gaming that may be lawfully carried on in each of them. Consequently no sort of gaming is perse unlawful but may become unlawful if it is carried on otherwise then in the place and under the conditions which have been laid down for it. It follows that the type of gaming which will be permitted anywhere is that to which the degree of control exercised over the premises is appropriate.

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(4) It was the failure of the Acts of 1960 and 1963 to achieve their purpose (to prevent the exploitation of gaming by Commercial interests) which has rendered the Act of 1968 necessary.

a) METHOD OF CONTROL

The instruments of control under the act are licence and registration. Registration is for member clubs of good standing, whether social clubs or what. The licence entails the greater degree of control; it is granted only after strict investigation by more than one body of persons and may be terminated if the conduct of the gaming or the accounts, management or staff of the club fall short of the required standrad. Control by registration is much less strict.

b) MEANS OF ENFORCEMENT

The present Act is unlikely to fail (as the act of 1963 failed) for lack of means of enforcing it. It is on the contrary remarkable for the number of devices built into it and interlocking with each other designed to ensure, as far as possible, that the intentions of the legislature are carried out. There are 4 bodies who can provide, either separately or in combination, safeguard against a breakdown of the Act.

The Gaming Board, in addition to their powers of inspection and approval work hand in

hand with the licensing authorities, who can refuse, terminate, restrict or cancel a licence if there have been contravention or misconduct, and who, in exercising this powers, must take into account advice given them by the Board. The latter, in giving their consent to an application, will be in a position to take panoramic view of gaming throughout the country, leaving the justices free to confine their attention, if they so wish, to local considerations. Then come the regulations of the Secretary of State. They can prescribe in detail the conduct of the gaming and even the operation of machines, and can be a powerful means of securing that the gaming is in all respects fairly and properly conducted and that the provisions of the Act are not eroded by practices which are indirectly contraventions.

Furthermore, the Secretary of State is another link between the Gaming Board, with whom he must consult before making regulation, and the licensing authority, whose powers to grant or renew licences he can modify ~~his~~ by regulation.

Finally the fear of being disqualified by the Courts from holding a licence is more likely to

defer a promoter than the fine or imprisonment to which he is also liable.

Briefly that is how matters stand in England with regards to gaming. The authorities have tried to tackle the situation by providing guidance and the course along which gaming should flow. The writer submits that the idea is rather attractive and merits some consideration by the appropriate authorities. Presently, the only section akin to the English way is provided for in S.27A(3) of the Common Gaming Houses Ordinance i.e. with regards to power to licence promotion and organisation of gaming by a company, upon whose sanction our local Empat Number Ekor and the Gentings Highland Casino were set up. We have already initiated an important step forward and it has proved to be very reliable, especially in view of the tremendous amount of revenue the Government can collect from these licensed clubs(4). Furthermore the inherent evils in gaming can be curbed by the provision of strict rules vis-a-vis amount of stakes etc in the licensed clubs.

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(3) Amended by Act A56/71.

(4) See Appendix D for sample of Revenue collected.

## APPENDIX A

| YEAR | TOTAL RAIDS | TOTAL PERSONS ARRESTED |
|---|---|---|
| 1970 | 3135 | 7476 |
| 1971 | 3486 | 7478 |
| 1972 | 2856 | 5996 |
| 1973 | 2682 | 6106 |
| 1974 | 3027 | 7755 |
| 1975 | 2587 | 8371 |

By Courtesy of the

POLICE RECORDS DIVISION,

KUALA LUMPUR.

# APPENDIX B

No. S 185 - THE COMMON GAMING HOUSES ORDINANCE, 1961
(No. 2 of 1961)

In exercise of the powers conferred by paragraph (b) of Subsection (2) of Section 2 of the Common Gaming Houses Ordinance, 1961, the Minister for Home Affairs hereby declares the games, methods, devices, schemes or competitions set out in the Schedules hereto to be games of Chance of mixed games of Chance and skill for the purposes of the said Ordinance:-

## THE SCHEDULE

(1) The Game of Pai Kow or Pan Tiong
(2) The Game of Tien Kow
(3) The Game of Tau Ngau
(4) The Game of Chap Ji Kee Panjang
(5) The Game of Fan Tan or Thuahn.
(6) The Game of Poh or Poh Kam or Lien Poh
(7) The Game of Pek Bin
(8) The Game of Belankas
(9) The Game of Mahjong
(10) The game of 'Roulette'
(11) The Game of Rajah Kena
(12) The Game of Tikam Tikam
(13) The Game of 'Three Cards' or Pa Kau or Sam Cheng or Daun Tiga
(14) The Game of 'Pair'
(15) The Game of 'Poker'
(16) The Game of 'Russian Poker'
(17) The Game of 'Twenty-one' or Yee Sap Yat or Ji It Tiam or Dua Puloh Satu
(18) The Game of Main Terope
(19) The Game of Minta Daun
(20) The Game of 'Fishing' or Ang Tiam or Tiew Yue
(21) The Game of 'Five Cards' or Tan
(22) The Game of Si-Ki-Phuay
(23) The Game of See Goh Lak
(24) The Game of Ta Kai
(25) The Game of Chong Yuen Chow
(26) The Game of Tai Sai
(27) The Game of Hoo, Hey, How
(28) The Game of Soo Sik or See Sak
(29) The Game of Chi Kee
(30) The Game of Seong Kum of Pin Kum
(31) The Game of Luk Foo
(32) The Game of Sap Ng Hor
(33) The Game of Tung Koon
(34) The Game of Oh Peh

(No. Min. H.A. 2092/59: No. MLL (LAW) 116/59).

## APPENDIX C

No. S 186 - THE COMMON GAMING HOUSES ORDINANCE, 1961.
(No. 2 of 1961).

In exercise of the powers conferred by subsection (3) of section 2 of the Common Gaming Houses Ordinance, 1961, the Minister for Home Affairs hereby declares the articles set out in the Schedule hereto to be instruments or appliances for gaming.

### THE SCHEDULE

(1) Dominoes.
(2) The Poh.
(3) The Pek Bin top or Eight-sided top.
(4) The Belankas top or Four-sided top.
(5) The Mah Jong tiles.
(6) The English playing cards.
(7) The Standard Dice.
(8) The Hoo, Hey, How Dice.
(9) The 'Four Colours Cards' or Soo Sik Pai.
(10) The 'Six Tigers Cards' or Luk Foo Pai.
(11) The Chi Kee Cards.
(12) The 'Double Gold Cards' or 'Gold Change Cards' or Seong Kum Pai or Pin Kum Pai.
(13) The 'Fifteen Points Cards' or Sap Ng Hor Pai.
(14) The Tung Koon Cards or Tung Koon Pai.
(15) The 'Black and White Cards' or Oh Poh Pai.

(No. Min. H.A. 2092/59: No. MLL. (LAW) 116/59).

# APPENDIX D

SAMPLE OF TAX PAID TO THE GOVERNMENT BY EMPAT NUMBER EKOR

| YEAR | 1969 | 1970 | 1971 | 1972 | 1973 | 1974 | 1975 |
|---|---|---|---|---|---|---|---|
| Pool-Betting Duty (In Ringgit) | 7.9 mil | 21 mil | 27 mil | 28 mil | 31.5 mil | 37 mil | 47.6 mil |

# BIBLIOGRAPHY

## BOOKS:

1. Sir Roland Braddell

2. Choor Singh: Gaming In Malaya, Singapore. Malayan Law Journal Ltd. 1960.

3. C.T. Dobree: Gambling Games of Malaya.