

## 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 prerequisite 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. W??

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 lotteries. 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 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*<sup>I</sup> 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.*

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