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A PURPOSIVE APPROACH TO THE LAW OF COMMON GAMING HOUSES

This article deals with the ambit of the scope of the term 'common gaming house', found in section 2 of the Common Gaming Houses Act (Cap 49, 1985 Rev Ed). The ambit of the term is important, as many activities are made an offence by the Act only if they occur on premises that are deemed by the Act to be a 'common gaming house'.

ONE would not ordinarily see anything wrong in adjourning to a colleague's home for a game of mahjong, or in going to a country club to play a game of cards. This is a common practice and would not normally raise any eyebrows, even when monetary stakes are involved. However, the situation is not always that simple and there may be times when care should be taken to check that this seemingly innocuous activity does not fall foul of the Common Gaming Houses Act[1] ("the Act"). Otherwise, both the host of the premises where the game is being played and his guests may find themselves in for a lot of trouble when the police come knocking on the door.

The Act lists an array of different gambling related offences.[2] One of the major categories of offences within the Act pertains to common gaming houses. In particular, the offences are:

i) Gaming in a common gaming house.[3]
"Gaming" is in turn defined by section 2 of the Act as "the playing of any game of chance or of mixed chance and skill for money or money's worth". This definition is extremely wide, and practically covers any form of gambling where monetary stakes are involved.[4]

1 Cap 49, 1985 Rev Ed.

2 Some of the offences pertain to the running of a lottery (*eg*, s 6 of the Act) while some pertain to gaming in a public place (s 8 of the Act). These offences will not be covered by this note.

3 S 7 of the Act.

4 But the fact that the definition of 'gaming' includes the playing of games for "money's worth" means that it can cover gaming where non-monetary stakes, such as cigarettes, are involved: see *Choo Siew Koon* v *R* [1952] MLJ 138.

ii) Keeping or using one's[5] premises as a common gaming house.[6]

iii) Permitting another person to keep or use one's premises as a common gaming house.[7]

Hence, it is seen that the classification of the premises where the gaming takes place makes all the difference. The deeming of the premises to be a 'common gaming house' can turn what would otherwise be a friendly poker game between acquaintances or fellow club members into a criminal activity. It is therefore imperative to know how the term 'common gaming house' is defined.

The definition of the term, found in section 2 of the Act, is as follows:

> "common gaming house" includes any place kept or used for gaming to which the public or any class of the public has or may have access, and any place kept for habitual gaming, whether the public or any class of the public has or may have access thereto or not, and any place kept or used for the purpose of a public lottery whether the public has access thereto or not ...

Quite apart from the subject of lotteries (which will not be covered by this note), it is seen that the definition comprises two different limbs:

i) The first limb refers to premises kept or used for gaming and which are accessible to 'the public or any class of the public'.

ii) The second limb refers to premises kept for 'habitual' gaming, irrespective of the question of public access.

This note seeks to examine the possible scenarios in which premises will be classified as a 'common gaming house' and the problems that may crop up in the classification exercise. The focus will be mainly on the second limb.

5 This being reference to the owner of occupier of the premises.
6 S 4(1)(a) of the Act.
7 S 4(1)(b) of the Act.

I. The First Limb: Access to the Public or any Class of the Public

Gaming *per se* was never meant to be an offence in itself.[8] It thus has to be examined why the element of public access converts the premises where gaming takes place into a common gaming house, thus exposing the owner and everybody else found gaming on the premises to criminal liability. Perhaps, the answer is to be found in the objective that has been attributed to the Act. As pointed out by Sir Roland Braddell in his book *Common Gaming Houses:*[9]

> The mischief of a common gaming house is the same as that of any public nuisance of a like nature, namely, that it is a great temptation to idleness and apt to draw together great numbers of disorderly persons. The essential element of the offence is the public scandal, disorder and inconvenience caused by keeping them.[10]

There is thus a fear that when premises are opened to anybody on the streets out to make a quick dollar, the premises inevitably become a melting pot for all sorts of unruly behaviour, so that trouble may start to brew.

There are several tests for ascertaining whether premises fall within the first limb. The most obvious would be to see if the owner knows the people found gaming there. If these people have specifically been invited as the owner's guests, it is unlikely that the premises will be treated as falling within the first limb.[11] In contrast, if a very large number of persons are found gaming on the premises and the host does not know any of them, there is a very high chance that the premises will be considered as having been opened to 'the public or any class of the public'.[12] Another test would be to see if the premises are owned by some exclusive organisation. If they are, and the persons found gaming on the premises belong to that organisation, then the persons will probably not constitute the 'public or any class of the public'. There are in fact a number of authorities stating that the term

8 In *R* v *Fong Cheng Chong* (1930) SSLR 139, Stevens J remarked (at 145): "[i]t is has to be observed that in this Colony it is not illegal to play games of chance for money."

9 2nd Ed, 1932.

10 *Ibid,* at 7.

11 *R* v *Chan Ah Tye & Ors* (1889) 4 Ky 518, *Setasewan* v *PP* (1924) 4 FMSLR 213.

12 As was the case in *Loh Ah Kow* v *PP* High Court Magistrate's Appeal No 135/00/01, 7 August 2000.

'class of the public' does not extend to members of a club[13] or to the employees of the owner of the premises.[14]

If any person on the streets wanting to gamble can simply waltz into the premises to do so, this would be a clear-cut example of a case falling within the first limb; the premises in question would be freely accessible to 'the public'.[15] But the applicability of the first limb becomes more difficult when the owner restricts accessibility to the premises to only certain classes of people. In such a situation, the courts seem to treat the relevant question as being whether the premises can still fall within the first limb, under the heading of a place accessible to 'any *class* of the public'. However, the cases on gaming appear to offer no definition as to what this term means. In *R* v *Din*,[16] O Malley CJ posed the question to the prosecution as to what the term 'class of the public' meant, but was met with the singularly unhelpful reply: "a section – any portion of – the public"[17] In *R* v *Li Kim Poat & Anor,*[18] Terrell J remarked:

> In my opinion a class of the public means, for example, the members of the Khek[19] community or of the Chetty[20] community, or it might mean the people using a particular railway station at any given moment, or people travelling on a particular ship. It cannot I think mean the members of a club who are not a class of the public as such.[21]

Oddly enough, it is possible for certain clubs to grow so large that they become even bigger than the Chetty community. There thus appears to be no benchmark for determining what constitutes 'a class of the public' in the gaming context. It is unfortunate that while the term 'class of the public' will often determine whether criminal liability exists or not, its parameters are so ill defined.

13 *R* v *Wong Tuck Pho* (1905) 9 SSLR 77, *R* v *Li Kim Poat & Anor* [1933] 2 MLJ 164, *PP* v *Tan Ann Chuan* [1979] 1 MLJ 246.

14 *R* v *Thong Chung Chong* [1938] 7 MLJ 179, 181.

15 Accessibility to the public *per se* is not enough. It must be possible for the public to have access for the purpose of gaming: *R* v *Thong Chung Chong* [1938] 7 MLJ 179, 180.

16 (1890) 4 Ky 615.

17 At 618.

18 [1933] MLJ 164.

19 One of the Indian ethnic groups.

20 One of the Indian ethnic groups.

21 At 167.

It is suggested that the confusion arises when the courts try to isolate the term 'class of the public' and to determine whether the persons on the premises fall within that term. Rather, the better approach would be to construe the term 'the public or class of the public' as a whole. If it is shown that no *direct nexus* exists between the owner of the premises and the people found gaming there, these people should be treated as falling within the term 'public or class of the public'. The insertion of the term 'or any class of the public' into the second limb simply serves to clarify that the mere restriction of access to certain classes of people does not prevent the premises from falling within the first limb, so long as the requisite nexus is absent.

Several examples can be taken as demonstrating the direct nexus test in action. There is a direct nexus between a club and its members, *via* the pre-existing contractual relationship between them. This same nexus exists between the owner of the premises and its employees. Such a nexus is also found when the persons invited to the premises are the owner's friends or acquaintances. In contrast, no nexus could conceivably be said to exist when a member of the Khek community opens up his premises to other members of the Khek community for the purpose of gaming. In this latter situation, while the people found gaming on the premises are the owner's kinsmen, they are for all intents and purposes strangers to him; that entry has been restricted to a certain ethnic community does not prevent the premises falling within the first limb. Likewise, if the persons found on the premises are strangers to the owner, the mere fact that they have been permitted entry cannot of itself form the requisite nexus.

It would seem that the direct nexus test also advances the object of the first limb. By virtue of the relationship existing between the owner of the premises and the people found gaming there, there will inevitably be some degree of control by the owner over who gets to enter the premises as well as over the conduct of the gaming activities. This in turn makes the public nuisance and disorder that the first limb was targeted at less likely to happen.

Admittedly, the test is not completely free of uncertainty.[22] There may possibly be situations when the question arises as to how close the link must be between the owner of the premises and the persons found gaming

[22] Take the example of premises where twenty persons are found gaming. There is a direct nexus between the owner and eighteen of them. However, the remaining two are passers by from the streets who decided to come in and gamble. Does the presence of these two strangers bring the premises within the first limb? It is felt that if the owner's intention was to allow such strangers onto his premises, then the first limb may come into play. Conversely, if the two strangers had slipped in without the owner's consent, the first limb ought not to apply.

there.[23] Be that as it may, the direct nexus test still goes some way to avoid the problem stemming from the futility of the court's attempts to delineate the term 'class of the public', a term which has been described as being "almost impossible of precise definition."[24] By focusing on the nexus between the owner and the persons on the premises, the courts will at least have some idea of which direction to proceed.

II. The Second Limb: Premises Kept for Habitual Gaming

A. *Purposive Interpretation*

The term 'habitual' is usually associated with words such as 'frequent' or 'regular'. Adopting a literal interpretation, the second limb would catch any premises where recurrent gaming occurs, so that a man would not be able to invite his friends over for a weekly game of poker without exposing himself and his friends to criminal liability. As that could not have been the intended aim of the Common Gaming Houses Act, a purposive approach has been taken towards interpretation of the second limb. In *R* v *Fong Chong Cheng,*[25] Stevens J explained that a place 'kept for habitual gaming' in effect refers to:

> ... [A] place which, though barred to the public, is kept or used by the owners or occupiers primarily for the purpose of gaming. I say "primarily" because I think it is clear 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 in my opinion 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 ...[26]

[23] Arguably, the requisite nexus exists between the owner and the friends brought by his guests. But if the friends of his guests bring along friends of their own, and the owner consents to this, the court will then have to decide whether the nexus with the owner becomes too remote.

[24] Braddell, *Common Gaming Houses* (2nd Ed, 1932) at 21.

[25] (1930) SSLR 139.

[26] At 145.

More recently, the interpretation has been applied in *PP* v *Yap Ah Yoon & Ors*[27] and in *Chua Seong Soi* v *PP*.[28] In the latter case, the appellant and seven of his long-time business associates were found playing a game of *pai kow*[29] on certain factory premises. These premises were in fact the business address of two timber companies, of which the appellant was a director and major shareholder. The appellant was charged with permitting the premises to be kept or used as a common gaming house. It was the prosecution's case that the premises fell within the second limb. At the trial, the appellant tendered various documents to prove that the two companies occupying the premises were active and substantial companies. Testimonies were also given that customers visited the premises to discuss the buying and selling of timber. Photographs were adduced showing that timber was in fact stored on the premises. The appellant was nevertheless convicted. On appeal, the conviction was reversed, as Yong Pung How CJ was of the view that all the evidence adduced tended to demonstrate that the premises were kept primarily for the *bona fide* business activities of the two timber companies and not for gaming. The premises were held not to fall within the second limb and therefore did not constitute a 'common gaming house'.[30] In so deciding, the learned Chief Justice remarked:

> This limitation must be borne in mind, for to read the word 'habitually' literally would turn the Act into a giant dragnet with no clearly defined boundaries. All and sundry would then be caught by the Act, from the hardcore gaming house operator who earns his living by operating an underground casino, to the bored housewife who invites her contemporaries over for a weekly *mahjong* session.[31]

It is necessary at this juncture to ask what is so wrong about keeping or using one's premises primarily for the purpose of gaming. In *R* v *Fong Chong Cheng & Ors,* Stevens J remarked that the mischief which the second limb is designed to prevent is "the encouragement of gambling by the use of premises ... for the special purpose of a gambling saloon."[32] However, if there is nothing inherently wrong in gaming in itself, there should be no reason for the legislature to interfere when people choose to keep their premises primarily for that activity. After all, the second limb applies even when there is no public access – if the premises are not open to anybody

[27] [1993] 3 SLR 763, at 766E.
[28] High Court Magistrate's Appeal No 123/00/01, 26 September 2000.
[29] A game played with dominoes.
[30] At ¶15.
[31] At ¶39.
[32] *Supra,* note 25, at 146.

on the streets who wants to come in and gamble, the 'nuisance and disorder' rationale (discussed above in the context of the first limb) loses much of its force. Some guidance may nevertheless be found in JT Chenery, *The Law and Practice of Bookmaking, Betting and Lotteries* (2nd Edition, 1963). The author offers the following exposition:

> Gambling in its varied forms is a deeply rooted characteristic of the human race which, although a source of pleasure for many and not inherently immoral, *can cause harm to individuals and to society through immoderate indulgence.* To protect our society, and individuals who on account of infancy or other cause are deemed incapable of safeguarding themselves adequately from the effects of their self-indulgence, is the principal basis on which Parliament has interfered from time to time with the conduct of gambling transactions.[33] [emphasis added]

Thus, it seems that the rationale envisaged by the second limb is that when premises are devoted primarily to gaming, this could encourage gaming to such an extent that indulgence becomes 'immoderate' and thus harmful.

There have in fact been some dicta in the authorities to suggest that premises must be used *exclusively* for gaming before they fall within the second limb. For example, in *R* v *Fong Chong Cheng* itself, Stevens J remarked:

> The real question in issue was whether the premises raided on this occasion were devoted *exclusively* to gambling or to general social purposes among which games of chance were included.[34] [emphasis added]

This passage from Stevens J's judgment appears to have been taken note of in *PP* v *Yap Ah Yoon,*[35] where Yong Pung How CJ held:

> A common feature of these cases ... is that the premises in question were all social or recreational clubs, or at least purported to be so. In such cases, the real question was whether the club premises were devoted *exclusively* to gaming or to general social purposes among which games of chance were included.[36] [emphasis added]

[33] At pp 5-6.
[34] *Supra*, note 25, at 148.
[35] *Supra,* note 27.
[36] At 766H.

Be that as it may, it seems quite clear from the authorities that the accepted test is whether the premises are kept *primarily* for gaming.[37] Even if there are other activities on the premises which are secondary to the primary purpose of gaming, such that gaming is not the exclusive purpose, the premises should still fall within the second limb. This must be the better approach, otherwise gaming den operators can take their premises outside the scope of the Act simply by carrying out some other ancillary activity on the premises over and above gaming. As was held in *R* v S*ingapore British Malay Football Club:*[38]

> Surely an association to which individuals subscribe for purposes of mutual entertainment and convenience, under the designation of a social club, and whose activities among themselves if not exclusively, are primarily directed to gambling, is engaging in the very mischief which the Ordinance purports to suppress. I use the expression "not exclusively" because I am of opinion that the provision of such other amenities as reading material, meals on the premises and like conveniences, are merely incidental, so long as the primary object of the club is gaming, for even the most enthusiastic gambler demands his moment of leisure and has to eat to live.[39]

While the problem arising from the literal interpretation of the word 'habitual gaming' is now out of the way, the question arises as to when premises will be deemed as being 'kept primarily for the purpose of gaming'. It seems that there are a number of scenarios where the 'kept primarily for gaming' test can be quite difficult to apply.

B. *Can Premises be Kept Primarily for More Than One Purpose?*

As seen from *Chua Seong Soi,*[40] the most obvious way to take the premises in question out of the second limb is to show that there is some other bona fide purpose for which the premises are primarily used, to which gaming is only incidental. However, can premises be kept 'primarily' for more than

[37] *R* v *Li Kim Poat & Anor* [1933] MLJ 164, *R* v *Singapore British Malay Football Club* [1934] MLJ 3, *Lee Yew & Ors* v *PP* [1941] MLJ 43, *PP* v *Tan Ann Chuan & Ors* [1979] 1 MLJ 246.

[38] [1934] MLJ 3.

[39] *Per* Gerahty J, at 4.

[40] *Supra,* note 28.

one purpose? The answer to this question could have significant legal ramifications.

For example, a company's employees may decide to get together on the company's premises several times a week, after office hours, to play a friendly game of cards for relatively small monetary stakes. This should not give rise to any cause for complaint. But it becomes a lot more difficult to argue that the activity falls outside the mischief of the Act if the gaming sessions take place every night and the betting stakes get increasingly higher and the number of employees partaking in the gaming sessions grows to, say, over fifty. To make matters worse, the company's premises are used to store a vast array of gaming paraphernalia. Thus, while the premises constitute the business address of a respectable company by day, by night they are effectively converted into a private gaming den. If the gaming sessions are open to employees only and no member of the public is found on the premises, the first limb will probably be inapplicable.[41] If the company's premises are to be deemed a 'common gaming house' at all, it would have to be through the second limb.

In the event that the company's business is shown to be a mere façade for the gaming activities in the evenings, there would be nothing to stop the court from holding that the premises are kept primarily for gaming.[42] If, however, evidence is adduced to show that the company in question is an active and substantial company and that the premises are in fact used for the purposes of that company's business (as was the case in *Chua Seong Soi),* the façade argument would probably be closed.[43] If then, the rigid view that premises can only be kept primarily for *one* purpose is adopted, many gaming den operators could simply organise private gaming sessions after office hours, on premises that are used primarily for some other legitimate activity during the daytime. So long as the level of legitimate activity carried on during the day remains more substantial in comparison to the nocturnal gaming sessions,[44] it could then be said that the former constitutes the primary purpose of the premises. The gaming sessions in the evenings would, no matter how large-scale they may be, remain out of the Act's reach because they would not constitute the primary purpose

[41] *R* v *Thong Chung Chong* [1938] 7 MLJ 179, 181.

[42] See for example the facts of *R* v *Singapore British Malay Football Club* [1934] MLJ 3.

[43] *Supra,* note 28, at ¶15.

[44] This might possibly be the case if the number of hours occupied by the *bona fide* activities during the day is greater than the time spent on gaming at night and if there are more persons involved in the daytime activity than in the gaming sessions. Furthermore, it could also be shown that the daytime activity earns the company revenue, while the gaming sessions at night do not.

for which the premises are used. Bearing in mind that one of the major purposes of gaming legislation is to protect against 'immoderate indulgence', it is likely that a court faced with the situation postulated above will be compelled to make a finding that premises *can* be kept primarily for more than one purpose.

The problematic question thus arises as to when premises will be taken as being kept primarily for more than one purpose. The authorities have repeatedly cautioned that gaming sessions that are only incidental or ancillary to bona fide activities conducted on the premises should not bring the second limb into play.[45] There is thus a risk that adoption of the view that premises can be kept for concurrent primary purposes will open a pandora's box, so that minor instances of gaming are used to support a finding that gaming is one of the primary purposes of premises otherwise kept for legitimate purposes.

Caution should thus be exercised to ensure that this does not happen. It is suggested that the second limb should only come into play when the level of gaming activity is so substantial that an inference can be drawn that the premises are being kept primarily for *dual* purposes. The factors that the court could take into account are:

i) The frequency of the gaming sessions,

ii) The number of persons involved in the gaming sessions,

iii) The size of the stakes involved,

iv) Whether the owner of the premises gets paid for allowing the premises to be used for the gaming sessions.[46]

It is suggested that the courts should take a robust approach and prescribe some well defined yardsticks for gauging when the premises are indeed used for dual purposes. For example, a rule of thumb could be adopted that premises kept primarily for some *bona fide* purpose cannot be taken as being kept for the concurrent purpose of gaming unless the gaming sessions take place at least three times a week.[47] Another example of a rule which could be adopted is that the number of hours spent on gaming on the premises

[45] *R* v *Li Kim Poat & Anor* [1933] MLJ 164, 166, *Chua Seong Soi* v *PP, supra,* note 28.

[46] See also *PP* v *Yap Ah Yoon, supra,* note 27.

[47] In *Chua Seong Soi* v *PP,* the Chief Justice remarked, obiter, that "[o]ne may well conceive of a situation where the frequency of gaming sessions occurring in a place is so high that an inference may be raised that the place is in fact used *primarily* for gaming" (at ¶16).

should be at least half that spent on the legitimate activity. An analogy could also be drawn from the Penal Code provision on unlawful assembly, so that the second limb will not apply unless there are at least five people found gaming at the premises. If there are large numbers of people gaming on the premises more than three times a week and the number of hours spent on gaming is comparable to the number of hours spent on the legitimate activity for which the premises are primarily kept, then this may well support the inference that the premises have the propensity to support 'immoderate indulgence' in gaming. A finding that the premises fall within the second limb would then be justified.

The obvious objection to the above yardsticks is that they are somewhat arbitrary and overly technical. The short answer to that is that gaming offences are, by their very nature, technical. As commented by one particular judge, "gaming is a highly technical and artificial offence".[48] More importantly, the man in the street must be in a position to know when he will be held to have committed a criminal offence. If the statute allows the parameters of the offence to remain vague, then there is every reason for the courts to step in and set the matter straight. It would serve no useful purpose for the Act to be "a giant dragnet with no clearly defined boundaries".[49]

C. *Subdivision of the Premises*

There is yet another instance where conceptual difficulties may arise pertaining to the applicability of the second limb. Take the example of a residential flat occupied by an ordinary family. The house is kept primarily for residential purposes, but the father decides to keep aside a room solely for the purpose of his weekly poker game with his colleagues. The room is out of bounds to the children, as he uses it to keep all his playing cards and counters. To take another example, a club may open up rooms on its premises to be used by its members for the exclusive purpose of playing card games. In both these scenarios, it is unlikely that the entire residential flat or the entire club premises will be considered as a place kept primarily for gaming. So long as the premises *as a whole* are kept primarily for residential purposes or for the activities of a *bona fide* club, then the premises *as a whole* would not fall within the second limb, notwithstanding that one of the rooms on the premises may be kept primarily for the purpose of gaming: *R* v *Li Kim Poat & Anor.*[50]

[48] *Per* Laville J in *Cheng Ah Sang* v *Public Prosecutor* [1948] MLJ 82, 83.
[49] *Chua Seong Soi*, *supra,* note 28, ¶39.
[50] [1933] MLJ 164.

However, the situation becomes more difficult when one considers the possibility of the prosecution framing the charge in such a fashion that the premises alleged to have been used as a 'common gaming house' are not the entire club or the entire residential flat but rather the *room* where gaming takes place. Section 2 of the Act defines 'common gaming house' as including

> any *place* kept or used for gaming to which the public or any class of the public has or may have access, and any place kept for habitual gaming ... [emphasis added]

The word 'place' is in turn defined by section 2 as "any house, office, *room* or building ..." [emphasis added]. So it appears that a room in itself can technically constitute a 'common gaming house'. If a room can be considered in isolation to see if it constitutes a place kept primarily for gaming, then it is highly likely that the rooms in the examples given above would fall within the second limb. This is because the bona fide purposes for which the rest of the flat or club are being used would probably no longer be a relevant consideration.

This point was specifically addressed in *Li Kim Poat,* where Terrel J opined:

> The chief difficulty arises through the very wide terms in which 'place' is defined in section 2 of the Ordinance ... I certainly think club premises are a 'place', but I do not think that the premises as a whole can be sub-divided into parts consisting of any number of 'places' within the meaning of the Ordinance. If it were otherwise, any social club which had a card room for the convenience of its members would undoubtedly be infringing Ordinance 45 (Common Gaming Houses), because the card room is primarily, or indeed exclusively, used for the purpose of gambling with cards ...[51]

However, in *Loh Ah Kow* v *PP,*[52] Yong Pung How CJ had this to say about the matter:

[51] *Ibid,* at 167.
[52] *Supra,* note 12.

> With respect, such a curtailment of the scope of the word 'place' is unwarranted. It would allow gambling den operators to escape liability simply by opening up only *part* of their premises for gambling. So long as the rest of the premises are used ostensibly for some other legitimate purpose (such as a turf club or, as in the present case, a motor repair shop), the portion of the premises used for gambling can never be a 'place' and therefore can never fall within the definition of a 'common gaming house'. That this absurd result was never intended by the legislature is further seen from the wide manner in which the word 'place' is defined in section 2(1) of the Act.[53]

Nevertheless, it should be noted that *Loh Ah Kow* was a case involving the *first limb, ie,* it was alleged by the prosecution in that case that the public or any class of the public had access to the accused's premises to gamble. It thus remains open for one to argue that the Chief Justice's comments in *Loh Ah Kow* should be restricted only to cases dealing with the first limb and not the second. While it is common sense that a person who opens up a room on his premises to the public for the purpose of gaming should be caught by the Act, there seems to be nothing reprehensible about a club opening up one of its rooms for the purpose of allowing its members to play cards. One could thus say that such a room was never meant to come within the description of premises kept for the 'special purpose of a gambling saloon',[54] and that it does not encourage 'immoderate indulgence' in gaming. This may then justify the view that when dealing with cases under the second limb, Terrel J's holding in *Li Kim Poat* remains good law, so that courts should never focus solely on the particular room where gaming takes place, but should consider the activity in the accused's entire premises as a whole.

While this line of argument seems attractive, it may pave the way for problems. This may not be apparent in the case of a club that opens a small little room for its members to play cards. However, one can conceive of a situation where a club opens up a much larger room and furnishes it with various gambling paraphernalia such as gambling tables, roulette wheels and chips counters. The room may even come with several attendant staff members to act as bankers or dealers. In such a situation, the room borders on being a small casino, so that the likelihood of 'immoderate indulgence'

[53] At ¶10.

[54] *R* v *Fong Cheng Chong supra,* note 8, at 146.

being encouraged becomes a lot more real. Consequently, it will be much more difficult for the club to say that such a case falls outside the mischief of the Act. If however, the club is big enough, with an entire array of amenities for sports and other bona fide recreational purposes, then the mini casino postulated may still constitute only a relatively minor portion of the club's facilities. With respect to such a club, it would be difficult to say that the premises as a whole are kept primarily for gaming. If one adopts the argument that the accused's premises in second limb cases should always be looked at as a whole and that specific rooms should not be considered in isolation, the law would not be able to find the existence of a 'common gaming house' even in this given example.

Hence, even if the case is one involving the second limb, the argument that the premises must be considered as a whole and that the activity in any one particular room cannot be considered in isolation will in all probability be rejected by the courts. As it now stands, the Common Gaming Houses (Private Bodies – Exemption) Notification 2000, which came into operation on 25th March 2000, specifically exempts from the operation of the Act 'private bodies'[55] which allow gaming to be conducted within enclosed parts of their premises. Presumably, this would include clubs that use rooms on their premises for the sole purpose of gaming. The concession is however subject to a number of restrictions. For example, no person other than a member may have access to or remain in the premises where the gaming is conducted.[56] Furthermore, the concession only extends to certain types of games.[57] It would thus appear that the assumption underlying the Notification is that even small card rooms within clubs are still capable of falling within the second limb, even though the club premises as a whole may not be kept primarily for gaming.

III. Conclusion

It is important for there to be a clear answer to the question of what exactly constitutes a 'common gaming house', since the classification of premises as a common gaming house can turn what the law has time and again deemed to be a harmless activity into a criminal offence. It is important for the

[55] "Private body" is defined by ¶2 of the notification to include, *inter alia,* companies and societies, and so would presumably include country or recreation clubs.

[56] Condition 3.

[57] Condition 4: these include "Tau Ngau", Mahjong, Russian Poker, Fishing or "Ang Tiam" or "Tiew Yue", Five Cards or "Tan", "Soo Sik" or "See Sek", "Chi Kee" and "Dou Tai Chi".

public to know which side of the law they stand. Furthermore, section 17 of the Act states that when "instruments or appliances for gaming" are found in any place entered under the Act, it shall be presumed, until the contrary is proven, that the premises are kept as a common gaming house.[58] The accused persons, whether they are the owners of the premises or the persons found gaming therein, will then have to rebut the presumption.[59] So long as the term 'common gaming house' remains an elusive concept, accused persons would be placed in a most invidious position when the onus lies on them to prove that the premises do not constitute a common gaming house. It is thus important that as the cases arise, more concrete guidelines are laid down by the courts. In the meantime, the safer course of action for the man on the street to take would be, first, not to allow large numbers of strangers onto his premises to gamble and, second, not to utilise any portion of his premises for the special purpose of gaming. On the flip side of the coin, since the act of gaming in a common gaming house is itself an offence (albeit one carrying a lesser penalty),[60] it would be prudent not to visit strange or unfamiliar places to gamble.

On a more general note, it may be that it is time for the legislature to consider modifying the Act. In particular, the rationale underlying the second limb is no longer convincing. If 'immoderate indulgence' in gaming is indeed such a grave social evil, then the legislature should clamp down on premises such as horseracing clubs and jackpot rooms. However, these premises have in fact been expressly exempted from the provisions of the Act.[61] Absent the 'immoderate indulgence' theory, there does not appear to be any other compelling rationale to justify the State's interference when people choose to utilise their own private premises for the purposes of gaming. Perhaps it is time that the second limb is removed.

The first limb might nevertheless retain some utility, in so far as the prevention of public disorder is concerned. While public access may be

[58] S 17 reads: "Where in any proceedings under this Act any instruments or appliances for gaming are found in any place entered under this Act or upon any person found in such place, it shall be presumed, until the contrary is proved, that the place is a common gaming house and that it is so kept, used or permitted to be used by the owner or occupier thereof and that any other person found in such place or escaping from it is gaming therein."

[59] *PP* v *Yap Ah Yoon*, *supra,* note 27.

[60] S 7 of the Act.

[61] The Singapore Turf Club is exempted under the Common Gaming Houses (Singapore Turf Club – Exemption) Notification, while jackpot rooms are exempted under the Private Lotteries Act (Cap 250). However, a duty is payable for the revenue collected from jackpot machines: see s 7(b).

allowed into a place like the Singapore Turf Club,[62] any possibility of public disorder is greatly curbed, given that the Club is an established institution with its own set of rules. The same however cannot be said of the gaming den located in some back alleyway. It may be that the way forward in respect of first limb cases is the licensing of common gaming houses with public access. This has in fact been done in a number of other jurisdictions around the world where casinos have been legalised. Such a course of action allows the State to earn revenue, while the licensing requirement may be used to ensure that the premises in question enforce strict rules to prevent any public disorder from arising.

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[62] Members of the public were first allowed to attend races at the Club in 1960.

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