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limitation is clearly contra to the provision for a lien on "oil territories" as provided for in Section 55-308. This provision is the general view of the lien law throughout the country in that one cannot create a contractual lien on the property of another without the owner's consent.[12] In Kansas it has been held that an oil and gas lease will create an incorporeal hereditament or profit a prendre, and that a mechanic's lien will not attach to the interest acquired in lands by the lessee under an ordinary oil and gas lease, notwithstanding oil or gas is discovered.[13] Oklahoma has held these interests to be incorporeal or a profit a prendre, and further, that they were not of such an interest as would support a judgment on real estate.[14]

From the foregoing, it appears that Section 55-401 of the Wyoming Compiled Statutes (1945) is a modern statute, and conforms to the current concepts of proprietary interests created by oil and gas leases. In view of this, Sections 55-301, 55-308, 55-310 and 55-319 are of doubtful utility and add only to the confusion regarding the interests created in oil and gas leases, and do not afford a lienor assurance as to the extent of his security interest.

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PINBALL MACHINES WHICH AWARD FREE GAMES AS GAMBLING DEVICES

The manufacturers of gaming devices in the United States by constantly inventing new, ingenious machines have been able to keep ahead of the majority of the legislation and decisions aimed at outlawing gambling. A quick look at some of these devices will show how this has been accomplished.

When the states in which gambling is considered against public policy began their attack on this evil, the attack was primarily directed toward traditional gambling games such as are played with cards, dice and machines like the roulette wheel. Such statutes were easily circumvented when the manufacturers came out with the "one armed bandit" slot machine which paid off in money or tokens exchangeable for money. These machines were soon outlawed in most states by decision and legislation.

The manufacturers then turned to another "gimmick." This was to

12. Meek v. Parker, 63 Ark. 367, 38 S.W. 900 (1897); Terminal Drilling Co. v. Jones, 84 Colo. 279, 269 Pac. 894 (1928); Eastern Ohio Oil Co. v. McEvoy, 75 Kan. 515, 89 Pac. 1048 (1907); Martin Coal and Coke Co. v. Brewer, 185 Okla. 169, 90 P.2d 63 (1939).
13. Rawlings v. Armel, 70 Kan. 778, 79 Pac. 683 (1905); Eastern Ohio Oil Co. v. McEvoy, 75 Kan. 515, 89 Pac. 1048 (1907); Burden v. Gypsy Oil Co., 141 Kan. 147, 40 P.2d 463 (1935); Phillips v. Springfield Crude Oil Co., 76 Kan. 783, 92 Pac. 1119 (1907).
14. Alexander v. Continental Petroleum Co., 63 F.2d 927 (10th Cir. 1933); Francis v. Superior Oil Co., 102 F.2d 732 (C.C.A.Okla. 1939); Jones v. Tower Production Co., 120 F.2d 779 (C.C.A.Okla. 1941)

clothe gambling with the legality of merchandising. They could then argue that the purpose of a merchandising dispensing machine (which also gave tokens) was only to stimulate sales, and thus was a species of advertising.[1] These devices were constructed so that the "purchaser" of the merchandise, usually a cheap candy or gun, would receive a varying number of tokens at the same time the merchandise item was dispensed. These tokens could be replayed by the purchaser into a special slot which operated different games, like baseball,[2] which the purchaser could play, or the machine would release witty sayings or prophecies on a card.[3] In turn, such machines were held to be gambling devices under the existing statutes in many states.[4]

It soon became apparent to the builders of this type of device that their business would not suffer if they dropped the feature of a reward of cheap merchandise.[5] The pinball machine of today is the result.

Pinball machines are electrically operated games played with one or a number of steel balls which, after being propelled to the top of an inclined plane by the operator, roll down, coming in contact with electric points which give the player some type of score. They are a type of "slot machine" in the sense that a coin must be dropped into a slot before the play can begin. Some types award tokens having value,[6] or merchandise[7] to the successful operator. As the courts began to take notice of the pinball device, they seemed increasingly inclined to hold them gambling devices if the machines awarded a "thing of value." To keep a jump ahead, the manufacturers restricted the reward to the awarding of free games to successful players.

Pinball machines which award free games should be analyzed from the point of view of the traditional elements of gambling—price, chance and prize.[8] The price is generally considered the coin that the operator must place in the machine to operate it.[9] There have been no decisions directly construing this point. However, it seems that there would be little question that the price element is satisified in the pinball machine.

As to the element of chance, the argument has been advanced that the element of skill dominates that of chance.[10] The majority of courts

1 Painter v. State, 163 Tenn. 627, 45 S.E.2d 46 (1932).
2. Ibid.
3. Green v. Hart, 41 F.2d 855 (D. Conn. 1930).
4. Rankin, Constable v. Mills Novelty Co., 182 Ark. 561, 32 S.W.2d 161 (1930); Green v. Hart, 41 F.2d 855 (D. Conn. 1930); State ex rel. Manchester, County Sheriff v. Marvin, 112 Ia. 462, 233 N.W. 486 (1930); State v. Bailler, 131 Me. 285, 161 Atl. 671 (1932); State v. Mint Vending Machine, 85 N.H. 22, 154 Atl. 224 (1931); Harvie v. Heise, 150 S.C. 277, 149 S.E. 66 (1929).
5. People v. One Pinball Machine, 316 Ill.App. 161, 44 N.E.2d 950 (1942).
6. State v. Googin, 117 Me. 102, 102 Atl. 970 (1918); State ex rel. Russault v. Kilburn, 111 Mont. 400, 109 P.2d 1113 (1941).
7. In Re Sutton, 48 Pa.Super. 101, 24 A.2d 756 (1942); Sparkes v. States, 48 Ga. 498, 173 S.E. 216 (1934).
8. Westerhaus Co., Inc. v. City of Cincinnati, 165 Ohio St. 271, 135 N.E.2d 316 (1956).
9. Ibid.
10. Cavalier v. Board of Liquor Control, ... Ohio ....., 119 N.E.2d 131 (1954).

appear to hold, however, that even though there is some element of skill in operating a pinball table, the element of chance dominates.[11] One court has held that the skill involved is negligible when compared with the chance.[12] An Illinois court, under the statute of that state which specifically provides that coin machines which are operated for amusement and depend in part on skill are not gambling devices,[13] held that a pinball machine in which the odds of winning could be increased by depositing additional coins did not have enough skill involved to give it the protection of the statute.[14] The Supreme Court of Montana found that the test of skill predominating over chance is not a proper one, since any game involving skill can be a gambling device if betting is allowed.[15] The South Carolina court, in declaring a pinball machine a gaming device, relied on the element of chance being the chief attraction.[16] There appears to be little question that the necessary element of chance is present in a pinball machine.

The strongest argument raised in recent years that pinball machines are not gaming devices is based on the asserted absence of a prize. Free games, it was alleged, are not a "prize" in the gambling sense of the word. There seems to be little question that merchandise,[17] trade checks,[18] tokens[19] or money[20] pay-off will constitute a prize. But the contention is that a free game has no value, and therefore cannot constitute a prize within the elements of gambling. The free game device has been the subject of much controversy in various courts.

It is evident that the intent behind the free game feature is to induce the playing of the machine. It is doubtful that the machine would be played were it not for this feature, unless there was actual betting on the outcome or score. This chance of winning something, i.e., a free game, for nothing, seems to be aimed at the instinct of gambling innate in man. It may be reasoned that if one game is worth five cents to the operator, a subsequent game must be worth an equal amount.[21] If one player receives more games for his money than another there is not a uniform and fair return for the value of each coin.[22] It is also illogical to argue that one will spend his time and money operating a machine to obtain something that has no value to him. The majority of courts seem therefore to hold

11. Sparkes v. States, 48 Ga. 498, 173 S.E. 216 (1934).
12. Buedaro v. Caldwell, 156 Neb. 489, 56 N.W.2d 706 (1953).
13. Ill. Rev. Stat. § 341-343 (1953).
14. The People of the State of Illinois v. One Mechanical Device or Machine Desiginated as Bally Dude Ranch, 9 Ill.App.2d 38, 132 N.E.2d 338 (1956).
15. State ex rel. Dussault v. Kilburn, 111 Mont. 400, 109 P.2d 1113 (1941).
16. Alexander v. Hunnicutt, 196 S.C. 364, 13 S.E.2d 630 (1941).
17. In re Sutton, 148 Pa.Super. 101, 24 A.2d 756 (1942).
18. See note 15 supra.
19. Kraus v. City of Cleveland, 135 Ohio St. 43, 19 N.E.2d 159 (1939).
20. State of New Jersey v. Peter Ricciardi, 32 N.J.Super. 204, 108 A.2d 111 (1954).
21. Baedro v. Caldwell, 156 Neb. 489, 56 N.W.2d 706 (1953).
22. Alexander v. Martin, 192 S.C. 176, 6 S.E.2d 20 (1939).

that amusement in the form of a free game has value.[23] The extreme position here is that taken by the South Carolina court which held that a pinball machine in which all the player received for being successful was the amusement of running up a high score did not give fair return for value of each coin deposited.[24] The judicial consensus thus appears to be that the right to play a pinball machine without payment is enough of a prize to make the operation of the machine constitute gambling, provided that the other elements of gambling are present.

The court decisions which are contrary to this majority view that free games are things of value seem to rest primarily on differences in the language of particular state gambling statutes.[25] For example, the Missouri court in *State v. One "Jack and Jill" Pinball Machine* held that a device which gave the successful operator free games only was not a gaming device as free games could not be classified as money or property within the statute.[26] When statutes are applied to particular factual situations it will sometimes result that one or more of the elements of gambling were not present. These variations in statutory language are bound to play a major role in the determination of whether a pinball machine is to be deemed a gambling device under a particular state statute.

By looking at these contra decisions it will be seen that the courts, in construing gambling statutes, have split along two general lines. One view is that a gambling statute is penal in nature, and therefore must be strictly construed.[27] The second view is that gambling statutes are remedial in nature and therefore should be liberally construed.[28] These two different constructions will influence the court when it is faced with problems of whether a device awards the operator a thing of value. In the absence of express legislative direction as to whether the statute is to be considered penal or remedial, the courts are left considerable discretion as to which of the conflicting views is to be adopted.

Pinball machines have never been seriously challenged in Wyoming under our gaming statutes.[29] The Wyoming statutes, however, declare that playing any machine, or "device of whatever nature" for "representa-

23. Commonwealth v. Rivers, 323 Mass. 379, 82 N.E.2d 216 (1948); Giomi v. Chase, 47 N.M. 22, 132 P.2d 715 (1942); People v. Gravenhorse, 32 N.Y.S.2d 760 (1942) holding enjoyment has value; Broaddus v. State, 141 Tex.App. 512, 150 S.W.2d 247 (1941); Baedaro v. Caldwell, 156 Neb. 489, 56 N.W.2d 706 (1953); Alexander v. Martin, 192 S.C. 176, 6 S.E.2d 20 (1939); Westerhaus Co., Inc. v. City of Cincinnati, 165 Ohio St. 271, 135 N.E.2d 316 (1956).
24. Alexander v. Hunnicutt, 196 S.C. 364, 13 S.E.2d 630 (1941).
25. Gayer v. Whelan, 59 Cal.App.2d 255, 138 P.2d 763 (1943) holding free game not a thing of value within statute; Washington Coil Machine Association v. Callahan, 142 F.2d 97 (D.C.Cir. 1944) holding free games or amusement not property; State v. Waite, 156 Kan. 143, 131 P.2d 708 (1942) holding free game not amusement; State v. One "Jack and Jill" Pinball Machine, ... Mo. ....., 224 S.W.2d 854 (1949); In Re Wiggon, 151 Pa.Super. 337, 30 A.2d 351 (1943).
26. State v. One "Jack and Jill" Pinball Machine, ... Mo. ....., 224 S.W.2d 854 (1949); Mo. R.S.A. § 4675 (1939).
27. In Re Wiggon, 151 Pa.Super. 337, 30 A.2d 351 (1943).
28. Painter v. State, 163 Tenn. 627, 45 S.E.2d 46 (1932).
29. Wyo. Comp. Stat. §§ 9-818 and 9-825 (1945).

tives of value" is a misdemeanor[30] and that such a device may be destroyed by the sheriff atfer appropriate procedure has been complied with by the officers of the court.[31] It seems entirely possible that the Wyoming courts could hold that a pinball machine is such a device, and that free games are representative of value. The legislature has not specifically declared the gaming statutes of Wyoming to be either remedial or penal. The gaming laws are in Wyoming Compiled Statutes, 1945, Chapter 9—entitled "Criminal Offenses."[32] However, the legislature did point out that gaming devices were considered to be a nuisance.[33] The fact that the gaming statutes are found in the criminal section of the statute book does not necessarily mean that the courts must strictly construe them and it is entirely possible that they could be construed as remedial in nature. But until this question is presented to the Wyoming Supreme Court the answer will remain unknown.

If the legislature deems that pinball machines are by their nature things which are undesirable, it would appear that it would be advisable to amend our gambling statutes to specifically prohibit them. An expression of a state policy on these devices would eliminate the doubt that may arise. The State of New York has been foremost in legislation which has sought to completely outlaw these devices, which encourage the gambling instinct in people.[34] Legislation such as that found in New York, if adopted in Wyoming, would make future court decisions on this point unnecessary.

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30. Wyo. Comp. Stat. § 9-818 (1945).
31. Wyo. Comp. Stat. § 9-825 (1945).
32. Wyo. Comp. Stat. ch. 9 (1945).
33. Wyo. Comp. Stat. § 9-825 (1945), "Any gambling table, gambling device, or paraphernalia adopted (adapted), devised or designed for the purpose of playing, conducting, or carrying on, any game of chance, prohibited by the laws of this state, is hereby declared to be a nuisance. . . ."
34. New York Penal Code § 982. For a good discussion of the New York gambling situation see 43 J.Crim.L. 114.

TRADING STAMPS

Regardless of legal concepts connected with the trading stamp, it is a conclusive presumption that it appeals to consumers like the apple in the Garden of Eden appealed to Eve.[1]

Generally, consumers receive trading stamps contemporaneously with the cash purchase[2] of an item from a retailer who has adopted the stamp

1. Life Magazine, Mar. 4, 1957, pp. 114-126. These facts brought out in the article demonstrate the popularity of trading stamps: More than 400 stamp companies in 1956 printed nearly $600 million worth of stamps, which were sold to 170,000 businesses in this country.

   Time Magazine Nov. 19, 1956, p. 97: "Trading stamp tax, passed by North Dakota Legislature to discourage stamp giveaways, was thrown out by state's stamp-hungry voters in first popular referendum on issue."
2. Colgate-Palmolive Co., and Sperry & Hutchison Co., Intervenor v. Max Dischter & Sons, Inc., 142 F.Supp. 545 (1956).