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Criminal Law—Gambling

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Gambling

Lotteries, pool-selling, book-making, and any other kind of gambling except pari-mutuel betting on horse races, is prohibited by the New York Constitution.⁴² However, this provision is not self-executing, and a particular transaction is not a crime until made so by statute.⁴³ Pool-selling, book-making, and so forth, are specifically made misdemeanors by the Penal Law, §986.⁴⁴ In *People v. Farone*⁴⁵ the defendant was convicted of, *inter alia*, receiving and becoming the custodian of money bet and wagered in connection with roulette and dice games, in violation of §986. The prosecution maintained that the wording of §986 was broad enough to cover roulette and dice,⁴⁶ however, the Court rejected this contention and reversed the convictions.

It felt that such an interpretation of the statute would greatly extend the scope of our penal laws against gambling, and would result in their application to the non-professional gambler. The statute is aimed at the professional gambler, not the casual bettor.⁴⁷ Casual betting or gambling by individuals, as distinguished from professional gambling, is not a crime.⁴⁸ By extending this anti-booking statute to cover other professional gambling activities, there is danger that non-professional bettors will be included as well; therefore it is necessary to construe it strictly in favor of the accused.

DOMESTIC RELATIONS

Abandonment

After a hectic early period of marriage, a wife left her husband to go home to her mother, and shortly thereafter offered to return to him. This offer was refused, and the wife sued for separation on the ground of abandonment. The husband counterclaimed for separation on the same ground. Judgment was rendered for the wife.¹

While the Civil Practice Act establishes abandonment as a ground for separation,² it does not define the exact requirements for such an abandonment.

42. Art. 1, § 9.

43. *People ex rel. Collins v. McLaughlin*, 128 App. Div. 599, 113 N. Y. Supp. 188 (1st Dep't 1908).

44. Formerly N. Y. PENAL CODE §351.

45. 308 N. Y. 305, 125 N. E. 2d 532 (1955).

46. ". . . any person who receives . . . any money . . . bet or wagered . . . by or for any other person . . . is guilty of a misdemeanor . . ."

47. See *People ex rel. Collins v. McLaughlin*, 128 App. Div. 599, 113 N. Y. Supp. 188 (1st Dep't 1908).

48. *Watts v. Malatesta*, 262 N. Y. 80, 82, 186 N. E. 210 (1933).

1. *Aghinides v. Aghinides*, 308 N. Y. 530, 127 N. E. 2d 323 (1955).

2. N. Y. CIV. PRAC. ACT § 1161.