

GORGONIO MIRANDA, ET AL., PLAINTIFF-APPELLEE VS CITY OF MANILA, DEFENDANT- APPELLANT.

G.R. No. 17252-76. May 31, 1961

Ponente: BAUTISTA ANGELO, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-17252-76/>

BAUTISTA ANGELO, J.:

Plaintiffs, in separate complaints filed before the Court of First Instance of Manila, seek to invalidate Ordinance Mo. 3628 of the City of Manila which prohibits "the operation of pinball machines within a radius of 200 meters from any church, hospital, institution of learning, public market, plaza and government building", and fixes "an annual fee of P300.00 for the installation and use of said machines", and Ordinance No. 3941 which provides "that no license for the operation of machines and apparatus commonly known as 'pinball' machines shall be granted under any circumstances", and to enjoin and restrain the defendant City of Manila, its officials, employees, agents, and representatives from enforcing said ordinances or any of their provisions in connection with the operation of plaintiffs' pinball business.

The principal issues involved in these cases being the same, the parties agreed on a joint hearing, and to abbreviate the proceedings, the parties submitted a stipulation of facts, without prejudice of presenting additional evidence.

On February 12, 1959, after a joint hearing, the court rendered decision declaring the two ordinances above-mentioned null and void and, consequently, it permanently enjoined the defendants from enforcing them, or any of their provisions, in connection with plaintiffs' pinball business.

Defendants appealed in due time to the Court of Appeals. However, by resolution of July 25, 1960, said Court certified the cases to us on the ground that they involve the validity of Ordinance No. 3941 of the City of Manila.

The questions for determination in these cases are: (1) whether or not Ordinances Nos. 3628 and 3941 are valid with respect to the provisions affecting the operation of pinball machines; and (2) whether or not the pinball machines owned by appellees are operated for gambling purposes.

The issues raised are not new. The same have been recently submitted to us for determination and we then held that pinball machines in the different forms in which they are operated are gambling devices in that the winning therein depends mostly, if not wholly, upon chance or hazard. Consequently, we held that the municipal board of the City of Manila acted rightly in enacting Ordinance No. 3941 providing therein that no license for their installation or operation shall be granted under any circumstances. Hence, we declared that the ordinance is valid and constitutional it being a measure that comes under the general welfare clause of the Charter of the City of Manila.

Thus, in *Uy Ha v. The City Mayor, et al.*, G.R. Nos. L-14149 and L-14069, promulgated May 30, 1960, wherein the issues posed were: (1) whether pinball machines are gambling devices the operation of which is prohibited by law, and (2) whether Ordinance No. 3941 is valid and constitutional, this Court held:

"With regard to the first issue, we quote with approval the following observation of the trial court: 'Pinball machines generally consists of a playing surface, containing obstacles and apertures, upon which balls or marbles, obtained by inserting the required coin in the slot, are propelled by various methods but uniformly with the object of dropping such balls or marbles into particular apertures designated as scoring or 'pay-off holes (39 CJS 66). Bets. Cesar Zaballa and Numeriano Cortez upon order of the Chief of the Detective Bureau conducted a three-day observation on the operation of the one-ball pinball machine and found that the chance of winning of a skilled player is 4»570 while that of a non-skilled player is only 3.3470 (Exhibit 6, pp. 1-4). They, further observed that the persons-patronizing these joints are school children carrying books and idle adults.

'The foregoing observation made with respect to the non-flipper or one-ball type which are invariably played for money is not radically different from the conditions obtaining in the flipper or 5-ball type which were the object of ocular inspection. During the ocular inspection, the Fiscal spent P0.60 without winning a replay, while the presiding Judge spent P1.00 with only one replay. In other words, for three games, P1.00 was lost. The result depends mainly on chance or luck. The criterion is based not on the skilled player but on the general public patronizing same. In the flipper type, the prize is a chance at replay and the chances are enhanced in proportion to the amount paid per game. Then, too, the replays one wins may be easily converted into cash by the operator.

'Pinball machines have generally been held gambling devices (Howle v. City of Birmingham, 159 So. 206, 229. Ala. 666; Steed v. State, 72 S. W. 2d 542, 189 Ark. 389; State v. Wiley, 3 N.W. 2d 620; State v. Livingston, 196 A. 407; Hunter v. Mayor & Council of Teneck Tp., 24 A. 2d 553, 128 N.J. Law 164; People v. Swartz, 25 M.E. 2d 386, 282 M.Y. 596, and State v. Coats, 74 P. 2d 1102, 158 Or. 122.) In the case of State ex rel. Dussault, Co. Atty., et al. v. Kilburn, 135 ALR 99, it has been held that "Under statute-penalizing as a misdemeanor operation of any game of chance played with any device for money, checks, credit or any representatives of value, a pin-ball machine in the operation of which a certain amount of skill could be developed, but which as played by patronizing, public was purely a game of chance, and which paid off in trade checks if metal ball shot from spring or mechanical device fell into proper hole designated by lighted number on back of machine which changed each time machine was played, was a 'gambling device' and building in which it was used was properly enjoined as a 'nuisance'. And in State ex rel. Gree v. One 5¢ Fifth Inning Base Ball Machine, 3 So. 2d 27, 28, it has been held that 'A device which was termed a "fifth inning baseball machine" and was operated by placing nickel in slot, which released certain balls and by ejecting balls on board by pulling a plunger and striking against the balls, which would then strike projections or bumpers on the board, a higher score resulting by striking a certain number than by striking others was a "game of chance" subject to condemnation as a gambling device" under codal provisions relating to suppression of gambling devices. The proper test as to whether a machine is a gambling device is whether it encourages the gambling instinct (Dussault Case, Supra. Furthermore, 'a machine which returns merchandise of the value of the coin played therein and, in addition, a chance of receiving a varying amount of checks which may be used to pay the machine for amusement only is a gambling device the right to continue the operation of the machine for amusement being a thing of value within statutes directed against gaming (State v. Baitler, 131 Me 285, 161 A 671, citing RCL; Myers v. Cincinnati, 128 Ohio St. 235, 190 HE 569, citing RCL; Colbert v. Superior Confection Co. 154 Okla. 28, 6 P (2d) 791; Harvie v. Heise, 150 SC 277, 148-SE-66 (appeal dismissed in 279 US 824, 73 L ed 977; 49 S Ct 478) citing RCL; Painter v. State, 163 Tenn. 627, 45 SW (2d) 46, 81 ALR 173.)

'Under the foregoing authorities, petitioner's non-flipper machines are clearly gambling devices; while the flipper type should likewise be considered as gambling devices due to their tendency to encourage the gambling instinct, which lead to idleness, economic waste, dislike for work and criminality especially among children of school age who are attracted by the lure and novelty of the machine. They are, therefore proper subjects and object of the general welfare clause of the City of Manila. It further results that pinball machines joints cannot be considered 'places of amusements' within the purview of Republic Act 1224 as to affect the

question at issue.'

"We fully agree with the trial court that 'pinball machines' in the different forms in which they are operated are gambling devices in that the winning therein depends wholly upon chance or hazard. They are inimical to the general welfare because they tend to corrupt the people especially youngsters and schoolchildren robbing them of their money and of their savings earned by the sweat of their brow. Their operation should therefore be suppressed not only because, they are prohibited by law but because they are injurious to public welfare« Being gambling devices or contrivances the operation of which depends upon chance, they are not only prohibited but are penalized by Article 195 of the Revised Penal Code.

"Pinball machines' being specially designed for gambling and as such prohibited by law had been properly suppressed when the Municipal Board of the City of Manila enacted Ordinance No. 3941 providing therein that no license for their installation or operation shall be granted under any circumstances. In this sense, said ordinance cannot be held to be invalid or unconstitutional; on the contrary, it properly comes under the general welfare clause of the Charter of the City of Manila,

"It is true that under Section 18(1) of Act 409, known as Revised Charter of the City of Manila, the municipal board is given the power to regulate and fix the amount of license fees for the operation of certain devices, among them, slot machines, but this provision should be understood as referring merely to those types of slot machines that are not per se gambling devices, for what is prohibited by law cannot be the subject' of regulation. In this sense, Ordinance No. 3941 is valid and proper, for it only seeks to regulate, as it does, the installation and operation of any mechanical contrivance not otherwise prohibited by law. But 'pinball machines' are not included in this proviso. They have been properly suppressed.

'A slot machine is not per se a gambling device, since it may be used and played upon for innocent purposes, and courts cannot, therefore, take judicial notice that every slot machine is a gambling device because the use to which it is put must determine its character.¹ (Heartley v. State, 178 S.W. 2nd L. 178-Tenn. 354).

"Slot machine" is not per se a gambling -device, but is only such where it delivers some commodity in varying quantity, or where player may receive, depending on chance, something of value or token of some kind redeemable for something of value, or where there is some other element that appeals to the gambling instinct. Ex parte Overby⁵ 279. P. 523, 524, 43 Okl. Cr, 400.' (39 Words and Phrases, p. 519)

"Since Ordinance No. 3628 seeks to regulate and license the operation of 'pinball machines' within the City of Manila upon payment of an annual license of P300.00 for each 'pinball machine' , the same is ultra vires, it being an exercise of power not granted by law to the intervenor. As already stated, those devices are prohibited by law and as such are not subject to regulation. The attempt, therefore, on the part of the intervenor to collect the sum of P4,620.00 as unpaid license fees under said ordinance cannot be entertained."

It may be contended that there are two kinds of pinball machines which differ one from the other depending upon the skill of the player: the non-flipper or one-ball type which is invariably played for money, and the flipper or five-ball type which gives to the player a chance for replay in case he strikes the correct ball in its operation. To this, however, we say that this matter has been the subject of an ocular inspection on the part of the trial court in the Uy Ha case and the following is the result of its observation:

'The foregoing observation made with respect to the non-flipper or one-ball type which are invariably played for money is not radically different from the conditions obtaining in the flipper or 5-ball type which were the object of ocular inspection. During the ocular inspection, the Fiscal spent ₱0.60 without winning a replay, while the presiding Judge spent ₱1.00 with only one replay. In other words, for three games, ₱1.00 was lost. The result depends mainly on chance or luck. The criterion is based not on the skilled player but on the general

public patronizing same. In the flipper type, the prize is a chance at replay and the chances are enhanced in proportion to the amount paid per game. Then, too, the replays one wins maybe easily converted into cash by the operator.'

It may, therefore, be said that, whether the pinball machine is of a non-flipper or one-ball type, or a flipper or five-ball type., the same is deemed to be a gambling device for the reason that the element of skill involved is nil. Moreover, its operation tends to encourage the gambling instinct of the player which eventually leads to idleness, economic waste, dislike for work, and criminality, especially among children of school age, who are attracted by the lure and novelty of the machine, as properly observed by the trial court (*Uy Ha v» The City Mayor, et al.*, supra). And, as it has been aptly observed, the proper test to determine if a machine is a gambling device is whether it encourages the gambling instinct (*State ex rel. Bussault Co. Atty., et al. v. Kilburn*, 135 ALR, 99). Hence, for the good of our students and of our children, if not of the people as a whole, it is best that the operation of these machines be banned altogether, as was done by the City of Manila.

In this connection, it may not be amiss to quote herein the following annotation on pinball machines of the flipper type which gives in bold relief a clear picture of the different ways devised to circumvent the statute which prohibits the operation of these gambling devices:

"The endeavor to develop coin-operated or slot machine so as to circumvent legislative and judicial condemnation has been well stated in *People v. Gravenhorst* (1942) - Misc - 32 NYS (2d) 760, where, in respect to that development in New York State, which is typical of that in many other jurisdictions, the court said:

'The type of machine which first met the condemnation of our courts x x x was one in which the player by inserting a coin had the chance either of losing the amount played, or securing, as a gain, other coins of varying denominations, the payment being in actual money (See 135 ALE. 104, 138-141) x x x. An obvious effort to nullify the effects of the above (condemnation) was presented when the slot machine interests eliminated the pay-offs in money and substituted therefor the return to the successful player of additional merchandise, slugs, or tokens, the latter being exchangeable for gum, mints, cigars, etc. Machines of this type were likewise condemned (See 38 ALR 73; 81 ALR 177; and 135 ALR 104, 138-149) x x x. To avoid judicial disapprobation which the element of chance brought down upon these contrivances, the manufacturers proceeded to introduce a device to indicate to the operator in advance of play exactly what the payoff would be. The court held this subterfuge unavailing, remarking that the player gambles not so much on the immediate return but on the expectation that the indicator will show an opportunity for profit on his next play (See 38 ALR 73, 74-78; 81 ALR 177, 179, 180; and 135 ALR 104, 144-147) x x x In their ceaseless endeavors to circumvent legislative and judicial condemnation, the contrivers next developed a machine resembling a cash register with a lever on the side, and in the front, a column of packages of mints. Upon the deposit of a coin and the operation of the lever a package of mints was released. In addition the machine caused three cylinders to revolve at different rates of speed. Upon each cylinder were certain symbols and an incomplete sentence. The inscriptions on the three, however, when the cylinders ceased to spin and when these inscriptions were read together, formed complete sentences of a humorous vein. These machines sometimes delivered metal tokens which were purported to have no cash or trade-in value and to be capable of use only for further amusement. These types of machines were declared illegal In numerous state and Federal decisions (See 81 ALR 177.; and 135 ALR 104, 147-149) x x x The next development in these machines x~x x are known as the pinball type of slot machine (See 135 ALR 104, 149, 156) x x x As an added inducement to the playing of these devices, a mechanism is inserted into the contrivance whereby the operator on attaining a certain score would be entitled to one or more free games which were automatically furnished (See 135 ALR 104, 155, 156). [148 ALE. p. 880] These machines were condemned in *People v. Swartz*, 282 N.Y. 596, 25 N.E. 2d 386. A machine which could be readily converted into a free game device was banned in *People v. Boxer*, 1940, Misc. 24 N.Y.S. 2d 628. This brings the development of slot machines up to the present pin-ball game. (32 NYS 2d pp. 765-766)

"Held: (1) The purpose of the legislature in adopting the slot machine statute was to discourage and repress, gambling in all its forms, and the law is to be construed so as to accomplish, so far as possible, the suppression of the mischief against which the statute was directed.

"(2) 'Amusement' is a 'thing of value' within; statute prohibiting possession of coin-operated slot machine from which by reason of any element of chance the user may become entitled to receive anything of value.

"(3) Under statute prohibiting possession of coin-operated slot machine from which by reason of any element of chance the user may become entitled to receive anything of value, a 'thing of value' to be subject of gaming, may be anything affording the necessary lure to indulge in a gambling instinct.

x x x x

"After carefully considering the statute in the way of historical, legislative and judicial enlightenment, this court feels that its decision is in best accord with the legislative intent. The purpose of the legislature was to discourage and repress gambling in all its forms and the law is to be construed so as to accomplish so far as possible, the suppression of the mischief against which it was directed. The evil which the law chiefly condemns is betting and gambling organized and carried on as a systematic business. The reason is obvious. Curb the professional with his constant offer of temptation, coupled with ready opportunity, and you have to a large extent controlled the evil.

"A. recent survey conducted by one of the Departments of the City of New York disclosed that there were 11,080 such machines now operating in the city having a gross income of upwards of \$20,000,000 yearly and an average weekly gross income of upwards of \$35 per machine, although some earn as high as \$100 during that period. The investigation further revealed that between 40 and 50 per cent of this income is paid but in prizes.

"These facts and figures clearly depict the enormous business being conducted in the pin-ball interests. The annual yield in money alone indicates a well-organized gambling enterprise carried on as a regular and flourishing business. The quantity and omnipresence of these devices afford easy accessibility and continuous temptation to the unwary public. The root of the evil lies in the exploitation by professionals of the gambling instinct innate in human nature. This, the statute condemns and seeks to eliminate not by regulatory prohibition but by absolute suppression.

"The fact that the machine as chance-operated is clear and conclusive." (148 A.L.R. p. 879; Underlining supplied)

Wherefore, the decision appealed from is reversed and, in lieu thereof, another is entered dismissing these cases, without costs. The counterclaims of defendants are dismissed for the reasons stated in the Uy Ha case.

Bengzon, C.J., Padilla, Labrador, Concepcion, Reyes, J.B.L., Barrera, Paredes, Dizon, De Leon, and Natividad, JJ., concur.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.