CHAPTER 1

Gambling and Future Contracts

ARTICLE 1

Gambling Contracts

**SECTION 32‑1‑10.** Suit by loser at cards or other game for recovery of losses.

Any person who shall at any time or sitting, by playing at cards, dice table or any other game whatsoever or by betting on the sides or hands of such as do play at any of the games aforesaid, lose to any person or persons so playing or betting, in the whole, the sum or value of fifty dollars and shall pay or deliver such sum or value or any part thereof shall be at liberty, within three months then next ensuing, to sue for and recover the money or goods so lost and paid or delivered or any part thereof from the respective winner or winners thereof, with costs of suit, by action to be prosecuted in any court of competent jurisdiction.

HISTORY: 1962 Code Section 11‑51; 1952 Code Section 11‑51; 1942 Code Section 6308; 1932 Code Section 6308; Civ. C. ‘22 Section 5160; Civ. C. ‘12 Section 3416; Civ. C. ‘02 Section 2305; G. S. 1720; R. S. 1854; 1712 (2) 566.

CROSS REFERENCES

Bribery of agents, servants or employees, see Section 16‑17‑540.

Consumer Finance Law, see Sections 34‑29‑10 et seq.

Consumer Protection Code, see Section 37‑1‑101 et seq.

Contracts entered into while in flight, see Section 55‑3‑90.

Contracts exempted from application of Fair Trade Act, see Section 39‑7‑50.

Contracts in violation of General Railroad Law being void, see Section 58‑17‑100.

Contracts with counties for work on bridges, see Section 57‑13‑100.

Construction contracts for state highway system, see Sections 57‑5‑1610 et seq.

Declaratory judgments in contract actions, see Sections 15‑53‑30, 15‑53‑40.

Permissible provisions in contract for sale of commodity bearing trademark or name, see Section 39‑7‑30.

Power of married women to contract, see SC Const, Art XVII, Section 9.

Power of married women to enter into contracts, see Section 20‑5‑10.

Prohibition of law impairing the obligation of contracts, see SC Const, Art I, Section 4.

Recording of certain contracts, see Section 30‑7‑10.

Using dual contracts to induce loan commitment on real property, see Section 29‑1‑50.

Library References

Gaming 26(1).

Westlaw Topic No. 188.

C.J.S. Gaming Sections 40, 44 to 47.

RESEARCH REFERENCES

Encyclopedias

71 Am. Jur. Proof of Facts 3d 193, Enforcement of Casino Gambling Debts.

87 Am. Jur. Proof of Facts 3d 347, Enforcement of International Gambling Debts.

S.C. Jur. Action Section 21, Illegal or Immoral Transactions and in Pari Delicto Doctrine.

S.C. Jur. Appeal and Error Section 80, Directed Verdict Motions.

S.C. Jur. Appeal and Error Section 123, Issues of Fact in Equity Cases.

S.C. Jur. Costs Section 45, Recovering Gambling Losses.

S.C. Jur. Gaming Section 2, Background.

S.C. Jur. Gaming Section 32, Forfeitures.

S.C. Jur. Gaming Section 13.1, Video Games.

Forms

Am. Jur. Pl. & Pr. Forms Contracts Section 1 , Introductory Comments.

Treatises and Practice Aids

Williston on Contracts Section 17:23, Loser’s Recovery from Winner.

LAW REVIEW AND JOURNAL COMMENTARIES

The rule of lenity and hybrid statutes: WEC Carolina Energy Solutions LLC v. Miller. Stephen Wills Murphy, 64 S.C. L. Rev. 1129 (Summer 2013).

Video Poker: A Survey of Recent Developments Surrounding the Legal and Moral Debate. 51 S.C. L. Rev. 1065 (Summer 2000).

NOTES OF DECISIONS

In general 1

Construction with other laws 1.2

In pari delicto doctrine 3.5

Limitations 3

Measure of damages; setoff 4

Purpose 2

Review 5

1. In general

Horse racing is included in this section. Barret v Hampton (1807) 4 SCL 226; Atchison v Gee (1827) 15 SCL 211.

Statute which provided that gambler who lost more than $50 in one sitting could bring action to recover that sum, and statute that allowed third party to sue to recover gambler’s losses if gambler did not seek recovery, did not provide exclusive remedy for gambling losses, and habitual gamblers could attempt to recover losses they sustained on video poker machines under Video Game Machines Act (VGMA) and South Carolina Unfair Trade Practices Act (SCUTPA); statutes were not repugnant to or incapable of being reconciled with VGMA, statutes and VGMA promoted same goal of limiting excessive gambling, SCUTPA expressly stated that remedies it provided were cumulative and supplementary to other remedies provided by law, and as statutes were passed in 1712 it could not be said they were intended to pre‑empt all future remedies for persons injured by unlawful gambling activities. Johnson v. Collins Entertainment Co., Inc. (S.C. 2002) 349 S.C. 613, 564 S.E.2d 653. Gaming And Lotteries 285

Statutes allowing recovery of excessive gambling losses are penal in nature. Rorrer v. P.J. Club, Inc. (S.C.App. 2001) 347 S.C. 560, 556 S.E.2d 726.

Statute allowing gambler to bring suit to recover gambling losses only allows gambler to recover net losses at any one time or sitting. McCurry v. Keith (S.C.App. 1997) 325 S.C. 441, 481 S.E.2d 166, rehearing denied, certiorari denied. Gaming And Lotteries 275(13)

In an action by a patron against owners of a video poker machine, to recover gambling losses pursuant to Section 32‑1‑10, the court erred in granting judgment on the pleadings to the defendant owners on the basis that the patron spent money for the right to play the game rather than losing money gambling, since the patron did more than spend money for the right to play the game, the owners of the machine were “so playing” with the patron within the meaning of the statute, and the statute entitles a losing player to recover whether or not the game was illegal. McCurry v. Keith (S.C.App. 1994) 312 S.C. 254, 439 S.E.2d 861.

A cause of action based on Section 32‑1‑10, which permits the recovery of a gambling loss, was applicable to a loss incurred by a gambler playing legalized video poker since the statute does not specifically mention illegal gambling as a prerequisite to recovery. Berkebile v. Outen (S.C. 1993) 311 S.C. 50, 426 S.E.2d 760. Gaming And Lotteries 275(5)

There is no specific requirement that payment be made upon the conclusion of the gambling game. Francis v. Mauldin (S.C. 1949) 215 S.C. 374, 55 S.E.2d 337.

Recovery may be had of stakeholder, if demanded before he pays it over. Bledsoe v. Thompson (S.C. 1852) 6 Rich. 44, 57 Am.Dec. 777.

The money or goods must be lost at one time or at one sitting. Trumbo v. Finley (S.C. 1882) 18 S.C. 305.

A principal may recover money lost by his agent. Allen v. Watson (S.C. 1834).

Contract to forfeit the deposit on the refusal to run the horse race for a wager above fifty dollars is void. Corley v. Berry (S.C. 1830).

One winner can recover of his joint winner his share of money received on note for wager. Owen v. Davis (S.C. 1829).

Only the thing lost can be recovered, and not the articles delivered in payment of it, can be recovered. Whelloch v. Bobo (S.C. 1824).

Recovery may be had of stakeholder if he paid it over after notice not to do so. Livingston v. Wootan (S.C. 1818).

Wager on a horse race for twenty dollars is not illegal. Barret v. Hampton (S.C. 1807). Gaming And Lotteries 235

1.2. Construction with other laws

Gambling loss statutes, authorizing gamblers and affected third parties to recover gambling losses in certain limited circumstances, provide the exclusive remedy for a gambler seeking recovery of losses sustained by illegal gambling, accordingly, one engaged in illegal gambling cannot recover under South Carolina Unfair Trade Practices Act; overruling Johnson v. Collins Entertainment Company, 349 S.C. 613, 564 S.E.2d 653, and Gentry v. Yonce, 337 S.C. 1, 522 S.E.2d 137. Proctor v. Whitlark & Whitlark, Inc. (S.C. 2015) 414 S.C. 318, 778 S.E.2d 888, rehearing denied. Antitrust and Trade Regulation 282; Gaming and Lotteries 275(1)

2. Purpose

Object of the statutes allowing recovery of excessive gambling losses was manifestly to punish excessive gaming, and consequently, the statutory scheme is part remedial and part penal. Rorrer v. P.J. Club, Inc. (S.C.App. 2001) 347 S.C. 560, 556 S.E.2d 726.

Purpose of statute allowing gambler to bring suit to recover gambling losses is to punish excessive gaming and to prevent gambler from allowing vice to overcome his ability to pay. McCurry v. Keith (S.C.App. 1997) 325 S.C. 441, 481 S.E.2d 166, rehearing denied, certiorari denied. Gaming And Lotteries 275(2)

3. Limitations

There can be no recovery beyond the time limit. Owen v Davis (1829) 17 SCL 315. Willis v Hockaday (1843) 28 SCL 379.

A cause of action accrued to the defendant each time he made a payment on the gambling debt, and he had three months from the date of each payment within which to bring an action thereon. Francis v. Mauldin (S.C. 1949) 215 S.C. 374, 55 S.E.2d 337.

3.5. In pari delicto doctrine

Doctrine of in pari delicto was abrogated for reasons of public policy with respect to gambler’s losses while gambling on video poker machines at corporate operator’s restaurants and did not bar gambler from recovering her losses, even though video poker gambling was illegal when gambler suffered her losses, given the circumstances of the case, which included, according to gambler, the restaurants providing her with cash advances on her credit cards to enable her to fund her gambling as well as free food and alcohol. Proctor v. Whitlark & Whitlark, Inc. (S.C.App. 2013) 406 S.C. 225, 750 S.E.2d 93, rehearing denied, affirmed in part, reversed in part 414 S.C. 318, 778 S.E.2d 888. Gaming And Lotteries 276(4)

4. Measure of damages; setoff

Plain meaning of words used in statutes allowing recovery of excessive gambling losses indicated that measure of damages was actual loss sustained by gambler at one sitting. Rorrer v. P.J. Club, Inc. (S.C.App. 2001) 347 S.C. 560, 556 S.E.2d 726.

Gambler who brought action against owners of video poker establishment to recover gambling losses waived right to object to trial judge’s consideration of her winnings, in determining total losses, as owners’ attorney mentioned winnings in opening statement and questioned gambler about winnings without objection and gambler’s attorney questioned her about winnings on direct examination. McCurry v. Keith (S.C.App. 1997) 325 S.C. 441, 481 S.E.2d 166, rehearing denied, certiorari denied. Gaming And Lotteries 295

Even if owners of video poker establishment had been required to request relief of a setoff of gambler’s winnings, in gambler’s action to recover gambling losses, issue was tried by implied consent, given that owners’ attorney mentioned winnings in opening statement and questioned gambler about winnings without objection and gambler’s attorney questioned her about winnings on direct examination. McCurry v. Keith (S.C.App. 1997) 325 S.C. 441, 481 S.E.2d 166, rehearing denied, certiorari denied. Pleading 427

Owners of video poker establishment at which gambler suffered losses was entitled to a setoff of gambler’s winnings, in gambler’s action to recover gambling losses, even though owners did not request this relief in their pleadings. McCurry v. Keith (S.C.App. 1997) 325 S.C. 441, 481 S.E.2d 166, rehearing denied, certiorari denied. Pleading 139

Proper measure of loss in gambler’s action to recover gambling losses includes adjustment for amounts gained or saved, as this measure of damages places injured party in position that existed prior to loss. McCurry v. Keith (S.C.App. 1997) 325 S.C. 441, 481 S.E.2d 166, rehearing denied, certiorari denied. Gaming And Lotteries 275(13)

5. Review

Appropriate standard of review of a judgment under the statute allowing recovery of excessive gambling losses is whether there is any evidence to support the verdict. Rorrer v. P.J. Club, Inc. (S.C.App. 2001) 347 S.C. 560, 556 S.E.2d 726.

**SECTION 32‑1‑20.** Suit by person other than loser for recovery of losses.

In case any person who shall lose such money or other thing as aforesaid shall not, within the time aforesaid, really and bona fide and without covin or collusion sue and with effect prosecute for the money or other things so by him or them lost and paid and delivered as aforesaid, it shall be lawful for any other person, by any such action or suit as aforesaid, to sue for and recover the same and treble the value thereof, with costs of suit, against such winner or winners as aforesaid, the one moiety thereof to the use of the person that will sue for the same and the other moiety to the use of the county in which the offense shall have been committed.

HISTORY: 1962 Code Section 11‑52; 1952 Code Section 11‑52; 1942 Code Section 6309; 1932 Code Section 6309; Civ. C. ‘22 Section 5161; Civ. C. ‘12 Section 3417; Civ. C. ‘02 Section 2306; G. S. 1721; R. S. 1855; 1712 (2) 566.

Library References

Gaming 26(4).

Westlaw Topic No. 188.

C.J.S. Gaming Sections 40, 44 to 47.

RESEARCH REFERENCES

Encyclopedias

71 Am. Jur. Proof of Facts 3d 193, Enforcement of Casino Gambling Debts.

S.C. Jur. Action Section 21, Illegal or Immoral Transactions and in Pari Delicto Doctrine.

S.C. Jur. Appeal and Error Section 80, Directed Verdict Motions.

S.C. Jur. Appeal and Error Section 123, Issues of Fact in Equity Cases.

S.C. Jur. Costs Section 45, Recovering Gambling Losses.

S.C. Jur. Gaming Section 2, Background.

S.C. Jur. Gaming Section 32, Forfeitures.

S.C. Jur. Gaming Section 13.1, Video Games.

Treatises and Practice Aids

Williston on Contracts Section 17:25, Recovery by Lender, Dependents, Creditors, and Other Third Parties.

NOTES OF DECISIONS

In general 1

Burden of proof 5

Construction with other laws 1.2

In pari delicto doctrine 4.5

Limitations 4

Measure of damages 6

Pleading 3

Purpose 2

Treble damages 7

1. In general

Statute which provided that gambler who lost more than $50 in one sitting could bring action to recover that sum, and statute that allowed third party to sue to recover gambler’s losses if gambler did not seek recovery, did not provide exclusive remedy for gambling losses, and habitual gamblers could attempt to recover losses they sustained on video poker machines under Video Game Machines Act (VGMA) and South Carolina Unfair Trade Practices Act (SCUTPA); statutes were not repugnant to or incapable of a reasonable reconcilement with VGMA, statutes and VGMA promoted same goal of limiting excessive gambling, SCUTPA expressly stated that remedies it provided were cumulative and supplementary to other remedies provided by law, and as statutes were passed in 1712 it could not be said they were intended to pre‑empt all future remedies for persons injured by unlawful gambling activities. Johnson v. Collins Entertainment Co., Inc. (S.C. 2002) 349 S.C. 613, 564 S.E.2d 653. Gaming And Lotteries 285

Statutes allowing recovery of excessive gambling losses are penal in nature. Rorrer v. P.J. Club, Inc. (S.C.App. 2001) 347 S.C. 560, 556 S.E.2d 726.

Video Games Machine Act (VGMA) did not impliedly repeal gaming statutes allowing gambler or third party to recover gambler’s losses; statutes were not repugnant to each other and were not unable to be reconciled. Mullinax v. J.M. Brown Amusement Co., Inc. (S.C. 1998) 333 S.C. 89, 508 S.E.2d 848. Gaming And Lotteries 206(6); Gaming And Lotteries 206(7); Gaming And Lotteries 208

Section 32‑1‑10 and 32‑1‑20 do not require the existence of a contract or agreement in order for a gambler or third party to recover gambling losses. Ardis v. Ward (S.C. 1996) 321 S.C. 65, 467 S.E.2d 742, rehearing denied.

Stated in Francis v. Mauldin (S.C. 1949) 215 S.C. 374, 55 S.E.2d 337.

1.2. Construction with other laws

Gambling loss statutes, authorizing gamblers and affected third parties to recover gambling losses in certain limited circumstances, provide the exclusive remedy for a gambler seeking recovery of losses sustained by illegal gambling, accordingly, one engaged in illegal gambling cannot recover under South Carolina Unfair Trade Practices Act; overruling Johnson v. Collins Entertainment Company, 349 S.C. 613, 564 S.E.2d 653, and Gentry v. Yonce, 337 S.C. 1, 522 S.E.2d 137. Proctor v. Whitlark & Whitlark, Inc. (S.C. 2015) 414 S.C. 318, 778 S.E.2d 888, rehearing denied. Antitrust and Trade Regulation 282; Gaming and Lotteries 275(1)

2. Purpose

Object of the statutes allowing recovery of excessive gambling losses was manifestly to punish excessive gaming, and consequently, the statutory scheme is part remedial and part penal. Rorrer v. P.J. Club, Inc. (S.C.App. 2001) 347 S.C. 560, 556 S.E.2d 726.

3. Pleading

Plaintiff’s causes of action to recover gambling losses incurred by his mother and sister while playing video poker were sufficiently pled under gaming statute, where plaintiff pled that on several dates throughout calendar years of 1995 and 1996, sister and mother of plaintiff, while gambling on video poker machines, owned and/or operated by defendants, lost in excess of $50 per sitting. Justice v. The Pantry (S.C. 1999) 335 S.C. 572, 518 S.E.2d 40. Gaming And Lotteries 292

Plaintiff seeking to recover gambling losses incurred by his mother and sister while playing video poker was not required to allege specific dates of when losses occurred; dates of gambling were not required element of statute, but rather, plaintiff was only required to indicate manner in which money was won, i.e., at one time or sitting. Justice v. The Pantry (S.C. 1999) 335 S.C. 572, 518 S.E.2d 40. Gaming And Lotteries 292

In an action brought under Section 32‑1‑20 to recover gambling loss incurred by a third party while playing video poker, the trial court erred in ruling that video poker machines constitute a lottery within the meaning of S.C. Const. Art. XVII, Section 7 because there was no allegation that there was an agreement which the owner of the video machine violated. Ardis v. Ward (S.C. 1996) 321 S.C. 65, 467 S.E.2d 742, rehearing denied.

Complaint which did not allege each loss to have been “at one time or sitting” was insufficient and stated no cause of action. Trumbo v. Finley (S.C. 1882) 18 S.C. 305.

4. Limitations

Plaintiff’s complaint to recover gambling losses incurred by his mother and sister while playing video poker adequately set out time period when plaintiff claimed losses occurred so gambling establishment owners could determine if they should raise statute of limitations defense, where complaints were filed March 8, 1996 and stated that losses occurred on several dates throughout the calendar years of 1995 and 1996. Justice v. The Pantry (S.C. 1999) 335 S.C. 572, 518 S.E.2d 40. Gaming And Lotteries 292

Three‑month statutory limitation period provided in statute allowing actions to recover gambling losses applies only to gambler’s recovery of her own losses. Montjoy v. One Stop of Abbeville, Inc. (S.C. 1996) 325 S.C. 17, 478 S.E.2d 683. Gaming And Lotteries 288

General one‑year statute of limitations, and not three‑month limitations period contained in statute allowing actions to recover gambling losses, applied to action in which plaintiff sought to recover money her daughter had lost playing video poker. Montjoy v. One Stop of Abbeville, Inc. (S.C. 1996) 325 S.C. 17, 478 S.E.2d 683. Gaming And Lotteries 288

A third party may bring an action to recover a gambler’s losses only after the 3‑month period in which the gambler himself may bring an action to recover the losses has passed. Ardis v. Ward (S.C. 1996) 321 S.C. 65, 467 S.E.2d 742, rehearing denied.

4.5. In pari delicto doctrine

Doctrine of in pari delicto was abrogated for reasons of public policy with respect to gambler’s losses while gambling on video poker machines at corporate operator’s restaurants and did not bar gambler from recovering her losses, even though video poker gambling was illegal when gambler suffered her losses, given the circumstances of the case, which included, according to gambler, the restaurants providing her with cash advances on her credit cards to enable her to fund her gambling as well as free food and alcohol. Proctor v. Whitlark & Whitlark, Inc. (S.C.App. 2013) 406 S.C. 225, 750 S.E.2d 93, rehearing denied, affirmed in part, reversed in part 414 S.C. 318, 778 S.E.2d 888. Gaming And Lotteries 276(4)

5. Burden of proof

Rules of statutory construction, which required strict construction of penal statutes, did not increase burden of proof for recovery under statutes allowing recovery of excessive gambling losses, even though statute was penal in nature, and thus, to recover under statute, spouse of gambler had to prove each of spouse’s excessive gambling losses by preponderance of evidence, rather than by clear and convincing evidence. Rorrer v. P.J. Club, Inc. (S.C.App. 2001) 347 S.C. 560, 556 S.E.2d 726. Gaming And Lotteries 292

Question of whether gambler sustained excessive losses playing video poker games, in spouse’s action against owner of games under statute allowing recovery of excessive gambling losses was for jury, where gambler testified with specificity as to each loss sustained on games and referred to credit card and bank records as corroboration, each these losses was for amounts in excess of $50, according to gambler’s testimony, each was net loss at that particular sitting, and gambler testified that she did not lose money on rare occasions where she gambled elsewhere. Rorrer v. P.J. Club, Inc. (S.C.App. 2001) 347 S.C. 560, 556 S.E.2d 726. Gaming And Lotteries 293

6. Measure of damages

Plain meaning of words used in statutes allowing recovery of excessive gambling losses indicated that measure of damages was actual loss sustained by gambler at one sitting. Rorrer v. P.J. Club, Inc. (S.C.App. 2001) 347 S.C. 560, 556 S.E.2d 726.

7. Treble damages

Treble damage award under statutes allowing recovery of excessive gambling losses was not punitive damages, and thus spouse of gambler, who sought recovery for gambler’s excessive losses, was not required to prove losses by clear and convincing evidence, but rather preponderance of evidence standard applied, even though separate statute imposed higher burden on plaintiff seeking punitive damages, and damages might not be compensatory when recovered by someone other than gambler, given that generally statute protected spouse and family of gambler and did not specify higher burden, statute indicated that initial measure of damages was actual loss sustained, actual damages were required before punitive damages could be awarded, and it would improvident to judicially engraft extra requirements to clear legislation. Rorrer v. P.J. Club, Inc. (S.C.App. 2001) 347 S.C. 560, 556 S.E.2d 726. Constitutional Law 2503(1); Gaming And Lotteries 277; Gaming And Lotteries 292

Whether husband and wife acted in covin and collusion in bringing wife’s lawsuit to recover treble the value of losses husband sustained playing video poker was question for jury, in wife’s action against video poker machine manufacturers. Mullinax v. J.M. Brown Amusement Co., Inc. (S.C. 1998) 333 S.C. 89, 508 S.E.2d 848. Gaming And Lotteries 293

Wife’s action against manufacturers of video poker machines to recover her husband’s gambling losses under South Carolina gambling loss recovery statute was brought without “covin or collusion,” as required by statute, although husband assisted wife in bringing action; husband had necessary information and documentation, and there was no evidence that husband intentionally refrained from bringing suit in his own name so that wife could recover treble damages. Mullinax v. J.M. Brown Amusement Co., Inc. (S.C.App. 1997) 326 S.C. 453, 485 S.E.2d 103, rehearing denied, certiorari granted, affirmed 333 S.C. 89, 508 S.E.2d 848. Gaming And Lotteries 276(13)

**SECTION 32‑1‑30.** Orders for discovery.

Any person who, by virtue of the provisions herein contained, shall or may be liable to be sued for such moneys or other things so won shall be obliged and compellable to answer, upon oath, such order as shall be made against him for discovering the sum of money or other things so won at play as aforesaid.

HISTORY: 1962 Code Section 11‑53; 1952 Code Section 11‑53; 1942 Code Section 6310; 1932 Code Section 6310; Civ. C. ‘22 Section 5162; Civ. C. ‘12 Section 3418; Civ. C. ‘02 Section 2307; G. S. 1722; R. S. 1856; 1712 (2) 566.

Library References

Pretrial Procedure 36.1.

Westlaw Topic No. 307A.

C.J.S. Discovery Sections 25 to 26.

**SECTION 32‑1‑40.** Notes or other securities or conveyances given to secure wagers.

All notes, bills, bonds, judgments, mortgages or other securities or conveyances whatsoever given, granted, entered into or executed by any person whatsoever when the whole or any part of the consideration of such conveyances or securities shall be (a) for any money or valuable thing whatsoever won by cockfighting, horse racing or by gaming or playing at cards, dice tables, tennis, bowls, or other game whatsoever or by betting on the sides or hands of such as do game at any of the games aforesaid or any other game or games or (b) for the reimbursing or repaying any money knowingly lent or advanced at the time and place of such cockfighting, horse racing or play to any person (i) so gaming or betting as aforesaid or (ii) that shall, during such cockfighting, horse racing or play, so bet shall be utterly void, frustrate and of none effect to all intents and purposes whatsoever.

HISTORY: 1962 Code Section 11‑54; 1952 Code Section 11‑54; 1942 Code Section 6311; 1932 Code Section 6311; Civ. C. ‘22 Section 5163; Civ. C. ‘12 Section 3419; Civ. C. ‘02 Section 2308; G. S. 1723; R. S. 1857; 1712 (2) 567; 1791 (5) 178.

Library References

Gaming 19(1).

Westlaw Topic No. 188.

C.J.S. Gaming Sections 26, 31.

RESEARCH REFERENCES

Treatises and Practice Aids

Williston on Contracts Section 17:16, Negotiable Instruments Given for Illegal Gambling Consideration.

Williston on Contracts Section 17:19, Mortgages and Pledges Given to Secure Illegal Gambling Debts.

NOTES OF DECISIONS

In general 1

1. In general

Where certain goods were won and actually transferred to the winner, a note given for the goods by a third party is valid. Hockaday v. Willis (S.C. 1843) 40 Am.Dec. 606.

Statute voiding notes or conveyances given to secure gaming wagers did not invalidate contract pursuant to which video gaming machines were placed in business proprietor’s premises and in which contract proprietor agreed to reimburse owner of machines for half of cost of machine licenses. Collins Entertainment, Inc. v. White (S.C.App. 2005) 363 S.C. 546, 611 S.E.2d 262, rehearing denied, certiorari denied. Gaming And Lotteries 255(2)

Cited in Francis v. Mauldin (S.C. 1949) 215 S.C. 374, 55 S.E.2d 337.

A promissory note given for a loan of money with which to gamble is void whether in the hands of the payee or an innocent holder. Mordecai v. Dawkins (S.C. 1856) 9 Rich. 262. Bills And Notes 375

Where note was made payable to bearer, in an action to recover on the note by a holder, statements of the payee that note was for payment of gambling debt are admissible. Sharp v. Smith (S.C. 1853) 7 Rich. 3.

**SECTION 32‑1‑50.** Mortgages or other conveyances of land given to secure wagers.

When such mortgages, securities or other conveyances shall be of lands, tenements or hereditaments or shall be such as to encumber or affect the same, such mortgages, securities or other conveyances shall enure and be to and for the sole use and benefit of, and shall devolve upon, such person or persons as shall have been or may be entitled to such lands, tenements or hereditaments in case the grantor thereof or the person or persons so encumbering the same had been dead and as if such mortgages, securities or other conveyances had been made to such person or persons by the person so encumbering the same. And all grants and conveyances to be made for the preventing of such lands, tenements or hereditaments from coming to, or devolving upon, such person or persons hereby intended to enjoy them as aforesaid shall be deemed fraudulent and void and of none effect, to all intents and purposes whatsoever.

HISTORY: 1962 Code Section 11‑55; 1952 Code Section 11‑55; 1942 Code Section 6312; 1932 Code Section 6312; Civ. C. ‘22 Section 5164; Civ. C. ‘12 Section 3420; Civ. C. ‘02 Section 2309; G. S. 1724; R. S. 1858; 1791 (5) 178.

Library References

Gaming 19(1).

Westlaw Topic No. 188.

C.J.S. Gaming Sections 26, 31.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Gaming Section 2, Background.

**SECTION 32‑1‑60.** Application of statutes to gambling activities not authorized by law.

Beginning on the effective date of this section, the provisions of Sections 32‑1‑10, 32‑1‑20, and 32‑1‑30 apply only to those gambling activities not authorized by law.

HISTORY: 1999 Act No. 125, Section 18.

Library References

Gaming 3, 26(1).

Westlaw Topic No. 188.

C.J.S. Gaming Sections 9 to 13, 40, 44 to 47.

ARTICLE 3

Contracts for Future Delivery

**SECTION 32‑1‑210.** Definitions.

For the purpose of this article:

(1) The term “contract for sale” shall be held to include sales, purchases, agreements of sale, agreements to sell and agreements to purchase; and

(2) A “bucket shop” is hereby defined to be any place of business wherein are made contracts of the sort or character denounced by Section 32‑1‑220.

HISTORY: 1962 Code Section 11‑61; 1952 Code Section 11‑61; 1942 Code Sections 6313, 6316; 1932 Code Sections 6313, 6316; 1928 (35) 1321.

Library References

Gaming 12.

Westlaw Topic No. 188.

C.J.S. Gaming Sections 34, 36 to 39.

RESEARCH REFERENCES

Treatises and Practice Aids

Williston on Contracts Section 17:12, Speculative Contracts; Bucket Shop and Exchange Transactions.

LAW REVIEW AND JOURNAL COMMENTARIES

Video Poker: A Survey of Recent Developments Surrounding the Legal and Moral Debate. 51 S.C. L. Rev. 1065 (Summer 2000).

**SECTION 32‑1‑220.** Contracts when actual delivery not contemplated.

Any contract of sale for future delivery of cotton, grain, stocks or other commodities when it is not the bona fide intention of parties that the things mentioned therein are to be delivered but which is to be settled according to or upon the basis of the public market quotations or prices made on any board of trade, exchange or other similar institution, without any actual bona fide execution and the carrying out of such contract upon the floor of such exchange, board of trade or similar institution, in accordance with the rules thereof, shall be null and void and unenforceable in any court of this State and no action shall be maintainable thereon at the suit of any party.

HISTORY: 1962 Code Section 11‑62; 1952 Code Section 11‑62; 1942 Code Section 6315; 1932 Code Section 6315; 1928 (35) 1321.

Library References

Gaming 12.

Westlaw Topic No. 188.

C.J.S. Gaming Sections 34, 36 to 39.

NOTES OF DECISIONS

In general 1

1. In general

Applied in Gist v Western Union Tel. Co. (1895) 45 SC 344, 23 SE 143M. Gwathmey v Burgiss (1914) 98 SC 152, 82 SE 394. Knight, Yancey & Co. v Aetna Cotton Mills (1908) 80 SC 213, 61 SE 396. Barr v Satcher (1905) 72 SC 35, 51 SE 530. Harvey v Doty (1897) 50 SC 548, 27 SE 943. Harvey v Doty (1899) 54 SC 382, 32 SE 501. Doughty v Lightsey (1915) 101 SC 370, 85 SE 898. McLure v Wilson (1923, CA4 SC) 292 F 109. Parker & Co. v Moore (1903, CC SC) 125 F 807.

The validity of the contract depends upon the bona fide intention of the parties. Sampson v. Camperdown Cotton Mills, 1897, 82 F. 833.

Cited in Huntley v. Sullivan (S.C. 1933) 170 S.C. 391, 170 S.E. 664.

Where contract is void because future delivery of cotton was not intended, plaintiff cannot recover damages from a telegraph company for nondelivery of a telegram authorizing sale to brokers. Wiggins v. Postal Telegraph Co. (S.C. 1924) 130 S.C. 292, 125 S.E. 568, 44 A.L.R. 781.

It is not necessary that both parties to the contract be actually present when it is made in order to have the bona fide intention necessary to make it valid, but an agent may make the contract and there still may be the necessary intention to make it binding. Marlboro Cotton Mills v. O’Neal (S.C. 1920) 114 S.C. 459, 103 S.E. 781.

Not only must the buyer prove his intention to receive, but also he must prove the intention of the seller to deliver at the time of making of the contract in order to prove a contract of sale for future delivery of cotton. Maybank & Co. v. Rogers (S.C. 1914) 98 S.C. 279, 82 S.E. 422.

**SECTION 32‑1‑230.** Establishment of local exchanges, boards of trade or similar institutions.

There may be organized, as voluntary associations, in any municipality in this State cotton exchanges, grain exchanges, boards of trade or similar institutions to receive and post quotations on cotton, grain, stocks or other commodities for the benefit of their members or other persons engaged in the production of cotton, grain or other commodities. Every such association shall be composed of members and shall adopt a uniform set of rules and regulations not incompatible with the laws of this State and of the United States. They shall open their books to inspection of all proper courts and officers when required so to do.

HISTORY: 1962 Code Section 11‑63; 1952 Code Section 11‑63; 1942 Code Section 6319; 1932 Code Section 6319; 1928 (35) 1321.

Library References

Exchanges 1.

Westlaw Topic No. 160.

C.J.S. Exchanges Sections 2 to 3.

**SECTION 32‑1‑240.** Contracts of sale for future delivery.

All contracts of sale for future delivery of cotton, grain, stocks or other commodities:

(1) Made in accordance with the rules of any board of trade, exchange or similar institution;

(2) Actually executed on the floor of such board of trade, exchange or similar institution and performed or discharged according to the rules thereof; and

(3) Placed with or through a regular member in good standing of a cotton exchange, grain exchange, board of trade or similar institution organized under the laws of this or any other state;

Shall be valid and enforceable in the courts of this State according to their terms; provided, that:

(1) Contracts of sale for future delivery of cotton in order to be valid and enforceable as provided herein must not only conform to the foregoing requirements of this section but must also be made subject to the provisions of the United States Cotton Futures Act, approved August 11, 1916, and any amendments thereto;

(2) If the foregoing proviso should for any reason be held inoperative then contracts for future delivery of cotton shall be valid and enforceable if they conform to the foregoing requirements of this section; and

(3) When it is not contemplated by the parties to any contract that there shall be an actual delivery of the commodities sold or bought thereby such contract shall be unlawful.

HISTORY: 1962 Code Section 11‑64; 1952 Code Section 11‑64; 1942 Code Section 6314; 1932 Code Section 6314; 1928 (35) 1321.

Library References

Contracts 105.

Gaming 12.

Westlaw Topic Nos. 188, 95.

C.J.S. Contracts Sections 27 to 29, 208, 211 to 212.

C.J.S. Gaming Sections 34, 36 to 39.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Gaming Section 5, Gambling Contract.

**SECTION 32‑1‑250.** Bona fide hedging contracts.

Any person making any contract of sale for future delivery of any cotton, grain, meats or other animal, mineral or vegetable product of which such person is, at the time of the making of such contract of sale for future delivery, the actual owner or as to which such person may be duly authorized by the owner thereof to make and enter into such contract of sale for future delivery may for his protection on such contract of sale for future delivery make and negotiate sales or purchases for future delivery upon any legally established board of trade or exchange in this or any other state and under the rules and regulations of such board of trade or exchange of a like and equal amount of cotton, grain, meats or other animal, mineral or vegetable products as that covered by and embraced in such contract of sale for future delivery of cotton, grain, meats or other animal, mineral or vegetable products so owned by him or which, at the time of the making of such contract of sale he was duly authorized by the owners thereof to enter into such contract to sell, for future delivery. And every such contract of sale or purchase so made upon any legally established board of trade or exchange in this or any other state shall be taken and adjudged by the courts of this State to be a good, valid and legitimate contract of sale or purchase, anything in the statutes of this State to the contrary notwithstanding; provided, that this section shall be deemed to authorize only bona fide hedges or contracts of purchase or sale for the purpose of fixing prices.

HISTORY: 1962 Code Section 11‑65; 1952 Code Section 11‑65; 1942 Code Section 6321; 1932 Code Section 6321; 1928 (35) 1228.

Library References

Contracts 105.

Gaming 12, 15.

Westlaw Topic Nos. 188, 95.

C.J.S. Contracts Sections 27 to 29, 208, 211 to 212.

C.J.S. Gaming Sections 34, 36 to 39.

**SECTION 32‑1‑260.** Association and corporate charters amended to confer powers set out in Section 32‑1‑250.

The charters of all associations or corporations incorporated under the laws of this State are hereby amended so as to confer upon them the rights and powers conferred and established by Section 32‑1‑250.

HISTORY: 1962 Code Section 11‑65.1; 1952 Code Section 11‑65.1; 1942 Code Section 6321; 1932 Code Section 6321; 1928 (35) 1228.

**SECTION 32‑1‑270.** Statements to be furnished by agents; effect of failure to furnish.

Every person shall furnish upon demand to any principal for whom such person has executed any contract for the future delivery of any cotton, grain, stocks or other commodities a written instrument setting forth the name and location of the exchange, board of trade or similar institution upon which such contract has been executed, the date of the execution of the contract and the name and address of the person with whom such contract was executed. If such person shall refuse or neglect to furnish such statement upon reasonable demand such refusal or neglect shall be prima facie evidence that such contract was an illegal contract within the provisions of Section 32‑1‑220 and that the person who executed it was engaged in the maintenance and operation of a bucket shop.

HISTORY: 1962 Code Section 11‑66; 1952 Code Section 11‑66; 1942 Code Section 6317; 1932 Code Section 6317; 1928 (35) 1321.

Library References

Gaming 11.

Westlaw Topic No. 188.

C.J.S. Gaming Sections 34, 36 to 39.

**SECTION 32‑1‑280.** Bucket shops.

The maintenance or operation of a bucket shop at any point in this State is prohibited.

HISTORY: 1962 Code Section 11‑67; 1952 Code Section 11‑67; 1942 Code Section 6316; 1932 Code Section 6316; 1928 (35) 1321.

Library References

Gaming 5, 11.

Westlaw Topic No. 188.

C.J.S. Gaming Sections 26, 29, 34, 36 to 39.

**SECTION 32‑1‑290.** Making or assisting in making contracts when actual delivery not contemplated or operating bucket shop; penalty.

Any person who, either as agent or principal, enters into or assists in making any contract of sale of the sort or character denounced in Section 32‑1‑220 for the future delivery of cotton, grain, stocks or other commodities or who maintains a bucket shop shall be guilty of a misdemeanor and upon conviction shall be imprisoned in the penitentiary not exceeding two years.

HISTORY: 1962 Code Section 11‑68; 1952 Code Section 11‑68; 1942 Code Section 6318; 1932 Code Section 6318; 1928 (35) 1321; 1960 (51) 1602.

Library References

Gaming 69.

Westlaw Topic No. 188.

C.J.S. Gaming Section 89.