

8 In these circumstances, there appears to be no reason to withhold the court's permission to the applicant to marry under the age of 16 and this is accordingly granted.

*Application granted.*

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[1980–87 Gib LR 335]

**ALBA v. ATTORNEY-GENERAL**

SUPREME COURT (Alcantara, A.J.): December 2nd, 1985

*Gambling—lotteries—lost or destroyed ticket—confiscated ticket—conditions of Lotteries Regulations (cap. 64), regs. 10 and 10A not complied with and no payment of prize money if winning ticket not presented because confiscated by Customs authorities and purchaser fails to make statutory declaration of loss of ticket prior to draw*

*Gambling—lotteries—lost or destroyed ticket—confiscated ticket—refusal to pay out on winning lottery ticket confiscated by Spanish Customs not indirect enforcement of Spanish penal or revenue law prohibiting importation of foreign lottery tickets*

The plaintiff brought proceedings against the Attorney-General to recover lottery prize money for which her ticket had been confiscated by Spanish Customs authorities.

The plaintiff resided in Spain but whilst in Gibraltar purchased a ticket for the Gibraltar Government Lottery which was confiscated on her return to Spain by Spanish Customs authorities acting in accordance with Spanish law. When the lottery was drawn, it transpired that the confiscated ticket was the winning ticket, but it was not until a week after the draw that the plaintiff reported the confiscation to the Treasury in Gibraltar and lodged a formal claim to the prize money supported by a statutory declaration. The Accountant-General of Gibraltar refused to pay the prize money to her and also refused a claim from a representative of a Spanish bank, presumably acting on behalf of the Spanish Government. The plaintiff then brought proceedings against the Attorney-General for the prize money and the Attorney-General issued an interpleader summons, naming the additional claimants to the prize money as Banco Exterior de España and the head of the Customs section at La Linea. The claimants were served with notice of the proceedings but failed to appear and, as a

result, orders were made debaring them from pursuing their claims. The action then proceeded between the plaintiff and the Attorney-General.

The plaintiff submitted that she should be paid the prize money even though under the Lotteries Regulations (*cap.* 64), reg. 10 she was not entitled to it without producing the winning ticket, as (a) the purchase of the ticket created a contract between herself and the Government which was unaffected by the Lotteries Regulations (*cap.* 64); (b) in failing to pay her the prize money, the Government of Gibraltar was wrongly enforcing Spanish penal or revenue laws prohibiting the importation of lottery tickets into Spain; (c) although the winning ticket had been confiscated, the title to it remained with her and as such entitled her to the prize money; (d) it would be wrong for the Government of Gibraltar to keep the prize money; and (e) to interpret the Regulations in such a way that she was not entitled to recover the prize money would cause an absurd, unjust or inconvenient result contrary to the intention of the “golden rule” of statutory interpretation.

The defendant submitted in reply that (a) although the plaintiff might not have willingly assigned the title of the winning ticket to the Spanish Customs authorities, it might well have passed as a result of confiscation; (b) to be entitled to claim the prize money, the plaintiff should have made a statutory declaration of the loss of her ticket *before* the draw, as required by the Lotteries Regulations (*cap.* 64), reg. 10A, and not waited until *after* as she had done; and (c) it was for the court to decide what order to make after careful consideration of all the relevant statutory provisions, which were clear and unambiguous and left no room for the application of the “golden rule” of statutory interpretation.

**Held**, dismissing the application:

(1) The plaintiff was not entitled to the payment of the prize money as she could not bring herself within either reg. 10 or 10A of the Lotteries Regulations (*cap.* 64). While the purchase of a lottery ticket gave rise to a contract between the plaintiff and the Government, that contract arose from and was governed by the Lotteries Regulations (*cap.* 64) in which the terms and conditions of the contract were to be found and to which regard had therefore to be had in construing the contract. It was unnecessary to consider the question of the title to the ticket, since, as the issue before the court was whether the plaintiff could claim the lottery prize without presenting the ticket, the question of who had title to it was irrelevant (para. 12; para. 15).

(2) No question arose of the enforcement of foreign penal or revenue laws, as no party to the action was attempting to enforce them and the Spanish state had been debarred from proceeding. The reason that the plaintiff could not claim the prize money was that she was unable to bring herself within Gibraltar law as she no longer possessed the winning ticket, which she was required to present under reg. 10 of the Lotteries Regulations (*cap.* 64), and in failing to make a statutory declaration that she had lost her ticket prior to the draw, she could no longer claim to be

entitled to the prize money under reg. 10A of the Regulations. The legislation made it clear that she had no claim to the prize money and the “golden rule” of statutory interpretation that a court may depart from the literal interpretation of a statute only if it would cause an absurd, unjust or inconvenient result was therefore of no assistance (para. 14; paras. 18–20).

**Cases cited:**

- (1) *Selkirk v. Romar Invs. Ltd.*, [1963] 1 W.L.R. 1415; [1963] 3 All E.R. 994, considered.
- (2) *Williams & Humbert Ltd. v. W. & H. Trade Marks (Jersey) Ltd.*, [1985] 3 W.L.R. 501; [1985] 2 All E.R. 619, *dicta* of Nourse, J. applied.

**Legislation construed:**

Lotteries Regulations (Laws of Gibraltar, *cap.* 64), reg. 10A: The relevant terms of this regulation are set out at para. 19.

A.A. *Vasquez* for the plaintiff;  
D. *Azopardi* for the Attorney-General.

1 **ALCANTARA, A.J.:** Initially the plaintiff was seeking a declaration that she was entitled to the payment of the winning prize money of a lottery ticket, together with interest. However, just before the end of counsel for the plaintiff’s address, there was a change in procedure. I was persuaded by counsel on both sides to deal with the matter summarily on interpleader. I will say more about this later, but the central issue for decision before me remained the same: whether the plaintiff is entitled, in law, to the prize money.

2 The facts are agreed. There is a statement of agreed facts dated October 22nd, 1985, signed by the solicitors on both sides. No *viva voce* evidence has been required and none has been called. The facts as agreed can be summarized as follows: the plaintiff is a Spanish national, resident in Spain. On December 8th, 1983, she came to Gibraltar and bought a number of Gibraltar Government lottery tickets from a kiosk at Case-mates. Amongst them was lottery ticket for the draw to be held on December 12th, 1983. She then went back to Spain and at the Spanish customs post at La Linea, she was searched. The lottery tickets were seized and confiscated. She was charged with a smuggling offence contrary to Spanish law, and was subsequently fined Ptas. 48,897.

3 On December 12th, 1983, the lottery draw was held and, as fate would have it, the first prize of £20,000 went to her ticket which had been confiscated. A week later, the plaintiff came to Gibraltar to inform the Treasury authorities what had happened to her winning ticket. It is significant that on that same day, December 19th, 1983, a representative of

the Banco Exterior de España S.A. produced the ticket to the Accountant-General of Gibraltar for payment on behalf of an unnamed client. Payment to the representative of the Banco Exterior de España S.A. was refused on the ground that another party had already claimed the prize money, and legal advice was being sought.

4 On December 21st, 1983, the plaintiff made a statutory declaration setting out what had happened and stating, in para. 4 thereof: “The winning prize money has been claimed by another person other than myself and completely unknown to me and I hereby claim the said prize money as belonging to me only.”

5 This was followed by a letter from the plaintiff’s solicitors dated December 22nd, 1983 to the Financial and Development Secretary disclosing the basis of her claim. Paragraphs 4 and 5 of that letter read as follows:

“We wish to inform you that the prize money is being claimed under the basic principle of English law that ‘no country ever takes notice of the revenue law of another.’ You should note that there is authority in common law which shows that foreign revenue laws, which include customs duty and other forms of taxes, will not be enforced under our jurisdiction.

Furthermore, it is also our opinion that if the Spanish authorities are attempting to give effect in Gibraltar to the results of a Spanish statute, which is penal in nature, our courts will not enforce the dictates of a foreign statute of such nature within our jurisdiction. I therefore claim the said prize money amounting to £20,000 on behalf of our client.”

6 On March 13th, 1984, the representative of the Banco Exterior de España S.A. again presented the winning ticket for payment. Payment was refused, however, until the dispute between the various claimants had been settled. On March 22nd, 1984, a writ was issued on behalf of the plaintiff against the Attorney-General claiming an injunction. That action was discontinued and the present action was instituted claiming a declaration by writ issued on April 11th, 1984.

7 On June 6th, 1984, the representative of the Banco Exterior de España S.A. disclosed, by means of a letter from the administration and inspectorate of Customs at La Linea, that he was claiming the prize on behalf of the Spanish Customs authorities. In other words, on behalf of the Spanish State.

8 On August 14th, 1984, the Attorney-General initiated interpleader proceedings joining both the Banco Exterior de España S.A. and the head of the Customs section at La Linea (Spain) as claimants. Although served, on failure to appear at the hearing of the interpleader proceedings, orders

were made debarring both claimants from pursuing their “claim on the subject-matter in this action against Her Majesty’s Attorney-General, the applicant in this matter.” The orders are respectively dated November 26th, 1984 and December 17th, 1984.

9 One thing is clear beyond any doubt. Whether or not the Banco Exterior de España S.A. or the Spanish Customs authorities could have collected the prize money on presentation of the winning ticket, they can no longer do so. Neither can they claim to be entitled to it. They have been debarred from pursuing such a claim. In these proceedings I am only concerned with the plaintiff who bought the winning ticket and “lost” it through confiscation. Is she entitled to the prize money?

10 Under the Gaming Ordinance (*cap.* 64) and the Lotteries Regulations (*cap.* 64), to collect the prize money you have to present and hand in the winning ticket. The winning ticket is considered something akin to a cheque drawn to bearer. You can transfer it, you can sell it, but to collect the money you have to hand it in. No bank will pay you on a bearer cheque if you do not produce it.

11 The Gaming Ordinance and the Lotteries Regulations also makes all other lotteries illegal to the extent that it is an offence to bring lottery tickets from outside the jurisdiction. In Gibraltar, foreign lottery tickets are a prohibited import under the Imports and Exports Ordinance (*cap.* 75). To legalize the Gibraltar Government Lottery an Ordinance was passed on September 15th, 1947, called the Lotteries Ordinance. In 1958, the Lotteries Ordinance was repealed and replaced by Part II of the Gaming Ordinance (*cap.* 64). In essence the provisions remained and have remained the same. Since that date there has been a notable amendment in the Lotteries Regulations regarding the payment of prizes. I shall deal with the 1977 amendment later in my judgment.

12 Counsel for the plaintiff has argued the case on four grounds, which he lists as follows: (i) the interpretation of the Gaming Ordinance; (ii) the law of assignment of chattels; (iii) the principles of private international law; and (iv) the common law principles of contract. Dealing with them in reverse order, counsel submits that the buying of a lottery ticket creates a contract between the buyer and Government which is enforceable at law. I agree with him. He then goes on further and argues that the Gaming Ordinance (*cap.* 64) and the Lotteries Regulations (*cap.* 64) merely create machinery for the regulating and running of the lottery and do not interfere with the normal incidences of contractual relations. In other words, that the contract is *aliunde* the legislation. I do not agree. The terms and conditions of the contract are to be found in the Gaming Ordinance (*cap.* 64) and the Lotteries Regulations (*cap.* 64), and the contract comes into existence because such legislation exists. In construing the contract you have to look at the legislative provisions, the test of

reasonableness of contract plays no part in interpreting the legislation. Counsel has referred me to *Selkirk v. Romar Invs. Ltd.* (1) on the question of reasonableness, but after reading that case I have come to the conclusion that it is of no assistance.

13 On the principles of private international law, counsel quoted from *Dicey's Conflict of Laws*, 6th ed., at 152–158 (1949) and from Cheshire, *Private International Law*, 7th ed., at 122 (1965) for the proposition put forward in this case at a very early stage, that English courts will not recognize or enforce a foreign penal law. There are many cases on this subject, however, *Williams & Humbert Ltd. v. W. & H. Trade Marks (Jersey) Ltd.* (2) has now made the position clear, as one would wish, with regard to confiscation. Nourse, J. in his judgment ([1985] 3 W.L.R. at 510) found that the existing authorities appeared to support the following propositions:

“(1A) English law will not recognize foreign confiscatory laws which, by reason of their being discriminatory on grounds of race, religion or the like, constitute so grave an infringement of human rights that they ought not to be recognised as law at all . . .

(1B) English law will not recognize foreign laws which discriminate against nationals of this country in time of war by purporting to confiscate their movable property situated in the foreign state . . .

(2A) English law, while recognizing foreign laws not falling within class I which confiscate property situated in the foreign state . . . will not directly or indirectly enforce them here if they are also penal . . .

(2B) English law will not enforce foreign laws which purport to confiscate property situated in this country . . .

(3) English law will recognize foreign laws not falling within class I which confiscate property situated in the foreign state and, where the title is perfected there, will enforce its incidents in this country . . .”

14 I would like to point out that for the purposes of this action, a revenue law is not necessarily a penal law, although the infringement of a revenue law might be visited with a penalty. Having said that, I would also like to point out that no-one in this action is trying to enforce a foreign penal or revenue law. The proposed claimants are now debarred, and if the plaintiff hopes to succeed she must do so on the strength of her claim rather than on the weakness of someone else's claim. I find that the plaintiff fails on this ground also.

15 As regards the law of assignment of title, what the plaintiff says is that the title to the winning lottery ticket has not been assigned. In fact, for an assignment to be effective, it must be in writing. As it has not been assigned, the title remains in her and she is therefore entitled to claim the

prize. Mr. Azopardi for the defendant agrees that the plaintiff has not willingly assigned the winning ticket to the Spanish Customs authorities but notes that as the ticket has been confiscated, the title might well have passed. I was referred to the Civil Law Amendment Ordinance 1978, s.3, on the legal assignment of things in action. A point which was not argued, is whether the winning ticket is something equivalent to a negotiable instrument or just evidence of a debt owed by the Government. I am inclined to view that it is in the nature of the former, in which case the Civil Law Amendment Ordinance would have no application. However, I consider it unnecessary to deal with this aspect of the case as to who has the title of the winning ticket, as the issue before me is whether the plaintiff can claim the winning prize under the provisions of the Gaming Ordinance (*cap.* 64).

16 The fourth submission was the interpretation of the Gaming Ordinance. What counsel for the plaintiff argues, is that by not paying the winning ticket to the plaintiff, the Government will keep the £20,000, to which they are not entitled. He prays in aid of the “golden rule” and referred me to Cross, *Statutory Interpretation*, at 14–15 (1976):

“On occasions the golden rule simply serves as a guide to the court where there is doubt as to the true import of the statutory words in their ordinary sense. When there is a choice of meanings there is a presumption that one which produces an absurd, unjust or inconvenient result was not intended; but it should be emphasized that when the rule is used as a justification for ignoring or reading in words resort may only be made to it in the most unusual cases.”

17 Does the “golden rule” have any application in this case? The provisions regarding the claiming of prize money are contained in the Lotteries Regulations. Regulation 10 reads:

“Prizes shall be paid by the Financial and Development Secretary in respect of winning tickets, and shares of tickets, in a lottery in accordance with the following provisions:—

- (a) payment shall be claimed by presenting and delivering up the ticket or share in respect of which the claim is made at the place and during the hours appointed for the purpose in the notice published in pursuance of regulation 6;
- (b) payment shall be claimed within six months after the date of the draw at which the ticket in respect of which or a share of which the claim is made was declared a winning ticket;
- (c) no payment shall be made before the day next following that of the draw at which the prize winning ticket was

drawn, or, if that day is a Sunday or public holiday, before the next following day not being a Sunday or a public holiday;

- (d) payment shall be made to the person who presents the ticket or share for payment of the prize or portion of the prize won by that ticket or share, as the case may be, and such payment shall absolutely discharge the Financial and Development Secretary, the Government, its servants and agents in respect of the payment of that prize or that portion of that prize, as the case may be.”

18 In my opinion, reg. 10 is crystal clear. To obtain the prize money you have to present and deliver the winning ticket within six months of the draw. No winning ticket presented, no payment. There is no room for the application of the “golden rule” of interpretation.

19 That was the position up to 1977. By the Lotteries Regulations 1977, provisions were made for the payment of lost or destroyed tickets in certain circumstances. The new regulation is now known as reg. 10A of the Lotteries Regulations and reads:

“Notwithstanding anything contained in regulation 10, where any ticket or share has been lost or destroyed and such ticket or share is a prize winning ticket or share, then the prize shall be paid in respect of such ticket or share by the Financial and Development Secretary if—

- (i) a statutory declaration to the effect that such ticket or share has been lost or destroyed has been made and lodged with the Financial and Development Secretary before the draw in which such ticket or share won a prize takes place; and
- (ii) no prize has been paid in respect of such ticket or share in the six months next succeeding such draw.”

20 In my opinion, reg. 10A is also clear. Even if you are not able to present and deliver the winning ticket, you will be paid provided you are able to bring your claim within reg. 10A which provides, first, that the winning ticket must not have been paid already and, secondly, a statutory declaration has been made before the draw. In this case before me, the prize has not been paid, but the statutory declaration was made after the draw, not before. I am assuming that confiscation is equivalent to “lost,” although I am not deciding it. However much sympathy I may feel for the plaintiff, the fact remains that she is unable to bring herself within the confines of reg. 10A. That being so, she is not entitled to the prize money and therefore fails in her claim. I am conscious that this is not a popular



decision but the law acquires its respect by being certain rather than by being popular.

21 Finally, a word about the change of procedure. As I have said, counsel persuaded me to deal with this matter as on an interpleader under O.17 r.5(2)(c) (see 1 *The Supreme Court Practice 1979*, para. 17/5, at 254), which reads as follows: “Where (c) the question at issue between the claimants is a question of law and the facts are not in dispute, the court may summarily determine the question at issue between the claimants and make an order accordingly on such terms as may be just.”

22 Counsel for the plaintiff strongly advocated this course and counsel for the Crown supported him. I was not happy and I am still not happy about it because I am not completely convinced that it is of application in this case. However, I was informed that by having issued interpleader proceedings, the Attorney-General was disclaiming any interest in the prize money.

23 Counsel for the Crown informed me that his instructions are to ensure that the attention of the court is drawn to all the relevant statutory provisions and leave the court to decide what order to make. Counsel for the plaintiff has, in the course of his address, referred me to the legislation concerning lotteries and has argued on its interpretation. Counsel for the Crown has not argued the merits or otherwise of the case. By having agreed at the last moment to a change of procedure, I have been deprived of hearing the interpretation given by the Attorney-General to the Gaming Ordinance (*cap.* 64) and the Lotteries Regulations (*cap.* 64), and in particular to reg. 11 of the Lotteries Regulations.

*Application dismissed.*

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