Equity and Criminal Law
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Recent Arkansas cases have raised again the question of the relationship between the courts of equity and the criminal law. The following Note attempts to simply summarize the two primary black letter rules, the rationale for those two rules, and the myriad of exceptions that undermine the simple but not clear language of the rules. It should be obvious from the outset that the following material does not attempt to analyze critically all prior cases or their rationale. That analysis can be found in the secondary sources listed in the endnotes.

I. A. The Rule: Equity will not enjoin a criminal prosecution.

For our illustration, let us look to a crime that not all Arkansans would treat as a crime. In the bingo saga the legislature enacted Act 939 of 1993. The State imposed a 20 percent tax on the gross proceeds of bingo operations, with the Department of Finance and Administration to promulgate rules and collect the tax. Under that statute bingo operators were required to annually register with the Department. The enacting language of the statute made it clear that the legislature through the statute did not intend to address the legality or illegality of bingo itself. The statute only lasted for six years. Act 1152 of 1999 repealed the provision, the legislature finding that bingo tax revenues had declined and bingo parlors had been treated as illegal gambling.

However, prior to the legislature repeal, two appellate decisions raised the issues discussed in this Note. While the statute permitted the registration of commercial bingo operators, complaints to prosecutors continued: complaints from out-of-state gambling operators who did not want Arkansas competition; complaints from those fearing the economic effects of gambling on individuals; complaints from those concerned about the moral effects of gambling; complaints from those reading the Arkansas Constitution's ban on lotteries strictly. The issue arose in Fort Smith, where the prosecuting attorney had apparently threatened to take criminal action against a commercial bingo parlor. In a preemptive strike against the prosecuting attorney, the bingo parlor sought declaratory and injunctive relief against the prosecuting attorney. In effect, it asked for a determination that Act 939 was valid, that bingo had been authorized, and that the prosecuting attorney lacked authority and should be enjoined from using the criminal statutes.
against the bingo parlor.

Both the case law and the statutes broadly define gambling. Gambling has been defined by the courts as the risking of money or property on a contest or chance of any kind, where one person is the winner and the other a loser. While some games depend on skill entirely (such as billiards or golf), others depend upon chance in whole (such as a lottery) or in part (such as poker or backgammon). Risking money on the outcome of any such contests fits within the common understanding of gambling. Accordingly, bingo is a form of gambling and subject to the statute forbidding gambling houses.

In denying relief to the bingo operator, the Court held that the chancery court lacked authority to enjoin a prosecuting attorney from bringing criminal prosecutions. "Our cases are legion that chancery courts will not interfere to enjoin anticipated criminal prosecutions." Without the restraint of equity, the prosecutor was free to prosecute and to ask the courts to close the bingo parlor and to impose the penalties authorized by the statutes. Whether to prosecute is then left to the discretion of the prosecutor.

Not long after that decision, the prosecuting attorney of Jefferson County informed the operators of amusement video vending machines of her intention to commence prosecution unless they ceased operations. The machines have a game similar to a tic tac toe board, but with features that allegedly permit some use of skill to affect the outcome of the game. The machines reward successful players with coupons that can be redeemed for merchandise. The operator argued that the machines are permitted by the statute as are pinball machines, cranes, pool tables, shooting galleries, shuffleboard, claw machines, video games, and other miniature games that award toys and novelties (with a maximum value of $12.50). Slot machines and other machines equipped with any automatic money payoff mechanism are expressly prohibited. Without the necessity of determining whether equity was totally without subject matter jurisdiction, the Supreme Court stated the "familiar rule" that equity will not enjoin threatened or anticipated criminal prosecutions. Numerous earlier cases support that familiar rule.

Likewise, equity has no express power to declare a criminal statute unconstitutional. In Bryant v. Picador, Arkansas citizens unsuccessfully sought in chancery a declaratory judgment that the Arkansas statute that criminalizes specific sexual acts between persons of the same sex violates both the federal and state constitutions. The circuit courts have exclusive jurisdiction over criminal prosecutions, and the declaratory judgment statute cannot create jurisdiction when none otherwise exists. An adequate remedy exists elsewhere. Upon the issuance of a declaratory judgment by a circuit court, precedent permits the court of law to then issue an injunction to prevent a prosecution. Thus the remedy is adequate and complete. As the dissent by Justice Brown points out, some prior case law had apparently permitted, or tolerated, equity to hold a criminal statute unconstitutional when no criminal prosecution was pending. The result of Bryant may be to bar a direct attack on a criminal statute in equity, regardless of whether it is by injunctive relief or by declaratory relief. Equity is permitted to intervene only when it can be clearly shown that there is no remedy in a court of law.
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1. B. The rationale for the rule

In declining to issue an injunction against the prosecutor, the courts have enunciated several reasons of varying significance and strength.

1. Chancery court has no subject matter jurisdiction. Such a conclusion is usually only mentioned in passing, for the courts recognize that equity does have jurisdiction to issue injunctions in appropriate cases. The underlying issue is one of propriety and equitable discretion, not fundamental power.

2. Equity should not act because the plaintiff (the alleged offender) has an adequate remedy, which historically obviates the need for equitable involvement. If the party is ultimately prosecuted, he is free to raise all appropriate defenses in the criminal courts, including the assertion that the statute or ordinance is unconstitutional or void.

3. Criminal matters involve unique factual issues, such as gambling or obscenity, that are more properly determined in a court of law.

4. Those factual determinations more properly belong in a court that has a jury.

5. A prosecutor is entitled to wide discretion in the exercise of his responsibilities, and equity should be reluctant to intervene.

6. Prosecutors are under no obligation, and should not be expected, to disclose when, how and against whom they will seek criminal sanctions.

7. Because only criminal courts can punish, equity should absent itself from such disputes.

8. In those instances when the prosecution and a conviction have occurred, a pending appeal negates any need for equitable involvement.

9. Complainants, and perhaps even prosecutors, who act in bad faith and instigate criminal investigations and proceedings are subject to civil liability.

1. C. Exceptions to the general rule

Although the case law speaks of several exceptions, an examination reveals that the statements are frequently merely dicta or the act enjoined was something less than a traditional criminal prosecution.

1. Equity will enjoin a threatened prosecution that is directed against the operation of a business when the business is lawful. Although several Arkansas cases are frequently cited for the proposition that equity should not enjoin a lawful business, these cases typically arise from a dispute between competitors or between an employer and striking employees, not from a dispute between the public policy of the government as embodied in criminal legislation and a private citizen. This exception, if it exists at all, is properly described as “a narrow exception.”

2. Equity may intervene when property rights are involved and the actions of the prosecutor are not authorized by law.

3. Equity may intervene when multiple prosecutions have occurred or are threatened. Courts will occasionally cite these exceptions and open the door to an injunction, but then close it just as quickly. In *Missouri Pac. R. Co. v. Norwood*, the railroad sought to enjoin the Attorney General and local prosecutors from prosecuting the railroad for failing to adhere to the Arkansas “full crew” statute. The fed-
eral court denied the defendant's first grounds in support of a motion to dismiss: "Where a property right . . . is involved and where a multiplicity of such prosecutions are involved, a court of equity may intervene even though the effect is to enjoin the enforcement of criminal laws." Likewise, the court stated that an appeal of a criminal conviction was an inadequate remedy when the concern was with future and multiple prosecutions. But those findings amounted to nothing when the court found that the validity of the statute had been expressly and clearly upheld. Although the court was willing to pronounce the general exception, it found no basis to issue an injunction.

4. Equity will restrain a criminal prosecution that would be the equivalent of an unlawful exaction under the Arkansas Constitution. The taxpayers' provision of the Arkansas Constitution permits a citizen to challenge "any illegal exactions whatever." The broad sweep of the language has been followed by equally broad judicial action. The language has permitted actions to enjoin taxes and expenditures. It is foreseeable that a threat to enforce an ordinance, with quasi-criminal elements, might come within the scope of the illegal exaction prohibition.

5. Equity will bar a prosecution that is in bad faith. Of all the exceptions, this has the best chance of success. In a recent case the prosecuting attorney of Lee County had brought witness bribery charges against a local attorney. The attorney responded, in federal court, by seeking injunctive and declaratory relief, as well as damages, against the prosecutor. The essence of the federal action was that the bribery charges brought by the white prosecutor were racially motivated and were brought in retaliation of the black attorney's vigorous defense of a high profile criminal case. Two months after commencing the action, and a mere five days before the commencement of the criminal trial against him, the attorney sought to enjoin the prosecutors from proceeding with the trial. Upon a finding that the prosecutor had no expectation of a conviction when he filed the charges against the attorney, and that the charges were brought, at least in part, in bad faith to harass and to retaliate for the exercise of constitutional rights, the district court issued a preliminary injunction. Affirming, the Eighth Circuit concluded that the standards for issuance of a preliminary injunction had been satisfied. The Eighth Circuit subsequently clarified that the standard for a preliminary injunction is different than the standard for a permanent injunction. The latter may be granted only upon a showing that "but for" the bad faith and retaliation, the prosecution would never have been brought. Upon remand, the trial court would be obligated to undertake a more exacting evidentiary finding.

Obviously this case raised the issue of federalism. But suppose the attorney had turned to state court and asked equity to enjoin the prosecutor from proceeding in bad faith. There is no reason why a state chancellor would not reach the same conclusion. Although the relationship of the parallel courts of law and equity would complicate the issue, the exception should be just as applicable.

II. A. The Rule: Equity will not enjoin a crime.

1. Consider a simple case, and a short case in that the appellate decision is only four paragraphs long. The prosecuting
attorney for Pulaski County sought an injunction in equity against a theater showing allegedly obscene movies in violation of a criminal statute. The Supreme Court, reversing the lower court, unanimously concluded the chancery court had no jurisdiction. "The State's remedy lies in the enforcement of the criminal law rather than in a resort to the civil courts."47

2. The preceding case presented the fact pattern in which the government seeks the injunction.48 The variation is when a private citizen seeks to enjoin another citizen from a violation of the criminal law. Consider the case of the quarreling neighbors in Morrilton. Harmon and Walsie Maxwell complained that loud noises, drinking, fighting and obscenities occurred on their neighbor's property at all hours of the day and night. In response, the neighbor, Margie Sutton, complained that the Maxwells harassed her with their own version of loud and profane language. In addition, they made frivolous calls to the police, used obscene gestures and paraded in front of their windows without adequate clothing. With no apparent relief, other than the limits of self-help, both neighbors marched down to chancery court to seek equitable relief. The trial court granted an injunction to one party, but the Supreme Court reversed.49 All the wrongs alleged—such as nudity, fighting, public drinking—had criminal consequences. Appropriate criminal proceedings should have been commenced.50 The role of equity is not to step into such criminal matters, even between private individuals.51

Similarly, in Bates v. Bates,52 a woman, relying on a recent legislative enactment, sought injunctive relief to restrain the man (actually her husband, but that is irrelevant) living with her from committing future acts of domestic abuse against her. The court, in a sharply divided opinion, held that the chancery court had no subject matter jurisdiction, citing the availability of criminal sanctions and protections, and the necessity of protecting the constitutional right to a jury trial.53

The aftermath of Bates was that the 1991 legislature revised the statute, giving the chancery court power to issue an order of protection, and making violation of the order of protection a criminal offense within the power of the circuit courts.54 The differences in the eyes of one legal scholar are merely cosmetic and do not solve the underlying constitutional problem.55 The revised statute has not been challenged. Given the uproar after the first decision, the strong dissents, and more recent cases such as Masterson, (see the discussion infra at Section II.C.2.)56 the opinion in Bates seems of limited precedential value.

II. B. The Rationale for the Rule

1. The state has an adequate remedy through enforcement of the criminal law. While equity seeks obedience to the law, legislative pronouncements categorizing actions as forbidden likewise lead to obedience. Although the route may be indirect, it is just as complete. When individuals fear arrest, embarrassment, conviction, incarceration, they will obey the mandates and the prohibitions of their government. The few that don't are best handled in the method envisioned by the legislative body.

2. The State has another adequate remedy, namely, by amendment of the underlying criminal statute to incorporate and add injunctive relief. However, the mere addition of such language may not be sufficient. For example, when a state agen-
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cy sought an injunction against a Conway gas station to prevent its selling contraceptive devices in violation of the statute, the agency emphasized that the statute, in addition to authorizing a fine and possible imprisonment, permitted the state board "in its discretion, in addition to the various remedies now provided by law, 10] apply to a court having competent jurisdiction over the parties and the subject matter for a writ of injunction to restrain repetitious violations. . . ."67 In concluding that the chancellor had not abused his discretion in refusing an injunction, the Supreme Court emphasized that while the agency was permitted to seek an injunction, the issuance of a decree was not mandatory. Nor had the legislature attempted to remove the discretionary aspect of equitable relief.

3. A purported criminal defendant is entitled to a jury trial. The guise of an injunction against a nuisance cannot be a subterfuge to deprive one of that constitutional right.68

4. The mere threatened commission of an offense against the law of the land is an insufficient basis for equity.59

5. For equity to step in, there must be an interference, actual or threatened, with property or pecuniary rights.60

6. The Chancellor might find it difficult to enforce the injunction,61 and hence should be reluctant to issue the decree.

7. Criminal proceedings would have a more precedential effect than an injunction that would bind only the parties under the immediate power of the court.62

II. C. Exceptions to the General Rule

Simply because an act is criminal will not necessarily bar equitable relief, if an otherwise legitimate basis for equity involvement exists. As the Court said in refusing equitable relief, "The criminality of the act will neither give nor oust jurisdiction in chancery."63 In granting relief, the court said likewise: "it is equally basic that if grounds for equity jurisdiction exist in a given case, the fact that the act to be enjoined is incidentally violative of a criminal enactment will not preclude equity's action to enjoin it."64 Accordingly, assertions based on the following grounds may support equitable involvement.

1. While the criminal sanctions appears to be an adequate remedy, in reality the practical aspects and shortcomings of that remedy reveal it as inadequate.

a. It may be inadequate because, given the length of trial and appellate proceedings, no relief can be gained immediately and in the meantime the criminal laws are ignored.65

b. It may be inadequate because the potential criminal punishment is small compared to the benefits to be gained from violation. In Meyer v. Seifert66 the Supreme Court, reversing the chancellor, issued an injunction. In violation of a Stuttgart city ordinance, the defendant had erected a non-fireproof building, to the consternation of the nearby property owners, who became the plaintiffs. Obviously the threat of a $100 fine is insufficient deterrence and compulsion to the owner of the building. Equally obviously, the nearby owners have a financial interest far greater than a $100 fine in their own building, and therefore seek forced adherence to the mandates of the city ordinance to give them and their buildings greater protection from a block-wide or community-wide conflagration. The mere payment of a fine should not excuse or immunize a party from obedience.67
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Upon a showing of probable damages to their own property through the increased fire hazard, the plaintiffs may seek an injunction.

c. It may be inadequate because the violations are numerous and recurrent, necessitating successive prosecutions.66

d. It may be inadequate because jury convictions are hard to obtain.69

e. It may be inadequate because the criminal conduct has continued over a long period of time with little effect on the conduct.70

f. The mere threat of punishment after the event is insufficient deterrence.71

g. The simple fact that no prosecutions have been attempted despite the continuation of the conduct leads to the conclusion, ipso facto, that the remedy at law is inadequate.72

2. The conduct in question is also a public nuisance. For the primary example, let us return to the bingo saga in the Masterson case. Two commercial bingo parlors were operated in Springdale, but the Prosecuting Attorney did not take, or apparently threaten, any criminal action against them. Accordingly, the Arkansas Attorney General brought an action in chancery court against the bingo parlors, seeking an order of abatement. In early 1986, shortly after the Supreme Court handed down the decision discussed above73 which held that bingo parlors were not protected by the licensing statute, the chancellor enjoined the defendants from continuing to operate the bingo parlors. The Supreme Court affirmed.74 A commercial bingo hall falls within the definition of a gambling house and is therefore a common law public nuisance.75 The attorney general has the power and indeed the duty to commence equitable proceedings to enjoin a nuisance.76 The Court relied heavily on the trial court’s findings of fact that the bingo parlors had operated openly, publicly, continuously and regularly, despite any potential criminal enforcement. In other words, any legal remedy had proved to be inadequate.

In addition, the court’s decision was supported by a footnote reference to a statute77 permitting the attorney general or a prosecutor to seek an injunction against some forms of gambling. Certainly, such a statute would be stronger support than the concept of a common law nuisance. For a common law nuisance, elements affecting the public, such as crowds, noise, excessive traffic, disturbances, or fighting, must be demonstrated.78 No evidence was presented of such factors; no evidence was presented of earlier unsuccessful prosecutions; no evidence was presented of prior convictions that failed to deter; nothing demonstrated that the criminal law had broken down. Note the result: the defendants are deprived of a jury trial. Such an outcome requires stronger support than the court gave.79

3. The statute makes the granting of an injunction mandatory.80 If the wording so indicates, an injunction should be granted, unless the trial judge concludes that it would be “inequitable, unjust or unduly harsh” for the injunction to be awarded at that time.81 In the alternative, the legislation specifically authorizes the government or an individual to seek injunctive relief,82 and leaves the decision to the traditional discretion of equity.

4. The anticipated or threatened criminal act is primarily and essentially an injury to property or constitutes interference with the property interests of the
plaintiff. This exception certainly fits when the injury is to the person bringing the action. The individual plaintiff may seek an injunction to assure adherence to building codes, zoning ordinances and other quasi-criminal statutory laws. Likewise the exception may perhaps be extended to citizens in general seeking enforcement of quasi-criminal provisions.

However, to extend it to an action brought by the government is debatable. For example, in Masterson, part of the court’s rationale for the injunction was that the customers of the Springdale bingo parlors were facing possible property losses, and equity had authority to prevent such losses. But those losses were self-imposed from the gamblers’ deliberate choice to risk their money, not the result of someone else’s actions.

5. Courts of equity are particularly concerned with enforcement of community morals and standards, which is frequently the focus of such a lawsuit. The community standards and other personal rights were more significant and actionable than any incidental criminal violations.

6. If the criminal law goes unenforced, respect for the law will disappear. Therefore equity may intervene.

Conclusion

The State of Arkansas rejected earlier proposals to merge the courts of law and equity. The people of Arkansas have a similar opportunity in November 2000. Revision of the judicial article of the constitution will not remove all these issues, but the focus will shift from a jurisdictional analysis to a more proper examination of the propriety of injunctive relief and the discretion traditionally connected with equitable relief. Only then will the newly merged circuit court decide whether and on what basis to enjoin a prosecutor from continuing to prosecute in reliance on a questionable statute or for a questionable motive, or to enjoin individuals from engaging in conduct that violates a specific, but unpopular, criminal statute.

NOTES

1. The act was codified at ARK. CODE ANN. § 26-52-1501 et seq.

2. The legislature expressly excluded from the tax charitable or nonprofit organizations that engaged in only limited bingo operations. ARK. CODE ANN. § 26-52-1503. The organizations must have been in operation for five years and offer bingo no more than two days in a consecutive seven day period.

3. ARK. CONST. art. 19, Section 14: “No lottery shall be authorized by this State, nor shall the sale of lottery tickets be authorized.” A lottery has three elements: consideration, chance, and a prize. Masterson v. State ex rel. Bryant, 329 Ark. 443, 450, 949 S.W.2d 63, 66 (1997).

4. ARK. CODE ANN. § 5-66-101 (gambling statute to be construed liberally, in favor of the prohibition and against the offender).

5. States v. Torres, 309 Ark. 422, 831 S.W.2d 903 (1992) (bingo parlor is a prohibited gambling house under ARK. CODE ANN. § 5-66-103).

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9. Id. at 276, 908 S.W.2d at 337.

10. The court also found that the bingo operator as a taxpayer lacked standing to challenge the statute, and that the necessary parties (namely, the State and the Director of the Department of Finance and Administration) had not been joined. Billy/Dot, Inc. v. Fields, 322 Ark. 272, 276, 908 S.W.2d 335, 337 (1995).


12. If the pinball machine awards free games, but the operator pays off in cash, the machine has become a gambling device. Bostic v. City of Little Rock, 241 Ark. 671, 409 S.W.2d 825 (1966).


15. For other cases barring injunctive relief against the prosecutor and law enforcement officials, see S & S News Agency v. Freeze, 247 Ark. 1078, 449 S.W.2d 404 (1970) (city prosecution of book store for selling magazines obscene under state law); Gordon v. Smith, 196 Ark. 926, 120 S.W.2d 325 (1938) (law requiring inspection of automobiles); Rankin v. Mills Novelty Co., 182 Ark. 561, 32 S.W. 161 (1930) (no injunction against official who threatened to interfere with operator of machine that gave a package of mints and a varying number of slugs to play the machine again); Rider v. Leatherman, 85 Ark. 230, 107 S.W. 996 (1908) (no injunction against enforcement of Hot Springs ordinance); New Home Sewing Machine Co. v. Fletcher, 44 Ark. 139 (1884) (no injunction against threatened prosecution for failure to pay tax on sewing machine companies); Waters Pierce Oil Co. v. City of Little Rock, 39 Ark. 412 (1882) (city ordinance requiring license for peddlers); Taylor, Cleveland & Co. v. City of Pine Bluff, 34 Ark. 603 (1879) (ordinance barring the sale of cotton not weighed on municipal scales); Medical and Surgical Institute v. City of Hot Springs, 34 Ark. 559 (1879) (ordinance against drumming); Portis v. Fall, 34 Ark. 375 (1879) (statute against gambling).


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28. Taylor, Cleveland & Co. v. City of Pine Bluff, 34 Ark. 603 (1879). However, civil claims against state and local officials confront defenses of constitutional and statutory immunity. See BRILL, supra note 21, at §§ 22-2 and 22-5.


31. Local Union No. 313, Hotel and Restaurant Employees' International Alliance v. Stathakis, 135 Ark. 86, 205 S.W. 450 (1918) (picketing).


33. Royal Baking Powder Co. v. Emerson, 270 F. 429 (8th Cir. 1920) (dicta; prosecutor authorized to proceed under food labeling act).

34. Royal Baking Powder Co. v. Emerson, 270 F. 429 (8th Cir. 1920) (dicta).

35. 42 F.2d 765 (W.D. Ark. 1930).

36. Id. at 767.

37. Merritt v. Gravenmier, 169 Ark. 779, 277 S.W. 526 (1925);

38. ARK. CONST., art. 16, Section 13.

39. BRILL, supra note 21, at § 22-7.

40. For example, Deaderick v. Parker, 211 Ark. 394, 200 S.W.2d 787 (1947) (successful challenge to municipal ordinance and contract); Dreyfus v. Boone, 88 Ark. 353, 114 S.W. 718 (1908) (Little Rock ordinance on unsewered privies created a monopoly for one individual and was an illegal exaction); Taylor, Cleveland & Co. v. City of Pine Bluff, 34 Ark. 603 (1879) (ordinance requiring cotton to be weighed on municipal scales and setting a fee not authorized by state statute).

41. The claims for damages were eventually stricken because of the absolute immunity of prosecutors. See Lewellen v. Raff, 843 F.2d 1103, 1113 (8th Cir. 1988).
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43. Lewellen v. Raff, 843 F.2d 1103 (8th Cir. 1988).

44. Lewellen v. Raff, 851 F.2d 1108 (8th Cir. 1988).

45. Id.

46. In light of Younger v. Harris, 401 U.S. 37 (1971) and Dombrowski v. Pfister, 380 U.S. 479 (1965), the court concluded that the federal court could intervene in state criminal proceedings to protect a party threatened with “great and immediate irreparable injury.”


48. See also State v. Vaughan, 81 Ark. 117, 98 S.W. 685 (1906) (no jurisdiction to grant injunction against gambling house).


50. Whether the police had previously investigated or initiated charges is unclear. However, in fairness to the police, they might have relied on the analogous doctrine of recrimination from domestic relations law. The doctrine holds that as both spouses have engaged in adultery or committed general indignities, neither should be granted a divorce. Rather than be freed to prey on unsuspecting future victims, they are consigned to a continued life together. So be it with the feuding neighbors.

51. See also Smith v. Hamm, 207 Ark. 507, 181 S.W.2d 475 (1944) (Fort Smith neighbors quarreling, harassing and threatening each other over a picket fence; no injunction).


53. Contrast the situation in James v. James, 237 Ark. 764, 375 S.W.2d 793 (1964), where the chancellor issued a restraining order in a domestic matter. Upon violation of the order, the husband was found guilty of battery in a criminal proceeding and was also held in contempt by the chancellor for violation of the injunctive relief. Without difficulty the Supreme Court upheld the contempt finding, saying the court of equity needed power to enforce its orders. But suppose the initial issuance of the restraining order had been challenged by the husband using the logic that prevailed in the Bates case. Would those arguments have been successful, or would the court have found that historically and traditionally chancery courts have had power, in connection with a pending divorce, to issue temporary restraining orders? Was Bates different because it was not in the context of a divorce and was based upon a statute, rather than traditional equitable remedies?


55. See the comprehensive analysis and discussion of the precedents in Mark R. Killenbeck, And Then They Did . . . ? Abusing Equity in the Name of Justice, 44 ARK. L. REV. 235 (1991).
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56. See Masterson v. State ex rel. Bryant, 329 Ark. 443, 949 S.W.2d 63 (1997) (enjoining a Springdale bingo parlor when the local prosecutor had failed to take any action).


59. Id.

60. Id.


62. Id.

63. State v. Vaughan, 81 Ark. 117, 126, 98 S.W. 685, 690 (1906).


66. 216 Ark. 293, 225 S.W.2d 4 (1949).

67. See Van Hovenberg v. Holeman, 201 Ark. 370, 144 S.W.2d 718 (1940) (violation of city ordinance).


69. Id.

70. See Webber v. Gray, 228 Ark. 289, 307 S.W.2d 80 (1957) (court granted injunction against a rejected man who had engaged in a decade long series of steps to woo back his former woman friend), discussed in Brill, supra note 30. Compare Maxwell v. Sutton, 2 Ark. App. 359, 621 S.W.2d 239 (1981) (trial court relied on Webber in granting injunction, appellate court did not; continuation of conduct far shorter in duration than in Webber).


72. Masterson v. State ex rel. Bryant, 329 Ark. 443, 949 S.W.2d 63 (1997). However, in Smith v. Hamm, 207 Ark. 507, 181 S.W.2d 475 (1944), supra at note 51, the court noted that the mere failure of law enforcement to respond to complaints does not provide a basis for equity.

73. See Billy/Dot, Inc. v. Fields, 322 Ark. 272, 908 S.W.2d 335 (1995).

74. Masterson v. State ex rel. Bryant, 329 Ark. 443, 949 S.W.2d 63 (1997). For a critical discussion of the opinion, see Brian P. Henry, Case Note, Masterson v. State ex rel. Attorney General: The Moral Watchdogs Ride Again—the Arkansas Supreme Court condemns an All-American Pasttime, 52 ARK. L.
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REV. 453 (1999). The author argues that (1) the law is unclear whether a bingo hall should be treated as gambling or a lottery, (2) without clear evidence that the criminal law has broken down, equity should not intervene, (3) no facts or statute demonstrate that bingo is a public nuisance permitting equitable intervention. He concludes that the majority opinion was incorrect on both the jurisdictional and the nuisance issues.

75. Compare the statutory definition of a public nuisance at ARK. CODE ANN. § 16-105-204.

76. See State ex rel. Attorney General v. Karston, 208 Ark. 703, 187 S.W.2d 327 (1945); Albright v. Karston, 206 Ark. 307, 176 S.W.2d 421 (1943). However, according to the dissenting opinion by Justice Corbin in Masterson, Karston had been arrested at least 10 times and continued to operate as a bookmaker. The criminal law had not worked on Karston; but it had not even been tried on Masterson in Springdale. For a further comparison of the two fact patterns, see Henry, supra note 74, at 469-470 and 472-473.

77. ARK. CODE ANN. § 5-66-119. Perhaps the reason the statute does not play a more significant role in the Court's opinion is that it is directed at chain letters and pyramid schemes. It does not expressly authorize injunctive relief against bingo games or any other forms of gambling.

78. See Brill, supra note 21, at § 28-1.

79. See Henry, supra note 74, at 472-475.


82. Green Star Supermarket, Inc. v. Stacy, 242 Ark. 54, 411 S.W.2d 871 (1967) (ordinance specifically declared violation of Sunday closing laws to be a public nuisance, and authorized any citizen to seek injunction).

83. See the dicta in Smith v. Hamm, 207 Ark. 507, 181 S.W.2d 475 (1944); Maxwell v. Sutton, 2 Ark. App. 359, 621 S.W.2d 239 (1981) (no showing that the property rights of the parties were affected by the criminal conduct).

84. For example, Hickinbotham v. Corder, 227 Ark. 713, 301 S.W.2d 30 (1957) (retail grocer sued competitor for operating store in violation of Sunday closing laws; upon showing of inadequacy of law enforcement and the injury to the plaintiff, injunction granted); Meyer v. Seifert, 216 Ark. 293, 225 S.W.2d 4 (1949) (neighbors obtained injunction against owner who built a non-fireproof building in violation of city ordinance).

85. Green Star Supermarket, Inc. v. Stacy, 242 Ark. 54, 411 S.W.2d 871 (1967) (suit brought by citizen; injunction granted against store for violation of Sunday closing laws; ordinance specifically declared violation to be a public nuisance, and authorized any citizen to seek injunction). However, note the dissent by Justice Fogelman that no property rights were affected and no public health threatened by the conduct of the defendants.

86. See Masterson v. State ex rel. Bryant, 329 Ark. 443, 949 S.W.2d 63 (1997).

88. See Webber v. Gray, 228 Ark. 289, 307 S.W.2d 80 (1957) (injunction granted against invasion of privacy by jilted man, even though some of his conduct was arguably criminal).


91. See, e.g., ARK. DEMOCRAT-GAZETTE, December 5, 1999 (article on widespread cockfighting in Arkansas despite criminal statute).