A SURVEY OF THE LAW OF DRAM SHOP AND ALCOHOL LIABILITY

Compiled by the Premises Liability Group of the Primerus Defense Institute

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TABLE OF CONTENTS

Survey of the Law of Dram Shop and Alcohol Liability

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Alcohol consumption is very much a part of our country's culture and has been since its inception. When served, sold, and consumed responsibly, alcoholic beverages, among other things, enhance social experiences between friends and family. To that end, responsible alcohol service and sales is a function that should be paramount for hospitality-related entities and retailers. That is because the safety of the public, as well as of customers and patrons, is at stake. Being a responsible permit holder means adopting industry-recognized standards for service and sales, educating your workforce of the same, and continually enforcing those standards through appropriate supervision and refresher education. There are no short cuts or half-measures that should be taken when it comes to responsible service and sales of alcohol. It's that important.

However, notwithstanding the best efforts to educate and enforce standards for responsible service and sales, from time to time, alcohol-related claims emanating from service and sales occur. As we all know, these claims are more often than not catastrophic in nature, particularly those claims that arise from motor vehicle accidents. Due to the severity of the claims, exposure can be substantial and sometimes trigger multiple layers of insurance coverage. While the injuries and other outcomes are often horrific, these claims are also often (very) defensible for a variety of reasons. Accordingly, the stakeholders who are responding to these claims-from C-suite executives of the permit holder to in-house counsel to corporate risk management to brokers to insurance professionals-need and require capable and experienced counsel who understand alcohol liability laws in their respective jurisdictions to quickly and competently aid them understand and navigate the myriad issues relating to liability. This compendium is one of the ways lawyers belonging to the Primerus Defense Institute can assist and counsel their clients and insurers when alcohol liability claims arise.

This compendium is very much a team effort. Primerus lawyers from around the country who routinely represent clients and their insurers in alcohol liability-related matters have contributed to this publication to assist you, the client, gain a rapid understanding of the law as it applied around the country. It is our hope that you find this compendium useful and employ it when investigating and evaluating alcohol liability claims. As always, the lawyers of the Primerus Defense Institute stand ready to assist you, whenever and however they are needed.

ALABAMA

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General Overview of the Law

First Party Liability

Alabama law does not recognize an action for first party liability brought by an injured intoxicated patron or customer who was served or sold to by a permit holder.

Third Party Liability

Alabama does recognize an action brought by a third party liability injured by an intoxicated adult or minor patron or customer who was served or sold to by a permit holder.

Social Host Liability

Alabama does not recognize an action for first party liability brought by an injured intoxicated adult guest who was served by a social host.

Alabama does recognize an action for first party liability brought by an injured minor guest who was served by a social host.

Liability Involving Minors

The Civil Damages Act, Alabama Code §6-5-70, imposes strict liability on one who "unlawfully sells or furnishes spirituous liquors to such minor" . . . "provided the person selling or furnishing liquor to the minor had knowledge of or was chargeable with notice or knowledge of such minority." In order to establish liability under the Civil Damages Act, the plaintiff must prove that the defendant sold spiritous liquors to a minor, and that the defendant was chargeable with notice or knowledge of minority. Once the plaintiff does that, the burden shifts to the defendant to show that he complied with the statute and regulations to determine whether the person was a minor. If the defendant cannot show that he complied with the applicable regulations, the plaintiff is entitled to a directed verdict on the issue of whether the Act has been violated

Key Statues & Regulations

The various liquor liability statutes in Alabama prohibit the furnishing of alcohol to minors and service of alcohol to intoxicated persons, and impose liability on those who otherwise provide alcohol in violation of the Acts. Alabama Code §6-5-71, the "Dram Shop Act", is what most common liquor liability claims fall under. Sections 6-5-70 and §6-5-72 deal with furnishing alcohol to minors. From the outset, it should be noted that there is no common law cause of action for the negligent dispensing of alcohol.

The Alabama Alcohol Beverage Control Board regulates the sale of alcohol.

In Alabama, in both criminal and civil proceedings, the legal presumption for intoxication for adults is .08 BAC. The legal presumption for intoxication for minors is .02 BAC. The legal presumption for someone operating a commercial vehicle is .04 BAC.

Notable Cases

Weeks. v. Princeton, 570 So.2d 1232 (Ala. 1990). The vast majority of dram shop claims arise from multiple vehicle accidents, typically where an intoxicated driver causes an accident with an innocent motorist. However, the statute also authorizes suit by family members of the intoxicated party. Where the intoxicated individual dies, his or her family, unlike the Alabama's Wrongful Death statute, may sue to recover compensatory damages, including injury to "person, property, or means of support" and "all

damages actually sustained, as well as exemplary damages." Ala. Code §6-5-71 (1975). The protected parties under the Act who are suing as a result of the intoxication of their family member include the "wife, child, parent, or other person" related to the intoxicated party. Id. The intoxicated party is not protected under the Act, and has no right to sue.

Ward v. Rhodes, Hammonds and Beck d/b/a The Brass Monkey, 511 So2d 1987 (1987). Another common claim under §6-5-71 is based upon a premises liability theory, where a patron of a lounge, bar, restaurant or other establishment furnishing alcohol is injured by another patron who is intoxicated. Typically, the success of these claims ride on the level of knowledge that the defendant bar had prior to the fight or altercation with the third party. The plaintiff and his two brothers went to eat at a restaurant in Tuscaloosa where the plaintiff had one beer. They then went to the Brass Monkey, the defendant bar. While there, he was hit in the eye by a third party. The question presented in the case was whether a person injured by an intoxicated person, to whom alcoholic beverages have been sold contrary to the provisions of law, has a claim under the Dram Shop Act. The plaintiff's complaint contained several counts, including a Dram Shop claim; willful, negligent and wanton service of alcoholic beverages while the third party assailant was intoxicated and that while intoxicated, he intentionally, wantonly and maliciously assaulted plaintiff; the corporation had actual or constructive knowledge or could have reasonably foreseen that third party was likely to commit violent acts while he was intoxicated and despite this knowledge, served the third party which proximately led to the injury; and, the corporation owed plaintiff a duty as a business invitee to maintain a reasonably safe premises which it negligently and wantonly breached proximately causing the injury to the plaintiff. This was also alleged against the individual owners as individuals and stockholders. The trial court granted summary judgment on all claims. It was reversed on all but the Dram Shop counts. The plaintiff did not appeal the granting of summary judgment as to the individual stockholders. The court held that a plaintiff such as the one in this case has a "claim under the Dram Shop Act because he was injured in person by an intoxicated person by reason of the sale by [the bar] to the assailant contrary to the provisions of law." Id

When the court reached the second issue, it held that under the facts of this case, the plaintiff did not have a direct common law cause of action against one who served alcoholic beverages to another, who, in turn, caused the injury. Id. at 164

On the premises liability count, whether a plaintiff has a claim will depend on whether he "adduced any evidence on the motion for summary judgment that defendant . . . 'knew or should have known of the likelihood of conduct on the part of a third person such as this assailant which would endanger the invitee." . at 164. The court held that Alabama does not recognize a common law cause of action for negligence in the dispensing of alcohol.Id. at 165.

Summary judgment was proper on this count because the defendant(s) established that within one year prior to the incident in question there had been no reports of assaults on patrons by third persons on the corporation's premises. The defendant denied knowledge of any violent disposition possessed by the assailant, or any knowledge that the plaintiff would be assaulted by the third party. The court held that just because the assailant was intoxicated immediately before the attack, this fact in itself would not have made the attack foreseeable. Id. at 166.

The court, quoting an Indiana Court of Appeals, stated: "For a proprietor of a tavern to be held liable for a criminal assault under a common law theory of negligence, the proprietor must have been alerted to the likelihood of harm by the prior actions of the assailant, either on the occasion of the injury or on previous occasions.

Statute of Limitations

In Alabama, the statute of limitations for both negligence and intentional tort based claims is 2 years from the date of injury. The age of majority in Alabama is 19. Mnors have until two years after attaining majority to institute claims for personal injury.

Comparative Negligence

Alabama is ordinarily a contributory negligence jurisdiction. However, because Alabama's Dram Shop Laws create strict liability in favor of the persons covered under the Acts, contributory negligence is not a defense in these cases. Assumption of the risk on the other hand remains available.

Joint & Several Liability

Alabama does not permit apportionment of fault joint tortfeasors.

Contribution Among Joint Tortfeasors

Alabama does not allow for contribution among joint tortfeasors.

ALASKA

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General Overview of the Law

First Party Liability

Alaska has no case barring recovery by an intoxicated person. There is a general common law duty, independent of statute, requiring sellers of alcohol to conduct themselves with reasonable care and prudence when dispensing alcohol. Alaska follows pure comparative fault, so there is no absolute rule barring an intoxicated person from recovering in tort.

Third Party Liability

Alaska courts do recognize an action brought by a third party injured by an intoxicated adult or minor patron or customer who was served or sold to by a permit holder when the intoxication is a proximate cause of the accident.

Social Host Liability

Social Hosts are generally immune from liability. However, social hosts may be liable under alternative theories, such as failure to provide adequate security.

Liability Involving Minors

Alaska courts permit an action for first party liability brought by an injured minor patron or customer who was served or sold to by a permit holder.

Key Statues & Regulations

Alaska's "dram shop" laws are governed by Statute. In 1980, the Alaska legislature enacted the current dram shop act which assigns liability to alcohol licensees who act with criminal negligence in selling, giving or bartering alcoholic beverages to a drunken person or allowing a drunken person to consume an alcoholic beverage within licensed premises. Common law claims against a liquor licensee are no longer recognized.1 However a cause of action for civil liability is expressly authorized and a licensee who provides alcoholic beverages to a drunken person or minor may be held civilly liable for injuries arising from the intoxication of that person. A drunken person is a person whose conduct is substantially or visibly impaired as a result of alcohol ingestion.

The legal limit of intoxication is .08% or more by weight of alcohol in the person's blood. There are varying degrees. If the percentage of alcohol is .04% or less, it is presumed the person is not under the influence of intoxicating liquor. Between the level of .04% and .08%, there is no presumption either way.

The legal age for consumption or possession of alcohol is 21. The sale or consumption of alcohol in Alaska is limited in certain local areas of the state by "local option laws."

Key statutes are as follows:

- AS 04.16.030 Prohibited conduct relating to drunken persons
- AS 04.16.040 Access of drunken persons to licensed premises
- AS 04.16.049 Access of underage persons to licensed premises
- AS 04.16.050 Possession, control or consumption by persons underage per
- AS 09.65.201 Prohibiting recovery for personal injury while driving drunk
- AS 28.35.030 Alaska's drunk driving statute
    - AS 09.60.070 Providing for recovery of full reasonable attorney's fees for victims of seriouscrimes, including driving under the influence

1 Williford v L.J. Carr Inv., 783 P.2d 235, 238 n.10 (Alaska 1989).

Notable Cases

Gonzalez v Safeway Stores, Inc., 882 P2d 389 (Alaska 1994) (Dram shop liability exists for criminal negligence, and that requires a gross deviation from the standard of care, which in the case of a liquor licensee, exists when the licensee sells to an intoxicated person who exhibits “plain” or “easily seen” or discovered manifestations of drunkenness.)

Christiansen v Christiansen, 152 P3d 1144 (Alaska 2007) (holding that Dram shop liability exists only for licensed sellers, such as a bar owner or liquor store, and only when the intoxication is the proximate cause of the accident. Social hosts, such as unlicensed party-givers, are generally immune from liability.)

Kavorkian v. Tommy's Elbow Room, Inc., 711 P.2d 521 (Alaska 1985) (holding a bar owner who serves a drunken customer may be liable for damages incurred in an automobile accident caused by his customer's intoxication.) See also Tommy’s Elbow Room, Inc. v Kavorkian, 727 P.2d 1038, 1045 (Alaska 1986) (Unless liquor licensee who serves drunken person is criminally negligent, licensee is not civilly liable for injuries resulting from drunken person’s intoxication.)

Gordon v. Alaska Pacific Bank Corp., 753 P.2d 721 (Alaska 1988) (In addition, party givers may be held liable for negligence other than serving liquor, such as failing to provide adequate security for guests when it was foreseeable that drunken persons would be on the premises.)

Sowinski v Walker, 198 P3d 1134 (Alaska 2008) (recognizing Alaska’s allocation of fault statutes apply to dram shop action.)

L.D.G., Inc. v Brown, 211 P.3d 1110 (Alaska 2009) (Plaintiff in a dram shop case is only required to show an unlawful sale to an intoxicated person who, in consequence of such intoxication, caused injury to another; Plaintiff need not show the sale substantially contributed to the intoxication.)

Statute of Limitations

The Alaska statute of limitations for torts, personal injuries, and for injury to personal property is two years from the date of injury.2 The statute of limitations for a wrongful death claim also is two years.3 For claims involving a minor, the statute of limitations is tolled until the minor reaches the age of majority.4

Alaska has adopted the discovery rule in determining when the statute of limitations begins to run.5 The statute of limitations does not begin to run until the claimant discovers, or reasonably should have discovered, the existence of all elements essential to the cause of action.

Comparative Negligence

Generally, Alaska, through AS 09.17.080, has adopted a pure several liability tort scheme in which judgment is entered against each person at fault in accordance with his or her percentage of fault.6 This statutory scheme replaced Alaska’s earlier joint and several liability scheme. Comparative fault in Alaska is not a defense to liability, but will reduce any award in favor of the injured party by his percentage of fault. Thus, for example, a plaintiff found to be 50% at fault will have his damages reduced by 50%. Even a plaintiff found 90% at fault could still recover 10% of his damages from the defendant.

Joint & Several Liability

Alaska has abolished joint and several liability. Instead, Alaska has adopted several liability and permits the plaintiff to recover from each defendant only that defendant’s share of the fault. 7

Contribution Among Joint Tortfeasors

Contribution among tortfeasors was eliminated by voter initiative in 1989. In the same initiative, Alaska abolished the system of joint and several liability which previously held each tortfeasor fully liable for the injured party's damages.8 Alaska now has a system of pure several liability, in which a plaintiff "[can] only recover from each tortfeasor in the proportion that his fault played to the total fault of all the persons and entities at fault including the plaintiff herself."9 However, two decades after the voter initiatives completely changed the Alaska tort system, the Alaska Supreme court recognized a “common law right of contribution” based upon proportional fault.10 This area of law is still unsettled and developing in light of Alaska’s repeal of statutory contribution rights.

2 AS 09.10.070.

3 AS 09.55.580.

4 AS 09.10.140(a).

5 Mine Safety Appliances v Stiles, 756 P.2d 288 (Alaska 1988).

6 Sowinski v. Walker, 198 P.3d 1134, 1150 (Alaska 2008).

7 AS 09.17.080 (1989); Asher v. Alkan Shelter, LLC, 212 P.3d 772 (Alaska 2009).

8 Robinson v. Alaska Properties and Inv., Inc., 878 F. Supp. 1318, 1321 (D. Alaska 1995); Benner v. Wichman, 874 P.2d 949, 955 (Alaska 1994).

9 Robinson, 878 F. Supp. at 1321; AS 09.17.080.

10 McLaughlin v. Hughes, Thorseness, 137 P.3d 267, 276 (Alaska 2006)(recognizing common law contribution based upon proportional fault).

ARIZONA

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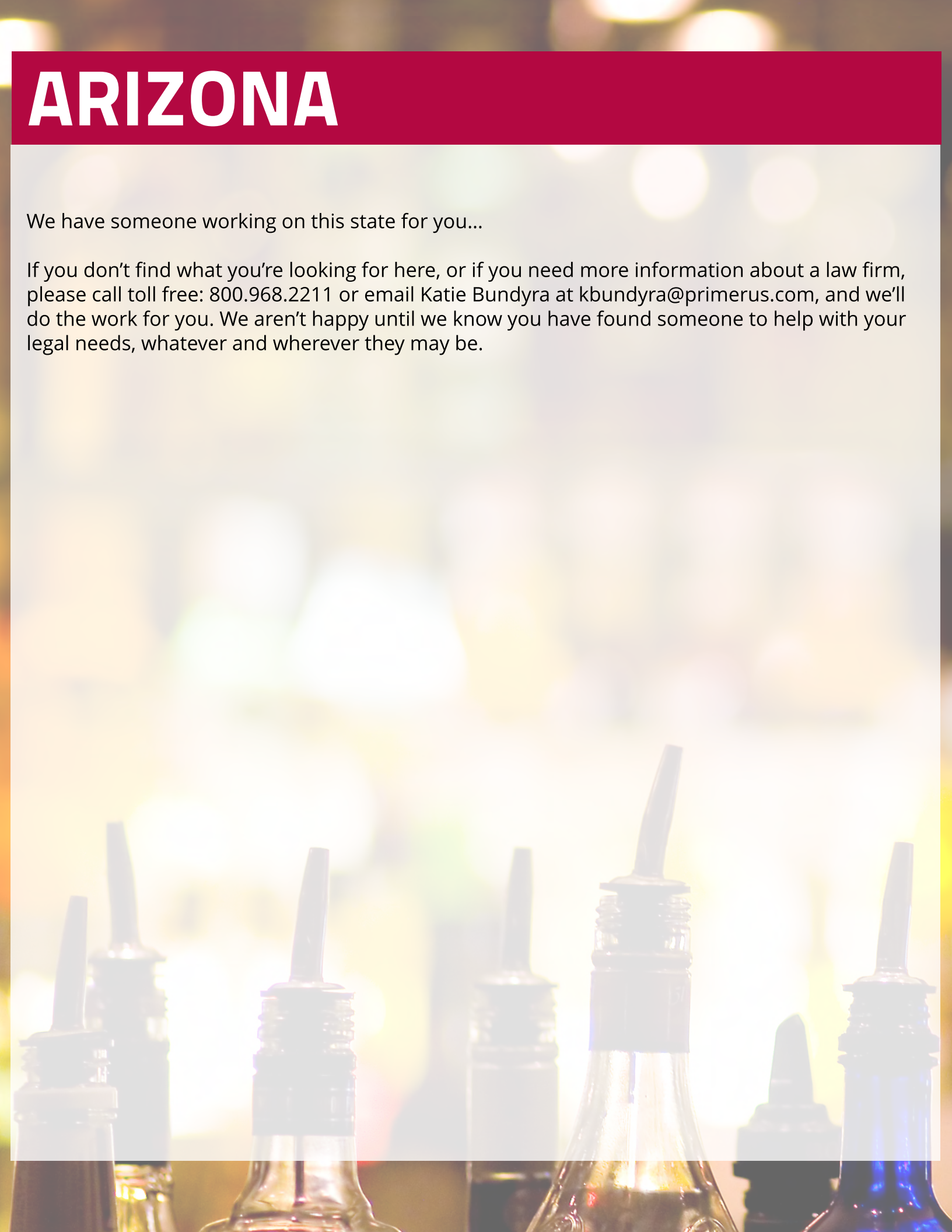

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General Overview of the Law

A.Background: The Civil Immunity Rule for Providing Alcoholic Beverages to Intoxicated Persons, and its Abrogation

Prior to 1971, a California defendant tavern keeper generally enjoyed civil immunity for providing an alcoholic beverage to an intoxicated patron who caused first and third party harm. That is because the sole proximate cause of the harm was the patron's ingestion of the alcoholic beverage as a matter of law, and not its provision by the tavern keeper to the patron.*Cole v. Rush*(1955) 45 Cal.2d 345, 356 ("the voluntary consumption, not the sale or gift, of intoxicating liquor … is the proximate cause of injury from its use").

This civil immunity rule was abrogated by three California Supreme Court opinions issued between 1971 and 1978.The Court held that a tavern keeper or a social host could be civilly liable under *eithe r*general negligence principles or for violating a criminal statute forbidding licensed premises from serving obviously intoxicated patrons.*Vesley v. Sager*(1971) 5 Cal.3d 153, 163;*Bernhard v. Harrah's Club*(1976) 16 Cal.3d 313, 325; and *Coulter v. Superior Court*(1978) 21 Cal.3d 144, 150-152.Fortunately for the wine, beer, liquor, grocery and hospitality industries, the story did not end here.

B.The Legislature Reinstated Civil Immunity, Subject to Narrow Exceptions Which are Strictly Construed

In 1978, the legislature expressly abrogated the holdings in *Vesely, Bernhard* and *Coulter*, and it also reinstated the former immunity rule. See Civil Code §1714(b)and Business and Professions Code §25602(b).The legislature also created narrow exceptions to immunity for certain businesses and social hosts in first and third party cases.

1.**Certain Business Premises** are Not Immune from Liability for Providing an Alcoholic Beverage to an "Obviously Intoxicated" Minor Under Age 21 Who Causes First or Third Party Harm

Business and Professions Code §25602.1exempts from statutory immunity a licensee, or one required to be a licensee, or any person authorized by the federal government to sell alcoholic beverages on a military base or other federal enclave that [1] sells, [2] furnishes, or [3] gives an alcoholic beverage away to an "**obviously intoxicated minor**," or who causes any of these three things to occur, where such acts are the proximate cause of personal injury or death.

As an exception to statutory immunity for business premises,§25602.1is construed *narrowly*.*Strang v. Cabrol*(1984) 37 Cal.3d 720, 725, 728,*Elizarraras v. L.A. Private Security Services, Inc.*(2003) 108 Cal.App.4th 237, 243;*Salem v. Superior Court*(1989) 211 Cal.App.3d 595, 600;*Ruiz v. Safeway Inc.*(2012) 209 Cal. App. 4th 1455, 1462.

"Obvious intoxication" is defined in the California Jury Instructions as follows:

"The term 'obvious intoxication' refers to visible and outward manifestations of intoxication, which include incontinence, unkempt appearance, alcoholic breath, bad or boisterous conduct, bloodshot or glassy eyes, incoherent, slow, deliberate or slurred speech, flushed face, poor muscular coordination, unsteady or slow and deliberate walk, loss of balance, impaired judgment or argumentative behavior. For an individual to be obviously intoxicated [he] [she] must exhibit one or more of these outward and visible signs of intoxication sufficiently to cause a reasonable person to believe that [he] [she] is intoxicated. It is not sufficient to merely show that an individual had been drinking. (Cal. Jury Instr.- Civ.4.50 (Apr. 2017 Update))."

A"minor" is a person under age 21.See Cal. Const. Art. 20, § 22;Bus. & Prof. C. §§ 25658,25658.5;*Rogers v. Alvas* (1984) 160 CA3d 997, 1004;fn. 2.

However, a tavern guest who is injured in the tavern by an intoxicated patron may successfully assert a traditional negligence theory based upon the tavern's failure to protect the patron from third party criminal acts or tortious conduct notwithstanding the immunity conferred by Civil Code §1714(b)and Business and Professions Code §25602(b).*Cantwell v. Peppermill, Inc.*(1994) 25 Cal. App. 4th1797, 1801-1802.

a.Business Premises Civil Liability Can Exist Only if the Obviously Intoxicated Minor who Acquired the Alcoholic Beverage Directly from the Business Premises Also Directly Inflicted Harm Upon the Third Party Plaintiff

A business premises of the type listed in §25602.1 has no liability to a third party for selling an alcoholic beverage to a minor who furnishes it to another minor who directly causes harm to the plaintiff.*Salem v. Superior Court*(1989) 211 Cal.App.3d 595, 603 (death of motorist was not"proximately" caused by defendant convenience store's sale of beverage to minor passenger who furnished it to the minor driver at fault);*Ruiz v. Safeway Inc.*(2012) 209 Cal. App. 4th 1455, 1462review denied, (Jan. 3, 2013)(grocery store Safeway was not liable for third parties' death and injuries because it did not "furnish" or cause beer to be furnished to the minor driver at fault, who received it from his minor passenger, who was the sole purchaser). [1]

2.**An Adult Social Host** Who Knowingly Furnishes Alcoholic Beverages at His or Her Residence to a Minor Under Age 21 May Also be Liable for Damages Caused by or to the Minor Guest

Civil Code §1714 subpart (c) provides immunity for social hosts who provide an alcoholic beverage to any person subject to an exception to be found in subpart (d) (1), which states: "[n]othing in subdivision (c) shall preclude a claim against a parent, guardian, or another adult who knowingly furnishes alcoholic beverages at his or her residence to a person whom he or she knows or should have known, to be under 21 years of age, in which case …. the furnishing of the alcoholic beverage may be found to be the proximate cause of resulting injuries or death."

The statutory exemption from immunity for social hosts applies even when the minor guest showed no signs of intoxication, obvious or otherwise, to the adult who furnished the beverage.

A person who supplies an alcoholic beverage for use by a social host who supplies the alcoholic beverage directly to a minor under age 21 who causes harm is immune.*Rybicki v. Carlson*(2013) 216 Cal. App. 4th 758, 764.

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General Overview of the Law

First Party Liability

Colorado courts do not recognize an action for first party liability brought by an injured intoxicated adult patron or customer who was served or sold to by a person authorized to sell or provide alcohol ("licensee"). C.R.S. § 12-47-801(3)(b) ("No civil action may be brought pursuant to this subsection (3) by the person to whom the alcohol beverage was sold or served or by his or her estate, legal guardian, or dependent.").

Third Party Liability

Colorado courts only recognize an action brought by a third party injured by an intoxicated adult or minor patron or customer who was served or sold to by a licensee if is proven that the licensee willfully and knowingly sold or served any alcohol beverage to such person who was visibly intoxicated or under the age of 21. Build It & They Will Drink, Inc. v. Strauch, 253 P.3d 302, 305 (Colo. 2011) (citing C.R.S. § 12-47-801(1), (3)(a)(I)).

Social Host Liability

Colorado courts do not recognize an action for first party liability brought by an injured intoxicated adult guest who was served by a social host. C.R.S. § 12-47-801(4)(b) ("No civil action may be brought pursuant to this subsection (4) by the person to whom such alcoholic beverage was served or by his estate, legal guardian, or dependent.").

Colorado courts do not recognize an action for first party liability brought by an injured minor guest who was served by a social host. C.R.S. § 12-47-801(4)(b) ("No civil action may be brought pursuant to this subsection (4) by the person to whom such alcoholic beverage was served or by his estate, legal guardian, or dependent.").

Liability Involving Minors

Colorado courts do not recognize an action for first party liability brought by an injured minor patron or customer who was served or sold to by a permit holder. C.R.S. § 12-47-801(3)(b) ("No civil action may be brought pursuant to this subsection (3) by the person to whom the alcohol beverage was sold or served or by his or her estate, legal guardian, or dependent.").

Also, as noted above, Colorado courts do not recognize an action for first party liability brought by an injured minor guest who was served by a social host. C.R.S. § 12-47-801(4)(b).

Key Statues & Regulations

Civil Liability

Colorado's "Dram Shop Liability Statute," C.R.S. § 12-47-801, specifically creates civil liability for alcohol-related claims, providing that vendors of alcohol may be liable, under certain limited circumstances, if they serve alcohol to a visibly intoxicated or under 21-year-old ("minor") person who subsequently causes damage to property or injury to another person.

Proximate cause and foreseeability are two elements that must be established to prove a tort claim and attach liability to the defendant. Generally, the consumption of alcohol, rather than the sale, service, or provision of alcohol, is considered the proximate cause of injuries or damages inflicted upon another by an intoxicated person. C.R.S. § 12-47-801(1).

Criminal Liability

The following are other key statutes and regulations that create criminal liability:

- C.R.S. § 12-47-901 prohibits licensees from "knowingly" committing a variety of acts upon the licensed premises, including:
  - "sell[ing] any alcohol beverage to or for any person under the age of twenty-one years"; and
  - "[selling], giving away, disposing of, exchanging, or delivery, or permitting the same, of any alcohol beverage to a visibly intoxicated person or to a known habitual drunkard."

- C.R.S. § 12-47-902.5, which describes AWOL devices ("alcohol-without-liquid" devices which create alcohol vapor by pouring alcohol into a diffuser capsule connected to an oxygen pipe), and prohibits possession, purchasing, selling, offering to sell, or using an AWOL device. A person who violates this section shall be punished in accordance with the provisions of C.R.S. § 12-47-903(2).

The Colorado Department of Revenue's Liquor & Tobacco Enforcement Division regulates the sale of alcohol in the "Centennial State" and maintains primary enforcement responsibility. It works with local law enforcement to enforce the alcohol laws.

In Colorado, in both criminal and civil proceedings, the legal presumption for intoxication for adults is 0.08 BAC. C.R.S. § 42-4-1301(2)(a).

In the criminal context, a person who drives a vehicle under the influence of alcohol or one or more drugs, or a combination of both alcohol and one or more drugs, commits driving under the influence. Driving under the influence is a misdemeanor, but it is a class 4 felony if the violation occurred after three or more prior convictions, arising out of separate and distinct criminal episodes, for DUI, DUI per se, or DWAI; vehicular homicide, as described in C.R.S. § 18-3-106(1)(b); vehicular assault, as described in C.R.S. § 18-3-205(1)(b); or any combination thereof. C.R.S. § 42-4-1301(1)(a).

Exclusive Remedy

A claim under Colorado's Dram Shop Liability Statute provides the exclusive remedy for a plaintiff injured by an intoxicated person against a vendor of alcohol beverages. Build It & They Will Drink, Inc. v. Strauch, 253 P.3d 302, 305 (Colo. 2011) (citing Charlton v. Kimata, 815 P.2d 946, 951 (Colo.1991)). In enacting the statute, the General Assembly expressly abolished any common-law cause of action against a vendor of alcohol beverages, making the liability of alcohol vendors "strictly a creature of statute in Colorado." Charlton, 815 P.2d at 948–49; C.R.S. § 12-47-801 ("The general assembly hereby finds, determines, and declares that this section shall be interpreted so that any common law cause of action against a vendor of alcohol beverages is abolished. . . .").

Notable Cases

Westin Operator, LLC v. Groh, 347 P.3d 606 (Colo. 2015): (holding that the Dram Shop Liability Statute did not provide hotel immunity from negligence claim brought by intoxicated guest's parents after guest, who was evicted from hotel room along with group of companions due to excessive noise and intoxication, was injured in automobile accident, as hotel did not sell, serve, or otherwise provide alcohol to guest or her companions).

Build It & They Will Drink, Inc. v. Strauch, 253 P.3d 302, 305–08 (Colo. 2011): (holding that Dram Shop Liability Statute has eliminated foreseeability from the proximate cause analysis ("So long as there is willful service and injury resulting from intoxication, there is no requirement that the injury be a foreseeable consequence of the sale or service of alcohol"), and distinguishing Dram Shop Liability Statute liability from a tavern's general duty to protect patrons on the premises from injury).

Rojas v. Engineered Plastic Designs, Inc., 68 P.3d 591 (Colo. App. 2003): (holding that a driver's employer was acting as a social host in providing beer for officers and employees after work. Thus, the employer was not liable to a motorist killed, and a passenger injured, in a collision with the driver, its employee. The employer was not in the business of selling alcoholic beverages).

Wrongful Death

The Dram Shop Liability Statute specifically eliminates any wrongful death claim against a licensee or social host by prohibiting any Dram Shop liability claim to be brought by any first party, or by his estate, legal guardian, or dependent. C.R.S. §§ 12-47-801(3)(b), (4)(b).

Statute of Limitations

Both Dram Shop actions and actions against a social host who furnishes alcoholic beverages to guests are governed by a one-year statute of limitations. C.R.S. §§ 12-47-801(3)(a)(II), (4)(a)(II).

Cap on Damages

Damages are capped at $150,000 in any civil action brought under subsection (3) – Dram Shop liability, or subsection (4) – Social Host liability. C.R.S. §§ 12-47-801(3)(c), (4)(c).

Comparative Negligence

Colorado is a modified comparative jurisdiction. C.R.S. § 13-21-111. Colorado courts have held that comparative negligence provides the appropriate framework for examining any negligence on the part of the individual who drives after consuming alcoholic beverages. Casebolt v. Cowan, 829 P.2d 352, 362 (Colo. 1992). A plaintiff in Colorado who is 50 percent or more negligent is barred from recovery under this modified contributory negligence rule. The question remains as to what effect multiple defendants will have on the plaintiff's right to recover. Mountain Mobile Mix, Inc. v. Gifford, 660 P.2d 883, 885 (Colo. 1983); see Lira v. Davis, 832 P.2d 240 (Colo. 1992); White v. Hansen, 837 P.2d 1229 (Colo. 1992) (plaintiff who jury determined to be 50% negligent cannot recover either actual or exemplary damages).

Joint & Several Liability/Contribution

Where multiple defendants are named in an action, the negligence of the injured person should be measured against the combined negligence of the defendants, rather than separately against each individual defendant. Mountain Mobile Mix, Inc. v. Gifford, 660 P.2d 883, 890 (Colo. 1983). Furthermore, a defendant is permitted to name nonparties whom he believes to be wholly or partially at fault in producing the injury, see C.R.S. § 13-21-111.5(3), and any fault attributable to designated nonparties is similarly considered in the aggregate with the defendants' negligence for purposes of determining whether the plaintiff is entitled to recovery. Inland/Riggle Oil Co. v. Painter, 925 P.2d 1083, 1086 (Colo. 1996). A plaintiff may, therefore, recover as long as the combined fault of all named tortfeasors, whether joined as defendants or designated as nonparties, is more than the fault attributable to the person for whose injury recovery is sought. Colorado's adoption of this "combined comparison approach" reflects, among other things, concern for the inequity that would result from barring recovery on behalf of an injured person who was less than fifty percent negligent merely because the injury was caused by multiple tortfeasors, no one of whom was individually as much at fault as the injured person. Mountain Mobile Mix, 660 P.2d at 888.

Contribution Among Joint Tortfeasors

While the comparative negligence statute seeks to eliminate the inequity resulting from the prior contributory negligence approach that barred recovery upon a finding of any fault by the injured party, Colorado's pro-rata liability provision, C.R.S. § 13-21-111.5, seeks to eliminate the inequity often present in the imposition of joint liability on defendants. It provides that "[i]n an action brought as a result of a death or an injury to person or property, no defendant shall be liable for an amount greater than that represented by the degree or percentage of the negligence or fault attributable to such defendant." C.R.S. § 13-21-111.5(1). In much the same way that compensatory damages are reduced by operation of the comparative negligence provision, section 13-21-111.5 is designed to avoid holding defendants liable for an amount of compensatory damages reflecting more than their respective degrees of fault. B.G.'s, Inc. v. Gross ex rel. Gross, 23 P.3d 691, 694 (Colo. 2001), as modified (May 21, 2001). Included among the types of damages subject to apportionment under either comparative negligence or pro-rata liability principles are damages for noneconomic loss or injury. See C.R.S. §§ 13-21-102.5(2)(b), 203. In wrongful-death actions, these noneconomic damages reflect the surviving party's nonpecuniary harm, which may include among other things grief, loss of companionship, pain and suffering, and emotional stress. C.R.S. § 13-21-203.

CONNECTICUT

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General Overview of the Law

Dram Shop Act

In Connecticut, in order for a third party to recover for personal injuries or other damages resulting from the sale of liquor to an intoxicated person, suit must be brought pursuant to Connecticut General Statutes §30-102, the Connecticut Dram Shop Act. There is no cause of action for negligent sale of liquor to a person twenty-one years of age or older. In other words a party cannot recover from a liquor seller for his own damages due to his own intoxication under a negligence theory of recovery, however, our Supreme Court recognized a cause of action in wanton and reckless misconduct against a purveyor of alcohol in Kowal v. Hofner, 181 Conn. 355, 436 A.2d 1 (1980).

“The delict defined by §30–102 is not the sale of liquor to create a condition of intoxication. It is rather the sale of liquor to one who is already intoxicated. No causal relation between the sale and the injury is required.” Sanders v. Officers Club of Connecticut, Inc., 196 Conn. 341, 348–49, 493 A.2d 184 (1985).

In order to succeed on a claim brought pursuant to the Connecticut Dram Shop Act, a plaintiff needs to plead and prove three elements:

(1) the sale of alcoholic liquor;

(2) that the sale was to an intoxicated person;

(3) that the intoxicated person caused injury to another’s person or property as a result of his intoxication.

The decision to pursue a Dram Shop Claim has three important consequences: (1) there is a statutory cap on damages in the amount of $250,000.00; (2) defendants in these types of claims may not plead the contributory negligence of the plaintiff so there is no reduction of the judgment; and (3) if there is a Dram Shop Claim, it is intended to be the exclusive remedy for the plaintiff with regards to the provision of alcohol. Furthermore, the Dram Shop Act does not authorize relief for injuries sustained by an intoxicated party.

The Act also requires written notice of the claim within 120 days of the accident or within 180 days where there is incapacitation or death of a party. Connecticut General Statutes §30-102. Such notice shall specify the time, the date and the person to whom such sale was made, the name and address of the person injured or whose property was damages, and the time, date and place where the injury to the person or property occurred.

However, Connecticut trial courts have construed The Dram Shop Act liberally and have held that “even where notice requirements have not been literally met ... if under all the circumstances it nevertheless appears that the party entitled to notice was neither misled nor hampered by that defect, then he may not avail himself of the defect in his defense of the action.” Kirby v. Rusty Nail Cafe of Bristol, Inc., 40 Conn.Sup. 331, 332, 449 A.2d 85 (1985) (court allowed a notice which listed the assailant as “ ‘John Doe’, a patron”). See e.g. Schena v. Torres, HHB-CV-116008837S, 2012 WL 2548997 (Conn. Super. Ct. June 5, 2012) (notice which failed to find way into hands of seller because residence address where delivered out-of-date held satisfactory); Lizotte v. Perkins, CV-11-6007989S, 2011 WL 6117890 (Conn. Super. Ct. Nov. 17, 2011) (notice which did not contain time and date of plaintiff's injury held satisfactory); Miller v. J. Jean, Inc., CV-98-0143732, 1998 WL 406344 (Conn. Super. Ct. July 13, 1998)(notice which filed to name the person to whom intoxicating liquor sold held satisfactory); Cruz v. Rice, 40 Conn.Sup. 48 (1984) (notice which failed to name the alleged assailant, calling him “a patron” held satisfactory as party entitled to notice was neither mislead nor hampered by defect).

The most important things to remember regarding a claim brought pursuant to the Connecticut Dram Shop Act are the following:

- There is a statutory cap on damages in the amount of $250,000.00;
- A third party has no cause of action against a seller for negligence in the sale of alcoholicliquor to a person twenty-one years or older; and
- An intoxicated person over the age of twenty-one cannot bring a claim pursuant to theConnecticut Dram Shop Act for his own injuries.

Connecticut General Statute §30-102.

Visible Intoxication

A recent Connecticut Appellate Court decision addressed the issue of a plaintiff's burden of establishing visible intoxication. In Zaneski v. Thirsty Turtle et al., 128 Conn.App. 829 (2011), the plaintiff appealed a directed verdict in favor of the defendants. The Appellate Court upheld the decision, holding that the evidence did not establish that bar patron was visibly intoxicated when the bar served alcohol to the patron. At trial, the patron testified that she did not feel intoxicated during that evening, that she never slurred her speech and that she did not have any difficulty maintaining her balance. No other evidence was submitted to the jury regarding the condition or behavior of the patron during the evening in question. The plaintiff relied solely on the patron's erratic operation of her motor vehicle, testimony of the police officer that he smelled alcohol on the patron's breath and the fact that she had a blood alcohol content of .14 1 four to five hours after she left the defendant bar to establish visible intoxication. The court found, however, that this was not probative evidence that she was visibly intoxicated when she was served by the defendants. The court held that a plaintiff must present evidence showing visible or perceivable intoxication, i.e., an individual must exhibit some type of physical symptomology in such a way that an observer reasonably could perceive that the individual was indeed under the influence of alcohol to some noticeable extent. See Zaneski v. Thirsty Turtle, supra.

A recent Connecticut Supreme Court ruling, O'Dell v. Kozee, 302 Conn. 928 (2011), will impact bars and restaurants across the state. The Court in O'Dell held that a seller of alcohol cannot be held liable under the Dram Shop Act unless it serves a patron displaying "visible or perceivable" signs of drunkenness at the time of service. This means that unless there is some evidence that a patron was behaving in an intoxicated manner – i.e. stumbling, slurring, being unusually boisterous or confrontational, etc. – at the time of service, then no bar or restaurant can be held liable under the Dram Shop Act for serving that patron. It is important that Dram Shop plaintiffs do not have to show that a defendant bar or restaurant had knowledge of a patron's visible or perceivable intoxication; it is enough to show that the patron was visibly or perceivably intoxicated. This highlights the importance of training bar and restaurant staff to be on the lookout for signs of intoxication, and to stop serving alcohol to patrons who display such symptoms.

In reaching its decision in O'Dell, the Supreme Court affirmed the Appellate Court's prior holding requiring "visible or perceivable" intoxication in order to establish a Dram Shop claim. See O'Dell v. Kozee, 128 Conn. App. 794 (2011).2 The plaintiff in O'Dell argued that the Supreme Court should overrule the Appellate Court's standard because the words "visible" or "perceivable" do not appear anywhere in the Dram Shop statute itself. While the Supreme Court acknowledged that the plaintiff was technically correct, the court was persuaded to affirm the "visible or perceivable intoxication" standard by a number of factors: (1) the law of other states, which uniformly require visible or perceivable intoxication, or actual knowledge of the plaintiff's drunkenness, in order for Dram Shop liability to attach; (2) the Supreme Court's own prior construction of the term "intoxication" as requiring observable symptoms of drunkenness; (3) the great departure from Connecticut's long-standing common law that would result if the plaintiff's argument was accepted; and (4) the inherent difficulty in holding alcohol purveyors liable for serving patrons who were not displaying any signs of intoxication at the time of service.

Loss of Consortium Claims

There is no appellate authority on the issue of whether the Dram Shop Act supports a derivative claim for loss of consortium, and there is limited trial court discussion of the issue. See Capo v. Knybel, Superior Court, complex litigation docket at Waterbury, Docket No. 06-CV-07 5008267 (May 13, 2009, Stevens, J.) (47 Conn. L. Rptr. 756, 757) (rejecting spouse's loss of consortium claim); Rosenthal v. AMF Bowling Center, Inc., Superior Court, judicial district of Fairfield at Bridgeport, Docket No. CV-98-0355349 (July 16, 1999, Skolnick, J.) (25 Conn. L. Rptr. 135, 137) (allowing same); Marks v.Donascimento, Superior Court, judicial district of Danbury, Docket No. CV-93-311425 (February 17,1993, Fuller, J.) (8 C.S.C.R. 324, 325) (8 Conn. L. Rptr. 373) (rejecting same).

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1 Connecticut's legal blood alcohol content limit is .08. Although chemical tests are not conclusive on the issue of intoxication at a prior time, the result of a blood test is relevant to a determination of intoxication for purposes of the Dram Shop Act. Coble v. Maloney,34 Conn.App. 655, 664, 643 A.2d 277 (1994).

2 In O'Dell v. Kozee, 128 Conn. App. 794, 802-803, cert. granted, 28 A.3d 343 (2011), the Appellate Court held that a purveyor of alcohol was not liable where the Plaintiff did not present evidence that tended to show that the alleged intoxicated operator was exhibiting any visible or perceivable indications that he was intoxicated. The Court stated that the Plaintiff's failure to present evidence that the alleged intoxicated operator was visibly or perceivably intoxicated was fatal to his claim.

In a recent decision, Eaton v. Ruggles, CV-11-6010411, 2012 WL 1089902 (Conn. Super. Ct. Mar. 9, 2012), the court, after reviewing relevant case law, determined that a spouse of an injured party may not maintain a cause of action for loss of consortium because the Dram Shop Act does limit a plaintiff's available causes of action. The court in Eaton stated that "[the Dram Shop Act] is the exclusive remedy for negligence causes of actions against the seller of alcohol and . . . the language of the Act does not provide recovery for loss of consortium. Since the Dram Shop Act creates a right that did not exist at common law, any recovery for loss of consortium under the Act will have to come from the legislature." Eaton v. Ruggles, supra.

Special Defenses

There currently is no Connecticut appellate authority that has addressed assumption of risk, contributory negligence, participation or contributory recklessness as a valid special defense to an action brought pursuant to the Connecticut Dram Shop Act. There is a split of authority at the Superior Court level with regard to the issue of whether these defenses are recognized as a defense to a Dram Shop claim.

The contention centers on whether the Dram Shop Act is intended to protect the public at large or just innocent third parties. Sego v. Debco, Inc., Superior Court, judicial district of Ansonia-Milford, Docket No. CV-92-039650 (September 8, 1994) (Skolnick, J.) (12 Conn. L. Rptr. 415, 416).

Courts that have disallowed these special defenses have held that General Statutes §30-102 does not regulate the driver of the vehicle, only the seller of the intoxicating beverage. Gatling v. Barleycorn, LLC, CV095013079S, 2010 WL 2365462 (Conn. Super. Ct. May 6, 2010). The court in Gatling reasoned that while a plaintiff may not be a totally "innocent third party" with respect to the principal tortfeasor, he is such with respect to the party who allegedly sold the intoxicating beverage to an already intoxicated person. See also Rivera v. Miceli, Superior Court, judicial district of Middlesex, Docket No. CV04 0104721 (April 15, 2005, Silbert, J.) (39 Conn. L. Rptr. 151); Jones v. Cross, Superior Court, judicial district of Waterbury, Docket No. CV-03-0176102 (December 8, 2003, Gallagher, J.) (36 Conn. L. Rptr. 85).

Courts that have disallowed these special defenses have held that since the statute is primarily remedial in nature, and apparently intended to limit recovery to innocent third party victims, the aforementioned special defenses may bar recovery in a Dram Shop action where the plaintiff comprehended the risk of harm and voluntarily subjected himself to it. See Sego v. Debco, Inc., supra. Courts also have held that there is nothing inconsistent with the Dram Shop Act's purpose in barring or limiting recovery under the act to one whose reckless, wanton, and willful conduct itself facilitated the violation of the act and directly contributed to the conduct causing the injury. See Blondin v. Meshack, Superior Court, Judicial District of New Haven at New Haven, Docket No. CV-08-5018828-S, at *9-10, 2008 Conn. Super. LEXIS 2512 (Lager, J.) (46 Conn. L. Rptr. 396, 398). Based on the plain language of General Statutes §30-102, there does not appear to be any substantive basis for disallowing such special defenses where the allegations of assumption of risk, contributory negligence, participation or contributory recklessness are such that the Plaintiff's decedent is neither an innocent third party, nor the public at large.

Negligent Service of Alcohol

Minors

A plaintiff may bring a claim of negligence service of alcohol if the patron was under twenty-one years of age. In Bohan v. Last, 236 Conn. 670, 680 (1996), the court held that the common law liability of purveyors of alcohol [is limited] to those who knew or had reason to know that they were making alcohol available to a minor. That holding was reaffirmed by our Supreme Court in Craig v. Driscoll, 262 Conn. 312, 339 (2003) which held that a person who provides alcohol to someone who should not have been served bears legal responsibility for a reasonably foreseeable risk of injury arising out of the improper service.

Shortly after the release of the Craig decision on February 4, 2003, on June 3, 2003 the legislature passed Public Act 03-91 making significant changes to the Connecticut Dram Shop Act. Public Act 03-91 provided that "[s]uch injured person shall have no cause of action against such seller for negligence in the sale of alcoholic liquor to a person twenty-one years of age or older." Accordingly, Connecticut recognizes common law negligence for sale of alcohol to under age patrons only, subject to foreseeability and reasonable person standards.

There is no statutory cap for damages on these types of claims. In order for a plaintiff to prevail upon her claim that the defendant negligently served alcohol to the patron, a plaintiff has the burden of proving that the defendant knew or had reason to know that the patron was under the age of twenty-one. Relevant to this inquiry include the procedures for checking identification employed by the defendant; any testimony regarding the patron's use of fake identification at the defendant's establishment; and any evidence of the patron's use of fake identification to purchase alcohol at other businesses. Moreover, the defendant host must have purveyed or supplied the alcohol consumed, rather than merely allowed it to be stored on the premises. Geise v. Lee, CV-08-5008363, 2011 WL 590627 (Conn. Super. Ct. Jan. 25, 2011).

Additionally, General Statutes §30-86 prohibits any permittee or any servant or agent of a permittee from selling or delivering alcoholic liquor to any minor or a habitual drunkard, subject to penalties set forth in the General Statutes.

See General Statutes §§30-86 and 30-113. However, it provides an affirmative defense to a statutory violation of a permittee scans a patron's driver's license or identity card, or photographs a patron and photocopies the driver's license or identity card presented by the patron in order to prove their age. It further provides a bar to penalties provided the permittee obtained a signed affidavit from the patron, and that the permittee introduces into evidence the affidavit and shows that the evidence presented to him to establish the patron's age was such as would convince a reasonable person.

Claims by Intoxicated Person for Own Injuries

1.Connecticut law does not recognize common law negligent service of alcohol claims againstalcohol purveyor by intoxicated person for own injuries

Connecticut courts do not recognize common law negligent service of alcohol claims against an alcohol purveyor by an intoxicated person for his own injuries. See Jilson v. Willson, Superior Court, judicial district of New Haven, Docket No. CV-10-6010685 (December 21, 2010, Fischer, J.). In Jilson v. Willis, the Plaintiff brought a claim of negligent service of alcohol against an alcohol purveyor for the plaintiff's decedent's own injuries. The decedent was involved in a single car accident upon leaving the defendant's premises.

In Jilson, the party alleging negligent service of alcohol is not a third party injured by an intoxicated person. It is instead brought on behalf of the intoxicated person who alleges that the defendants' negligence resulted in the imbiber's own injury and death. Further, there were no allegations the Plaintiff's decedent was under twenty-one (21) years of age. The dispositive issue in Jilson, therefore, was whether under the common law, an imbiber who is injured or killed as a result of his own intoxication can maintain a cause of action upon a theory of negligent service of alcohol. The court in Jilson found that the common law does not recognize a claim of negligent service brought by an imbiber for his own injuries. Jilson, supra, at *3. The court granted the defendant's motion to strike the plaintiff's claim of negligent service concluding that "[u]nder Connecticut common law, an imbiber who is injured or killed as a result of his own intoxication cannot maintain a cause of action upon a theory of negligent service of alcohol." Id.

The plaintiff in Kupec v. Classic Rock claimed that allegations involved "negligent supervision" of the defendant's employees, although the thrust of the allegations clearly involved a claim of negligent sale of alcohol. Kupec v. Classic Rock Café, Inc., Superior Court, judicial district of Waterbury, Docket No. CV-07-5005586 at *3 (November 28, 2007, Alvord, J.). The court in Kupec stated that "[t]he claimed failure of the defendant to supervise his employees to prevent their sale of alcohol to an intoxicated person is not supervision of the premises or supervision of patrons of the premises. (Emphasis added.) Id. Courts have uniformly rejected similar attempts to validate claims of negligent sale of alcohol by calling them negligent supervision claims. See Bioski v. Castelano, Superior Court, judicial district of Waterbury, Docket No. CV-95-0115265 (March 21, 1995, Flynn, J.) ("In cases that have recognized such a cause of action, the plaintiffs were injured by other patrons on the premises of the defendant, and the injuries were allegedly caused by the defendants' failure to supervise the other patrons and provide a safe business environment."); Sego v. Debco, Inc., Superior Court, judicial district of Ansonia-Milford at Milford, Docket No. CV-92-039650 (negligent supervision "has only been allowed in cases where the establishment served alcohol to one patron who subsequently assaulted another patron in the same establishment")."Kupec, supra, at *3. "Our courts have recognized the validity of a negligent supervision action where the plaintiffs were injured by other patrons on the premises of the defendant, and the injuries were allegedly caused by the defendant's failure to supervise the other patrons and provide a safe business environment." (Emphasis added.) Id.

Claims by Intoxicated Person for Own Injuries/Third Parties

1. No legal duty to restrain or provide alternative transportation exists Connecticut courts have not found that society expects such a business to restrain intoxicated patrons or provide alternative means of transportation for them upon leaving their property. See Welton v. Ferrara, Superior Court, judicial district of New Haven, Docket No. CV-07-5014334 (April 9, 2007, Keegan, J.); Kupec v. Classic Rock Cafe, Inc., supra; Federico v. Caruso, Superior Court, judicial district of Ansonia-Milford, Docket No. CV 96 0053808S (April 18, 2002, Sequino, J.); Pepin v. Cacchillo, Superior Court, judicial district of New Haven, Docket No. CV 94 0364290 (April 29, 1999, Pittman, J.) (24 Conn. L. Rptr. 415); Sego v. Debco, Inc., supra; Bioski v. Castelano, supra.

The plaintiff in Welton v. Ferrara, claimed that the defendant alcohol purveyor failed to provide an alternative means of transportation to those who could not drive themselves, regardless of whether or not the bartender had furnished them alcohol. Welton, supra, at *4. The injuries sustained by the plaintiff occurred on a public road and not on the premises. Welton, supra, at *1. Specifically, the plaintiff alleged that purveyors of alcohol are expected to actively provide safeguards to determine which patrons intend to drive upon leaving the premises, should prevent these patrons from leaving their establishment and must arrange safe transportation for intoxicated patrons, regardless of whether or not they furnished alcohol to them. Welton, supra, at *4.

"[T]he test for the existence of a legal duty of care entails (1) a determination of whether an ordinary person in the defendant's position, knowing what the defendant knew or should have known, would anticipate that harm of the general nature of that suffered was likely to result, and (2) a determination, on the basis of public policy analysis, of whether the defendant's responsibility for its negligent conduct should extend to the particular consequences or particular plaintiff in the case." Welton, supra, at *5, citing Murdock v. Croughwell, 268 Conn. 559, 566 (2004). In determining whether a legal duty existed, the court in Welton first considered the normal expectations of individuals in the context of a bar owner patron relationship. Welton, supra, at *6. Judge Keegan determined, in relevant part, that:

> There generally is no duty that obligates one party to aid or to protect another party. Murdock, [supra, 268 Conn. at 565]; see also Bohan v. Last, [236 Conn. 670 (1996)] ("the common law imposes no duty to act as a good Samaritan"); W. Prosser & W. Keeton, Torts (5th Ed.1984) § 56, pp. 375 ("[b]ecause of [the] reluctance to countenance 'nonfeasance' as a basis of liability, the law has persistently refused to impose on a stranger the moral obligation of common humanity to go to the aid of another human being who is in danger"). (Internal quotation marks omitted.) Welton, supra, at *6.

The Welton court concluded that "if society fosters a duty of care between these two parties, and the furnishing of alcohol is not considered, it needs to arise because of a special relationship. Welton, supra, at *7. If the furnishing of alcohol is not to be considered in this regard, the court must consider possible alternative relationships." Id.

The plaintiff in Welton, was a patron at a place of business that served alcohol, and thereafter was involved in an automobile accident on a public road. In concluding that a special relationship failed to exist in this context, the court stated that "[a]lthough driving while intoxicated is a serious problem in our society and has received much attention over the past decade, the Connecticut courts have never found that society expects such a business to restrain intoxicated patrons or provide alternative means of transportation for them upon leaving their property. See e.g. Kupec v. Classic Rock Cafe, Inc., supra; Federico v. Caruso, supra; Pepin v. Cacchillo, supra; Sego v. Debco, Inc., supra; Bioski v. Castelano, supra." (Emphasis added; internal quotation marks omitted.) Id. The court granted the defendant's Motion for Summary Judgment on the grounds that Connecticut courts have never found that it expects such a business to restrain intoxicated patrons upon leaving their property. The court reasoned that:

> To find that society supports the broad expectation that the plaintiffs articulate would be to say that if an intoxicated person wandered into delicatessen or a grocery store, the owner would be expected to prevent the patron from leaving the store. Alternatively, a clothing store would be expected to call a taxi for a customer who appeared inebriated, rather than letting that customer leave the store on his own accord. To the contrary, as these simple hypothetical scenarios illustrate, without the service of alcohol, our society has no expectation that an occupier of land must affirmatively act to prevent an intoxicated invitee from leaving its premises and driving. Welton, supra, at *8.

2. Injuries suffered in location other than establishment/bar Connecticut courts do recognize a cause of action for negligent supervision of tavern patron and employees. "Connecticut does recognize a cause of action for the negligent supervision of tavern patrons and employees. . . . The cause of action for negligent supervision . . . is based on conduct amounting to the defendant proprietor's failure to exercise reasonable care in the supervision of the conduct of patrons or other business visitors within his establishment, rather than the proprietor's negligence in furnishing alcohol." (Citations omitted; emphasis in original; internal quotation marks omitted.) Potter v. American Legion, Superior Court, judicial district of New Haven, Docket No. CV 08 5016583 (January 7, 2009, Cronan, J.), quoting Collar v. Da Cruz, Superior Court, judicial district of Hartford, Docket No. CV 03 0830138 (August 13, 2004, Booth, J.).

"In cases that have recognized such a cause of action, the plaintiffs were injured by other patrons on the premises of the defendant, and the injuries were allegedly caused by the defendants' failure to supervise the other patrons and provide a safe business environment." (Emphasis added; internal quotation marks omitted.) Widdows v. Crown Street Bar Ltd. Partnership, Superior Court, judicial district of New Haven, Docket No. CV 07 5009467S (January 14, 2008, Zoarski, J.T.R.).

It is well settled in Connecticut that "a patron or business visitor of an establishment, who sustains an injury in person or property as a consequence of negligent supervision, may have a cause of action against the establishment . . . however, that cause of action has only been allowed in cases where the establishment served alcohol to one patron who subsequently assaulted another patron in the same establishment ." (Emphasis added; internal quotation marks omitted.) Jensen v. DePaolo, Superior Court, judicial district of New Haven, Docket No. CV 01 0277460S (March 8, 2004, Wiese, J.) (36 Conn. L. Rptr. 665), quoting, Sego v. Debco, Inc., supra. When it is uncontroverted, however, that the injuries suffered by a plaintiff occurred in a location other than on a defendant's premises, then the plaintiff has failed to allege negligent supervision, as a matter of law. Welton, supra at *3. See also Jensen, supra; 36 Conn. L. Rptr. at 665.

Contributory Negligence

Connecticut courts have allowed defendants to plead contributory negligence of an intoxicated minor in negligent and

reckless provision of alcohol claims. See Hayes v. Caspers, Ltd., 90 Conn.App. 781, 801, 881 A.2d 428, cert. denied, 276 Conn. 915, 888 A.2d 84 (2005); Silk v. Gill, 2007 Conn.Supp. 11345, 43 Conn. L. Rptr. 672, No. LLI CV-05-4002254S, Superior Court, Judicial District of Litchfield at Litchfield, (Pickard, J., June 26, 2007); Butler v. Long, 2004 Ct.Sup. 3536, Conn. L. Rptr. 513, Superior Court, Judicial District of Litchfield, No. CV-03-0090334 (February 11, 2004, Pickard, J.).

For example, our firm, as defense counsel for the Defendant in Kochuk v. Lynch, MMX-CV-09- 5006961S, 2010 WL 760409 (Conn. Super. Ct. Feb. 20, 2010), was successful in overcoming the Plaintiff's Motion to Strike our special defense of contributory negligence asserted against an intoxicated minor.

Social Host Liability

According to several Connecticut superior court cases, a social host may be held liable for the negligent service of alcohol to an adult. See Silvia v. Wittenberg, 50 Conn. L. Rptr. 575 (Conn. Supp. 2010); Piontkowkski v. Agan, 48 Conn. L. Rptr. 209 (Conn. Supp. 2009); Raymond v. Duffy, 38 Conn. L. Rptr. 562 (Conn. Supp. 2005). However, there is no Connecticut Appellate or Supreme Court decision regarding this issue. This type of claim would not be subject to the $250,000 cap on damages.

In Murphy v. LaChapell, 24 Conn. L. Rptr. 567, Superior Court, judicial district of Waterbury, Docket No. CV-97-142410 (May 23, 1999, Pellegrino, J.), the court extended such social host liability to minor hosts who supply or purvey alcohol to other minors. The court noted that whether the defendant had the maturity to know that their actions were likely to cause the partygoer to become intoxicated and to do what he did do is a question of fact for the jury. Id.

Recklessness

A plaintiff may also bring a claim for reckless sale of alcohol. This type of claim may be brought in addition a Dram Shop claim and are not subject to the statutory damages cap. To establish liability for a reckless sale of alcohol, "[a] specific allegation setting out the conduct that is claimed to be reckless or wanton must be made ... [T]he plaintiff must allege facts which would indicate that the defendants, or their agents, continued to serve a patron despite observable manifestations of intoxication." (Emphasis added.) Whoolery v. Archie Moore's Cafe, Superior Court, judicial district of New Haven, Docket No. CV-04-4000006S (December 15, 2004, Zoarski, J.T.R.).

Proof of sale to an intoxicated person requires proof of something more than to be merely under the influence of, or affected to some extent by, liquor. Intoxication means an abnormal mental or physical condition due to the influence of intoxicating liquors, a visible excitation of the passions and impairment of the judgment, or a derangement or impairment of physical functions and energies. When it is apparent that a person is under the influence of liquor, when his manner is unusual or abnormal and is reflected in his walk or conversation, when his ordinary judgment or common sense are disturbed or his usual will power temporarily suspended, when these or similar symptoms result from the use of liquor and are manifest, a person may be found to be intoxicated. He need not be "dead-drunk." It is enough if by the use of intoxicating liquor he is so affected in his acts or conduct that the public or parties coming in contact with him can readily see and know this is so. Hayes v. Caspers, Ltd., 90 Conn.App. 781, 801-02 (2005), quoting Sanders v. Officers Club of Connecticut, Inc., 196 Conn. 341, 349-50 (1985).

In order for a plaintiff to prevail on her reckless service of alcohol claim, she will need to prove that the defendant sold alcohol to the patron when she was in an obviously intoxicated state. A plaintiff may seek to establish this by the results of any toxicology tests that were performed. If a plaintiff is unable to prove visible intoxication in this manner, plaintiff's proof as to the recklessness count will require some direct evidence as to her condition at the time she left the defendant's establishment.

There is also Connecticut superior court precedent for the proposition that an intoxicated person can maintain a cause of action for his own injuries upon a theory of reckless purveyance to him. See Candelora v. Lulu, Inc., 38 Conn. L. Rptr. 123 (Conn. Super. 2004); Lindsay v. Benevolent Protective Order, 44 Conn. L. Rptr. 20 (Conn. Super. 2007).

Social Host Liability

A social host may be held liable by a third party for the reckless and wanton misconduct in the service of alcohol to an individual. Kowal v. Hofher, 181 Conn. 355 (1980). Service of alcohol has been defined as "furnished, whether by sale or by gift;" Nolan v. Morelli, 154 Conn. 432 (1967) and furnished is further defined as used in the liquor laws, to provide in any way. Wanton misconduct is such conduct as indicates a reckless disregard of the just rights or safety of others or of the consequences of action. Kowal v. Hofher, supra, 181 Conn. 362.

Special Defenses to Claim Brought by Third Party

There currently is no Connecticut appellate authority that has addressed assumption of risk, contributory negligence, participation or contributory recklessness as a valid special defense to a claim based upon recklessness service of alcohol. There is a split of authority at the Superior Court level with regard to the issue of whether these defenses are recognized.

While there is a split among the judges of the Superior Court as to whether assumption of risk is a viable defense in a claim based upon recklessness, the more recent decisions support allow the special defense to stand.

In Petrolito v. Cucullo, Judicial District of Hartford at Hartford, Docket No. CV-10-6015391-S, at *5 (December 30, 2011) (Woods, J.), the court held that based on the law in Connecticut a special defense of assumption of risk is a valid defense to the plaintiff's claim for common-law reckless service of alcohol. The court in Petrolito reasoned that the Plaintiff's decedent's conduct in that she observed the intoxicated operator's consumption of alcohol throughout the night, knew or should have known he was in an intoxicated state, and voluntarily entered the vehicle driven by him prior to the incident.

Similarly, in Herrera v. Adams, Superior Court, Judicial District of New London, Docket # CV-10-6004615 (January 25, 2011), 2011 Conn. Super. LEXIS 215 , the court canvased the applicable precedent and held that assumption of risk and contributory recklessness are valid defenses to a common law reckless service of alcohol claim. See also, Sego v. Debco, Inc., Superior Court, Judicial District of Ansonia-Milford, Docket No. CV-92-0039650, 1994 Conn. Super. LEXIS 2292 (September 8, 1994, Skolnick, J.) (allowing assumption of risk and contributory recklessness defense to stand as to reckless service of alcohol claim); Jacocks v. Monahan's Shamrock, Superior Court, Judicial District of New Haven, Docket # CV-92- 0330268, 1993 Conn. Super. LEXIS 2701 (October 13, 1993, Zoarski, J.) (same); and Tarver v. Devito, Superior Court, Judicial District of Stamford-Norwalk at Stamford, Docket No. CV-91-0120282, 1992 Conn. Super. LEXIS 1856 (June 18, 1992, Rush, J.) (same).

Special Defenses to Claim Brought by Imbiber for Own Injuries

Special Defenses of contributory recklessness and assumption of risk may be available to a claim brought by an intoxicated operator for his own injuries. Our firm, representing the defendant June's Outback Pub in the matter of Michael Annunziata, Administrator of the Estate of Anthony Annunziata v. June's Outback Pub, Superior Court, judicial district of Middlesex, CV-11-6005980 (January 7, 2013, Morgan, J.) successfully defeated the Plaintiff's Motion to Strike special defenses of contributory recklessness and assumption of risk. These defenses were made to Plaintiff's claim of reckless service of alcohol. The Plaintiff claimed that the Plaintiff's decedent was recklessly served alcohol while intoxicated at June's Outback Pub, before he crashed his motorcycle, resulting in his death. Suit was brought in Connecticut Superior Court for judicial district of Middletown at Middletown.

There currently is no appellate authority that addressed the availability of contributory recklessness or assumption of risk as defenses to a claim of reckless service of alcohol. The Superior Court decisions that have addressed this subject are split. However these decisions pertain to claims asserted by injured third parties. We are unaware of any decisions addressing the validity of these defenses against claims asserted by the imbiber for his own injuries. In this case of first impression, we argued on behalf of the defense that the Plaintiff's decedent voluntarily and knowingly subjected himself to the well-known risks associated with riding a motorcycle while intoxicated. The Plaintiff argued that contributory recklessness and assumption of risk are not valid defenses to a claim of reckless service of alcohol and should be stricken on public policy grounds.

After oral argument, the Honorable Lisa Morgan found that voluntarily riding a motorcycle at excessive speeds while intoxicated could be construed as wonton, willful or reckless conduct that increased the likelihood that the Plaintiff's decedent would be injured and die. Accordingly, the court denied the Plaintiff's Motion to Strike holding that contributory recklessness and assumption of risk may be asserted as a special defense by a purveyor of alcohol to a common law claim of reckless service of alcohol made by or on behalf of an intoxicated driver for his own injuries.

Negligent Hiring and Supervision

A plaintiff may also bring a claim of negligent hiring and/or supervision in addition to a Dram Shop claim, by alleging that the defendant had a duty to hire and train employees to recognize individuals who are underage and intoxicated, that they failed to properly train and supervise their employees in this regard, and they failed to discharge employees who were prone to serve alcohol to individuals who were underage and/or intoxicated. These claims are not subject to the statutory cap.

The elements of a claim for negligent supervision are different than for negligent hiring. "A common-law claim in negligent hiring exists in any situation where a third party is injured by an employer's own negligence in failing to select an employee fit or competent to perform the services of employment." Shore v. Stonington, 187 Conn. 147, 155 (1982).

A claim of negligent supervision requires pleading and proving that the defendant had a duty to supervise and knew or should have known that a particular behavior would have caused injury of the general nature of the kind suffered by the plaintiff. See, e.g., Companions & Homemakers, Inc. v. Pogasnik, CV-04-0834592, 2005 WL 1634366 (Conn. Super. Ct. June 7, 2005). Courts have uniformly rejected any attempt to validate claims of negligent sale of alcohol by calling them negligent supervision claims. Kupec v. Classic Rock Café, Inc., Superior Court, judicial district of Waterbury, Docket No. CV-07-5005586 (November 28, 2007, Alvord, J.) (44 Conn. L. Rptr. 574, 575).

The cause of action for negligent supervision is based on conduct amounting to the defendant proprietor's failure to exercise reasonable care in the supervision of the conduct of patrons or other business visitors within his establishment, rather than the proprietor's negligence in furnishing alcohol. Bartlewski v. Black Bear Saloon Sono, FST-CV-106004108S, 2011 WL 1087140 (Conn. Super. Ct. Feb. 23, 2011).

In cases that have recognized such a cause of action, the plaintiffs were injured by other patrons on the premises of the defendant, and the injuries were allegedly caused by the defendants' failure to supervise the other patrons and provide a safe business environment. See Bartlewski v. Black Bear Saloon Sono, supra; Widdows v. Crown Street Bar Ltd. Partnership, Superior Court, judicial district of New Haven, Docket No. CV-07-5009467 (January 14, 2008, Zoarski, J.T.R.), quoting Bioski v. Castelano, Superior Court, judicial district of Waterbury, Docket No. 0115265 (March 21, 1995, Flynn, J.) (14 Conn. L. Rptr. 346). In these cases, the resulting injuries were not alleged to have been caused by the defendants' conduct in furnishing intoxicating beverages, but by the failure to control unruly patrons who happened to be intoxicated.

Also relevant to this type of claim is the amount and nature of training employees received with respect to recognition of underage drinkers.

Social Host Liability

According to several Connecticut superior court cases, a social host may be held liable for the negligent service of alcohol to an adult. See Silvia v. Wittenberg, 50 Conn. L. Rptr. 575 (Conn. Supp. 2010); Piontkowkski v. Agan, 48 Conn. L. Rptr. 209 (Conn. Supp. 2009); Raymond v. Duffy, 38 Conn. L. Rptr. 562 (Conn. Supp. 2005). However, there is no Connecticut Appellate or Supreme Court decision regarding this issue. This type of claim would not be subject to the $250,000 cap on damages.

In Murphy v. LaChapell, 24 Conn. L. Rptr. 567, Superior Court, judicial district of Waterbury, Docket No. CV-97-142410 (May 23, 1999, Pellegrino, J.), the court extended such social host liability to minor hosts who supply or purvey alcohol to other minors. The court noted that whether the defendant had the maturity to know that their actions were likely to cause the partygoer to become intoxicated and to do what he did do is a question of fact for the jury. Id.

Recent Connecticut Cases

- Michael Annunziata, Administrator of the Estate of Anthony Annunziata v. June's Outback Pub,Superior Court, judicial district of Middlesex, CV-11-6005980 (January 7, 2013, Morgan, J.)
- Herrera v. Adams, Superior Court, Judicial District of New London, Docket # CV-10-6004615(January 25, 2011)
- Petrolito v. Cucullo, Judicial District of Hartford at Hartford, Docket No. CV-10-6015391-S, at *5(December 30, 2011) (Woods, J.)
- Zaneski v. Thirsty Turtle, et al., 128 Conn. App. 829 (2011)
- O'Dell v. Kozee, 302 Conn. 928 (2011)

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General Overview of the Law

First Party Liability

Florida courts do not recognize an action for first party liability brought by an injured intoxicated adult patron or customer. No civil cause of action exists against a bar owner for dispensing alcoholic beverages to a drunk patron who later drunkenly and negligently injures himself in Florida. Aguila v. Hilton, Inc., 878 So. 2d 392 (Fla. 1st DCA 2004); Lonestar Florida, Inc. v. Cooper, 408 So. 2d 758 (Fla. 4th DCA 1982).

Third Party Liability

Florida courts do recognize an action brought by a third party injured by an intoxicated adult or minor patron or customer who was served or sold to by a permit holder. At common law no cause of action existed against the dispenser of alcohol for injuries caused to another by the intoxicated recipient. Lonestar at 759. The Florida legislature codified the common law with a reverse Dram Shop statute, establishing the common law rule and providing for only two express exceptions: (1) cases where a vendor willfully and unlawfully sells alcohol to a minor, and (2) when a vendor knowingly serves alcohol to someone habitually addicted to alcoholic beverages. Florida Statute 768.125.

Social Host Liability

Florida law does not recognize a cause of action against social hosts for furnishing alcohol to guests. Ellis v. N.G.N. of Tampa, Inc., 586 So. 2d 1042 (Fla. 1991); Dowell v. Gracewood Fruit Co., 559 So. 2d 217 (Fla. 1990); Bankston v. Brennan, 507 So. 2d 1385 (Fla. 1987); Kirkland v. Johnson, 499 So. 2d 899 (Fla. 1st DCA 1986). However, there is an “open house party exception under Florida Statute 856.015(2) which says that a person must take reasonable steps to prevent minors from consuming drugs or alcohol at an open house party.

Liability Involving Minors

If a person willfully sells or furnishes alcohol to a minor, they may be liable for any injuries or damages caused by the resulting intoxication of that minor. Hetherly v. Sawgrass Tavern Inc., 975 So. 2d 1266 (Fla. 4th DCA 2008). Willful conduct is required to be liable, not merely negligent conduct. Publix Supermarkets, Inc. v. Austin, 658 So. 2d 1064 (Fla. 5th DCA 1995).

Key Statues & Regulations

The following are the key statutes and regulations that create both civil and criminal liability:

Florida Statute 562.11 Selling, giving, or serving alcoholic beverages to person under age 21;

It is unlawful for any person to sell, give, serve, or permit to be served alcoholic beverages to a person under 21 years of age or to permit a person under 21 years of age to consume such beverages on the licensed premises. A person who violates this subparagraph commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

Florida Statute 768.125. Liability for injury or damage resulting from intoxication

A person who sells or furnishes alcoholic beverages to a person of lawful drinking age shall not thereby become liable for injury or damage caused by or resulting from the intoxication of such person, except that a person who willfully and unlawfully sells or furnishes alcoholic beverages to a person who is not of lawful drinking age or who knowingly serves a person habitually addicted to the use of any or all alcoholic beverages may become liable for injury or damage caused by or resulting from the intoxication of such minor or person.

Florida Statute 856.015 Open house parties

A person having control of any residence may not allow an open house party to take place at the residence if any alcoholic beverage or drug is possessed or consumed at the residence by any minor where the person knows that an alcoholic beverage or drug is in the possession of or being consumed by a minor at the residence and where the person fails to take reasonable steps to prevent the possession or consumption of the alcoholic beverage or drug.

Florida Statute 316.1934 Blood Alcohol level of Intoxication

In Florida, in both criminal and civil proceedings, the legal presumption for intoxication for adults is .08 BAC.

Notable Cases

In Evans v. McCabe 415, Inc., 168 So. 3d 238 (Fla. 5th DCA 2015), the appellate Court reversed summary judgment and held triable issues existed as to whether patron was a habitual drunkard and whether dram shop had knowledge of customer's condition. In this case, the patron's estate filed affidavits and deposition transcripts from decedent patron's girlfriend and family members attesting to Decedent patron's regular attendance at defendants bar and his excessive and habitual use of alcoholic beverages. The patron's estate also filed an affidavit from an expert witness stating the defendant bar knew the decedent patron was a habitual drunkard. Further, there was an issue of spoliation because the defendant bar had not preserved its surveillance video from the night of the incident.

In Russo v. Plant City Moose Lodge No. 1668, 656 So. 2d 957 (Fla. 2d DCA 1995), the Second District Court of Appeal affirmed summary judgment for the defendant. In that case, the intoxicated patron was not known to Defendant as a "habitual drunkard" when the evidence showed he would visit the Defendant's bar two to eight times per month and consume three to seven beers per visit.

In Sabo v. Shamrock Communications, Inc., 566 So. 2d 267, 269 (Fla. 5th DCA 1990), the appellate court reversed a summary judgment for Defendant on the issue of whether Defendant knew or should have known a patron was a habitual drunkard. The patron testified he was an alcoholic, consumed a case of beer a day around the time of the accident, that he got drunk each time he patronized the subject bar, that he became loud, slurred his words, and had red eyes when he became intoxicated, that he knew the bartenders well, that the bartenders would pour his usual drink when they saw him enter the bar, that he normally drank five (5) double White Russians at the bar, and that he patronized the bar at least twice a week in the months preceding the subject accident.

Statute of Limitations

Florida requires injury claims to be filed within four years of the date of injury. Florida Statute 95.11.

Comparative Negligence

Florida is a pure comparative negligence state. Fault between the plaintiff, the defendants, and any third parties alleged to be at fault would be apportioned by a jury. See Williams v. Davis, 974 So. 2d 1052, 1061 n. 10 (Fla. 2007); Florida Statute 768.81.

Joint & Several Liability

Florida Statute 768.81 provides that "the court shall enter judgment against each party liable on the basis of such party's percentage of fault and not on the basis of the doctrine of joint and several liability."

Contribution Among Joint Tortfeasors

The Florida Contribution Among Joint Tortfeasors Act is found at Florida Statute 768.31. This Act provides for a "pro rata" contribution among persons jointly or severally liable to the plaintiff.

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General Overview of the Law

First Party Liability

Georgia courts do not recognize an action for first party liability brought by the consumer of alcohol against the individual or entity that provided the alcohol to that person. This is also codified at O.C.G.A. §51-1-40. However, by statute (O.C.G.A. § 51-1-18), the parents of a minor child who is furnished alcohol have a right of action against the provider if furnished without the parents' consent.

Third Party Liability

By statute, O.C.G.A. § 51-1-40, a person who knowingly furnishes alcohol to a person who is under 21 years of age or to a person who is in a state of noticeable intoxication, knowing that such person will soon be driving a motor vehicle, may be liable to third parties injured by the individual served.

Social Host Liability

The Georgia Dram Shop Act applies generally to any person (or entity) who "sells, furnishes, or serves alcoholic beverages" to a minor or noticeably intoxicated person. Therefore, third party liability under the law applies equally to social hosts.

Liability Involving Minors

Dram shop liability to third parties for injury or damage caused by an intoxicated person is restricted to situations where it was foreseeable that the intoxicated person would soon be driving a motor vehicle. This also applies to minors.

Georgia courts do not recognize an action by any person who was furnished alcohol against the provider of that alcohol; however, the parents of a minor child (this means under 18 rather than the drinking age of 21) who is furnished alcohol may sue the provider directly.

Evidence that the individual who furnished alcohol to a minor was provided (and reasonably relied upon) proper identification showing the minor to be 21 years of age or older provides a rebuttable defense to dram shop liability in Georgia.

Key Statues & Regulations

- O.C.G.A. § 51-1-40: Liability for act of intoxicated persons

  "[A] person who willfully, knowingly, and unlawfully sells, furnishes, or serves alcoholic beverages to a person who is not of lawful drinking age, knowing that such person will soon be driving a motor vehicle, or who knowingly sells, furnishes, or serves alcoholic beverages to a person who is in a state of noticeable intoxication, knowing that such person will soon be driving a motor vehicle, may become liable for injury or damage caused by or resulting from the intoxication of such minor or person when the sale, furnishing, or serving is the proximate cause of such injury or damage. Nothing contained in this Code section shall authorize the consumer of any alcoholic beverage to recover from the provider of such alcoholic beverage for injuries or damages suffered by the consumer."

- O.C.G.A. § 3-3-22: Furnishing alcoholic beverages to intoxicated persons

  "No alcoholic beverage shall be sold, bartered, exchanged, given, provided, or furnished to any person who is in a state of noticeable intoxication." This statute predates the Georgia Dram Shop Act and although it is regulatory in nature, civil liability is extended to third parties harmed by a violation of the statute vis-à-vis O.C.G.A. § 51-1-6, which provides that, "when the law requires a person to perform an act for the benefit of another or to refrain from doing an act which may

injure another, although no cause of action is given in express terms, the injured party may recover for the breach of such legal duty if he suffers damage thereby."

- O.C.G.A. § 51-1-18: Furnishing alcoholic beverages to or gaming with underage child of another

  "The custodial parent or parents shall have a right of action against any person who shall sell or furnish alcoholic beverages to that parent's underage child for the child's use without the permission of the child's parent."

In Georgia, the standard for third-party civil liability for damage or injury caused by an intoxicated person is that the person served must have been "noticeably intoxicated" at the time they were served. This must be proven either by eyewitness or expert testimony. In criminal proceedings, the legal presumption for intoxication for adults is .08 BAC. The legal presumption for intoxication for minors is .02 BAC.

Notable Cases

Dion v. Y.S.G. Enterprises, Inc., 296 Ga. 185, 188, 766 S.E.2d 48, 51 (2014) (holding that a wrongful death action brought against a bar owner by the widow of a bar patron killed in an car accident after being served at the bar was precluded by the Dram Shop Act, because the action was based solely on the bar's act of selling alcohol to the patron and a survivor in a wrongful death action cannot recover for the decedent's death if the decedent could not have recovered in his or her own right.)

Flores v. Exprezit! Stores 98-Georgia, LLC, 289 Ga. 466, 713 S.E.2d 368 (2011) (holding that liability under the Georgia Dram Shop Act can apply when a convenience store sells closed or packaged containers of alcohol not intended for consumption on the premises to a noticeably intoxicated adult, knowing that the intoxicated adult will soon be driving).

Northside Equities, Inc. v. Hulsey, 275 Ga. 364, 567 S.E.2d 4 (2002) (holding that evidence of a high blood alcohol concentration, combined with reliable expert witness testimony, may be sufficient to overcome eyewitness testimony that an individual who was served alcohol was not "noticeably intoxicated").

Capp v. Carlito's Mexican Bar & Grill No. 1, Inc., 288 Ga. App. 779, 655 S.E.2d 232 (2007) (holding that a furnisher of alcohol is not subject to liability for punitive damages to third-parties).

Statute of Limitations

In Georgia, the statute of limitations for injuries to the person is two years from the date of injury. Note that for torts which also involve the commission of a crime, the limitation period is tolled during the pendency of the criminal prosecution.

Comparative Negligence

Georgia is a modified comparative jurisdiction. A plaintiff may not recover if his or her own negligence is equal to or greater than that of the defendant(s). If the negligence apportioned to the plaintiff is less than 50%, then his or her recovery is reduced by that proportion of fault attributed to him or her by the factfinder.

Joint & Several Liability

In 2005, the Georgia General Assembly abolished joint and several liability and replaced it with a system whereby the jury is required to consider the proportionate fault of each party and non-party who contributed to the injury or loss and apportion liability among the defendants according to the share of fault. O.C.G.A. § 51-12-33.

Contribution Among Joint Tortfeasors

O.C.G.A. § 51-12-33(b) expressly provides that there is no right of contribution among joint tortfeasors.

HAWAII

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General Overview of the Law

Third Party Liability

Although Hawaii does not have a Dram Shop statute, it is well settled that courts recognize third party liability in actions where an individual is injured by an intoxicated adult or minor.[1] Hawaii courts have held that the State's liquor control statute, Hawaii Revised Statutes § 281(b)(1), imposes a duty on a commercial liquor supplier to not serve a person under the influence of alcohol or is a minor.[2] The statute reads in pertinent part:

> (b) At no time under any circumstances shall any licensee or its employee:
>
> 1. Sell, serve, or furnish any liquor to, or allow the consumption of any liquor by:
>
> (A) Any minor;
>
> (B) Any person at the time under the influence of liquor;
>
> (C) Any person known to the licensee to be addicted to the excessive use of intoxicating liquor; or
>
> (D) Any person for consumption in any vehicle that is licensed to travel on public highways;
>
> Haw. Rev. Stat. Ann. § 281-78 (West)

Prior to finding a breach of duty under Haw. Rev. Stat. 281(b)(1), a plaintiff needs to demonstrate that the commercial liquor supplier knew or reasonably should have known that an individual is under the influence of alcohol at the time of service.[3] The determination on whether or not an individual was under the influence of alcohol at the time of service is an issue for the jury to decide.

Once a breach of duty is established, the commercial supplier's liability is not relieved by the intervening acts of the intoxicated individual. Hawaii courts have found that the consequences of serving alcohol to an individual who injures another are reasonably foreseeable. This is especially true when dealing with motor vehicle accidents in light of the universal use of cars and increasing frequency of drunk driving injuries.[4]

First Party Liability

Hawaii courts have joined the majority of states in declining to recognize an action for first-party liability brought by an injured motorist.[5] Courts have acknowledged that a commercial supplier owes a duty to avoid affirmative acts which increase the risk to an intoxicated customer. However, absent harm to an innocent third person, there is no actionable negligence.[6] Simply put, intoxicated persons who harm themselves are solely responsible for their own voluntary intoxication.[7]

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1 Ono v. Applegate, 62 Haw. 131, 612 P.2d 533 (1980).

2 Id., 62 Haw. at 138; 612 P.2d at 539; Haw. Rev. Stat. Ann. § 281-78 (West).

3 Id. 62 Haw. at 138; 612 P.2d at 539.

4 Id. 62 Haw. at 141; 612 P.2d at 540.

5 Bertelmann v. Taas Assocs., 69 Haw. 95, 101, 735 P.2d 930, 934 (1987).

6 Bertelmann, 69 Haw. at 100-101, 735 P.2d at 933-934; See Feliciano v. Waikiki Deep Water, Inc., 69 Haw. 605, 752 P.2d 1076 (1988).

7 Bertelmann, 69 Haw. at 100, 735 P.2d at 934.

The courts have also declined to recognize actions for first-party liability when the bar staff aggressively sells alcohol to an unsophisticated customer.[8] The court noted that requiring a commercial supplier to assess the sophistication of each customer would place an intolerable burden on the bar personnel.[9] Again, the intoxicated individual chose to voluntarily consume the alcohol and cannot then hold the commercial supplier liable.[10]

Social Host Liability

Hawaii courts do not recognize an action for first or third party liability brought by an injured third party or intoxicated adult guest. The choice not to extend liability to social hosts was affected by the potential effect it would have on social and business relations.[11] The courts considered the potential increase in homeowners and rental insurance costs a social host would need to incur.[12] Absent "any statute imposing liability upon social hosts or establishing standards of conduct for social hosts", courts will not hold a social host civilly liable for a breach of duty to protect third parties injured by an intoxicated guest.[13]

The standard was later restated in the context of an employer who is a non-commercial supplier of alcohol where an intoxicated employee injures a third party. Hawaii courts have held that a "reasonable trier of fact could find a sufficient nexus in [an intoxicated employee's negligent act of driving while intoxicated] and the employer's interest in fostering employee good will."[14] Fostering employee goodwill may entail allowing drinking after hours on the employer's property or a party to celebrate an event at on the employer's property. An employee may be acting in the scope of employment when they consume alcohol under these circumstances. If the employee is within their scope of employment, the employer may be held vicariously liable.[15]

However, the Hawaii legislature enacted Haw. Rev. Stat. 663-41 that the courts have used to recognize action for both first and third party liability as it applies to intoxicated minors.[16] The statute reads as follows:

> (a) Any person twenty-one years or older who:
>
> 1. Sells, furnishes, or provides alcoholic beverages to a person under the age of twenty-one years; or
> 2. Owns, occupies, or controls premises on which alcoholic beverages are consumed by any person under twenty-one years of age, and who knows of alcohol consumption by persons under twenty-one years of age on such premises, and who reasonably could have prohibited or prevented such alcohol consumption; shall be liable for all injuries or damages caused by the intoxicated person under twenty-one years of age.
>
> (b) This section shall not apply to sales licensed under chapter 281.
>
> (c) An intoxicated person under the age of twenty-one years who causes an injury or damage shall have no right of action under this part.
>
> Haw. Rev. Stat. Ann. § 663-41 (West)

Courts have held that this statute encompasses social hosts who serve minors alcohol and have recognized first party action where the intoxicated minor injured themselves.[17] However, it is unclear what impact this will have on future decisions where an injured, intoxicated minor brings an action for first party liability against a commercial supplier. Currently, case law does not recognize actions for first party liability brought by an intoxicated minor against a commercial supplier.[18]

Liability Involving Minors

Hawaii courts do not recognize an action for first party liability brought by an injured minor against a commercial supplier of alcohol.[19] Hawaii courts do, however, recognize actions for third party liability where a third party is injured by an intoxicated minor served by a commercial supplier. The analysis regarding duty, breach, and causation applied to action for third party liability where an individual is injured by an intoxicated adult is also applied to minors.[20]

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8 Feliciano, 69 Haw. at 608, 752 P.2d at 1078-1079.

9 Id.

10 Feliciano, 69 Haw. at 608-609, 752 P.2d at 1078-1079.

11 Johnston v. KFC Nat. Mgmt. Co., 71 Haw. 229, 237, 788 P.2d 159, 163 (1990).

12 Johnston, 71 Haw. at 237, 788 P.2d at 163-164.

13 Id.

14 Wong-Leong v. Hawaiian Indep. Refinery, Inc., 76 Haw. 433, 444, 879 P.2d 538, 549 (1994).

15 Id.

16 Ah Mook Sang v. Clark, 130 Haw. 282 298, 308 P.3d 911, 927 (2013).

17 Ah Mook, 130 Haw. at 298, 308 P.3d at 927.

18 See Winters v. Silver Fox Bar, 71 Haw 524, 797 P.2d 51 (1990).

19 Id., 71 Haw. at 535, 797 P.2d at 56-57.

20 See Id.; See also Reyes v. Kuboyama, 76 Haw. 137, 870 P.2d 1281 (1994).

Hawaii courts have also recognized actions for third party liability brought by an injured minor against a liquor store who sold alcohol to another minor. In a 1994 case, the injured minor accepted a ride from another minor who did not purchase the alcohol from the store but did consume it.[21] The injured minor brought suit against the liquor store and the driver. The liquor store argued that unlike a bar who can monitor the customers, a store cannot. The court pointed out that Haw. Rev. Stat. 281-78(a)(2)(A) imposes a responsibility to ensure that the customers of twenty-one years old.[22] The court held that the liquor store may be held liable.[23]

Comparative Negligence

"Under Hawaii's modified comparative negligence statute, a plaintiff's recovery in negligence is either barred or reduced by the percentage of fault attributable to him."[24] If a plaintiff seeks recovery from more than one defendant, his negligence cannot exceed the aggregate negligence of the other defendants. Plaintiff's recovery is also reduced by the amount of their own negligence. [25] In Hawaii dram shop litigation, this analysis would apply.

Joint & Several Liability

Joint and several liability would apply to dram shop actions brought in Hawaii. Hawaii has ostensibly abolished joint and several liability by statute.[26] However, the statute includes a number of exceptions, two of which are torts involving motor vehicles and recovery of economic damages involving death or injury to an individual.[27]

Contribution Among Joint Tortfeasors

"Hawaii's Uniform Contribution Among Tortfeasors Act (UCATA), codified at Haw. Rev. Stat. §§ 663-11 through 663-17 defines "joint tortfeasors" as "two or more persons jointly or severally liable in tort for the same injury to person or property, whether or not judgment has been recovered against all or some of them."[28] Joint tortfeasors have the right of contribution. However, the joint tortfeasors are not entitled to a judgment for contribution until its portion of liability or more than its pro rata share of liability has been paid.[29]

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21 Reyes, 76 Haw. at 139, 870 P.2d at 1282.

22 Id. 76 Haw. at 144, 870 P.2d at 1288.

23 Id. 76 Haw. at 146-147, 870 P.2d at 1290-1291.

24 Lois Yamaguchi, A Survey of the Law of Non-Contractual Indemnity and Contribution: Compiled by the Products Liability Group of the Primerus Defense Institute, International Society of Primerus Law Firms, Hawaii Section (April 2015).

25 Haw. Rev. Stat. Ann. § 663-31 (West).

26 Haw. Rev. Stat. Ann. § 663-10.9 (West).

27 Id.

28 Lois Yamaguchi, A Survey of the Law of Non-Contractual Indemnity and Contribution: Compiled by the Products Liability Group of the Primerus Defense Institute, International Society of Primerus Law Firms, Hawaii Section (April 2015).

29 Haw. Rev. Stat. Ann. § 663-12 (West).

IDAHO

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General Overview of the Law

First Party Liability

Idaho courts do not recognize an action for first party liability brought by an injured person or the injured person's estate or representatives against a person who furnished alcohol beverages to the injured person.

Third Party Liability

Idaho courts recognize an action brought by a person who was injured by an intoxicated person against a person who sold or furnished alcohol beverages if (1) the intoxicated person was younger than the legal age for the consumption of alcohol at the time the alcoholic beverages were sold or furnished and the person selling or furnishing the alcoholic beverages knew or should have known that the intoxicated person was younger than the legal age for consumption of alcoholic beverages; or (2) the intoxicated person was obviously intoxicated at the time that the alcoholic beverages were sold or furnished and the person selling or furnishing the alcoholic beverages knew or reasonably should have known that the intoxicated person was obviously intoxicated. The exception to this rule is if the injured party was a passenger in the intoxicated person's vehicle. In that event, neither the injured party nor the party's estate or representatives may bring a claim or cause of action.

Social Host Liability

Same as above. Idaho's dram shop act does not differentiate between licensed sellers or social hosts. First party actions are not permitted but third party actions are allowable under two circumstances with one exception.

Liability Involving Minors

Same as above. Idaho's dram shop act does not differentiate between actions brought by adults or minors. First party actions are not permitted but third party actions are allowable under two circumstances with one exception.

Key Statues & Regulations

The Idaho Liquor Act is codified at Title 23 of the Idaho Code. The Idaho State Liquor Division regulates the sale of alcohol in Idaho.

Idaho's dram shop act was enacted in 1986 and is codified at Idaho Code §23-808. It states:

…

(2) No claim or cause of action may be brought by or on behalf of any person who has suffered injury, death or other damage caused by an intoxicated person against any person who sold or otherwise furnished alcoholic beverages to the intoxicated person, except as provided in subsection (3) of this section.

(3) A person who has suffered injury, death or any other damage caused by an intoxicated person, may bring a claim or cause of action against any person who sold or otherwise furnished alcoholic beverages to the intoxicated person, only if:

(a) The intoxicated person was younger than the legal age for the consumption of alcoholic beverages at the time the alcoholic beverages were sold or furnished and the person who sold or furnished the alcoholic beverages knew or ought reasonably to have known at the time the alcoholic beverages were sold or furnished that the intoxicated person was younger than the legal age for consumption of the alcoholic beverages; or

(b) The intoxicated person was obviously intoxicated at the time the alcoholic beverages were sold or furnished, and the person who sold or furnished the alcoholic beverages knew or ought reasonably to have known that the intoxicated person was obviously intoxicated.

(4)(a) No claim or cause of action pursuant to subsection (3) of this section shall lie on behalf of the intoxicated person nor on behalf of the intoxicated person's estate or representatives.

(b) No claim or cause of action pursuant to subsection (3) of this section shall lie on behalf of a person who is a passenger in an automobile driven by an intoxicated person nor on behalf of the passenger's estate or representatives.

….

Idaho Code §§23-603, 23-604, 23-615: The legal age for consumption of alcohol in Idaho is 21.

Idaho Code §23-605: Selling, giving or dispensing alcohol to a person who is intoxicated or apparently intoxicated is a misdemeanor.

Idaho Code §23-615 prohibits the sale, delivery or giving away of alcohol to persons under the age of 21, an obviously intoxicated person, a “habitual drunkard,” or an interdicted person.

Under Idaho Code §18-8004, the legal limit for intoxication in Idaho is .08. It is illegal for persons under the age of 21 who have blood alcohol concentrations of at least .02 and less than .08 to drive or be in actual physical control of a motor vehicle. Any evidence of conviction under Idaho Code §18-8004 (DUI) is admissible in any civil action for damages resulting from the occurrence.

Notable Cases

Coughlan v. Beta Theta Pi Fraternity, 133 Idaho 388, 987 P.2d 30 (1999): (Idaho’s dram shop law barred an injured intoxicated university student from bringing an action against the third parties who furnished alcohol to her; Idaho’s dram shop law’s restriction against first party suits does not violate the equal protection clauses of the United States Constitution or Idaho Constitution; Idaho’s dram shop law does not revive the doctrine of contributory negligence; Idaho’s dram shop law’s prohibition against first party claims does not violate the right to a trial by jury in Idaho’s Constitution.)

Idaho Department of Labor v. Sunset Marts, Inc., 140 Idaho 207, 91 P.3d 1111 (2004) (Comparative negligence applies in an action for damages under Idaho’s dram shop act; actions of intoxicated party may also be proximate cause of the injury sustained.)

McLean v. Maverick Country Store, Inc., 142 Idaho 810, 135 P. 3d 756 (2006) (Idaho’s dram shop law bars claim by injured minor passenger in intoxicated driver’s car; Idaho’s dram shop law’s restriction against suits by passengers does not violate the equal protection clauses of the United States Constitution or the Idaho Constitution; Idaho’s dram shop’s prohibition against claims by passengers does not violate the right to a trial by jury in Idaho’s Constitution.

Statute of Limitations

Under Idaho Code § 23-808(5), no claim or cause of action may be brought under this section against a person who sold or otherwise furnished alcoholic beverages to an intoxicated person unless the person bringing the claim or cause of action notified the person who sold or otherwise furnished alcoholic beverages to the intoxicated person within one hundred eighty (180) days from the date the claim or cause of action arose by certified mail that the claim or cause of action would be brought. If proper notice is not given, no claim can be brought against the person who sold or furnished the alcohol.

Once the notice is given, the injured party has 2 years from the date of injury to file the lawsuit. Idaho Code §5-219(4). Idaho courts apply the “some damage” rule, whereunder the claim begins to run when the fact of injury becomes objectively ascertainable. This is typically the date of the injury in a dram shop case.

Comparative Negligence

Idaho is a <50% modified comparative negligence state. Under Idaho Code §6-801, the plaintiff’s negligence must not be as great as the negligence, gross negligence or comparative responsibility of the person against whom recovery is sought. If the plaintiff’s negligence is less than that of the defendant, the plaintiff’s damages are reduced in proportion to the amount of negligence attributable to the plaintiff. Idaho’s Supreme Court has held that the intoxicated person’s share of negligence may be considered to be a proximate cause.

Idaho Code §6-803(3) provides as follows: “In any action in which the trier of fact attributes the percentage of negligence or comparative responsibility to persons listed on a special verdict, the court shall enter a separate judgment against each party whose negligence or comparative responsibility exceeds the negligence or comparative responsibility attributed to the person recovering. The negligence or comparative responsibility of each such party is to be compared individually to the negligence or comparative responsibility of the person recovering. Judgment against each such party shall be entered in an amount equal to each party’s proportionate share of the total damages awarded.”

Joint & Several Liability

Idaho law restricts joint and several liability to situations when the parties were acting in concert (pursuing a common plan or design which results in the commission of an intentional or reckless tort) or when the tortfeasor was acting as the agent or servant of another. Idaho Code §6-803 provides as follows:

(3) The common law doctrine of joint and several liability is hereby limited to causes of action listed in subsection (5) of this section….

(4) As used herein, "joint tortfeasor" means one (1) of two (2) or more persons jointly or severally liable in tort for the same injury to person or property, whether or not judgment has been recovered against all or some of them.

(5) A party shall be jointly and severally liable for the fault of another person or entity or for payment of the proportionate share of another party where they were acting in concert or when a person was acting as an agent or servant of another party. As used in this section, "acting in concert" means pursuing a common plan or design which results in the commission of an intentional or reckless tortious act.

Idaho Code §6-804 preserves the common law right of indemnity.

Contribution Among Joint Tortfeasors

Idaho Code §6-803 provides as follows with respect to contribution among joint tortfeasors:

(1) The right of contribution exists among joint tortfeasors, but a joint tortfeasor is not entitled to a money judgment for contribution until he has by payment discharged the common liability or has paid more than his pro rata share thereof.

(2) A joint tortfeasor who enters into a settlement with the injured person is not entitled to recover contribution from another joint tortfeasor whose liability to the injured person is not extinguished by the settlement.

(4) As used herein, "joint tortfeasor" means one (1) of two (2) or more persons jointly or severally liable in tort for the same injury to person or property, whether or not judgment has been recovered against all or some of them.

Under Idaho Code §6-806, the release by an injured person of a joint tortfeasor does not release that joint tortfeasor from liability for contribution unless the release is given before the right to contribution has accrued and the release provides a pro-rata reduction of the injured person’s damages recoverable against all other tortfeasors. This section applies only if the issue of proportionate fault is litigated between the joint tortfeasors in the same action.

Under Idaho Code §5-218(1), an action for contribution must be brought within three years after a joint tortfeasor has discharged the common liability or paid more than his pro rata share thereof.

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General Overview of the Law

Section 6-21 of the Liquor Control Act of 1934 (commonly known as the Dram Shop Act) (235 ILCS 5/6-21 (2000)) creates a cause of action against owners of businesses that sell liquor, and also against lessors or owners of the premises on which the liquor is sold, for physical injury to a person, for injury to tangible property, or for injury to means of support or loss of society, but not both, caused by an intoxicated person.

By enacting the Dram Shop Act, the legislature created a limited statutory cause of action against persons licensed to sell liquor and persons owning, renting, leasing, or permitting the use of property knowing that liquor will be sold on the property. Walter v. Carriage House Hotels, Ltd., 164 Ill.2d 80, 646 N.E.2d 599 (1995). The Act imposes a form of “no-fault” liability. E.g. Nelson v. Araiza, 69 Ill.2d 534, 372 N.E.2d 637, 638 –639, (1978).

First Party Liability

Illinois courts do not recognize an action for first party liability brought by an injured intoxicated adult patron or customer who was served or sold to by a permit holder.

Third Party Liability

Illinois courts do recognize an action brought by a third party injured by an intoxicated adult or minor patron or customer who was served or sold to by a permit holder.

Social Host Liability and Liability Involving Minors

Illinois courts have recognized that the Dram Shop Act is not a source of liability against social hosts providing alcohol to adults. Charles v. Seigfried, 165 Ill.2d 482, 651 N.E.2d 154 (1995). Likewise, social host liability does not exist in Illinois common law. Bogenberger v. Pi Kappa Alpha Corp., Inc., 56 N.E.3d 1, 13 (1st Dist. 2016), citing Charles v. Seigfried, 165 Ill.2d 482, 651 N.E.2d 154 (1995).

With respect to minors, the Illinois legislature has enacted the Drug or Alcohol Impaired Minor Responsibility Act (740 ILCS 58/1)(DAIMRA). The DAIMRA creates a civil cause of action when a person over 18 years of age “willfully supplies” alcohol or illegal drugs to minors who injure themselves or a third party. Bogenberger ., 56 N.E.3d 1, 13 (Ill. App. 1st Dist. 2016). Under DAIMRA, “[a[person may not bring an action under this Act against a licensee or employee of a licensee under the Liquor Control Act of 1934 who supplies alcoholic liquor to a person under 21 years of age for that act if the licensee or employee of the licensee complied with all applicable provisions of the Liquor Control Act of 1934.” 740 ILCS 58/20

Key Statues & Regulations

The Liquor Control Act of 1934 (235 ILCS 5/1-1, et seq.)

The Drug or Alcohol Impaired Minor Responsibility Act (740 ILCS 58/1, et seq.)

Statue of Limitations/Conditions Precedent

In Illinois, the Dram Shop Act provides in part: “Each action hereunder shall be barred unless commenced within one year next after the cause of action accrued.” 235 ILCS 5/6-21(a)”. At least one Illinois court has held that this provision of the Dram Shop Act is not a statute of limitations. Morales v. Fail Safe, Inc., 311 Ill.App.3d 231, 724 N.E.2d 174 (1st Dist.1999). The Illinois Supreme Court has called into doubt whether a compliance with a limitations period in a purely statutory cause of action (such as a Dram

Shop Act claim) is a jurisdictional condition precedent to a plaintiff's right to sue. Belleville Toyota, Inc. v. Toyota Motor Sales, U.S.A., Inc., 199 Ill.2d 325, 770 N.E.2d 177 (2002).

Plaintiff's Burden of Proof

To recover damages from a Dram Shop Act defendant, the plaintiff must prove:

- First, (allegedly intoxicated person) was intoxicated at the time of the (e.g., collision).
- Second, the defendant, his agents or servants, sold or gave intoxicating liquor consumed by (allegedly intoxicated person).
- Third, the liquor thus consumed caused the intoxication of (allegedly intoxicated person).
- Fourth, (allegedly intoxicated person)'s intoxication was at least one cause of the occurrence in question.
- Fifth, as a result of the occurrence, plaintiff suffered [injury] [damage to his property].

Ill. Pattern Jury Instr.-Civ. 150.02, Ill. Pattern Jury Instr.-Civ. 150.02

Limits of Recovery

The amount of compensation that can be recovered pursuant to the Dram Shop Act is limited by statute.

Since 1999, the limits of recovery for a Dram Shop action have been annually adjusted for inflation, as determined by the State Comptroller. 235 Ill. Comp. Stat. Ann. 5/6-21 For the year 2017, the Comptroller has determined the following:

According to the U.S. Bureau of Labor Statistics, the CPI-U increased 2.07% during the preceding calendar year. Based upon the previous determinations, the liability limits are adjusted as follows:

- For causes of action involving persons injured, killed, or incurring property damage on or after January 20, 2017, the judgment or recovery under the Liquor Control Act of 1934 for injury to the person or property of any person shall not exceed $67,356.23 for each person incurring damages; and
- For causes of action under the Liquor Control Act of 1934 for either loss of means of support or loss of society resulting from the death or injury of any person on or after January 20, 2017, the judgment or recovery shall not exceed $82,324.28.

https://illinoiscomptroller.gov/agencies/statutorily-required-reporting/dram-shop-liability-limits-2005-2017/

Joint & Several Liability

Under the Dram Shop Act, "every person who is injured within this State, in person or in property, by any intoxicated person has a right of action in his or her own name, severally or jointly, against any person, licensed under the laws of this State or of any other state to sell alcoholic liquor, who, by selling or giving alcoholic liquor, within or without the territorial limits of this State, causes the intoxication of such person." 235 ILCS 5/6-21(a).

The Dram Shop Act also provides that any person owning, renting, leasing or permitting the occupation of any building or premises, and having knowledge that alcoholic liquors are to be sold therein or who, having leased the same for other purposes, shall knowingly permit the sale therein of alcoholic liquors that have caused the intoxication of any person, shall be liable jointly with the person selling or giving alcoholic liquors. Ill. Pattern Jury Instr.-Civ. 150.07, Ill. Pattern Jury Instr.-Civ. 150.07

Comparative Negligence

The doctrine of contributory negligence is not applicable to an action brought under the Dram Shop Act because the gravamen of the Act is not negligence but rather the operation of a remedy created by statute. Douglas v. Athens Market Corp., 320 Ill.App. 40, 49 N.E.2d 834 (1st Dist. 1943); Taylor v. Hughes, 17 Ill.App.2d 138, 149 N.E.2d 393 (1st Dist. 1958).

Contribution Among Joint Tortfeasors

In tort actions, the Illinois Joint Tortfeasor Contribution Act (Contribution Act), is found at 740 ILCS 100/0.01, et seq. However, the Illinois Supreme Court has held that an alleged intoxicated person who causes injuries to a third party is unable to seek contribution from another party liable only pursuant to the Dram Shop Act. Jodelis v. Harris, 118 Ill.2d 482, 488, 115 Ill.Dec. 369, 517 N.E.2d 1055 (1987). That is because a party who is liable pursuant to the Dram Shop Act is not "liable in tort"; rather, liability pursuant to the Dram Shop Act is exclusive, sui generis nontort liability.

INDIANA

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General Overview of the Law

First Party Liability

Assuming the conditions in Ind. Code § 7.1-5-10-15.5 are met, Indiana courts recognize an action for first party liability brought by an injured intoxicated adult patron or customer who was served or sold to by a permit holder.

Third Party Liability

Assuming the conditions in Ind. Code § 7.1-5-10-15.5 are met, Indiana courts recognize an action brought by a third party liability injured by an intoxicated adult or minor patron or customer who was served or sold to by a permit holder.

Social Host Liability

Assuming the conditions in Ind. Code § 7.1-5-10-15.5 are met, Indiana courts recognize an action for first party liability brought by an injured intoxicated adult guest who was served by a social host.

Assuming the conditions in Ind. Code § 7.1-5-10-15.5 are met, Indiana courts recognize an action for first party liability brought by an injured minor guest who was served by a social host.

Liability Involving Minors

Assuming the conditions in Ind. Code § 7.1-5-10-15.5 are met, Indiana courts recognize an action for first party liability brought by an injured minor patron or customer who was served or sold to by a permit holder.

Assuming the conditions in Ind. Code § 7.1-5-10-15.5 are met, Indiana courts recognize an action for first party liability brought by an injured minor guest who was served by a social host.

Key Statues & Regulations

- Ind. Code § 7.1-5-10-15.5, which states that a person furnishing alcohol to another is not liable in a civil action for damages unless: (1) the person furnishing the alcohol had “actual knowledge” that the person furnished was “visibly intoxicated” at the time the alcohol was furnished; and (2) the intoxication was a proximate cause of the death/injury/damage alleged in the complaint.
- Ind. Code § 7.1-5-7-8, which states that providing alcohol to a minor is a Class B misdemeanor, except that it is a Class D felony if the use of alcohol was a proximate cause of serious bodily injury/death of any person.
- Ind. Code § 7.1-5-10-15, which states that it is unlawful to provide alcohol to anyone known to be intoxicated and it is a complete defense in an action for refusal to serve if the person serving reasonably believed that the person to be served was intoxicated or otherwise not entitled to be served.
- Ind. Code § 7.1-1-3-25, which defines a minor as anyone under the age of 21.

The Indiana Alcohol and Tobacco Commission regulates the sale of alcohol in the state.

Local prosecutors have primary enforcement responsibility and work with local law enforcement to enforce the alcohol laws.

In Indiana, in both criminal and civil proceedings, the legal presumption for intoxication is .08 BAC. Ind. Code § 9-30-5-1.

Notable Cases

When alleged injured parties filed claims against a restaurant under Ind. Code § 7.1-5-10-15.5 and the common law for serving alcohol to a visibly intoxicated person, their counsel's failure to reveal, in response to the restaurant's interrogatory on witnesses supporting their claim, that the restaurant's waitress stated to counsel that she served alcohol to the person who allegedly struck the alleged injured parties even though he was visibly intoxicated, was misconduct, especially when combined with counsel's closing argument at trial that the restaurant did not keep its opening statement promise that the waitress would testify that the person was not intoxicated, which entitled the restaurant to relief from judgment, under TR. 60(B)(3), as the restaurant's defense was prejudiced. Outback Steakhouse of Fla., Inc. v. Markley, 856 N.E.2d 65 (Ind. 2006).

Where an intoxicated employee causes an automobile accident after leaving an employer's premises, the employer owes no duty to third-person motorists because the accident is committed outside the scope of the employment, does not take place on the employer's premises, and does not involve the use of the employer's chattels. Estate of Cummings by Cummings Heck v. PPG Indus., 651 N.E.2d 305 (Ind.Ct.App. 1995).

A property manager owes no duty to patrons of the tenant bar because the contract between the property manager and owner did not impart such a duty. Kaitlyn Schneider v. Paragon Realty LLC, 55 N.E.3d 374 (Ind.Ct.App. 2016), trans. denied.

A social host has a duty to render aid to a social guest. However, a person does not furnish alcohol by providing it to someone who already possesses it. As a result, if a homeowner and social guest jointly possessed the same alcohol, the homeowner could not furnish it to the social guest as a basis of liability under the Dram Shop Act. Rogers v. Martin, 63 N.E.3d 316 (Ind. 2016).

Statute of Limitations

IIn Indiana, the statute of limitations for both negligence and intentional tort based claims is 2 years from the date of loss. Ind. Code § 34-11-2-4.

Comparative Negligence

Indiana is a comparative fault jurisdiction. Under the Indiana Comparative Fault Act, the plaintiff may not recover if the plaintiff's own negligence is greater than 50%. If the plaintiff's negligence is less than 50%, the plaintiff's recovery is reduced by that proportion of fault attributed by the fact-finder to the plaintiff or any "non-party" named by the defendant. Ind. Code § 34-51-2-1, et. seq.

Joint & Several Liability

There is no joint and several liability among tortfeasors under the Indiana Comparative Fault Act. Santelli v. Rahmatullah, 966 N.E.2d 661 (Ind.Ct.App. 2012).

Contribution Among Joint Tortfeasors

There is no contribution among joint tortfeasors under the Indiana Comparative Fault Act. The tortfeasor is liable for only that proportion of fault attributed to it by the fact-finder. Ind. Code § 34-51-2-12.

IOWA

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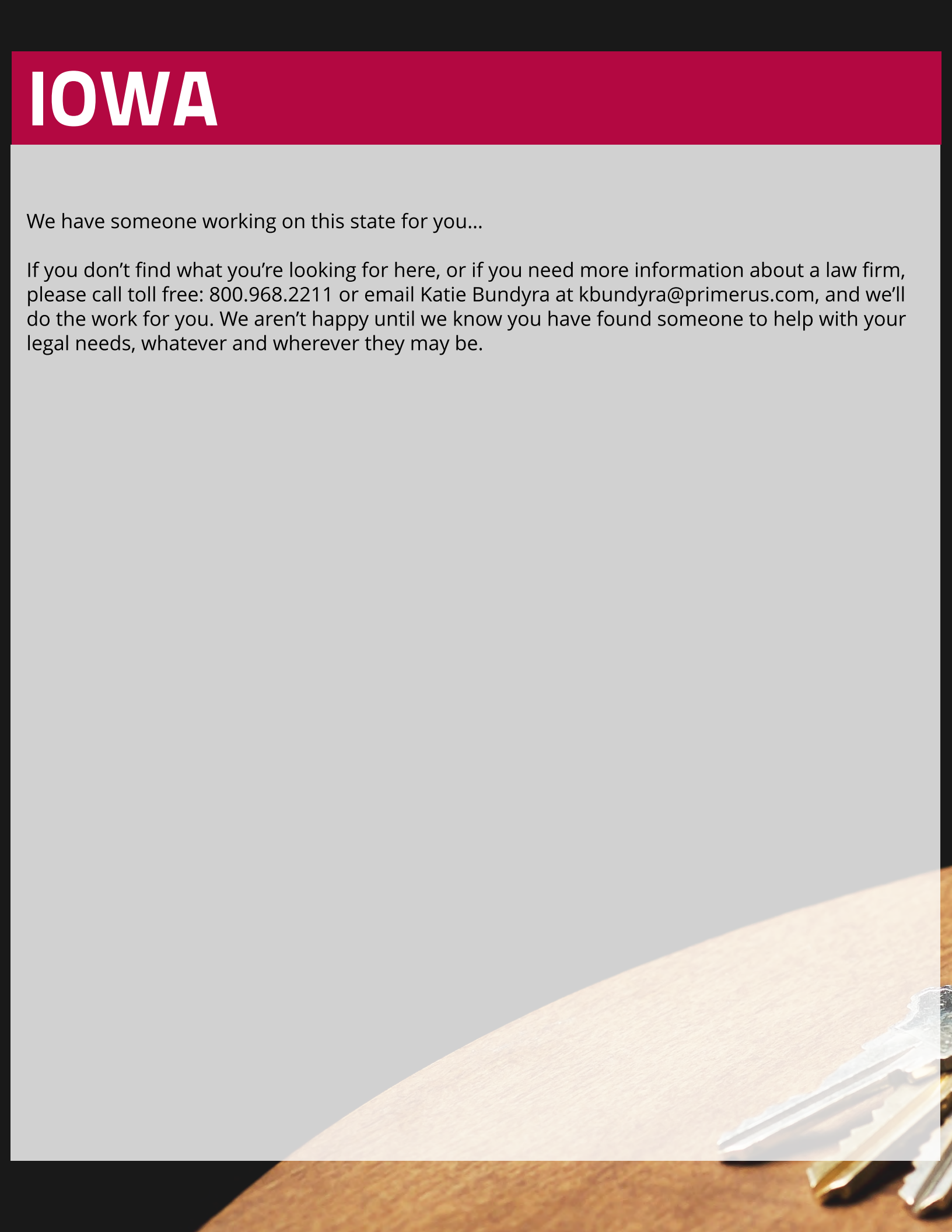

KANSAS

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General Overview of the Law

Kansas is one of the ten states in America that has not enacted a Dram Shop Act. Kansas law places no liability on an alcohol vendor for injuries stemming from the sale of alcohol. Social hosts are not liable for damages stemming from serving to guests either.

With respect to liability for serving to minors and people who are obviously intoxicated, Kansas has no statute allowing civil recovery.

First Party Liability

Alcohol vendors may sell alcohol to those of age who are not visibly intoxicated. The sale of alcohol to minors and visibly intoxicated persons can lead to criminal and administrative penalties from the state of Kansas however there is no authority for civil liability.

“The question of the liability of one furnishing intoxicating liquor to a minor for injuries caused by the minor's intoxication has been decided by the Kansas Supreme Court in Ling v. Jan's Liquors, 237 Kan. 629, 703 P.2d 731 (1985). The answer is an unequivocal ‘no.’ The decision was reaffirmed by the Supreme Court in Fudge v. City of Kansas City, 239 Kan. 369, 720 P.2d 1093 (1986), and Thies v. Cooper, 243 Kan. 149, 753 P.2d 1280 (1988).” Mills v. City of Overland Park, 837 P.2d 370, 373 (Kan. 1992)

Statute prohibiting the dispensing of alcoholic liquors to certain classes of persons was intended to regulate the sale of liquor and was not intended to impose civil liability; thus, a liquor vendor's violation of the statute is not negligence per se. K.S.A. 41-715. Bland v. Scott, 2005, 112 P.3d 941, 279 Kan. 962.

Statute prohibiting sale of liquor to incapacitated persons was not intended to impose civil liability in favor of person injured by tort of inebriated person; thus, civil action seeking recovery for death of inebriated person himself or herself cannot be predicated on violation of statute. Mills v. City of Overland Park, 837 P.2d 370 (Kan. 1992)

There were no grounds for imposing liability on vendor of alcohol for intoxicated individual's automobile accident; vendor was not at fault as matter of law and could not be allocated fault in determining liability of other parties. K.S.A. 41-715; Rules Civ. Proc., K.S.A. 60-258a. Fudge v. City of Kansas City, 1986, 239 Kan. 369, 720 P.2d 1093.

Third Party Liability

Kansas does not have a dram shop act. The courts decline to judicially impose third-party liability on suppliers of alcohol for the torts of intoxicated patrons on the ground that it was a policy matter better suited to legislative consideration. 237 Kan. at 640–41, 703 P.2d 731.

Prime v. Beta Gamma Chapter of Pi Kappa Alpha, 47 P.3d 402, 408 (Kan. 2002)

Restaurant, that sold alcoholic beverages to obviously intoxicated patron for consumption on premises, incurred no civil liability when intoxicated patron caused death in subsequent drunk driving automobile accident. Noone v. Chalet of Wichita, L.L.C., 2004, 96 P.3d 674, 32 Kan.App.2d 1230, review denied.

Legislature's failure to enact dram shop legislation, imposing civil liability on vendor of alcohol for injury caused by intoxicated patron, supported ruling that restaurant that sold alcoholic beverages to obviously intoxicated patron for consumption on premises incurred no civil liability when intoxicated patron caused death in subsequent drunk driving automobile accident. Noone v. Chalet of Wichita, L.L.C., 2004, 96 P.3d 674, 32 Kan.App.2d 1230, review denied.

Social Host Liability

Kansas has no specific statutes or caselaw creating liability for social hosts serving alcohol, however they can look to other states for guidance on this issue. Some states don't impose liability for serving to minors however some do.

No statutory vendor liability. Common-law liability. Sorensen v. Jarvis, 119 Wis.2d 627, 350 N.W.2d 108 (1984), overruling earlier Wisconsin cases adhering to nonliability rule. Koback v. Crook, 123 Wis.2d 259, 366 N.W.2d 857 (1985), Wisconsin Supreme Court imposes liability on social host who served liquor to a minor. Ling v. Jan's Liquors, 703 P.2d 731, 742 (Kan. 1985)

Liability Involving Minors

Currently there is no civil liability for serving alcohol to a minor but Kansas courts were split over the issue in the past. Flagrant disregard for serving to a minor which results in death or serious injury could cause this issue to be revisited by the Kansas courts and legislature. It is best to thoroughly screen customers to make sure no one under the age of 21 is sold alcohol.

The following quote was taken from a case in which a minor was served alcohol and subsequently died. The judge wanted to find the bar and its employees liable due to their flagrant disregard for the age of the child they were serving alcohol to.

"Generally, a private citizen can coldly watch another person die even if the death could be prevented without endangering the private citizen..... I dissent from affirming summary judgment in favor of the bar and its employees.

It is important to emphasize that the rules adopted by the majority would apply to the following scenario. A bar and its employees can sell liquor to a person they know is 13 years of age; can sell the child 9 to 10 shots of alcohol, as happened in this case; and can throw the child out of the establishment, if the child then becomes rowdy, without fear of liability for injury or death inflicted by or resulting to the child as a consequence of being intoxicated because of the illegal sale of intoxicating liquor to a person known to be a child." Mills v. City of Overland Park, 837 P.2d 370, 381 (Kan. 1992)

Key Statues & Regulations

The "Kansas liquor control act" controls the sales of intoxicating liquors and beverages in the state of Kansas and can be referenced for any individual questions on licensing, storage, sales, tax, records, prohibited acts, penalties, prosecutions, and miscellaneous provisions. Vendors must take extra precaution to avoid administrative and criminal repercussions. Kan. Stat. Ann. § 41-101 (West)

K.S.A. 41-715. Sale of liquor to incapacitated or intoxicated person; penalties

(a) No person shall knowingly sell, give away, dispose of, exchange or deliver, or permit the sale, gift or procuring of any alcoholic liquor to or for any person who is an incapacitated person, or any person who is physically or mentally incapacitated by the consumption of such liquor.

(b) Violation of this section is a misdemeanor punishable by a fine of not less than $100 and not exceeding $250 or imprisonment not exceeding 30 days, or both.

Statute of Limitations

Kansas law does not provide for liability from the sale of alcohol therefore the statute of limitations is irrelevant. Despite this and for reference purposes, personal injury actions must be brought within 2 years. K.S.A. 60-513

Comparative Negligence

There is no Comparative Negligence with respect to liability stemming from the legal sale of alcohol to those of age because there must be liability in the first place. The Kansas legislature and courts have yet to pass liability on to an alcohol vendor or a social host for the sale of alcohol therefore there can be no comparative negligence

Joint & Several Liability

There is no Joint or Several Liability stemming from the legal sale of alcohol to those of age. The Kansas legislature and courts have yet to pass liability on to an alcohol vendor or a social host for the sale of alcohol therefore there can be no joint & several liability.

Contribution Among Joint Tortfeasors

There is no contribution among joint tortfeasors stemming from the legal sale of alcohol to those of age. The Kansas legislature and courts have yet to pass liability on to an alcohol vendor or a social host for the sale of alcohol therefore there can be no contribution among tortfeasors.

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General Overview of the Law

First Party Liability

Under Kentucky law there is generally no dram shop liability to a patron for that patron's subsequent injuries. KRS 413.241 provides in part that no alcohol vendor or retailer holding a permit under applicable Kentucky law, who sells alcohol lawfully to a person over the minimum drinking age of 21, will be liable to that person or any other person. However, the law provides an exception: liability will exist where "a reasonable person under the same or similar circumstances should know that the person served is already intoxicated at the time of serving." KRS 413.241(2). Therefore, where the patron appears intoxicated at the time of serving, the vendor/retailer can be liable to the patron for damages to them if it continues to serve alcohol to him or her.

Third Party Liability

KRS 413.241 provides in part that no alcohol vendor or retailer holding a permit under applicable Kentucky law, who sells alcohol lawfully to a person over the age, will be liable to that person or any other person. However, the law provides the same exception applicable to intoxicated patrons: liability to third-parties will exist where "a reasonable person under the same or similar circumstances should know that the person served is already intoxicated at the time of serving."

However, this third-party liability is secondary to that of the intoxicated patron. That means that the third party may only collect damages from the vendor/retailer if a) they are not collectible from the intoxicated patron; and b) the third party successfully demonstrates the vendor/retailer violated the provisions of KRS 413.241(2). In that case, fault may be apportioned between the intoxicated patron and the vendor/retailer, potentially limiting the amount of damages that would be recoverable by the third party from the vendor/retailer. See Destock #14, Inc. v. Logsdon, 993 S.W.2d 952 (Ky. 1999).

EXAMPLE NO. 1: If a jury determined that a) a vendor/retailer violated the standard in KRS 413.241(2), but b) determined that the patron was 75% at fault, and the vendor/retailer was 25% at fault, the plaintiff could only collect at most 25% of the jury verdict from the vendor/retailer (assuming the plaintiff was not found to be at fault at all).

EXAMPLE NO. 2: If a jury a) apportioned fault for a drunk driving accident 50% to the plaintiff and 50% to the intoxicated patron, b) found that a vendor/retailer violated the standard in KRS 413.214(2), but c) determined that the patron was 75% at fault for his/her intoxication, with the vendor/retailer 25% at fault, then the plaintiff could only at most collect 12.5% of the jury's damages verdict from the vendor/retailer (25% of 50% equals 12.5%).

The vendor/retailer is entitled to indemnification from the patron in all cases. Of course, actual recovery under this right is rather speculative, since the vendor/retailer is normally not liable unless the patron lacks sufficient insurance coverage or assets to satisfy the full amount of the judgment. Vendors/retailers CANNOT be held liable for punitive damages, since they are statutorily deemed to be secondarily liable, rather than primarily liable. Jackson v. Tullar, 285 S.W.3d 290 (Ky. App. 2007).

Social Host Liability

Kentucky has no social host liability. Citing the lack of ability a social host has to control their guests, among other factors, the Kentucky Court of Appeals most recently declined to impose social host liability in Wilkerson v. Williams, 336 S.W.3d 919 (Ky. App. 2011). Although there is no statewide social host liability under Kentucky law, some local counties have enacted ordinances targeted at social hosts. However, most of these impose criminal, rather than civil penalties, and are targeted at individuals who allow underage drinking on their property. See e.g., Oldham County Ordinance KOC 87-300.320.2; Knott County Ordinance #2012-0116; Lexington-Fayette County Ordinance No. 51-87.

Liability Involving Minors

Under Kentucky law the limitation of liability provided to vendors and retailers of alcohol does not extend to those who provide alcohol to minors. See KRS 413.241; Sixty-Eight Liquors, Inc. v. Colvin, 118 S.W.3d 171 (Ky. 2003) (under plain language of dram shop statute, minor has valid claim against dram shop that sells him alcohol, thereby causing or contributing to his injuries). In such cases, the vendor/retailer can be primarily liable along with the underage patron, and punitive damages would be available against the vendor/retailer.

Key Statues & Regulations

KRS 413.241 – Kentucky's Dram Shop Act

KRS 413.140(1) – Statute of Limitations For Certain Claims Including Personal Injury (Not Involving Automobiles) – 1 Year

KRS 413.125 --- Statute of Limitations For Claims Arising Out of Damage to Personal Property – 2 Years

KRS 304.39—230 – Statute of Limitations for Motor Vehicle Accidents – 2 Years After Accident or Final Date of No-Fault Insurance Benefit Payments

KRS 446.070 -- KRS 411.182 – Allocation of Fault (Comparative Negligence Statute)

KRS 411.184 – Punitive Damages Statute

KRS 411.186 – Factors For Consideration in Awarding Punitive Damages

Notable Cases

Wilkerson v. Williams, 336 S.W.3d 919 (Ky. App. 2011) – no social host liability

Sixty-Eight Liquors, Inc. v. Colvin, 118 S.W.3d 171 (Ky. 2003) – liability can exist where a dram shop sells alcohol to a minor

Butt v. Independence Club Venture, Ltd., 453 S.W.3d 189 (Ky. App. 2014) – where a dram shop has sold alcohol to an already intoxicated person that cause of action is distinct from the primary action against the one causing the harm

Jackson v. Tullar, 285 S.W.3d 290 (Ky. App. 2007) – tortfeasor is primarily liable for injury they cause while dram shop may be secondarily liable with a right of indemnity against the tortfeasor

Statute of Limitations

One year if the damages consist of personal injury and no automobile was involved. Two years if the damages consist of loss to personal property (or real property). Two years if the damages consist of personal injury and the claim arises out of a motor vehicle accident; if the injured party received any no-fault insurance benefits from an insurer, then the limitations period begins running on the last date on which such no-fault payment was issued.

These statutes can be tolled for up to one year if the injuries result in death, and a personal representative of the decedent is lawfully appointed within one year of the death. See KRS 395.

Comparative Negligence

Not directly to the plaintiff, unless the patron is a minor. However, if service is made to an already intoxicated person another action for negligence may arise. Under the Dram Shop Act, the dram shop and the intoxicated tortfeasor are not concurrently negligent for the injuries to third parties caused by the tortfeasor, but instead they have committed to separate and independently tortious acts; liability is imposed on the intoxicated tortfeasor for his actions in injuring the plaintiff, while secondary liability may imposed upon the dram shop for the entirely separate and independently negligent act of serving alcohol to the already-intoxicated tortfeasor before the accident. Butt v. Independence Club Venture, Ltd., 453 S.W.3d 189 (Ky. App. 2014).

Actions of the intoxicated tortfeasor, not the dram shop's service of alcohol, are the proximate cause of injury, and the tortfeasor remains primarily liable for injuries while the dram shop is secondarily liable with a right of indemnity against the tortfeasor. Jackson v. Tullar, 285 S.W.3d 290 (Ky. App. 2007).

Joint & Several Liability

None, unless the patron is a minor.

Contribution Among Joint Tortfeasors

None, unless the patron is a minor. The vendor/retailer's liability is secondary to that of the patron, and the vendor/retailer is entitled to indemnity from the patron.

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General Overview of the Law

First Party Liability

Louisiana generally does not recognize an action for first party liability brought by an injured intoxicated adult patron or customer who was served or sold to by an alcoholic beverage permit holder or any agent, servant, or employee of the permit holder.[1] However, this immunity does not apply to any person who causes or contributes to the consumption of alcoholic beverages by force or by falsely representing that a beverage contains no alcohol.[2]

Third Party Liability

Louisiana generally does not recognize an action for third party liability brought by a person injured by an intoxicated adult patron or customer who was served or sold to by an alcoholic beverage permit holder or any agent, servant, or employee of the permit holder.[3] However, this immunity does not apply to any person who causes or contributes to the consumption of alcoholic beverages by force or by falsely representing that a beverage contains no alcohol.[4] Serving alcohol to minors is another exception to dram shop immunity.

Social Host Liability

In Louisiana, social hosts who serve intoxicating beverages to a person of lawful age are generally not liable to such person or to any other person for any injury suffered off the premises, including wrongful death and property damage, because of the intoxication of the person to whom the intoxicating beverages were served or furnished.[5] Over thirty years ago, the Louisiana Legislature codified the jurisprudence, declaring “that the consumption of intoxicating beverages, rather than the sale or serving or furnishing of such beverages, is the proximate cause of any injury . . . inflicted by an intoxicated person upon . . . another person."[6] Accordingly, a provider of alcohol is generally not liable to third persons injured by a drunk driver unless the provider performed some affirmative act, which increased the peril.[7] Merely allowing an intoxicated person to leave a premises would not constitute an affirmative act; however, evicting an obviously intoxicated person could be an affirmative act.[8]

Liability Involving Minors

Louisiana law “does not relieve the seller or furnisher of alcohol to minors from liability to minors or to third persons injured by minors due to the effects of alcohol.”[9]

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1 LA. REV. STAT. § 9:2800.1(B).

2 LA. REV. STAT. § 9:2800.1(E).

3 LA. REV. STAT. § 9:2800.1(B).

4 LA. REV. STAT. § 9:2800.1(E).

5 LA. REV. STAT. § 9:2800.1(C)(1).

6 LA. REV. STAT. § 9:2800.1(A) (emphasis added).

7 Vaughn v. Hair, supra.

8 See, e.g. Sanders v. Hercules Sheet Metal, Inc., 385 So.2d 772, 775–76 (La.1980) (“Evicting plaintiff from the party, onto a busy street, might have been such an affirmative act, but permitting him to leave the party was not”).

9 Jurisprudence subsequent to the enactment of R.S. 9:2800.1, 12 LA. CIV. L. TREATISE, TORT LAW § 22:4 (2d ed.)

When a vendor serves alcohol to a minor, and that minor causes damage to third person because of his intoxication, LA. REV. STAT. § 9:2800.1 does not immunize the vendor from liability, nor is the vendor absolutely liable. Rather, a court must determine whether the vendor violated general negligence principles, applying the traditional duty/risk analysis on a case-by-case basis. Under this analysis, the vendor has the duty to refrain from selling or serving alcohol to a minor, and if the other requirements of breach of duty, causation, and damages are proven, the vendor will be liable for damages.[10]

Without actual or constructive knowledge that minors are consuming alcohol at an adult's home, Louisiana does not impose any duty on the adult to discover and prevent minors from drinking alcohol.[11]

Key Statues & Regulations

LA. REV. STAT. § 9:2800.1 limits liability connected with the sale, service, or furnishing of alcoholic beverages.

LA. REV. STAT. § 26:90(A)(1)(a) prohibits sale of alcohol to persons under the age of 21.

LA. REV. STAT. § 26:90(A)(2) prohibits sale of alcohol to any intoxicated person.

LA. CIV. CODE. art. 2315.4 (Additional Damages; Intoxicated Defendant)

Louisiana's Office of Alcohol and Tobacco Control ("ATC") is responsible for overseeing the alcoholic beverage industries within the state.

In Louisiana, the legal presumption for intoxication for adults is 0.08% BAC. The legal presumption for intoxication for minors is 0.02%.

Notable Cases

In Morris v. The Bulldog BR, LLC, an injured bicyclist sued an intoxicated adult driver that struck him along with the bar that served alcohol to the visibly intoxicated driver.[12] The trial court granted the bar's peremptory exception of no cause of action, and the appellate court affirmed, holding that the bar was entitled to immunity under the anti-dram shop statute.[13]

In Brown v. Wolfe, an intoxicated secretary struck a pedestrian who sued the driver, the driver's insurer, and the employer—who had thrown an office party before the accident. The employer gave the driver the afternoon off with pay to attend the party.[14] The Court noted prior jurisprudence holding "that an employer who provided his employees with an office party and served intoxicating beverages would have a standard of duty no higher than that of a bar owner. Such duty is to avoid affirmative acts which increase the risk of peril to an intoxicated person."[15] The Court found that the employer breached no duty in merely allowing the driver to leave.

In Kulka v. Shag II, a mother brought wrongful death and survival actions against a bar that served her minor son, alleging that the son's fatal injuries from jumping or falling out of the bed of a moving pickup truck, and then being struck by a hit-and-run motorist, were caused by the illegal sale.[16] The trial court granted summary judgment in favor of the bar, and the appellate court affirmed, holding that the illegal sale of alcohol to the minor was not the legal cause of his death. The court reasoned that the minor's death "does not satisfy the foreseeability requirement of the duty/risk analysis because there is no ease of association between the risk and the [bar's] legal duty not to sell alcohol to an underage person."[17] Essentially, too many intervening, unforeseeable events separated the sale and the incident, which occurred approximately 1.5 to 2.5 hours later.

Statute of Limitations

In Louisiana, delictual actions (torts) are subject to a liberative prescription (statute of limitations) of one year. This prescription commences to run from the day injury or damage is sustained.[18]

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10 Wiltz v. Brothers Petroleum, LLC, 13-332, 15-16 (La.App. 5 Cir. 4/23/14), 140 So.3d 758 (citing Berg v. Zummo, 00-1699 (La. 4/25/01), 768 So.2d 708, 715-18; see also, Berg v. Zummo, 00-1699 (La. 4/25/02), 786 So.2d 708 (Bar was liable to pedestrian for negligently serving alcohol to a minor driver).

11 Stead v. Swanner, 12-727, p. 12-13 (La.App. 5 Cir. 5/16/13), 119 So.3d 110, 117–18, writ denied, 13-1285 (La. 9/20/13), 123 So.3d 174.

12 Morris v. The Bulldog BR, LLC, 13-1861 (La.App. 1 Cir. 6/6/14), 147 So.3d 1112.

13 Id. at 5.

14 Brown v. Wolfe, 525 So.2d 355 (La. Ct. App. 1988), writ denied, 530 So.2d 569 (La.1988).

15 Id. at 357-58.

16 Kulka v. Shag II, 12-398 (La.App. 3 Cir. 10/24/12), 100 So.3d 412.

17 Id. at 418.

18 LA. CIV. CODE art 3492.

Comparative Negligence

Louisiana is a comparative fault state. In any action for damages where a person suffers injury, death, or loss, the degree or percentage of fault of all persons causing or contributing to the injury, death, or loss shall be determined, regardless of whether the person is a party to the action or a nonparty, and regardless of the person's insolvency, ability to pay, immunity by statute, or that the other person's identity is not known or reasonably ascertainable. If a person suffers injury, death, or loss as the result partly of his own negligence and partly as a result of the fault of another person or persons, the amount of damages recoverable shall be reduced in proportion to the degree or percentage of negligence attributable to the person suffering the injury, death, or loss.[19] However, if a person suffers injury, death, or loss as a result partly of his own negligence and partly as a result of the fault of an intentional tortfeasor, his claim for recovery of damages shall not be reduced.[20]

Joint & Several Liability

Unless one conspires with another person to commit an intentional or willful act, the liability is not solidarity (joint and several); rather, the liability is joint and divisible. A joint tortfeasor shall not be liable for more than his degree of fault, and shall not be solidarity liable with any other person for damages attributable to the fault of such other person, including the person suffering injury, death, or loss, regardless of such other person’s insolvency, ability to pay, degree of fault, immunity by statute or otherwise,, or that the other person’s identity is not known or reasonably ascertainable.[21]

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19 LA. CIV. CODE art. 2323(A).

20 LA. CIV. CODE art. 2323(B).

21 LA. CIV. CODE art. 2324.

MAINE

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General Overview of the Law

First Party Liability

Maine law does not recognize an action for first party liability brought by an injured intoxicated adult patron or customer who was served or sold alcohol by a licensee or employee or agent of a licensee.

Third Party Liability

Maine law does recognize an action brought by a third party injured by an intoxicated adult or minor patron or customer who was negligently or recklessly served or sold alcohol by a licensee or employee or agent of a licensee.

Social Host Liability

Maine law does not recognize an action for first party liability brought by an injured intoxicated adult guest who was served alcohol by a social host.

Maine law does recognize an action for first party liability brought by an injured minor guest who was negligently or recklessly served alcohol by a social host.

Liability Involving Minors

Maine law does recognize an action for first party liability brought by an injured minor patron or customer who was negligently or recklessly served or sold alcohol by a licensee or employee or agent of a licensee.

Also, as noted above, Maine law does recognize an action for first party liability brought by an injured minor guest who was negligently or recklessly served alcohol by a social host.

Key Statues/Exclusive Remedy

In 1987, the Maine Legislature repealed the Maine Dram Shop Act, (which did not provide an exclusive remedy), and enacted the Maine Liquor Liability Act. 28-A M.R.S.A §2501 et seq. The Act establishes both a legal basis for obtaining compensation for those suffering damages as a result of intoxicated-related incidents under the Act and an allocation of liability for payment of damages fairly among those responsible for the damages, namely the alleged server and the allegedly intoxicated individual(s). The Act is the exclusive remedy against servers of alcohol and requires all allegedly intoxicated individuals be named and retained as defendants until the conclusion of the action.

Statute of Limitations/Written Notice of Claim

In Maine, the statute of limitations for both negligent and reckless service claims is 2 years from the date of loss. The Maine Act further requires written notice to all defendants within 180 days of the server's conduct creating liability under the Act. Failure to give written notice within the time specified is grounds for dismissal of the action, unless the plaintiff provides written notice within the two year limitations period and shows good cause why the notice could not have reasonably been filed within the 180-day limit.

Damages/CAP

Damages may be awarded for property damage, bodily injury or death proximately caused by the consumption of liquor served by the server. An award for all damages, except expenses for medical care and treatment, including devices and aids, may not exceed $350,000 for any and all claims arising under a single accident or occurrence.

Named and Retained Defendants/Several Liability Only

No third party action against a server may be maintained unless the minor, the intoxicated individual or the estate of the minor or intoxicated individual is named as a defendant in the action and retained in the action until the litigation is concluded by trial or settlement. The minor or intoxicated individual must remain an interested party with a financial stake in the litigation until its conclusion. This provision is designed to ensure a fair allocation of liability for damages.

The intoxicated individual and any server are each severally liable and not jointly liable for that percentage of the plaintiff's damages which corresponds to each defendant's percentage of fault as determined by the court or a jury.

Notable Cases

Peters v. Saft, 597 A.2d 50 (1991)(upholding the constitutionality of the Maine Liquor Liability Act, including a written notice of claim, exclusion of any remedy other than as provided in the Act and abolishment of joint liability).

Swan v, Sohio Oil Company, 618 A.2d 214 (1992) (holding that the plaintiff's settlement with allegedly intoxicated minor before litigation concluded bars the continuation of the suit against the server under the Maine Liquor Liability Act).

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General Overview of the Law

First Party Liability

Michigan does not recognize an action for first-party liability brought by an injured intoxicated person. MCL 436.1801(9). Similarly, no derivative claims run to others as a result of loss of the intoxicated person's financial support, services, gifts, parental training, guidance, love, society, or companionship.

Third Party Liability

Michigan does recognize an action brought by a third party injured by an adult who was served while visibly intoxicated or by a minor who was served alcohol. MCL 436.1801(3). This includes both negligence torts and intentional torts (e.g. bar fight). *Weiss v Hodge*, 223 Mich App 620; 567 NW2d 468 (1997).

Social Host Liability

Social host liability in Michigan is a creature of common law and an application of Michigan's Liquor Control Act, MCL 436.1101 et seq and laws prohibiting selling or furnishing alcohol to minors, MCL 436.1701. See e.g. *Longstreth v Gensel,* 423 Mich 675; 377 NW2d 804 (1985).

Michigan does not recognize an action for social host liability brought by an adult against his or her social host.

Michigan does recognize an action for liability brought by a minor who was served by a social host. *Longstreth v Gensel,*423 Mich 675; 377 NW2d 804 (1985). Comparative negligence principles apply. Id.

Key Statues & Regulations

Michigan's Dramshop Statute is codified at MCL 436.1801. It applies to "retail licensees" which generally covers all entities licensed to serve alcoholic beverages. The statute provides in relevant part:

> (3) … an individual who suffers damage or who is personally injured by a minor or visibly intoxicated person by reason of the unlawful selling, giving, or furnishing of alcoholic liquor to the minor or visibly intoxicated person, if the unlawful sale is proven to be a proximate cause of the damage, injury, or death …

A claim under the Dramshop Act is the exclusive remedy against a retail liquor licensee for providing alcohol to minor or visibly intoxicated person. MCL 436.1801(10).

The Act requires that the alleged visibly intoxicated person be named in the action and retained until the conclusion of the action. MCL 436.1801(5). The purpose of this requirement is to prevent fraud and collusion by ensuring that the alleged intoxicated person has a direct financial stake in the litigation. If the alleged intoxicated person's identity is unknown, Plaintiff may maintain the action upon a showing of due diligence in attempting to identify the alleged intoxicated person.

The name and retain provision of the Act does not preclude settlement through Michigan's Case Evaluation process. *Shay v. JohnKAL, Inc.*, 437 Mich. 394; 471 NW2d 551 (1991).

The retail liquor licensee is entitled to all defenses had by the alleged intoxicated person. MCL 436.1801(7).

Proof that the licensee demanded identification and the minor presented genuine appearing identification (that showed him or her to be over 21) is a defense. MCL 436.1801(7).

A retail liquor licensee is entitled to full indemnification from the alleged visibly intoxicated person for all damages awarded against the licensee. MCL 436.1801(6).

When multiple retail licensees furnished alcohol to the minor or visibly intoxicated person, there is a rebuttable presumption that the licensees, other than the last licensee, have not committed any act giving rise to Dramshop liability. MCL 436.1801(8). A plaintiff may rebut this presumption by clear and convincing evidence to the contrary.

Notable Cases

Reed v Breton, 475 Mich. 531; 1718 NW2d 77 (2006) interpreted the Dramshop Act as requiring objective manifestations of actual visual intoxication. The Court held that circumstantial evidence, such as blood alcohol levels, time spent drinking, or the condition of other drinkers, cannot alone as a predicate for expert testimony demonstrate that the person was visibly intoxicated because it does not show what behavior, if any, a person *actually manifested* to a reasonable observer.

Statute of Limitations

Dramshop actions are governed by a two year statute of limitations. MCL 436.1801 (4).

A claim for social host liability is governed by a three year statute of limitations. MCL 600.5805(10).

A Dramshop plaintiff must give written notice to all defendants within 120 days after entering into an attorney-client relationship for pursuing a Dramshop claim. MCL 436.1801(4). Failure to give notice is grounds for dismissal and does not requiring any showing of prejudice. *Brown v JoJo-Ab, Inc*, 191 Mich App 208, 212; 477 NW2d 121 (1991).

Comparative Fault

Michigan is a modified comparative fault state. MCL 600.2959. A judgment is reduced by the Plaintiff's share of comparative fault as determined by the fact finder. If the Plaintiff's percentage of fault is greater than the aggregate fault of the other parties and non-parties, then the Plaintiff is precluded from recovering non-economic damages. MCL 600.2959.

In certain circumstances, a Plaintiff's recovery is barred if he or she actively contributes to the intoxication of the visibly intoxicated person. *Arciero v Wicks*, 150 Mich App 522; 389 NW2d 116 (1986).

Additionally, it is an absolute defense if the Plaintiff was intoxicated and as a result of this impaired ability was 50% or more of the cause of the event that caused his or her injuries. MCL 600.2955a.

Joint and Several Liability Contribution Among Joint Tortfeasors

Michigan has generally abolished joint and several liability in favor of "fair share liability" system. The jury or fact finder is tasked with making specific findings regarding the plaintiff's total damages and the percentages of fault of each party (and non-party disclosed as potentially at fault pursuant to Michigan's allocation of fault statute). MCL 600.6304 and MCL 600.2957. Accordingly, as a defendant cannot generally be held liable for damages beyond his or her pro rata share, valid contribution claims are rare.

A defendant remains jointly and severally liable if his or her actions result in the conviction for a crime, an element of which includes gross negligence or a crime involving alcohol (including the operation of a motor vehicle.) MCL 600.6312.

MINNESOTA

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General Overview of the Law

First Party Liability

First Parties aged 21 and older MAY NOT bring suit for injuries related to intoxication against a liquor vendor who sold liquor to the party. Common law tort claims remain against parties over 21 that provide alcohol to individuals under 21.

Third Party Liability

Third Parties that are injured by an allegedly intoxicated person ("AIP") MAY bring suit in their own name against a liquor vendor who illegally served or sold alcohol to the AIP. The class of third parties who may bring a dram shop claim in Minnesota includes the spouse, child, parent, guardian, or employer of the AIP so long as the third party is damaged through pecuniary loss, property loss, or loss of means of support.

Social Host Liability

Social hosts MAY NOT be held liable for providing alcohol to their guests with only one exception: third party actions ARE allowed if the social host is 21 years or older and provides alcohol to a guest under the age of 21 or knowingly or recklessly allows a guest under 21 to consume alcohol and the underage guest causes injury or pecuniary loss to a third party.

Liability Involving Minors

An intoxicated person under the age of 21 who causes an injury has no first party cause of action against the person aged 21 or older or the liquor vendor who provided the minor with alcohol or allowed the minor's consumption of alcohol.

Key Statues & Regulations

Minnesota's liquor liability law is governed by the Civil Damages Act ("Act"), commonly referred to as the Dram Shop Act, which creates civil liability for alcohol-related claims. Minn. Stat. § 340A.801. The Act sets forth sales which are considered illegal for purposes of a dram shop action. It applies to the sale of any alcoholic beverage with at least one half of 1% alcohol by volume. Minn. Stat. § 340A.101, subds. 2, 14. Statutory violations which may give rise to a liquor liability claim are as follows:

- Sales to obviously intoxicated persons (Minn. Stat. § 340A.502)
- Sales to minors (Minn. Stat. § 340A.503)
- Sales after hours (Minn. Stat. § 340A.504, subd. 2)
- Off Sale Sales on prohibited days (Minn. Stat. § 340A.504, subd. 4)
- Sales at prohibited locations (Minn. Stat. § 340A.412, subd. 4)
- Sales to nonmembers of a private club (Minn. Stat. § 340A.404, subd. 1(a)(4))
- Sales by vendor of "on sale" liquor license to patron when the vendor knows or should know the patron will consume alcoholic beverage off premises (Minn. Stat. § 340A.101, subd. 21)

The Act expressly prohibits insurance companies from pursuing subrogation claims against liquor vendors for payments made by insurers pursuant to first party coverages of a motor vehicle policy. Minn. Stat. § 340A.801, subd. 4.

Minnesota has a strict notice requirement mandating that a claimant making damage claims under the Act must provide a liquor vendor with written notice that contains the following information: (1) the identity of the AIP and the date and time the AIP was served alcoholic beverages; (2) the name and address of the person who was injured or sustained property damage; and (3) the approximate place, time and date where the injury or damage occurred. Minn. Stat. § 340A.802, subd. 1. The claimant's attorney

must provide the written notice denoted above within 240 days of the claimant entering into an attorney-client relationship related to the claim. Minn. Stat. § 340A.802, subd. 2.

The same notice requirement mandates that any party that may have a claim for contribution or indemnity under the Act must serve written notice on a potentially liable liquor vendor within 120 days after the alleged injury occurs or within 60 days of receiving another party's written notice of a claim for contribution or indemnity. Minn. Stat. § 340A.802, subds. 1, 2.

Minnesota's social host liability is governed by Minn. Stat. § 340A.90, subd. 1.

The Minnesota Division of Alcohol and Gambling Enforcement of the Department of Public Safety is vested with the power and duty of liquor control enforcement.

Notable Cases

Osborne v. Twin Town Bowl, Inc., 749 N.W.2d 367, 371 (Minn. 2008) (holding that the Act must be strictly construed because it created a statutory remedy that did not exist at common law).

Hartwig v. Loyal Order of Moose, Brainerd Lodge No. 1246, 91 N.W.2d 794, 801 (Minn. 1958) (establishing the elements of proof for a claim under the Dram Shop Act as 1. an illegal sale of intoxicating liquor, 2. the illegal sale caused or contributed to the intoxicated person's condition, and 3. the plaintiff's injuries were proximately caused by the intoxication of the person).

Mjos v. Village of Howard Lake, 178 N.W.2d 862, 867 (Minn. 1970) (establishing that an individual is "obviously intoxicated" according to the Act only if the intoxication is observable in the appearance or in the behavior of the individual).

Strand v. Village of Watson, 72 N.W.2d 609, 615 (Minn. 1955) (holding that a blood test or urinalysis, though evidence of obvious intoxication, is not necessarily conclusive of obvious intoxication), superseded on other grounds by statute as stated in Granville v. Minneapolis Pub. Schs., Special Sch. Dist. No. 1, 732 N.W.2d 201, 207 (Minn. 2007).

Fette v. Peterson, 404 N.W.2d 862, 866 (Minn. Ct. App. 1987) (establishing that a dram shop claim exists for the sale of liquor to an obviously intoxicated person regardless of whether they or someone else paid for the liquor).

Osborne, 749 N.W.2d at 372 (holding that for an individual's intoxication to be the proximate cause of a plaintiff's alleged injury, the plaintiff must prove the intoxication was a "substantial factor" in the occurrence of the claimed injury).

Lefto v. Hoggsbreath Enters., Inc., 581 N.W.2d 855, 857 (Minn. 1998) (holding that persons not related by blood or marriage to an injured person may bring suit under the Act).

Sather v. Woodland Liquors, Inc., 597 N.W.2d 295, 299 (Minn. Ct. App. 1999) (holding that a state agency providing economic assistance was not an "other person" for purposes of the statute and was barred from bringing suit under the Act).

Coughlin v. Radosevich, 372 N.W.2d 817, 820 (Minn. Ct. App. 1985), rev. denied, (Minn. Nov. 1, 1985) (holding that punitive damages are not recoverable under the Act).

Statute of Limitations

In Minnesota, the statute of limitations for actions maintained under section 340A.801 is two years from the date of injury. Minn. Stat. § 340A.802, subd. 2. Actions for contribution and indemnity, however, are subject to Minnesota's general 6-year statute of limitations so long as the co-tortfeasor complied with the written notice requirement. Brua v. Olson, 621 N.W.2d 472, 475 (Minn. Ct. App. 2001), rev. denied (Minn. Mar. 27, 2001).

To preserve a dram shop action, notice must be given to the liquor licensee within the time period prescribed by section 340A.801. Notice to a licensee's insurer is not enough. Buskey et al. v. Am. Legion Post #270, not reported in N.W.2d, 2016 WL 7338739 at *7 (Minn. Ct. App. Dec. 19, 2016), cert. granted (Minn. Mar. 14, 2017) . The liquor licensee itself must have actual notice. Id.

Comparative Negligence

Minnesota is a modified comparative fault jurisdiction. Plaintiffs may only recover damages if the factfinder at trial finds that the plaintiff's fault does not exceed that of the defendant(s). The plaintiff's recovery is reduced in proportion to the fault attributed to the plaintiff by the factfinder so long as the plaintiff's fault does not exceed the fault of the defendant(s).

Joint & Several Liability

Minnesota provides that tortfeasors can only be found jointly and severally liable for an entire award under the following scenarios:

1. A person whose fault is greater than 50 percent;
2. Two or more persons who act in a common scheme or plan that results in injury;
3. A person who commits an intentional tort;

Minn. Stat. § 604.02, subd. 1 (omitting the irrelevant portion of the statute that allows for joint and several liability pursuant to certain environmental violations).

Contribution Among Joint Tortfeasors

Minnesota allows the right of contribution in dram shop actions. This applies to motorists or other tortfeasors, and their insurers. Farmers Ins. Exch. v. Village of Hewitt, 143 N.W.2d 230, 233-236 (Minn. 1966). Liquor licensees also possess the right of contribution notwithstanding their strict liability. See Jones v. Fisher, 309 N.W.2d 726, 728-730 (Minn. 1981); Busch v. Busch Constr., 262 N.W.2d 377, 393 (Minn. 1977); Ketterling v. Spud Bar, Inc., 398 N.W.2d 599, 602 (Minn. Ct. App. 1986); Erickson v. Hinckley Mun. Liquor Store, 373 N.W.2d 318, 325 (Minn. Ct. App. 1985). The injured party can only obtain one full recovery, but can maintain separate lawsuits and attempt to prove that the first action did not result in a full recovery. See Lund v. Watson, 109 N.W.2d 564, 571 (Minn. 1961); Hartwig v. Loyal Order of Moose, Brainerd Lodge No. 1246, 91 N.W.2d 794, 803 (Minn. 1958). A defendant who does not settle is allowed a set-off from any verdict against them for any amount already paid to the claimant in a settlement or other verdict. See Ritter v. Village of Appleton, 93 N.W.2d 683, 689 (Minn. 1959).

Although Minnesota allows the right of contribution in dram shop cases, the contribution claim may still fail if the tortfeasor fails to comply with the notice requirements contained in Minn. Stat. § 340A.802, subd. 2 (See supra Key Statutes & Regulations).

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General Overview of the Law

Missouri law places no liability on an alcohol vendor for injuries stemming from the legal sale of alcohol. Social hosts are not liable for damages stemming from serving to guests either. If you violate the rules Missouri sets in place for protecting minors and obviously intoxicated individuals, you can be held civilly liable.

The criminal code varies between the state and different municipalities with regard to alcohol service, use, consumption, and transportation. Vendors and social hosts can face criminal penalties for violations of state and local codes. However, that does not automatically translate into civil liability.

First Party Liability

Alcohol vendors may sell alcohol to those of age who are not visibly intoxicated. A vendor convicted of serving intoxicating beverages to a minor or obviously intoxicated person resulting in personal injury or death can be held liable. Violation of these conditions along with a criminal conviction establishes negligence per se and a court can find that negligence was the proximate cause of the injuries caused by an intoxicated individual. Payne v. Markeson, WD 77553, 2015 WL 2090268 (Mo. App. W. Dist. May 5, 2015), reh'g and/or transfer denied (June 2, 2015)

A business owner who negligently entrusts someone with equipment while knowing they are intoxicated can be found liable for any injuries that come from allowing the intoxicated person to use their equipment. This is especially true with vehicles. In Hays v. Royer the court found the Dram Shop Act did not protect a business that allowed an employee to drive a company van while intoxicated. Hays v. Royer (App. W.D. 2012) 384 S.W.3d 330, rehearing and/or transfer denied. Vehicles and other equipment are inherently dangerous if operated while intoxicated and businesses and entities have a duty not to entrust intoxicated people with them.

Third Party Liability

If a business licensed to sell intoxicating liquor by the drink for consumption on the premises serves to an obviously intoxicated person who subsequently injures a third party, the business can face liability to that third party. "The Dram Shop Act provides the exclusive, limited cause of action available to third parties whose injuries were proximately caused by a tavern's service of alcoholic beverages to an obviously intoxicated person." Auto Chimers Mut. Ins. Co. v. Sugar Creek Memorial Post Na. 3876, 123 S.W.3d 183, 193 (Mo. App. W.D. 2003).

Negligent entrustment can result in liability but “negligent assistance” has no liability. In Elliot v. Kesler the appellate court overturned a trial court verdict for the plaintiff and stated there was no cause of action for negligently assisting a drunk driver in gaining access to his vehicle. 799 S.W.2d 97, 101 (Mo. App. W.D. 1990).

Social Host Liability

Social hosts do not have civil liability if they provide drinks to company. They may face criminal repercussions if they provide drinks to minors.

“Employer which furnished alcoholic beverages for consumption at meeting of its top management staff was not liable for injuries allegedly caused by one of its employees in motor vehicle accident after employee allegedly left a meeting in an intoxicated condition; employer’s status in serving alcoholic beverages was that of a social host. An intermediate classification of liquor suppliers, between commercial vendors and social hosts, has not been recognized.” Stottle v. Brown Group, Inc. (App. S.D. 1990) 801 S.W.2d 479, rehearing and/or transfer denied.

The legislature understood social hosts routinely involve providing alcohol in the course of an event and deliberately exempted social hosts from dram shop liability. That is because social hosts typically lack the expertise and capability to protect themselves from liability the way profit seeking vendors should. An unincorporated association like a fraternity or social group may be considered a “person” for purposes of statute proscribing as a misdemeanor the selling, giving or supplying by any licensee or any person intoxicating liquor to those under 21 years of age. Andres v. Alpha Kappa Lambda Fraternity, 730 S.W.2d 547 (Mo. 1987)

“Employer, which provided free drinks for its employees as a company-sponsored party, had no dramshop liability for death which occurred when an intoxicated employee's automobile struck a pedestrian.” McClure v. McIntosh (App. E.D. 1989) 770 S.W.2d 406, certiorari denied 110 S.Ct. 367, 493 U.S. 955, 107 L.Ed.2d 353.

Charging for admittance to a social gathering does not automatically create dram shop liability for a social host if the reason for the fee is nominal and designed to meet expenses rather than make a profit. Bernickus v. Bomar (App. E.D. 1989) 768 S.W.2d 210.

There is no common-law “dram shop” liability on the part of a social host who serves alcohol in his home to an intoxicated guest who subsequently injures a third party. Harriman v. Smith (App. E.D. 1985) 697 S.W.2d 219.

Liability Involving Minors

If a vendor is convicted of serving intoxicating beverages to a minor or obviously intoxicated person resulting in personal injury or death, that vendor can be held civilly liable. In Von Ruecker v. Holiday Inns, Inc. the court upheld the “legislative prohibition of dram shop liability except where there has been a conviction or suspended imposition of sentence for sale of intoxicating beverages to minor or obviously intoxicated person resulting in personal injury or death, applies to first party as well as third-party actions.” (App. E.D. 1989) 775 S.W.2d 295, certiorari denied 110 S.Ct. 1124, 493 U.S. 1075, 107 L.Ed.2d 1031. Checking every patron’s identification and educating the staff to cut off anyone who is obviously intoxicated can prevent liability when a person brings a claim.

Key Statues & Regulations

537.053. Sale of alcoholic beverage may be proximate cause of personal injuries or death--requirements--(dram shop law)

1. Since the repeal of the Missouri Dram Shop Act in 1934 (Laws of 1933-34, extra session, page 77), it has been and continues to be the policy of this state to follow the common law of England, as declared in section 1.010, to prohibit dram shop liability and to follow the common law rule that furnishing alcoholic beverages is not the proximate cause of injuries inflicted by intoxicated persons.

2. Notwithstanding subsection 1 of this section, a cause of action may be brought by or on behalf of any person who has suffered personal injury or death against any person licensed to sell intoxicating liquor by the drink for consumption on the premises when it is proven by clear and convincing evidence that the seller knew or should have known that intoxicating liquor was served to a person under the age of twenty-one years or knowingly served intoxicating liquor to a visibly intoxicated person.

3. For purposes of this section, a person is “visibly intoxicated” when inebriated to such an extent that the impairment is shown by significantly uncoordinated physical action or significant physical dysfunction. A person's blood alcohol content does not constitute prima facie evidence to establish that a person is visibly intoxicated within the meaning of this section, but may be admissible as relevant evidence of the person's intoxication.

4. Nothing in this section shall be interpreted to provide a right of recovery to a person who suffers injury or death proximately caused by the person's voluntary intoxication unless the person is under the age of twenty-one years. No person over the age of twenty-one years or their dependents, personal representative, and heirs may assert a claim for damages for personal injury or death against a seller of intoxicating liquor by the drink for consumption on the premises arising out of the person's voluntary intoxication.

5. In an action brought pursuant to subsection 2 of this section alleging the sale of intoxicating liquor by the drink for consumption on the premises to a person under the age of twenty-one years, proof that the seller or the seller's agent or employee demanded and was shown a driver's license or official state or federal personal identification card, appearing to be genuine and showing that the minor was at least twenty-one years of age, shall be relevant in determining the relative fault of the seller or seller's agent or employee in the action.

6. No employer may discharge his or her employee for refusing service to a visibly intoxicated person.

Mo. Rev. Stat. Ann. § 537.053 (West)

Statute of Limitations

Per RSMo 516.120.1 a plaintiff has to bring an action for injury within 5 years.

Comparative Negligence

Liability under the Dram Shop Act typically comes down to a plaintiff and two defendants; the intoxicated individual and the vendor. Dram shop liability depends on whether the act of serving alcohol to the minor or obviously intoxicated person was the proximate cause of the injuries caused. Multiple vendors cannot be the proximate cause therefore there can be no comparison between their levels of negligence.

The amount of plaintiff's negligence reduces defendants' liability by the degree of the plaintiff's fault. Gustafson v. Benda, 661 S.W.2d 11 (Mo. 1983). For instance there was no cause of action for negligent assistance of an intoxicated person; where the court found an employee who helped an intoxicated individual to their car after serving drinks all night was not the proximate cause of injuries. Auto Owners (Mut.) Ins. Co. v. Sugar Creek Memorial Post No. 3976 (App. W.D. 2003) 123 S.W.3d 183, rehearing and/or transfer denied. Serving additional drinks to the obviously intoxicated would have opened up liability under the Dram Shop Act but helping them into their car was not sufficient.

Joint & Several Liability

Dram shop liability can mean a vendor is jointly and severally liable for damages as a direct result of the negligence of an intoxicated person who was served alcohol in violation of the Missouri Dram Shop Act. Payne v. Markeson (App. W.D. 2015) 2015 WL 2090268, rehearing and/or transfer denied, transferred to mo.s.ct

If a defendant is found to have 51% or more of fault then they will be jointly and severally liable for damages rendered against the group. Mo. Stat. § 537.067 (2005). Other types of defendants receive several liability. Mo. Stat. § 537.067 (2005); Burg v. Dampier, 346 S.W.3d 343 (Mo. Ct. App. W. Dist. Div. 2 2011).

Liability under the Dram Shop Act required proximate cause, so as to support finding that such liability was tort liability for purposes of statute permitting the amount of damages awarded based upon a defendant's liability to be reduced by the amount of a settlement reached between the plaintiff and a joint tortfeasor, even though Act reaffirmed common law rule that furnishing alcohol was not the proximate cause of injuries inflicted by intoxicated persons; Act went on to authorize a cause of action "notwithstanding" the common law rule under specified circumstances. Payne v. Markeson (App. W.D. 2015) 2015 WL 2090268, rehearing and/or transfer denied, transferred to mo.s.ct.

Contribution Among Joint Tortfeasors

Joint tortfeasors have a right to contribution. Contribution may be sought in the underlying action or in a separate action. Mo. Rev. Stat. § 537.060; Safeway Stores, Inc. v. City of Raytown, 633 S.W.2d 727 (Mo. 1982). Defendants forced to pay more than their assigned share can bring an action for contribution. Mo. Stat. § 537.060 (1939); Missouri Pacific Railroad Co. v. Whitehead & Kales Co., 566 S.W.2d 466 (Mo. 1978).

Settlement between the plaintiff and one of the defendants will extinguish the right of contribution and the final judgment against the other defendants will be lowered by the settlement amount. Mo. Stat. § 537.060 (1939); Fast v. Marston, 282 S.W.3d 346 (Mo. 2009).

Contribution under the Dram Shop Act is not well litigated in Missouri because typically there is no subcontractor involved in the sale who could be found primarily at fault. A vendor often finds themselves liable due to the actions of an employee. The conduct and the financial background of that employee will determine if they were acting within the scope of their employment and whether a subrogation action would be financially feasible. They may be insolvent making an action against them moot. Individual circumstances may make a subrogation action against a subcontractor worthwhile but the caselaw on this topic is limited and the nature of the sale of alcohol typically rules out the potential for an action in contribution.

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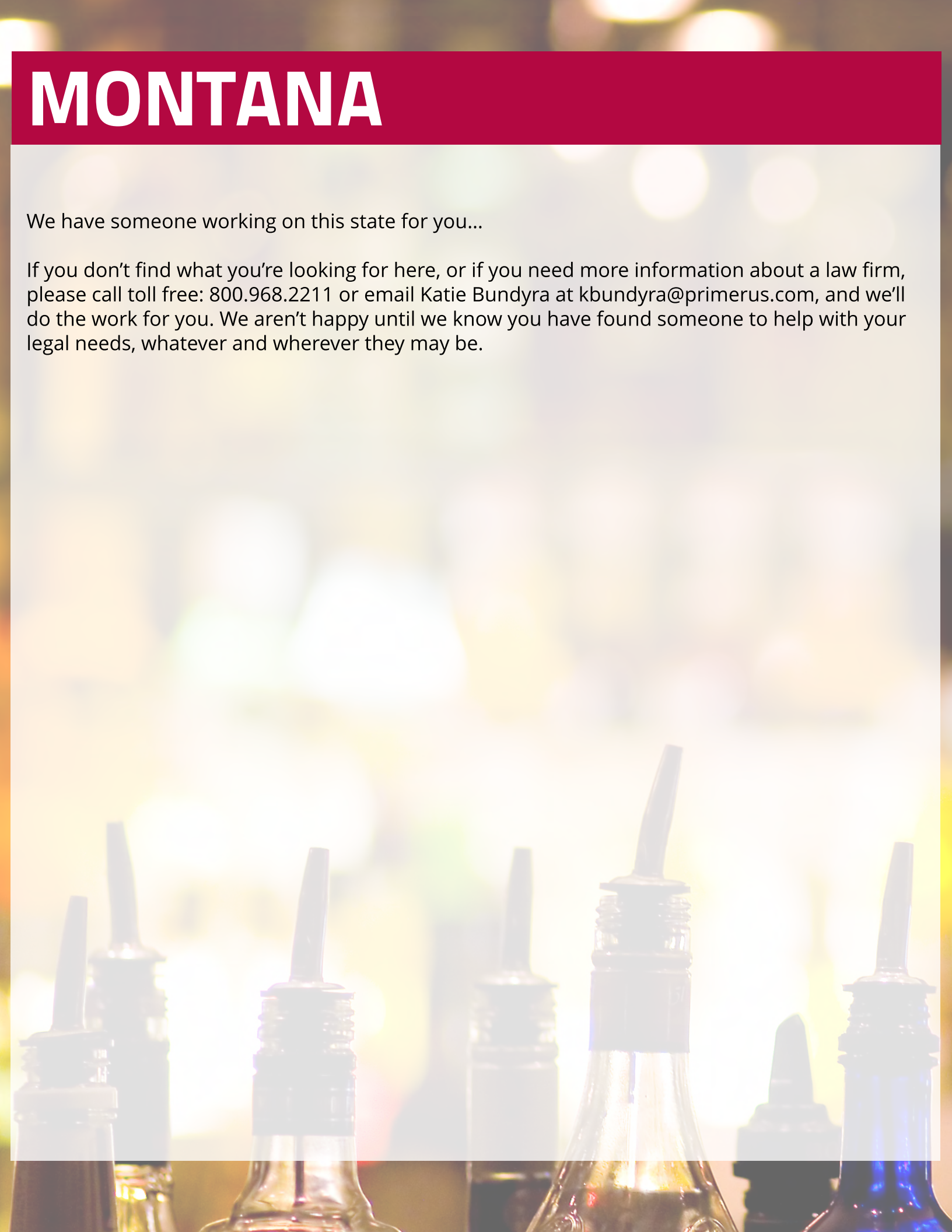

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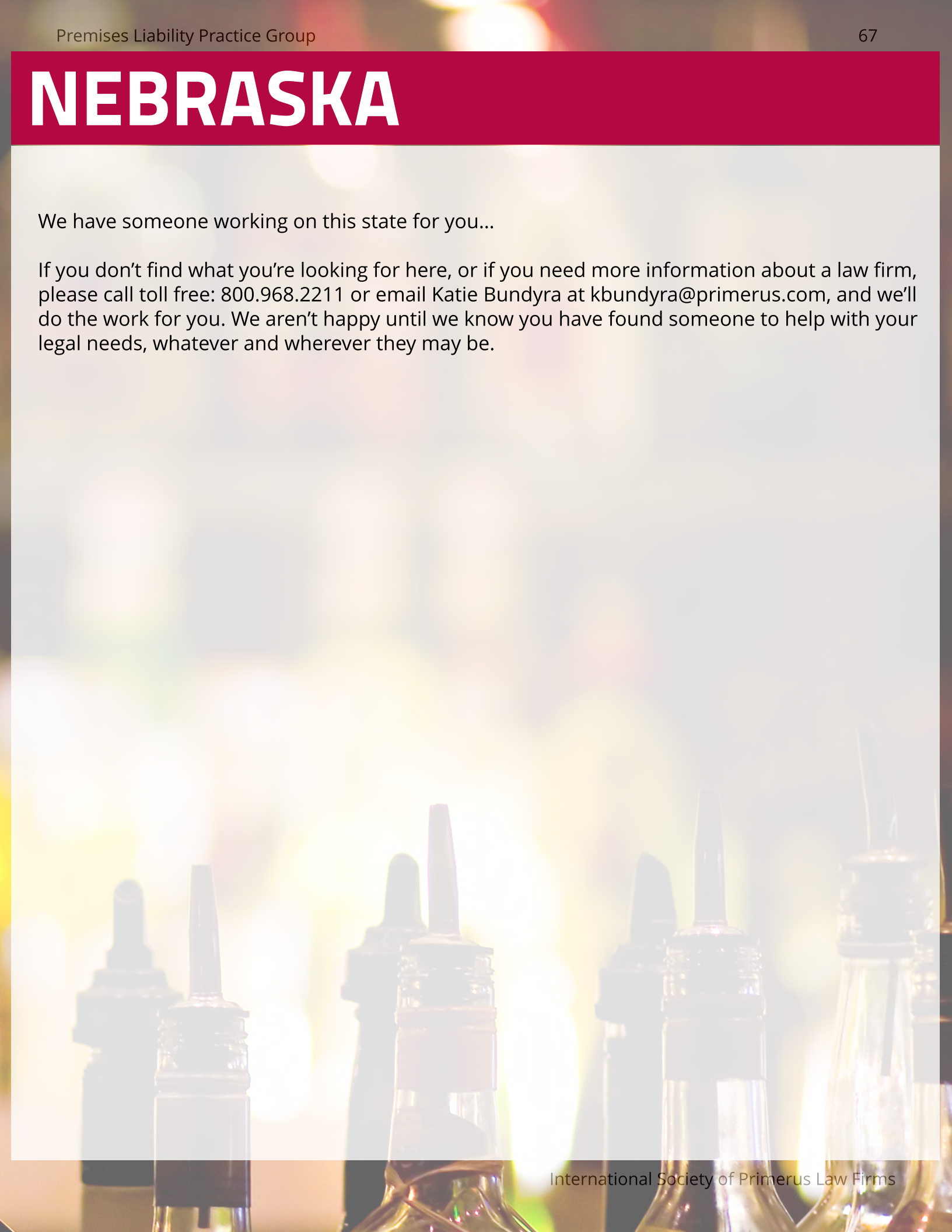

NEVADA

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General Overview of the Law

First Party Liability

Third Party Liability

Social Host Liability

Liability Involving Minors

Key Statues & Regulations

Nevada has rejected dram shop liability. Rodriguez v. Primadonna Co., LLC, 125 Nev. 578, 586, 216 P.3d 793, 799 (2009). Nevada's rejection of dram shop liability can be found in NRS 41.1305, which provides, with exceptions, that no person who serves or sells alcoholic beverages to another person may be found liable in a civil action for any damages caused by the person to whom the alcoholic beverages was served or sold as a result of the consumption of the alcoholic beverage. NRS 41.1305(1).

Liability of person who serves, sells or furnishes alcoholic beverages for damages caused as a result of consumption of alcoholic beverage: No liability if person served is 21 years of age or older; liability in certain circumstances if person served is under 21 years of age; exception to liability; damages, attorney's fees and costs.

1. A person who serves, sells or otherwise furnishes an alcoholic beverage to another person who is 21 years of age or older is not liable in a civil action for any damages caused by the person to whom the alcoholic beverage was served, sold or furnished as a result of the consumption of the alcoholic beverage.
2. Except as otherwise provided in this section, a person who;
    a. Knowingly serves, sells or otherwise furnishes an alcoholic beverage to an underage person; or
    b. Knowingly allows an underage person to consume an alcoholic beverage on premises or in a conveyance belonging to the person or over which the person has control, is liable in a civil action for any damages caused by the underage person as a result of the consumption of the alcoholic beverage.
3. The liability created pursuant to subsection 2 does not apply to a person who is licensed to serve, sell or furnish alcoholic beverages or to a person who is an employee or agent of such a person for any act or failure to act that occurs during the course of business or employment and any such act or failure to act may not be used to establish proximate cause in a civil action and does not constitute negligence per se.
4. A person who prevails in an action brought pursuant to subsection 2 may recover theperson's actual damages, attorney's fees and costs and any punitive damages that the facts may warrant.
5. As used in this section, "underage person" means a person who is less than 21 years of age.

NRS 41.1305. Accordingly, in Nevada, dram shop liability will only arise if a person serves or sells alcoholic beverages to a person under the age of 21.

Notable Cases

The Nevada Supreme Court held in Rodriquez v. Primadonna Co., LLC, 125 Nev. 578, 216 P.3d 793 (2009), that a hotel did not have an affirmative duty to prevent injury to an intoxicated patron after eviction from the premises. A minor and his adult relatives were asked to leave the hotel after an evening of drinking and disorderly conduct. After leaving the property, the adult driver rolled the vehicle and the minor suffered significant injuries. The Nevada Supreme Court concluded that a commercial alcohol vendor had no legal duty to protect patrons after a reasonable eviction, pursuant to statutory right to evict anyone who acts in a disorderly manner. The Court noted that the proximate cause of the minor's injuries was the consumption of alcohol and not the sale as consistent with Nevada's principle that individuals, drunk or sober, are responsible for their own torts.[1]

The unpublished opinion Healey v. Macayo Vegas, Inc. 2016 WL 854530 (Nev. 2016), cited both Rodriquez and also Sparks v. Alpha Tau Omega Fraternity, Inc., 127 Nev. 287, 296, 255 P.3d 238, 244 (2011),[2] for the proposition that no duty was created by the employer to an intoxicated employee who was killed when crossing the street after being told to go home, even if it had an employee handbook specifying certain actions were to be taken, but were not taken, in the event an employee was found to be intoxicated. The Court of Appeals noted that there was no authority for making a distinction between ensuring the safety of an employee from that of a patron.

Statute of Limitations

Nevada law imposes a two-year statute of limitation for actions seeking to recover damages for personal injuries. NRS 11.190(4)(e). NRS 11.190(4)(e) states:

Periods of limitations. Except as otherwise provided in NRS 40.4639, 125B.050 and 217.007 actions other than those for the recovery of real property, unless further limited by specific statute, may only be commenced as follows:

…

4.Within 2 years:

…

(e) Except as otherwise provided in NRS 11.215, an action to recover damages for injuries to a person or for the death of a person caused by the wrongful act or neglect of another.

While this issue has not been addressed by a Nevada Appellate Court, it is possible that any action asserting dram shop liability may be subject to NRS 11.190(3)(a), which provides a three-year limitation to bring an action asserting liability created by statute. See Snyder v. Viani, 112 Nev. 568, 581, 916 P.2d 170, 178 (1996) (Rose, J., concurring) (noting that the courts of Nevada refused to hear actions alleging dram shop liability before passage of NRS 41.1305). See also Torrealba v. Kesmetis, 124 Nev. 95, 102, 178 P.3d 716, 722 (2008) ("The phrase liability created by statute means a liability which would not exist but for the statute."). Because liability was created by NRS 41.1305, it is possible that a dram shop action will be subject to the three-year limitation period provided under NRS 11.190(3)(a). See Bongiorno v. D.I.G.I. Inc., 515 N.Y.S.2d 969, 971 (1987) (noting that dram shop liability did not exist at common law in New York, thus it was created by statute and subject to period of limitation for actions to recover upon liability created by statute). But see Filip v. Jordan, 188 P.3d 1039, 1041 (Mont. 2008) (noting that Montana recognized a cause of action for negligently providing alcohol before dram shop statute was enacted, thus statute of limitation for personal injuries applied).

Comparative Negligence

A plaintiff's comparative negligence does not bar recovery, if the plaintiff's negligence was not greater than the negligence or gross negligence of the defendants.[3] In FGA, Inc. v. Giglio, 128 Nev. Adv. Op. 26, 278 P.3d 490 (2012), the Nevada Supreme Court concluded that a party's possible intoxication may be probative of the issues of causation and comparative negligence for a slip and fall injury. However, the Court also found that if there is no support for finding a causal link between the alleged impairment and injury, the evidence of intoxication should not be admitted.

---

1 In Mills v. Continental Parking Corp., 475 P. 2d 673 (Nev. 1970), the Nevada Supreme Court had earlier held that the bailment relationship ended once the owner of the vehicle and the operator of the parking lot was not responsible under a negligent entrustment theory for a drunk driver who killed a pedestrian after reclaiming his vehicle.

2 The Nevada Supreme Court held in Sparks v. Alpha Tau Omega Fraternity, Inc. that a local fraternity chapter that held college football tailgate events did not have landowner/possessor invitee relationship with event attendees and had no duty to protect attendees when a fight broke out during a tailgate party.

3 Under NRS 41.141, Nevada's comparative negligence statute, joint and several liability is not affected if the claims are based upon: 1) strict liability; 2) intentional tort; 3) emission, disposal or spillage of toxic or hazardous substance; 4) concerted actions of defendants; 5) injury to person/product resulting from a product manufactured, distributed, sold, used in Nevada still applies if defendants.

Joint & Several Liability

Where two or more causes proximately contribute to the injuries complained of, recovery may be had against either one or both of the joint tortfeasors.[4]

Although Nevada does not have a dram shop law, the state does have a social host liability law.[5] For example, if an individual hosts a party, serves alcohol to an individual under the age of 21 (the legal drinking age in Nevada), and then the social guest is involved in an automobile accident and causes injury to a third person, both the host and the driver are jointly and severally liable.

When a release or a covenant not to sue or not to enforce judgment is given in good faith to one of two or more persons liable in tort for the same injury or the same wrongful death:

1. it does not discharge any of the other tortfeasors from liability for the injury or wrongful death unless its terms so provide, but it reduces the claim against the others to the extent of any amount stipulated by the release, or in the amount of the consideration paid for it, whichever is greater; and
2. it discharges the tortfeasor to whom it is given from all liability for contribution and for equitable indemnity to any other tortfeasor.[6]

Where the plaintiff settles with one of several defendants, the jury must not be informed as to either the fact of the settlement or the amount paid.[7]

Contribution Among Joint Tortfeasors

The “Contribution Among Tortfeasors” statute can be found under NRS 17.225 et seq. Where two or more persons become jointly or severally liable in tort for the same injury to person or property or for the same wrongful death, there is a right of contribution among them even though the judgment has not been recovered against all or any of them.[8] The right of contribution exists only in favor of a tortfeasor who has paid more than his equitable share of the common liability, and his total recovery is limited to the amount paid by him in excess of his equitable share.[9] No tortfeasor is compelled to make contribution beyond his or her own equitable share of the entire liability.[10]

There is no right to contribution in favor of any tortfeasor who has intentionally caused or contributed to the injury or wrongful death.[11] Further, an intentional tortfeasor may not receive a credit based on settlements by their joint tortfeasors in order to reduce a judgment against the intentional tortfeasor arising from the intentional misconduct.[12]

A tortfeasor who enters into a settlement with a claimant is not entitled to recover contribution from another tortfeasor whose liability for the injury or wrongful death is not extinguished by the settlement, nor with respect to any amount paid in a settlement which is in excess of what was reasonable.[13] Any joint tortfeasor in a multi-defendant tort action may obtain protection from claims of contribution and implied indemnity by settling with the tort claimant in good faith.

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4 See Mahan v. Hafen, 351 P.2d 617, 620 (Nev. 1960); Humphries v. Eighth Judicial Dist. Court, 312 P.3d 484, 489 (Nev. 2013).

5 NRS 41.1305. See also supra Key Statutes and Regulations.

6 Nev. Rev. Stat. § 17.245. See The Doctor’s Co. v. Vincent, 98 P.3d 681, 683 (Nev. 2004).

7 Moore v. Bannen, 799 P.2d 564, 566 (Nev. 1990).

8 Nev. Rev. Stat. § 17.225(1).

9 Nev. Rev. Stat. § 17.225(2).

10 Id.

11 Evans v. Dean Witter Reynolds, Inc., 5 P.3d 1043, 1051 (Nev. 2000) (citing NRS 17.255).

12 Evans, 5. P.3d at 1050.

13 Nev. Rev. Stat. § 17.225(3). See The Doctor’s Co, 98 P.3d at 683.

NEVADA CONT.

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General Overview of the Law

First Party Liability

Third Party Liability

Social Host Liability

Liability Involving Minors

Key Statues & Regulations

Licensed vendors of alcohol are not liable for any damages related to any injuries caused by an intoxicated patron, whether sustained by the patron or a third party.

Dram shop liability in Nevada is governed by Nev. Rev. Stat. § 41.1305. This statute provides:

1. A person who serves sells or otherwise furnishes an alcoholic beverage to another person who is 21 years of age or older is not liable in a civil action for any damages caused by the person to whom the alcoholic beverage was served,sold or furnished as a result of the consumption of the alcoholic beverage.
2. Except as otherwise provided in this section, a person who:
    a. Knowingly serves, sells or otherwise furnishes an alcoholic beverage to an underage person; or
    b. Knowingly allows an underage person to consume an alcoholic beverage on premises or in a conveyance belonging to the person or over which the person has control, is liable in a civil action for any damages caused by the underage person as a result of the consumption of the alcoholic beverage.
3. The liability created pursuant to subsection 2 does not apply to a person who is licensed to serve, sell or furnish alcoholic beverages or to a person who is an employee or agent of such a person for any act or failure to act that occurs during the course of business or employment and any such act or failure to act may not be used to establish proximate cause in a civil action and does not constitute negligence per se.
4. A person who prevails in an action brought pursuant to subsection 2 may recover the person's actual damages, attorney's fees and costs and any punitive damages that the facts may warrant.
5. 5.As used in this section, “underage person” means a person who is less than 21years of age.

Nev. Rev. Stat. § 41.1305 (emphasis added).

Notable Cases and Analysis

Dram shop acts specifically provide for civil liability.[1] However, Nevada law protects licensed vendors of alcoholic beverages, and their employees, from any liability for damages subsequently caused by their patrons.[2] Nevada’s rigid statutory protection of licensed vendors has its origins in the protection of its primary revenue generator – the hotel and casino industry. This industry and its lobbyists, as you may expect, contribute heavily to persons running for elected offices in Nevada - including all levels of the judiciary.

1Hamm v. Carson City Nugget, Inc., 450 P.2d 358, 360 (Nev. 1969).

2Nev. Rev. Stat. § 41.1305; Rodriguez v. Primadonna Co., LLC, 216 P.3d 793, 798 (Nev. 2009).

The legislative protections of licensed vendors are set forth in Nev. Rev. Stat. §41.1305 which provides that licensed alcohol vendors, even those who knowingly serve alcohol to underage persons, or knowingly allow underage persons to consume alcohol on their premises, are not civilly liable for damages subsequently caused by such underage persons.[3] Further, an individual not licensed to sell alcohol is not liable for damages subsequently caused by guests who have consumed alcohol on the individual's property, unless the guest is underage and the individual has either knowingly served the underage guest alcohol, or knowingly allowed the underage guest to consume alcohol on the individual's property.[4]

Thus, there is absolute immunity from civil liability for licensed vendors of alcohol, while unlicensed persons are civilly liable for knowingly serving underage persons alcohol, or knowingly allowing underage persons to consume alcohol on their premises. However, knowingly selling or providing alcohol to an underage person, or knowingly providing a means by which the underage person may obtain alcohol is a misdemeanor in Nevada.[5]

By enacting Nev. Rev. Stat. § 41.1305, the Nevada Legislature unequivocally stated that liability will not lie "against servers of alcoholic beverages for damage caused by patrons who subsequently use our highways absent legislation establishing such liability."[6] "This rule applies equally when the intoxicated patron is a minor."[7]

Nevada subscribes to the common law rule of non-liability for a provider of alcohol expressing "that individuals, drunk or sober," are "responsible for their own torts."[8] Thus, the act of consuming the alcohol is considered the proximate cause of any "injury resulting from the negligent conduct of the purchaser of the drink."[9] As such, the act of selling the intoxicating beverage is considered too remote in time to be the proximate cause of an injury.[10] Therefore, "it is well settled in Nevada that commercial liquor vendors, including hotel proprietors, cannot be held liable for damages related to any injuries caused by the intoxicated patron, which are sustained by either the intoxicated patron or a third party."[11]

Conclusion

As a matter of law, Nevada commercial alcohol vendors are not liable for injuries sustained by intoxicated persons. As such, these proprietors do not have a duty to monitor a patron's intoxication level, to arrange safe transportation for an intoxicated patron, prevent an intoxicated patron for driving, or prevent a third party from riding with an intoxicated patron.[12]

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3 Nev. Rev. Stat. § 41.1305(3)

4 Nev. Rev. Stat. § 41.1305(2).

5 Nev. Rev. Stat. § 202.055(1). However, this penalty does not apply to a parent, guardian or physician of the underage person for furnishing an alcoholic beverage to that person. Nev. Rev. Stat. § 202.055((2).

6 Snyder v. Viani, 916 P.2d 170, 171 (Nev. 1996).

7Rodriguez v. Primadonna Co., LLC, 216 P.3d 793, 798 (Nev. 2009) (citing Hinegardner v. Marcor Resorts, 844 P.2d 800, 803 (Nev. 1992).

8 Hinegardner v. Marcor Resorts, 844 P.2d 800, 802 (Nev. 1992).

9 Id.

10 Id.

11 Rodriguez v. Primadonna Co., LLC, 216 P.3d 793, 798 (Nev. 2009) (citing Hamm v. Carson City Nugget, Inc., 450 P.2d 358, 359 (Nev. 1969);

Snyder v. Viani, 885 P.2d 610, 612-13 (Nev. 1994).

12 Id. at 800

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General Overview of the Law

First Party Liability

New Jersey Courts do recognize a cause of action for First Party Liability brought by an injured intoxicated patron or customer. See e.g. Voss v. Tranquilino, 206 N.J. 93, 19 A.3rd 470 (2011). The New Jersey Licensed Alcoholic Beverage Server Fair Liability Act, commonly referred to as the Dram Shop Act, governs these types of claims

. Generally N.J.S.A. §2A:22A-5 makes it unlawful for a licensed alcoholic beverage server to serve a visibly intoxicated person. A Plaintiff must show that (1) the server is deemed negligent pursuant to the statute; (2) the injury or damage was proximately caused by the negligent service of alcoholic beverages; and (3) the injury or damage was a foreseeable consequence of the negligent service of alcoholic beverages. N.J.S.A. §2A:22-5a.

The Act is the exclusive civil remedy for personal injury or property damage resulting from negligent service of alcoholic beverages by a licensed alcoholic beverage server. N.J.S.A. §2A:22A-4.

The Act does not require eyewitness testimony to prove a person was served an alcoholic beverage while visibly intoxicated. Halvorsen v. Villamil, 429 N.J. Super. 568, 571, 60 A.3d 827, 829 (App. Div. 2013). Visible intoxication is defined under the Act as “a state of intoxication accompanied by a perceptible act or series of acts which present clear signs of intoxication.” N.J.S.A. §2A:22A-3. The New Jersey Supreme Court has held that it is possible to prove liability under the Act without direct eyewitness testimony on the visible intoxication issue. Mazzacano v. Estate of Kinnerman, 197 N.J. 307, 321, 962 A.2d 1103, 1111 (2009).

A licensed alcoholic beverage server cannot be liable for failing to monitor the conduct of a person to whom it did not serve alcohol, even if that person was intoxicated. Mazzacano, supra. at 324. A licensed alcoholic beverage server is "negligent only when the server served a visibly intoxicated person or serves a minor." Id. A licensed beverage server who serves an alcoholic beverage to a minor can be liable when the server knew, or reasonably should have known, that the person was a minor. N.J.S.A. §2A:22A-5(b)

Third Party Liability

New Jersey Courts do recognize an action brought by a third party injured by an intoxicated adult or minor served or sold alcohol by a licensed alcoholic beverage server. See, Rappaport v Nichols, 31 N.J. 188, 156 A.2d 1 (1959). When alcoholic beverages are sold by a tavern keeper to a minor or to an intoxicated person, the unreasonable risk of harm not only to the minor or the intoxicated person, but also to members of the traveling public, may readily be recognized and foreseen. McGovern v. Koza's Bar & Grill, 254 N.J. Super. 723, 604 A.2d 226 (Law Div. 1991); Rappaport v. Nichols, 31 N.J. 188, 156 A.2d 1 (1959).

Social Host Liability

Social hosts can be found liable for third-party injuries. A host who serves liquor to an adult social guest, knowing both that the guest is intoxicated and will thereafter be operating a motor vehicle, is liable for injuries inflicted on a third party as a result of the negligent operation of a motor vehicle by the adult guest when such negligence is caused by the intoxication. Kelly v. Gwinnell, 96 N.J. 538, 548, 476 A.2d 1219, 1224 (1984).

N.J.S.A. §2A: 15-5.6 now provides the exclusive civil remedy for injury resulting from the negligent provision of alcoholic beverages by a social host to a person who has attained the legal age to purchase and consume alcoholic beverages.

Social hosts are only directly liable to minor guests served alcoholic beverages and to third persons injured in motor vehicle accidents. Componile v Maybee, 273 N.J.Super. 402, 641 A.2d 1143 (Law Div. 1994)

Courts have held that a social host who leaves alcohol out for guests to take on their own "provides" alcohol within the meaning of the Social Host statute. Dower v. Gamba, 276 N.J. Super. 319 (App.Div.1994), certif. denied, 140 N.J. 276 (1995).

Liability Involving Minors

New Jersey Courts do recognize an action for first party liability brought by an injured minor patron or customer who was sold alcoholic beverages by a licensed alcoholic beverage server. N.J.S.A. §2A:22A-5(b).

A minor guest who was served alcoholic beverages by a social host is entitled to assert a first party liability claim against the host. See, Batten v. Bobo, 218 N.J.Super. 589, 528 A2d 572 (Law Div. 1986)

Key Statues & Regulations

In New Jersey, there is a Dram Shop Act, officially titled The New Jersey Licensed Alcoholic Beverage Server Fair Liability Act. N.J.S.A. § 2A:22A-1 et. seq.

Section 2A:22A-4 of the Act states “This act shall be the exclusive civil remedy for personal injury or property damage resulting from the negligent service of alcoholic beverages by a licensed alcoholic beverage server.”

In order to establish liability under the Act , N.J.S.A. §2A:22A-5 provides that:

a. A person who sustains personal injury or property damage as a result of the negligent service of alcoholic beverages by a licensed alcoholic beverage server may recover damages from a licensed alcoholic beverage server only if:

1. The server is deemed negligent pursuant to subsection b. of this section; and
2. The injury or damage was proximately caused by the negligent service of alcoholic beverages; and
3. The injury or damage was a foreseeable consequence of the negligent sevice of alcoholic beverages

b. A licensed alcoholic beverage server shall be deemed to have been negligent only when the server served a visibly intoxicated person, or served a minor, under circumstances where the server knew, or reasonably should have known, that the person served was a minor.

N.J.S.A. §2A:16-5.6 provides the exclusive civil remedy to a person injured as a result of the negligent provision of alcoholic beverages by a social host to an individual of legal age. The statute provides:

b. A person who sustains bodily injury or injury to real or personal property as a result of the negligent provision of alcoholic beverages by a social host to a person who has attained the legal age to purchase and consume alcoholic beverages may recover damages from a social host only if:

1. The social host willfully and knowingly provided alcoholic beverages either:

(a) To a person who was visibly intoxicated in the social host's presence;or

(b) To a person who was visibly intoxicated under circumstances manifesting reckless disregard of the consequences as affecting the life or property of another; and

2. The social host served alcohol to the visibly intoxicated guest that created an unreasonable risk of foreseeable harm to the life or property of another, and the social host failed to exercise reasonable care and diligence to avoid the foreseeable risk; and

3. The injury arose out of an accident caused by the negligent operation of a vehicle by the visibly intoxicated guest that was served alcohol by the social host.

A social host is not subject to first party claims asserted by adult guests. N.J.S.A. 2A:15-5.7 provides:

“No social host may be held liable to a person who has attained the legal age to purchase and consume alcoholic beverages for damages suffered as a result of the social host’s negligent provision of alcoholic beverages to that person.”

Notable Cases

Rappaport v. Nichols, 31 N.J. 188, 156 A.2d 1 (1959)

Defendant tavern keeper served alcohol to a minor, who then drove his mother’s car, collided with another vehicle, and killed the other driver. The driver’s estate sued for negligence, and the trial Court granted his motion for summary judgment for failure to state a claim. On appeal, the Court held that there was a claim for relief, and that the tavern keeper knew or should have known that the person being served was a minor or intoxicated.

Kelly v. Gwinnell, 96 N.J. 538, 476 A.2d 1219 (1984)

Plaintiff, the victim of a drunken driving accident, sued defendant drunk driver and defendant host, who had served alcoholic beverages to the drunken driver. The Court held that where a host provides liquor directly to a social guest and continues to do so even beyond the point at which the host knows the guest is intoxicated, and does this knowing that the guest will shortly thereafter be operating a motor vehicle, that host is liable for the foreseeable consequences to third parties that result from the guest's drunken driving. The host and guest are liable to the third party as joint tortfeasors.

Lee v. Kiku Rest., 127 N.J. 170, 603 A.2d 503 (1992)

Plaintiff patron and a driver consumed alcohol at Defendant's restaurant. It was alleged that both plaintiff and the driver were served alcohol after they were visibly intoxicated. Plaintiff was injured when she and the driver were involved in an accident, and sought damages against Defendant for causing his injuries by continuing to serve alcohol to the driver after he was visibly intoxicated.

The Court stated that an intoxicated patron may no longer avoid responsibility for injuries proximately caused by his or her voluntary decision to consume alcohol to the point of intoxication. Further, if a tavern serves alcohol to a visibly-intoxicated patron, a court will ordinarily presume the patron's lack of capacity to evaluate the ensuing risks. Thus, a patron who voluntarily becomes visibly intoxicated and is then served alcohol by a tavern will not be entitled to a jury charge that places all responsibility for the ensuing injuries on the tavern. A voluntarily-intoxicated dram-shop patron is distinguishable from other plaintiffs who are excused for their failure to protect themselves from harm.

Mazzacano v. Estate of Kinnerman, 197 N.J. 307, 962 A.2d 1103 (2009)

Plaintiffs were the survivors of four men killed as a result of an attendee of defendant's pig roast causing a motor vehicle accident wherein he and his three passengers were killed. An autopsy of the driver revealed that his blood alcohol content was almost twice the legal limit. The driver was visibly intoxicated at the event, which allowed patrons to serve themselves, and continued to drink.

The Dram Shop Act provides a powerful incentive to a social club to monitor its guests at an affair, because if such a club allows the self-service of alcohol to a visibly-intoxicated guest or patron who then causes an automobile accident proximately related to his intoxicated condition, the club can be held accountable under the Act.

Statute of Limitations

In New Jersey, personal injury claims are subject to a two-year statute of limitations. N.J. S.A. § 2A:14-2(a). Our Courts also apply the so-called "discovery rule," which provides that in appropriate cases a cause of action will be held not to accrue until the injured party learned, or should have learned, that he has a basis for an actionable claim. Lopez v. Swyer, 62 N.J. 267, 270, 300 A.2d 563, 564 (1973).

Comparative Negligence

New Jersey is a modified comparative negligence jurisdiction. This means that, under New Jersey law, an injured plaintiff may not recover if the plaintiff's own negligence is greater than that of the person or persons against whom recovery is sought. N.J. S.A. §2A:15-5.1. Thus, if the jury determines that the plaintiff is more than 50% responsible for the incident causing the alleged injury, then the plaintiff is precluded from obtaining an award of damages.

Joint & Several Liability

New Jersey has a joint and several liability law providing several liability for defendants less than 60% at fault, otherwise defendants will be held jointly and severally liable. N.J.S.A. §2A:15-5.3. Thus a defendant found to be 60% or more than fault is generally liable for the entire amount of a judgment. However, N.J.S.A. 2A:22A-6b limits the licensed beverage server's percentage share of damages to the percentage share of negligence attributable to their conduct.

Contribution Among Joint Tortfeasors

The New Jersey statute governing contribution against joint tortfeasors is N.J.S.A. §2A:53A-3, which states that:

> "Where injury or damage is suffered by any person as a result of the wrongful act… of joint tortfeasors, and the person so suffering injury or damage recovers a money judgment or judgments for such injury or damage against one or more of the joint tortfeasors… and any one of the joint tortfeasors pays such judgment in whole or in part, he shall be entitled to recover contribution from the other joint tortfeasor or joint tortfeasors for the excess so paid over his pro rata share."

This allows a party to pursue contribution from other joint tortfeasors, provided that there is a judgment, determination of damages, and existence of non-settling defendants. Such an action must be brought within 6 years from the entry of judgment. Ideal Mut. Ins. Co. v. Royal Globe Ins. Co., 211 N.J. Super. 336, 338 (App. Div. 1986).

NEW MEXICO

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General Overview of the Law

First Party Liability

New Mexico courts do not recognize an action for first party liability brought by an injured intoxicated adult patron or customer who was served or sold to by a licensee unless it is determined that the licensee acted with gross negligence and reckless disregard for the safety of the person who purchased or was served the alcoholic beverage. See NMSA 1978, § 41-11-1(B); see also Uniform Jury Instructions - UJI 13-1661 NMRA.

Third Party Liability

New Mexico courts do recognize an action for third party liability brought by a party injured by an intoxicated adult patron or customer who was served or sold to by a licensee. See NMSA 1978, § 41-11-1(A); see also Uniform Jury Instructions - UJI 13-1662 NMRA.

Social Host Liability

New Mexico courts do not recognize an action for first or third party liability brought against a social host unless the alcoholic beverages were provided recklessly in disregard of the rights of others, including the social guest. See NMSA 1978, § 41-11-1(E); see also Uniform Jury Instructions - UJI 13-1665 NMRA; UJI 13-1666 NMRA.

Liability Involving Minors

New Mexico courts do recognize an action for first and third party liability brought against a licensee when:

1. it is demonstrated by the preponderance of the evidence that the licensee knew, or that a reasonable person in the same circumstances would have known, that the person who received the alcoholic beverages was a minor; and
2. Licensee's violation of NMSA 1978, § 60-7B-1 was a proximate cause of the plaintiff's injury, death or property damage.

See NMSA 1978, § 41-11-1(G); see also Uniform Jury Instructions - UJI 13-1667 NMRA; UJI 13-1668 NMRA.

Key Statues & Regulations

In New Mexico, there is a "Dram Shop" statute, which specifically creates civil liability for alcohol-related claims. See NMSA 1978, § 41-11-1.

In New Mexico, there are Uniform Jury Instructions regarding Dram Shop Liability. See UJI 13-1660 NMRA through UJI 13-1668 NMRA.

NMSA 1978, § 60-7A-16 -> it is violation of the Liquor Control Act to sell/serve/procure alcohol for/to an intoxicated person.

NMSA 1978, § 60-7B-1-> deals with selling or giving alcohol to minors and possession of alcohol by minors.

NMSA 1978, § 60-3A-7 -> The alcohol and gaming division of the New Mexico regulation and licensing department has authority over all matters relating to the issuance, denial, suspension or revocation of licenses under the Liquor Control Act. The director of the alcohol and gaming division of the regulation and licensing department may request the department of public safety to provide investigatory and enforcement support as deemed necessary.

NMSA 1978, § 60-3A-6 -> The department of public safety has authority over all investigations and enforcement activities required under the Liquor Control Act except for those provisions relating to the issuance, denial, suspension or revocation of licenses, unless its assistance is requested by the director of the alcohol and gaming division of the regulation and licensing department.

NMSA 1978, § 66-8-102 & NMSA 1978, § 66-8-110 -> the following is the standard for driving under the influence of intoxicating liquor:

a. eight one hundredths or more; or
b. four one hundredths or more if the person is driving a commercial motor vehicle; or
c. when a person is less than twenty-one years of age and the blood or breath of the person contains an alcohol concentration of two one hundredths or more.

NMSA 1978, § 66-8-102 -> Aggravated driving under the influence of intoxicating liquor consists of an alcohol concentration of sixteen one hundredths or more.

Notable Cases

Estate of Gutierrez ex rel. Jaramillo v. Meteor Monument, L.L.C., 2012-NMSC-004, 274 P.3d 97: (to establish liability under New Mexico Dram Shop Liability Act, plaintiff must prove that the licensee (1) sold or served alcohol to a person who was intoxicated, (2) it was reasonably apparent to the licensee that the patron was intoxicated, and (3) the licensee knew from the circumstances that the patron was intoxicated. Under this standard, the “reasonably apparent” prong is an objective standard.)

Mendoza v. Tamaya Enterprises, Inc., 2011-NMSC-030, 150 N.M. 258: (holding that NMSA 1978, § 41-11-1 does not preempt all common law claims and, therefore, “[a]part from the statutory claims permitted by Section 41-11-1 [against licensees as defined in that Section], New Mexico common law recognizes two types of dram shop claims against non-licensee tavernkeepers [such as a tribal casino licensed only by the tribe] who serve alcohol to intoxicated persons: a claim in favor of injured third parties upon traditional negligence principles and a claim in favor of patrons upon proof that the tavernkeeper acted with gross negligence and reckless disregard for the safety of the patron.”)

Delfino v. Griffo, 2011-NMSC-015, 150 N.M. 97: (finding that social hosting under the Liquor Liability Act need not occur in a home; one may host in a bar or restaurant where the actual delivery of alcoholic beverages to the guests is performed by a licensed server.)

Richardson v. Carnegie Library Restaurant, Inc., 1988-NMSC-084, 107 N.M. 688: (finding that the cap on damages mandated by Section 41-11-1(I) does not withstand heightened scrutiny and, therefore, the cap is unconstitutional as being violative of the equal protection clause.)

Statute of Limitations

In New Mexico, the statute of limitations for personal injury suits is three (3) years.

Comparative Negligence

New Mexico is a pure comparative fault jurisdiction.

Joint & Several Liability

New Mexico has limited joint and several liability. However, no appellate court has yet found that conduct involving the sale, use, or possession of alcohol merits joint and several liability. We are aware of at least one trial court that has ruled that the application of joint and several liability against a dram shop is appropriate. The New Mexico Supreme Court has also indicated that joint and several liability may apply in dram shop litigation. See e.g., Delfino v. Griffo, 2011-NMSC-015, ¶ 23, 150 N.M. 97.

Joint & Several Liability

The New Mexico Contribution Amount Tortfeasors Act is found at NMSA 1978, § 41-3-1. This Act provides:

A. The right of contribution exists among joint tortfeasors.

B. A joint tortfeasor is not entitled to a money judgment for contribution until he has by payment discharged the common liability or has paid more than his pro rata share thereof.

C. A joint tortfeasor who enters into a settlement with the injured person is not entitled to recover contribution from another joint tortfeasor whose liability to the injured person is not extinguished by the settlement.

D. A pro rata share shall be the portion of the total dollar amount awarded as damages to the plaintiff that is equal to the ratio of each joint tortfeasor's percentage of fault to the total percentage of fault attributed to all joint tortfeasors.

NMSA 1978, § 41-3-2.

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General Overview of the Law

Laura A. Raheb

Under common law, one who provided intoxicating liquor to another was not liable for the injuries caused by the drinker. However, the Dram Shop Act, carved out an exception to this common law rule.

General Obligations Law § 11–101(1), enacted in 1983 and also known as the Dram Shop Act, makes a party who "unlawfully" sells alcohol to another person liable for injuries caused by reason of that person's intoxication. Under Alcoholic Beverage Control Law § 65(2), it is unlawful to furnish an alcoholic beverage to any "visibly intoxicated person." This law applies only to commercial alcoholic beverage sales. D'Amico v. Christie, 71 N.Y.2d 76, 524 N.Y.S.2d 1, 518 N.E.2d 896. The statute expressly provides for a right of action by any person "injured in person, property, means of support, or otherwise by any intoxicated person" against the person who unlawfully sold or assisted in the procuring of the intoxicated person's alcohol. Sheehy v. Big Flats Cmty. Day, Inc., 73 N.Y.2d 629, 635, 541 N.E.2d 18, 21 (1989). However, this statute has been held not to authorize recovery in favor of the individual whose intoxication resulted from the unlawful sale. See Mitchell v. Shoals, Inc., 19 N.Y.2d 338, 227 N.E.2d 21 (1967). Additionally, General Obligations Law § 11–100 for recovery against a person who knowingly caused a young person's intoxication by furnishing alcoholic beverages, with or without charge, with knowledge or reasonable cause to believe that such person was a person under the legal purchase age.

The Legislature's use of the term 'visible,' however, does not create a rigid requirement that that essential element of the claim be established by direct proof in the form of testimonial evidence from someone who actually observed the allegedly intoxicated person's demeanor at the time and place that the alcohol was served. Romano v. Stanley, 90 N.Y.2d 444, 661 N.Y.S.2d 589, 684 N.E.2d 19. To the contrary the statute "does not preclude the introduction of circumstantial evidence to establish the visible intoxication of the customer." Id., at 450. Defendant faces the hurdle of showing that "there is simply no valid line of reasoning and permissible inferences which could possibly lead rational men to the conclusion reached by the jury on the basis of the evidence presented at trial" Cohen v. Hallmark Cards, 45 N.Y.2d 493, 499, 410 N.Y.S.2d 282, 382 N.E.2d 1145.

Key Statues & Regulations

Ross A. Ruggiero

In New York, "Dram Shop" law is applicable. Where an intoxicated individual causes damage to a person or their property, Dram Shop Liability allows the injured party a viable cause of action against the party who sold, who furnished or who assisted that intoxicated person in acquiring alcohol. The following statutes create Dram Shop Liability:

- NY GOL §11-100, which holds that when an intoxicated individual under 21 years of age causes damage to someone or their property, the injured party will have a cause of action against any person who knowingly caused the individual's intoxication, whether by **unlawfully furnishing** or **unlawfully assisting**, in the procurement of alcohol to that individual under 21 years of age. Additionally, the furnishing or assisting party must have had knowledge or reasonable cause to believe that the intoxicated individual was under 21 years of age.

- NY GOL §11-101, which creates a cause of action against any person who unlawfully sold or unlawfully assisted in the procurement of alcohol to an intoxicated person, thereby causing or contributing to that person's intoxication and that intoxicated person damaged someone or their property.
    - Other than the age element, the difference between §11-100 and §11-101 is furnishing vs. selling. A sale could certainly be considered a form of furnishing but it is not the only meaning of the word. Therefore, under §11-100 the lawmakers have created a larger scope of liability where individuals under the age of 21 are involved.
- NY Alcoholic Beverage Control Law §65, which provides that "no person shall sell, deliver or give away or cause or permit or procure to be sold, delivered or given away any alcoholic beverages to (1) any person, actually or apparently, under the age of twenty-one years; (2) any visibly intoxicated person; or (3) any habitual drunkard known to be such to the person authorized to dispense any alcoholic beverages."

Notable Cases

Tara M. Darling

Many of the cases regarding New York State's Dram Shop Act are centered on the following issues: (1) whether there was a commercial sale of alcohol; and (2) whether a social host is liable for the actions of the intoxicated person.

Commercial Sale

In 1987, the New York Court of Appeals upheld the "consistent interpretation of lower courts" that the Dram Shop Act only applies to the sale of alcohol for a profit (i.e. a "commercial sale"). D'Amico v. Christie, 71 N.Y.2d 76, 84, 518 N.E.2d 986 (1987). In D'Amico, defendant attended a picnic that was organized by an association affiliated with his employer. Defendant became intoxicated at the picnic, and on his was home he collided with and killed decedent. Decedent's estate sued the association arguing that the association was liable for decedent's injuries because it served alcohol which caused defendant's intoxication and his inability to safely drive an automobile. The Court held that there was no commercial sale of alcohol even though defendant paid dues to the association; therefore, the association could not be held liable under the Dram Shop Act. Similarly, the Court has held that there was no commercial sale of alcohol when a bartender consumes alcoholic beverages that he did not pay for, after the bar he worked at closed for the night. Carr v. Kaifler, 195 A.D.2d 584, 601 N.Y.S.2d 8 (2d Dep't 1993); Custen v. Salty Dog, Inc., 170 A.D.2d 572, 566 N.Y.S.2d 348 (2d Dep't 1991).

Furthermore, the Court has held that convenience stores who sell alcoholic beverages to someone of legal drinking age have no duty to investigate whether the sale will result in an indirect sale to a minor, and the Dram Shop Act will not be expanded to impose liability on the convenience store. Sherman v. Robinson, 80 N.Y.2d 483, 606 N.E.2d 1365 (1992).

Social Host Liability

IThe cases surrounding this area have "uniformly acknowledged" that a social host or landowner is only responsible for injuries that occurred on their property, "or in an area under defendant's control, where defendant had the opportunity to supervise the intoxicated guest." D'Amico, 71 N.Y.2d at 85; Delameter v. Kimmerle, 104 A.D.2d 242, 484 N.Y.S.2d 213 (3d Dep't 1984); Comeau v. Lucas, 90 A.D.2d 674, 455 N.Y.S.2d 871 (4th Dep't 1982); Wright v. Sunset Recreation, Inc., 91 A.D.2d 701, 457 N.Y.S.2d 606 (3d Dep't 1982); Huyler v. Rose, 88 A.D.2d 755, 451 N.Y.S.2d 478 (4th Dep't 1982); Schirmer v. Yost, 60 A.D.2d 789, 400 N.Y.S.2d 655 (4th Dep't 1977); Paul v. Hogan, 56 A.D.2d 723, 392 N.Y.S.2d 766 (4th Dep't 1977).

Regarding minors, "a person, other than a parent, who undertakes to control, care for, or supervise an infant, is required to use reasonable care to protect the infant. . ." Appell v. Mandel, 296 A.D.2d 514, 745 N.Y.S.2d 491 (2d Dep't 2002). Therefore, where the person does not adequately supervise the minor, the person may be held liable for any foreseeable injuries that were a proximate result of his or her failure to supervise. Id. The Court has held that defendants, hosts of their underage daughter's birthday party, did not breach their duty owed to a minor because the hosts did not provide the minor with alcohol, it did not appear that alcohol was consumed on the premises, and the injury occurred after the minor left their property. Rudden v. Bernstein, 61 A.D.3d 736, 878 N.Y.S.2d 373 (2d Dep't 2009).

Statute of Limitations

Ross A. Ruggiero

In New York, the statute of limitations for claims of negligence is three years from the date of the negligent act.

Comparative Negligence

Laura A. Raheb

New York applies the comparative fault statute (CPLR 1411) in Dram Shop Act actions in particular circumstances. Specifically, the application of CPLR 1411 depends on whether the individual unlawfully served is the injured/decedent or if the injured/decedent is a third party.

Where individuals unlawfully served alcohol are themselves injured or killed as a result of the intoxication, the defendant-vendor cannot obtain contribution from either the vendee or the vendees' survivor. Adamy v. Ziriakus, 92 N.Y.2d 396, 404, 704 N.E.2d 216,

220 (1998). The Second Department in Coughlin v. Barker Ave. Assocs, noted:

"…To allow the defendant tavern owners to seek contribution from the estate of the intoxicated person would undermine the very purpose of the Dram Shop Act. The decedent and the intoxicated person are one and the same, and the only 'victims' are the decedent's spouse and children, who are suing for the loss of support occasioned by the decedent's death due to intoxication. Allowing contribution against the decedent's estate would not only diminish their potential recovery, but would also allow the tavern owners to reduce their liability for their own misconduct. The tavern owners would be unfairly shifting the burden of the loss onto the spouse and children" Coughlin v. Barker Ave. Assocs., 202 A.D.2d 622, 623–24, 609 N.Y.S.2d 646, 647 (1994). Citing Coughlin and other Appellate Division cases with similar holdings, the Court of Appeals in Adamy confirmed that the rationale for these holdings is that in the case where the person served alcohol and the decedent are one and the same, to allow contribution would enable the vendor to reduce its liability for conduct that essentially amounts to its own wrongdoing—unlawfully providing the alcohol. See Adamy 92 N.Y.2d at 404.

However, where the decedent and vendee are not the same, and decedent's fault is independent of the Dram Shop Act, comparative negligence may apply. For example, in Adamy, the Court of Appeals held that the fault of decedent was unrelated to the consumption or provision of alcoholic beverages, but flowed from evidence that he was speeding at the time of the accident. Applying the comparative fault statute merely prevents the vendor from paying a portion of the damages for conduct it could have not prevents. Therefore, reduction in the verdict in circumstances such as this, the Court states, promotes the policies of both the comparative fault statute and the Dram Shop Act.

Joint & Several Liability

David L. Metzger

In New York, CPLR Article 16 provides that in certain personal injury cases where there is more than one tortfeasor that can be sued, a defendant whose fault is found to be 50% or less need only pay its equitable share of a plaintiff's non-economic damages (for example pain and suffering, mental anguish, loss of consortium). Economic damage, such as the cost of future medical care, is not subject to Article 16. The other tortfeasor does not necessarily have to have been made a direct defendant in order for a party to attempt to lower its proportionate share of fault. However, if the other tortfeasor was not sued because the plaintiff could not have, with due diligence, obtained jurisdiction over that person or entity, that potential party's fault is not factored into the equation.

There are other exceptions to CPLR Article 16 which include claims sounding in contractual indemnification, environmental hazards, intentional torts and negligence in the use or ownership of a motor vehicle. An establishment sued in negligence and violation of New York's Dram Shop Act is however entitled to the calculus of Article 16. Even though a case involving joint tortfeasors may involve different legal theories (i.e. Dram Shop for a bar, negligence in the operation of a motor vehicle for a co-defendant), those defendants are still deemed joint tortfeasor for the purpose of Article 16. However, in the hypothetical above, the bar/Dram Shop defendant can assert an Article 16 defense, but the driver of the vehicle cannot.

Contribution Among Joint Tortfeasors

Megan M. Murphy

The general rules under CPLR Sections 1401 and 1402 permit a joint tortfeasor who has paid more than his or her equitable share of damages to a plaintiff, to recover the excess of that payment from the other tortfeasor(s). These general rules also apply to joint tortfeasors in situations involving violations of the Dram Shop Act, though not under a standard negligence theory.

Generally, a party's liability in contribution arises from that party's breach of a duty owed to the plaintiff. However, the common law does not recognize any theory of 'negligent intoxication,' in favor of the party injured by reason of intoxication as against the seller of alcohol. Since a seller of alcohol owes no duty to its consumer to protect that consumer from the consequences of his or her own intoxication, the seller therefore does not owe any duty to a plaintiff who is injured by that consumer's intoxication. Therefore, a seller of alcohol cannot be considered to have violated any independent duty owed to an injured plaintiff.

However, it has been continuously recognized that a breach of a duty to protect the general public will support a claim for contribution. As the Dram Shop Act is intended to protect the general public and community from the dangers of intoxicated persons, the Act imposes a duty upon sellers to protect the public from these dangers. Accordingly, the Dram Shop Act permits a plaintiff injured by an intoxicated party to recover damages from any party which either caused or contributed to that party's intoxication by way of providing alcohol. Therefore, both the seller of alcohol and an intoxicated person who has been charged with liability may be charged for damages based on the same personal injury. This provision thereby not only allows the intoxicated individual chargeable with damages under the Dram Shop Act to seek contribution from the merchant who sold the alcohol, but it also permits the vendor to seek contribution from the intoxicated party, or co-vendors to seek contribution from the other.

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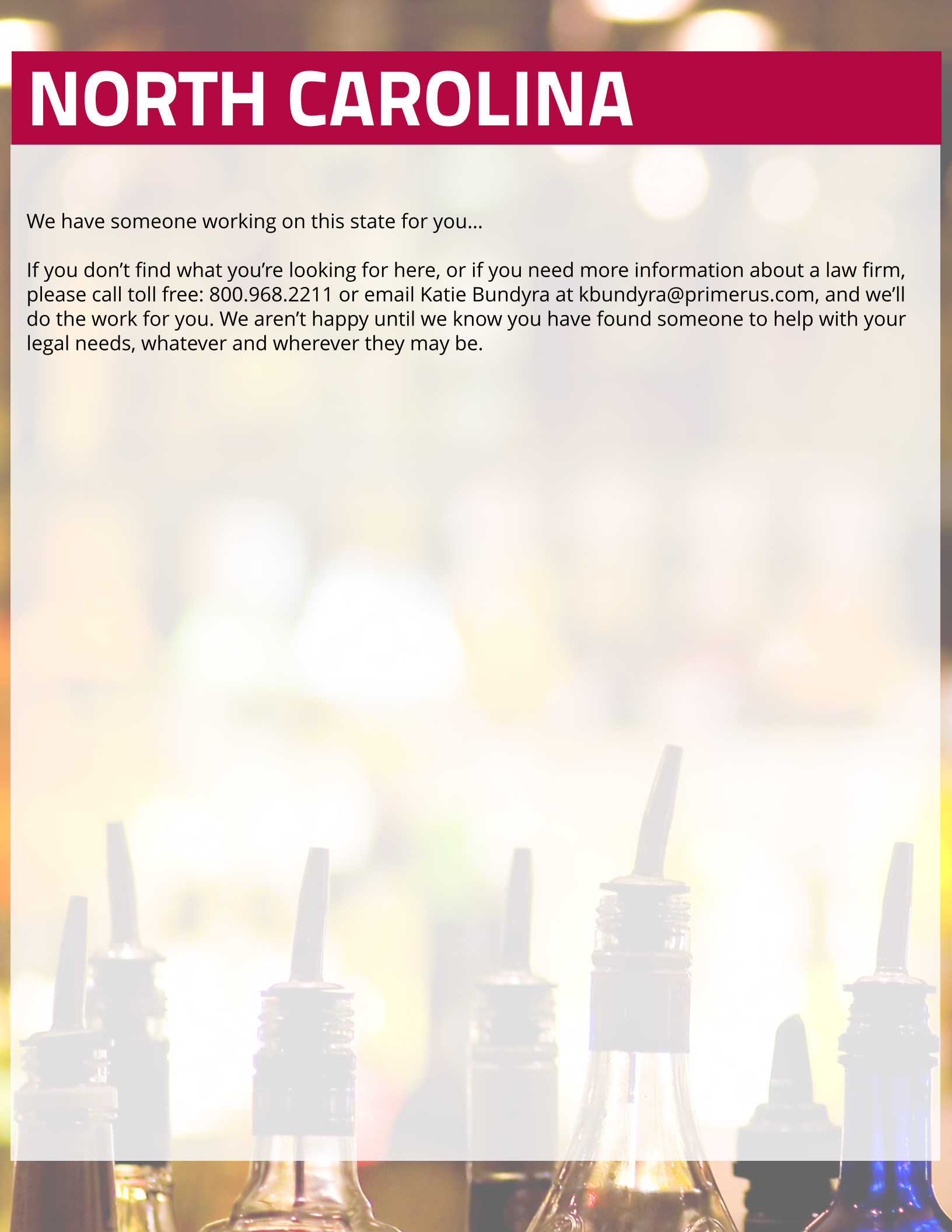

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General Overview of the Law

First Party Liability and Third Party Liability

R.C. § 4301.22(B) provides that "[n]o permit holder and no agent or employer of a permit holder shall sell or furnish beer or intoxicating liquor to an intoxicated person." A liquor permit holder who violates R.C. § 4301.22(B) may be held liable, pursuant to R.C. § 4399.18, for injuries to a third person caused by an intoxicated person to whom the permit holder sold or furnished beer or intoxicating liquor. Gressman v. McClain, 40 Ohio St.3d 359, 362 (1988).

The Ohio Dram Shop Act, R.C. 4399.18, codified the longstanding rule limiting the liability of a liquor permit holder for injuries caused by an intoxicated person, except under certain limited circumstances. Under R.C. 4399.18, a liquor permit holder can be held liable to third persons for injuries or death occurring off the permit holder's premises, when the injuries or death were caused or contributed by an intoxicated patron who was served alcoholic beverages by the permit holder in violation of R.C. 4301.22(B). Doolin v. Old River Yacht Club Ltd. Partnership, 8th Dist. No. 87653, 2006-Ohio-5922.

In order to recover for injuries or death occurring off-premises, a plaintiff must prove the following:

a. the permit holder knowingly sold an intoxicating beverage to a noticeably intoxicated person in violation of R.C. § 4301.22(B); and
b. the person's intoxication proximately caused injury or death to a third person after leaving the permit holder's premises.

R.C. § 4399.18.

Ohio courts have applied an actual knowledge standard in determining whether a liquor permit holder "knowingly sold" intoxicating beverages to a noticeably intoxicated person. Gressman, 40 Ohio St.3d at 363.

Constructive knowledge of a patron's intoxication has been deemed insufficient to support liability "because otherwise liquor permit holders would be subject to ruinous liability every time they served an intoxicating beverage. Gressman, 40 Ohio St.3d at 363. Instead, to establish a claim, Plaintiff must establish that the seller of alcohol had actual knowledge of the patron's intoxication.

Social Host Liability

ORC §4301.69(B): “No person who is the owner or occupant of any public or private place shall knowingly allow any underage person to remain in or on the premises while possessing or consuming beer or intoxicating liquor, unless the intoxicating liquor or beer is given to the person possessing or consuming it by that person’s parent, spouse who is not an underage person, or legal guardian, unless the parent, spouse who is not an underage person, or legal guardian is present at the time of the person’s possession or consumption of the beer or intoxicating liquor.”

Liability Involving Minors

ORC §4301.69 (A) provides that:

“No person...shall furnish {beer or intoxicating liquor} to an underage person...unless the underage person is accompanied by a parent, spouse who is not an underage person or legal guardian.”

Key Statues & Regulations

ORC § 4301.22(B)

ORC § 4301.69 (A), (B) “Social Host law”

ORC § 4399: Prohibitory Provisions and Crimes

ORC § 4399.02 Liability of owner or lessee for injuries caused by intoxicated person.

ORC § 4399.18 Liability for acts of intoxicated person.

Notable Cases

Gressman v. McClain, 40 Ohio St.3d 359, 362 (1988).

Doolin v. Old River Yacht Club Ltd. Partnership, 8th Dist. No. 87653, 2006-Ohio-5922.

Statute of Limitations

- 2 years – Personal Injury Negligence Actions and Wrongful Death Claims. See O.R.C. § 2305.11
- 1 year – Intentional Torts (libel, slander, defamation, assault, battery or other intentional torts). See O.R.C. §§ 2305.111, 2305.113
- 1 year – Professional Negligence, including: medical, legal and other professional malpractice. See O.R.C. § 2305.113
- 8 years – Contract Actions for writing contracts; 6 years for oral contracts. See O.R.C. §§ 2306, 2307.

Ohio has a catch-all statute of limitations of 4 years for all claims, not specifically identified. This includes claims such as tortious interference with contract and unjust enrichment. O.R.C. §§ 2305.11.

Comparative Fault

Ohio is a Comparative Negligence state. O.R.C. §§ 2315.32 to 2315.36. A plaintiff’s comparative fault does not act as a bar to his claim unless his fault is greater than the 50%. Generally, “contributory fault of the plaintiff may be asserted as an affirmative defense to a negligence claim or to a tort claim other than a negligence claim, except that the contributory fault of the plaintiff may not be asserted as an affirmative defense to an intentional tort claim.” R.C. § 2315.32(B). See, also, Young v. Univ. of Akron, 2004-Ohio-6720, ¶ 22.

Joint and Several Liability Contribution Among Joint Tortfeasors

Ohio Revised Code §§ 2307.22 through 2307.29 contain the statutory provisions applicable to joint and several liability in tort actions. Any one party who is found over 50% at fault is jointly and severally liable for all compensatory damages that represent economic loss. This party has a right of contribution against any other defendant found less than 50% at fault. For “noneconomic loss,”1 the negligent defendant would only be liable to Plaintiff in an amount equal to its proportionate share of liability. R.C. § 2307.22(C). Under no circumstances will a defendant be jointly and severally liable for non-economic loss.

The application of joint and several liability changes if one party committed an intentional tort and another is merely negligent. A defendant who commits an intentional tort and is found liable, even less than 50%, is jointly and severally liable for compensatory damages that represent economic loss.2 R.C. § 2307.22(A)(2), (4), (B). An intentional tort defendant does not have a right to contribution.

Ohio law does not permit a jury to be informed about the effect of its decisions regarding percentage of fault (e.g., it is not told that if it finds a plaintiff more at fault than the defendant tortfeasor, the plaintiff will recover nothing).

1 “‘Noneconomic loss’ means nonpecuniary harm that results from an injury, death, or loss to person that is a subject of a tort action, including, but not limited to, pain and suffering; loss of society, consortium, companionship, care, assistance, attention, protection, advice, guidance, counsel, instruction, training, or education; mental anguish; and any other intangible loss.” R.C. § 2307.011(F).

2 “Economic Loss” is defined in R.C. § 2307.011(C)(1)-(4) and includes wages, expenditures for medical care or treatment, expenditures to repair or replace property, and any other expenditures incurred as a result of the injury, death, or loss to person or property that is a subject of a tort action, except litigation expenditures.

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General Overview of the Law

First Party Liability

Oklahoma courts do not recognize an action for first party liability brought by an injured intoxicated adult patron or customer who was served or sold alcohol by a permit holder. See Ohio Cas. Ins. Co. v. Todd, 1991 OK 54, 813 P.2d 508.

Third Party Liability

Oklahoma courts do recognize an action brought by a third party that was injured by an intoxicated adult or minor patron or customer who was served or sold alcohol by a permit holder. See Brigance v. Velvet Dove Restaurant, Inc., 1986 OK 41, 725 P.2d 300 (Okla. 1986).

Social Host Liability

Oklahoma Courts have declined to extend civil liability to a social host or other noncommercial server of alcoholic beverages for injuries to third persons caused by intoxicated quests. See McGee v. Alexander, 2001 OK 78, ¶ 19, 37 P.3d 800, 805.

Oklahoma Courts have also declined to extend civil liability to a social host or other noncommercial server of alcoholic beverages for injuries to a minor guest who was served alcohol by the social host. See Teel v. Warren, 2001 OK CIV APP 46, 22 P.3d 234.

However, a social host may be criminally liable if the host knowingly and willingly permit a minor to possess or consume any alcoholic beverages on the host's premises. See Okla. Stat. Ann. tit. 37, §8.2.

Liability Involving Minors

Oklahoma courts do recognize an action for first party liability brought by an injured minor patron or customer who was served or sold alcohol by a permit holder. See Tomlinson v. Love's Country Stores, Inc., 1993 OK 83, 854 P.2d 910.

Oklahoma courts have declined to recognize a civil cause of action for first partyliability brought by an injured minor guest who was served alcohol by a social host. See Teel v. Warren, 2001 OK CIV APP 46, 22 P.3d 234.

Key Statues & Regulations

In Oklahoma, civil liability for alcohol-related "Dram Shop" claims stems solely from case law decided by Oklahoma courts. However, the following are the key statutes and regulations that pertain to "Dram Shop" liability.

Key Statutes

- Okla. Stat. Ann. tit. 37, §537 (A)(1) – "[No person shall] knowingly sell, deliver, or furnish alcoholic beverages to any person under twenty-one (21) years of age."
- Okla. Stat. Ann. tit. 37, §537 (A)(2) – "[No person shall] sell, deliver or knowingly furnish alcoholic beverages to an intoxicated person or to any person who has been adjudged insane or mentally deficient."
- Okla. Stat. Ann. tit. 37, §537 (B)(7) – "No licensee of the ABLE Commission shall:
  - (3) - Give any alcoholic beverage as a prize, premium or consideration for any lottery, game of chance or skill or any type of competition;
  - (5) - Permit or allow any patron or person to exit the licensed premises with an open container of any alcoholic beverage.
  - (7) - Permit any person to be drunk or intoxicated on the licensee's licensed premises."

- Okla. Stat. Ann. tit. 37, §8.2 – Imposes criminal liability upon a social host that knowingly and willingly permits a minor to possess or consume any alcoholic beverages on the host's premises.ORC § 4301.69 (A), (B) "Social Host law"

Violations and Penalties

- Okla. Stat. Ann. tit. 37, §538 (F) – "Any person who shall knowingly sell, furnish or give alcoholic beverage to a person under twenty-one (21) years of age shall be guilty of a felony, and shall be fined not less than Two Thousand Five Hundred Dollars ($2,500.00) nor more than Five Thousand Dollars ($5,000.00), or imprisoned in the State Penitentiary for not more than five (5) years, or both such fine and imprisonment. The ABLE Commission shall revoke the license of any person convicted of a violation of this subsection."
- Okla. Stat. Ann. tit. 37, §538 (G) – "Any person who shall knowingly sell, furnish or give alcoholic beverage to an insane, mentally deficient, or intoxicated person shall be guilty of a felony, and shall be fined not less than Five Hundred Dollars ($500.00) nor more than One Thousand Dollars ($1,000.00), or imprisoned in the State Penitentiary for not more than one (1) year, or both such fine and imprisonment.
- Okla. Stat. Ann. tit. 37, §538 (J) – "Any licensee permitting a person to be drunk or intoxicated on the licensee's licensed premises shall be guilty of a misdemeanor, and upon conviction punishable by a fine in an amount not exceeding One Hundred Dollars ($100.00), by imprisonment in the county jail for a term not more than thirty (30) days, or by both such fine and imprisonment."
- Okla. Stat. Ann. tit. 37, §566 (A) – "Any person who shall violate any provision of this title for which no specific penalty is prescribed shall be guilty of a misdemeanor and be fined not more than Five Hundred Dollars ($500.00), or imprisoned in the county jail for not more than six (6) months, or both such fine and imprisonment."

Jury Instructions

- The Oklahoma jury instruction for duty of care in a "Dram Shop" reads as follows:
  - "A bar owner [or other commercial vendor that sells liquor for on-the-premises consumption] has a duty to use ordinary care not to serve alcohol to a person that the bar owner [or other commercial vendor] knows or reasonably should know from the circumstances is already intoxicated." (OUJI 10.14).
- Oklahoma imposes a different jury instruction when the claim is based on sale of alcohol to a minor, in which case the jury instruction should read:
  - "A seller of alcohol has a duty to use ordinary care not to sell alcohol to a person that [he/she/it] knows or reasonable should know from the circumstances is under 21 years old." (OUJI 10.14 [Notes on Use]).

Authority / Enforcement

- The Legislature of the State of Oklahoma promulgates the statutes that regulate the sale of alcohol in the Sooner State.
- The Oklahoma Alcoholic Beverage Laws Enforcement Commission ("ABLE Commission"), created by the 28th Amendment to the Oklahoma Constitution, has the primary enforcement responsibility. ABLE Commission members, agents, and inspectors have the full authority and powers of peace officers of Oklahoma for the purpose of enforcing the provision of the Oklahoma Alcoholic Beverage Control Act.
- In Oklahoma, in both criminal and civil proceedings, the legal presumption for intoxication of adults is .08 blood-alcohol content (BAC). However, a minor is presumed to be legally intoxicated if there is any detectable amount of alcohol content in the minor's blood, which amounts to anything above a .00 BAC.

Notable Cases

- Brigance v. Velvet Dove Rest., Inc., 1986 OK 41, 725 P.2d 300: (adopting a new rule of liability that creates a civil cause of action for third-parties that are injured by intoxicated driver against a commercial vendor [for on-premises consumption] for the negligent sale of an intoxicating beverage to a person that the vendor knew or should have known was noticeably intoxicated and whose consumption of alcohol was the alleged cause of the injuries) (holding that "one who sells intoxicating beverages for on the premises consumption has a duty to exercise reasonable care not to sell liquor to a noticeably intoxicated person").
- Ohio Cas. Ins. Co. v. Todd, 1991 OK 54, 813 P.2d 508: (holding that a tavern owner has no liability to an intoxicated adult who voluntarily consumes alcoholic beverages to excess and sustains injury as result of his intoxication; in absence of harm to third party, the act of serving alcoholic beverages to an intoxicated adult customer and allowing the customer to exit the establishment does not constitute breach of duty).
- McGee v. Alexander, 2001 OK 78, 37 P.3d 800: (declining to extend a civil cause of action to third-parties that are injured by an intoxicated adult who was served alcohol by a social host).

• Tomlinson v. Love's Country Stores, Inc., 1993 OK 83, 854 P.2d 910: (holding that a civil cause of action existed against a commercial vendor of beer for off-premises consumption to recover for death of one of three minors to whom vendor allegedly sold beer with knowledge that minors intended to drink the beer while driving or riding in motor vehicle) (extending the rule established in Brigance to include a civil cause of action for the negligent sale of an intoxicating beverage to minors for off-premises consumption).

• Busby v. Quail Creek Golf & Country Club, 1994 OK 63, 885 P.2d 1326: (holding that a minor has a civil cause of action against a commercial vendor of alcohol when the minor is injured after consuming alcohol purchased from the vendor on the vendor's premises).

Statute of Limitations

In Oklahoma, the statute of limitation for negligence based claims is 2 years from the date of loss, and 1 year from the date of loss for intentional tort based claims. Our courts apply the "discovery rule," which means the claim begins to run on the date the prospective plaintiff knows or should know that he or she possesses a claim (i.e., typically the date of loss in alcohol liability cases.) See Okla. Stat. Ann. tit. 12, §95.

Comparative Negligence

Oklahoma is a modified comparative negligence jurisdiction. A plaintiff may not recover if his or her own negligence is "greater than" that of the defendant(s). If a plaintiff's negligence is less than that of the defendants, then his or her recovery is reduced by that proportion of fault attributed to him or her by the factfinder. See Okla. Stat. Ann. tit. 23, §13.

Joint & Several Liability

In any civil action based on fault, and not arising out of a contract, the liability for damages caused by two or more persons shall be several only and a joint tortfeasor shall be liable only for the amount of damages allocated to that tortfeasor. This rule, however, does not apply to actions brought by the state or a political subdivision of the state. See Okla. Stat. Ann. tit. 23, §15.

Contribution Among Joint Tortfeasors

The Oklahoma rule controlling contribution among joint tortfeasors is found at Okla. Stat. Ann. tit. 12, §832. This statute provides for a "pro rata" contribution among persons jointly or severally liable to the plaintiff. However, the right of contribution exists only in favor of a tortfeasor who has paid more than their pro rata share of the common liability. The total recovery is limited to the amount paid by the tortfeasor in excess of their pro rata share. No tortfeasor can be compelled to make a contribution beyond their pro rata share of the entire liability. Also, there is no right of contribution in favor of any tortfeasor who has intentionally caused or contributed to the injury or wrongful death.

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General Overview of the Law

First Party Liability

Pennsylvania Courts do recognize an action for First Party Liability brought by an injured intoxicated patron or customer. Generally section 4-493 of the Pennsylvania Liquor Code makes it unlawful for a licensee to serve one who is visibly intoxicated. Courts have noted that section 4-493 was enacted not only to protect society in general, but also to protect intoxicated persons from their inability to exercise self protective care. Schelin v Goldberg, 188 Pa. Super. 341, 146 A.2d 648 (1958). Plaintiff must show (1) that he or she was served alcoholic beverages while visibly intoxicated and; (2) that this violation proximately caused his injuries. Schelin, supra.; McDonald v. Marriott Corp., 388 Pa. Super. 121, 564 A.2d 1296 (1989); Smith v. Clark, 411 Pa. 142, 190 A.2d 441 (1963).

In addition, a commercial licensee who serves alcoholic beverages to a minor will be liable for injuries sustained by the minor if such injuries are proximately caused by the furnishing of the alcohol. See Smith,supra. This furthers the legislative purpose of protecting both minors and the public from the perceived deleterious effects of service of alcohol to someone under the age of 21.

Mathews v Konieczny,515 Pa. 106,112, 527 A2d 508, 511 (1987) Breach of the statutory duty to refrain from serving alcohol to visibly intoxicated persons does not, by itself, prove a defendant's liability. Even if a patron has been served alcoholic beverages while visibly intoxicated, no liability will be imposed unless the patron's injuries were proximately caused by the patron's intoxication. Miller v Brass Rail Tavern, 702 A.2d 1072, 1078 (Pa. Super. 1997) citing Holpp v Fez, Inc., 440 Pa. Super. 512, 518, 656 A.2d 147,150 (1990).

Third Party Liability

Pennsylvania Courts do recognize an action brought by a third party injured by an intoxicated adult or minor served or sold alcohol by a liquor licensee. In the case of an adult, the plaintiff must prove: (1) that an employee or agent of the licensee served alcoholic beverage to a customer while visibly intoxicated; (2) that violation of the statute proximately caused the plaintiff's injuries. Hiles v Brandywine Club, 443 Pa. Super. 462, 662 A2d 16 (1995); Mathews v. Konieczny, 515 Pa. 106, 527 A2d 508 (1987)

It is not sufficient for a plaintiff to establish merely that alcoholic beverages were served to a patron or that the patron was intoxicated at the time the patron caused injuries to another. Holpp v Fez, Inc., supra. 440 Pa. Super 517, 656 A. 2d 149. To establish liability the plaintiff must present evidence establishing that the patron was served alcohol at a time that he or she was visibly intoxicated. Id. Without evidence of visible intoxication, a licensee cannot be held liable for damages to a third party. Hiles v Brandywine Club, supra.

Visible intoxication can be proven by either direct or circumstantial evidence. Fandozzi v. Kelly Hotel, Inc., 711 A2d 524 (Pa. Super. 1998); Johnson v Harris, 419 Pa. Super. 541, 615 A2d 771 (1992); Couts v Ghion, 281 Pa. Super. 135, 421 A2d 1184 (1980). While expert testimony can be utilized to present "relation back" evidence, such testimony alone is insufficient to establish visible intoxication. See Johnson v Harris, 419 Pa. Super 541, 615 A2d 771 (1992).

> " In defining the violation as the dispensation of alcoholic beverages to a person "visibly intoxicated," the statute displays considerable logic in placing stress upon what can be seen. The law does not hold a licensee of its agent responsible on any basis, such as blood alcohol level of a patron, which would not be externally apparent; instead, the law decrees that the alcoholic beverage dispenser shall not provide more alcohol when the signs of intoxication are visible. The practical effect of the law is to insist that the licensee be governed by appearances, rather than medical diagnosis." Johnson v Harris, supra., 419 Pa. Super 551, 615 A2d 776.

Social Host Liability

Under Pennsylvania law, there is no liability on the part of a social host who serves alcoholic beverages to his or her adult guests, even if visibly intoxicated. See,Klein v. Raysinger, 504 Pa. 141, 470 A2d 507 (1984);Manning v. Andy, 454 Pa. 237, 310 A.2d 75 (1973). No liability will be imposed on the social host even if the host knew or should have known that the visibly intoxicated guest intended to drive a motor vehicle.Klein v Raysinger, supra. 504 Pa. 144, 470 A2d 508.The rationale is that in the case of an "ordinary able bodied man it is the consumption of the alcohol, rather than the furnishing of alcohol, which is the proximate cause of any subsequent occurrence."Klein v Raysinger, supra. 504 Pa.148, 470 A2d 511.

However, service of alcohol to minors is negligence per se and exposes the social host to liablity even if the minor was not served to the point of intoxication.Orner v. Malick, 515 Pa. 132, 527 A.2d 521 (1987). The breach occurs with the service of any alcohol to a minor, not just an amount sufficient to intoxicate the minor.Orner v Malick,supra. 515 Pa. 137, 527 A 2d 524. The affirmative action on the part of the defendant which gives rise to this negligence is the "furnishing of intoxicants to a class of persons legislatively determined to be incompetent to handle its effects".Congini v Portersville Valve Co., 504 Pa 157, 163, 470 A2d 515, 518 (1983).

In order to establish liability, it must be shown that the host "knowingly furnished" alcoholic beverages to a minor. The standard requires actual knowledge on the part of the social host as opposed to imputed knowledge imposed as a result of a relationship between the parties.Alumni Ass'n v Sullivan524 Pa. 336, 572 A2d 1209 (1990);Winwood v Bregman, 788 A2d 983 (Pa. Super. 2001).

A social host may assert the minor's comparative negligence as a defense.Congini v Portersville Valve Co.,supra. 504 Pa. 164. 470 A2d 518-519.

Further, there is no liability where a minor social host provides alcohol to another minor.Kapres v Heller,536 Pa. 551, 640 A2d 888 (Pa. 1994).

Liability Involving Minors

It has been held that the Pennsylvania Dram Shop Act establishes a duty on the part of licensees not to sell alcohol to minors. Reilly v. Tiergarten, Inc., 430 Pa. Super. 10, 633 A.2d 208, 210 (1993); 47 P.S. §4-493(1). The service of alcohol to anyone under the age of 21 constitutes negligence per se. Id., Herr v. Booten, 398 Pa. Super. 166, 172, 580 A.2d 1115, 1118 (1988). Liability will attach even if the minor is not visibly intoxicated or if alcohol was served to one other than the actor. Matthews v Konieczny, 515 Pa. 106, 527 A2d 508 (1987).

Furthermore, Pennsylvania Courts have held that a seller's duty to refrain from selling alcohol to minors can be breached by an indirect sale to an adult intermediary intended for a minor. Liability arises if the seller knows or should have known that the alcohol was being purchased for use by a minor. Thomas v. DuQuesne Light Co., 376 Pa. Super. 1, 545 A.2d 298, 294 (1988).

Key Statues & Regulations

In Pennsylvania, liability of a tavern owner arising from the sale or service of alcoholic beverages derives from statute.

47 P.S.§ 4-493(1) of the Pennsylvania Liquor Code provides the basis for imposing liability for negligent service of alcohol by liquor licensee(s). The section provides:

"It shall be unlawful –

> For any licensee or the board, or any employee, servant, or agent of such licensee or the board, or any other person, to sell, furnish, or give any liquor or malted or brewed beverages, or to permit any liquor or malted or brewed beverages to be sold, furnished or given, to any person visibly intoxicated or to any insane person, or to any minor, or to habitual drunkards or persons of known untempered habits.
>
> § 4-496 of the Pennsylvania Liquor Code provides as follows:
>
> Liability of licensees
>
> "No licensee shall be liable to third-persons on account of damages inflicted upon them off of the licensed premises by customers of a licensee unless the customer who inflicts the damages was sold, furnished or given liquor or malted or brewed beverages by the said licensee or his agent, servant or employee when the said customer was visibly intoxicated."

A violation of the Dram Shop statute is negligence per se. Miller v Brass Rail Tavern, 702 A. 2d 1072 (Pa. Super. 1997).

Pennsylvania Courts are split as to whether the Dram Shop Statute provides the exclusive remedy for individuals injured as a result of the service of alcoholic beverages or whether license holders can be exposed to liability based upon common law claims of negligence such as failure to provide adequate security, failure to properly train employees, or failure to have in place adequate policies and procedures. See e.g. Barr v Easton, 39 Pa. D. & C. 5th 211 (Lycoming Cty. 2014); Schuenemann v Dreemz, LLC, 34 A.3d 94 (Pa. Super. 2011); Rivero v Timblin, 12 Pa. D & C. 5th 233 (Lancaster Cty. 2010) (common law negligence claims can be asserted where service of alcohol to a visibly intoxicated patron has been established). See also Sims v Frank B. Fuher Holdings, Inc., 2012 Pa. Dist. & Cnty Dec. Lexis 309.

The Pennsylvania Liquor Control Board regulates the sale of alcohol in Pennsylvania.

The Bureau of Liquor Control Enforcement of the Pennsylvania State Police has primary responsibility to enforce the Pennsylvania Liquor Code. It works with local law enforcement to enforce the alcohol laws.

In 2003, Pennsylvania lowered the legal blood alcohol content ("BAC') level from .10 percent to .08 percent. The law also created a tiered approach toward DUI penalties which varied based on an individual's blood-alcohol content and prior offenses.

General Impairment:	.080 - .099 percent
High BAC:	.10 - .159 percent
Highest BAC:	.16 plus percent

Notable Cases

Jardine v. Upper Darby Lodge, 413 Pa. 626, 198 A.2d 550, (Pa. 1964)

A driver who struck a pedestrian had been drinking at a bar for several hours. The bar contended that there was insufficient evidence to show the driver was visibly intoxicated when he was last served. The bar also claimed there was no proof that the driver's alleged intoxication was the proximate cause of the injuries.

In this case, the Court found that the testimony of a surgeon who examined the driver within an hour of the accident as well as an officer who arrived to the scene of the accident shortly thereafter, were properly submitted to the jury. The officer's testimony stated the driver exhibited signs of visible intoxication at the scene. Additionally, a witness testified that the driver had bloodshot eyes while at the bar.

The Court affirmed the trial court's judgment finding that competent and sufficient evidence supported the jury's findings that the driver was intoxicated when he was sold intoxicating beverages at the bar and that his intoxication was the proximate cause of the pedestrian's injuries.

McDonald v. Marriott Corp., 388 Pa. Super. 121,564 A.2d 1296, (Pa. Super. Ct. 1989)

Appellant bar customer was involved in a single-car accident several hours after she left the bar of appellee hotel. Appellant had consumed four bloody marys and four beers in a four and a half hour period at appellee's bar. After leaving the bat Appellant smoked illegal substances and consumed additional beer. The accident occurred several hours after appellant left appellee's premises.

The trial court granted summary judgment in favor of appellee hotel. Appellant testified at trial that she was able to drive from appellee's bar to another bar with little trouble. On appeal, the court affirmed, finding that Appellant put forth no proof showing she was visibly intoxicated when served. The Court found that Summary judgment was appropriate and ruled in favor of appellee hotel. The Court stated that no genuine issue of material fact existed as to whether appellant was provided alcoholic beverages while "visibly intoxicated."

Schuenemann v. Dreemz, LLC, 34 A.3d 94, (Pa. Super. Ct. 2011)

The jury returned a verdict in favor of appellees/plaintiffs, determining that the decedent was 49 percent negligent. A post-trial motion seeking a judgment notwithstanding the verdict or, in the alternative, a new trial, was filed shortly thereafter by the appellant bar.

The Court determined the trial court properly denied appellant's post-trial motion because evidence regarding the bar's licensing, certification, and correspondence with the Pennsylvania Liquor Control Board, and internal employee procedures, was appropriate rebuttal to its defense that its personnel were trained to recognize patrons who were visibly intoxicated.

The Court further found that no error occurred by allowing the decedent's blood alcohol content level into evidence as extensive corroborating evidence to support intoxication was presented.

Klein v. Raysinger, 504 Pa. 141, 470 A.2d 507 (Pa. 1983)

Appellants, who were the victims of an accident involving an intoxicated driver and the estate of a deceased passenger, filed personal injury actions for injuries arising out of the accident against appellee, social hosts. The claims against appellee alleged negligence for serving alcoholic beverages to a visibly intoxicated adult guest who later drove. Appellants sought to have the court to recognize a cause of action against the social host.

The Court affirmed, holding that under Pennsylvania law there was no liability on the part of a social host who served alcoholic beverages to a visibly intoxicated adult guest. It did not matter that the host knew, or should have known, the intoxicated person intended to drive. The Court noted that no other jurisdiction, with few exceptions, had been willing to extend liability to a social host when serving his adult guests who were visibly intoxicated.

Matthews v. Konieczny, 515 Pa. 106, 527 A.2d 508, 1987 Pa. LEXIS 718 (Pa. 1987)

Appellant was a licensee able to sell alcoholic beverages. Appellees were individuals injured when appellant sold intoxicating beverages to minors. The Court reversed and remanded the trial court, stating that even though the minors were not served intoxicating beverages, appellants were liable to third parties for damages proximately cause by the service of alcohol to minors. The Court noted that appellant's duty to refrain from serving minors extended beyond the minor who was served and included a party who may be affected by the illegal service to a minor.

However, the Court also noted that evidence of comparative negligence may be submitted to rebut a claim involving the extent of a licensee's liability. The Court further noted that the Statutory immunity commonly recognized in 47 Pa. Cons. Stat. § 4-497 (requiring visible intoxication at the time of service) does not extend to the service of minors.

Statute of Limitations

Personal injury claims in Pennsylvania are subject to a two-year statute of limitations. 42 Pa.C.S.A. §5524.

Pennsylvania Courts apply the “discovery rule” which stands for the proposition that the statute of limitations does not commence to run until the injured party discovers or reasonably should discover that he has been injured and that his injury has been caused by another party’s conduct. Fine v Checcio, 582 Pa. 253, 870 A2d 850 (2005).

Comparative Negligence

Pennsylvania is a modified comparative jurisdiction. Under Title 42, Section 7102(a) “ in all actions brought to recover damages for negligence resulting in death or injury to person or property, the fact that the plaintiff may have been guilty of contributory negligence shall not bar a recovery by the plaintiff or his legal representative where such negligence was not greater than the causal negligence of the defendant or defendants against whom recovery is sought, but any damages sustained by the plaintiff shall be diminished in proportion to the amount of negligence attributed to the plaintiff.”

Joint & Several Liability

In 2011, Pennsylvania passed the Fair Share Act, 42 Pa.C.S.A. § 7102. This Act altered traditional concepts of joint and several liability by adopting a system of proportional fault. Under the Act, a tortfeasor is only responsible for his or her percentage share of an award unless the tortfeasor is found to be 60 percent or more responsible. Other exceptions to application of proportional fault expressly include an award of damages as a result of intentional misrepresentation, intentional tort, or the release or threatened release of hazardous substances. 42 Pa.C.S.A. §7102 (a.1)

Most notably, a specific exception was also maintained for “a civil action in which a defendant has violated section 497 of the Act of April 12, 1951 known as the Liquor Code.” Id.

As a result of the above, under the present state of the law, a liquor licensee found to be only 1 percent responsible, remains jointly and severally liable for the entirety of any verdict or award which is entered.

Contribution Among Joint Tortfeasors

The Pennsylvania Uniform Contribution Among Tort-feasors Act is found at 42 Pa.C.S.A. §§ 8321-8327. This Act provides for a “pro rata” contribution among persons jointly and severally liable to a Plaintiff. It allows the joint tortfeasor who paid to pursue a recovery limited to the amount paid by him in excess of his own pro rata share. 42 Pa.C.S.A § 8324 (b). Such an action must be brought within 6 years from the entry of judgment. Pennsylvania Nat’l Mut. Casualty Co. v Nicholson Constr. Co., 374 Pa. Super. 13, 542 A 2d 123 (Pa. Super. 1988).

Courts have held that the Act does not apply to intentional acts. Toll Bros. v Pantich, Schwarze, Jacobs & Nadel, 22 Pa. D. & C. 5th 119 (Montgomery Cty. 2011).

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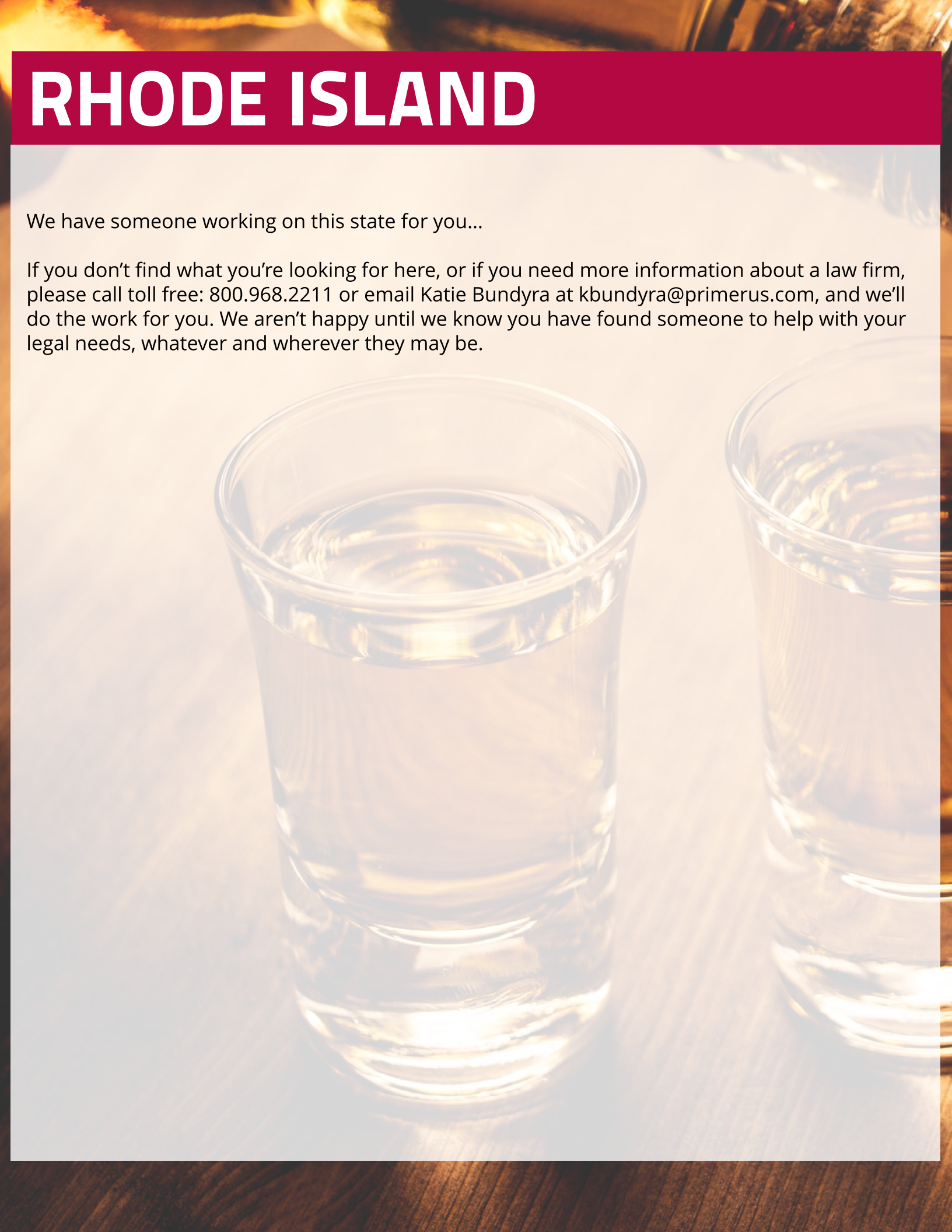

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General Overview of the Law

First Party Liability

South Carolina courts do not recognize an action for first party liability brought by an injured intoxicated adult patron or customer who was served or sold to by a permit holder.

Third Party Liability

South Carolina courts do recognize an action brought by a third party liability injured by an intoxicated adult or minor patron or customer who was served or sold to by a permit holder.

Social Host Liability

South Carolina courts do not recognize an action for first party liability brought by an injured intoxicated adult guest who was served by a social host.

South Carolina courts do recognize an action for first party liability brought by an injured minor guest who was served by a social host.

Liability Involving Minors

South Carolina courts do recognize an action for first party liability brought by an injured minor patron or customer who was served or sold to by a permit holder.

Also, as noted above, South Carolina courts do recognize an action for first party liability brought by a injured minor guest who was served by a social host.

Key Statues & Regulations

In South Carolina, there are no “Dram Shop” laws, which specifically create civil liability for alcohol-related claims. Instead, civil liability is premised upon violation of criminal statutes and regulations. The following are the key statutes and regulations that create both civil and criminal liability:

- S.C. Code Ann. § 61-4-50, which prohibits the sale of alcohol to persons under the age of 21.
- S.C. Code Ann. § 61-4-580, which prohibits permit holders from “knowingly” committing a variety of acts upon the licensed premises, including:
  - “sell[ing] beer or wine to a person under twenty-one years of age”;
  - “sell[ing] beer or wine to an intoxicated person”; and
  - “conduct[ing], operat[ing], organiz[ing], promot[ing], advertis[ing], run[ning], or participat[ing] in a ‘drinking contest’ or ‘drinking game’.

The South Carolina Department of Revenue regulates the sale of alcohol in the Palmetto State.

The South Carolina State Law Enforcement Division (SLED) has primary enforcement responsibility. It works with local law enforcement to enforce the alcohol laws.

In South Carolina, in both criminal and civil proceedings, the legal presumption for intoxication for adults is .08 BAC. The legal presumption for intoxication for minors is .05 BAC.

Notable Cases

Garren v. Cummings & McGrady, Inc., 289 S.C. 348, 345 S.E.2d 508 (S.C. Ct. App. 1986) (stating South Carolina social host incurs no liability to either first or third parties injured by an intoxicated adult guest).

Whitlaw v. Kroger Co., 306 S.C. 51, 410 S.E.2d 251 (S.C. 1991) (holding the statute criminalizing the sale of beer or wine to a person under the age of 21 and one providing regulatory penalties for the knowing sale to a person under 21 creates a duty on a commercial vendor such as a grocery store or convenience store - a vendor who violates this duty and sells to a person under 21 may be liable to the unlawful purchaser and to third parties harmed by the purchaser's consumption of the alcohol).

Norton v. Opening Break of Aiken, Inc., 313 S.C. 508, 443 S.E.2d 406 (S.C. Ct.App.1994) (imposing third party liability on the holder of an on-premises sales and consumption license who violated an alcoholic beverage control regulation by permitting an underage person to consume alcoholic beverages on the holder's premises).

Tobias v. Sports Club, Inc., 332 S.C. 90, 504 S.E.2d 318 (S.C. 1998) (ruling South Carolina does not recognize a “first party” cause of action against the permit holder by an intoxicated adult predicated on an alleged violation of the alcohol control statutes).

Marcum v. Bowden, 372 S.C. 452, 643 S.E.2d 452 (S.C. 2007) (holding an adult social host who knowingly and intentionally serves, or causes to be served, an alcoholic beverage to a person he knows or reasonably should know is under the age of 21 is liable to the person served and to any other person for damages proximately resulting from the host's service of alcohol).

Hartfield v. Getaway Lounge & Grill, Inc., 338 S.C. 407, 697 S.E.2d 558 (S.C. 2010) (arguably the most important alcohol liability case applied in South Carolina courts presently) (holding that civil juries may apply the .08 criminal standard to infer a patron was intoxicated at the time of service; expressly stating that a plaintiff need not demonstrate the patron was “visibly intoxicated” at the time of service, but instead that the permit holder knew or should have known the patron was intoxicated based on the number of alcoholic beverages served to the patron during a specific period of time or based on the permit holders knowledge of the patron’s consumption of alcoholic beverages in other settings prior to his or her entry onto the permit holder’s premises; and permitting a chemist or toxicologist to employ retrograde extrapolation to demonstrate intoxication at the time of service, as well as opine on the patron’s likely physical appearance/demeanor at the time of service based on estimated BAC).

Statute of Limitations

In South Carolina, the statute of limitations for both negligence and intentional tort based claims is 3 years from the date of loss. Our courts apply the “discovery rule,” which means the claim begins to run on the date the prospective plaintiff knows or should know he or she possesses a claim (i.e., typically the date of loss in alcohol liability cases).

Comparative Negligence

South Carolina is a modified comparative jurisdiction. A plaintiff may not recover if his or her own negligence is “greater than” that of the defendant(s). If a plaintiff’s negligence is less then that of the defendants, then his or her recovery is reduced by that proportion of fault attributed to him or her by the factfinder.

Joint & Several Liability

In 2005, South Carolina modified its approach to joint and several liability. However, the statutory provisions that allow equitable apportionment of fault between joint tortfeasors at the trial stage do not apply to a defendant whose conduct involved the sale, use, or possession of alcohol or drugs. S.C. Code Ann. § 15-38-15(F).

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General Overview of the Law

First Party Liability

Tennessee courts do not recognize an action for first party liability brought by an injured intoxicated adult patron or customer who was served or sold to by a permit holder.

Third Party Liability

Tennessee courts, by statute, do not allow a third party to bring an action against a party furnishing alcohol, unless, it can be shown to a jury of 12 persons beyond a reasonable doubt that the person furnishing alcohol sold the alcohol to a person known to be under 21 years of age or sold alcohol to a visibly intoxicated person. Otherwise, Tennessee law regards the consumption of alcohol as the proximate cause of an injury to others.

Social Host Liability

Tennessee courts do not recognize an action for first party liability brought by an injured intoxicated adult guest who was served by a social host.

Tennessee courts do recognize an action for first party liability brought by an injured minor guest who was served by a social host. This is true even if the adult host did not actually furnish the alcohol to the minors but merely permitted them to drink at their home.

Liability Involving Minors

Tennessee courts do not recognize an action for first party liability brought by an injured minor patron or customer who was served or sold to by a permit holder.

Also, as noted above, Tennessee courts do recognize an action for first party liability brought by a injured minor guest who was served by a social host.

Key Statues & Regulations

In Tennessee, there are “Dram Shop” laws, which specifically create civil liability for alcohol-related claims. The following are the key statutes and regulations that create both civil and criminal liability:

- Tenn. Code Ann. § 57-5-301, which prohibits the sale of alcohol to persons under the age of21.(Criminal Liability).
- Tenn. Code Ann. § 57-10-101 - The general assembly declared that the consumption of any alcoholic beverage or beer rather than the furnishing of any alcoholic beverage or beer is the proximate cause of injuries inflicted upon another by an intoxicated person.
- Tenn. Code Ann. § 57-10-101 - Notwithstanding § 57-10-101, no judge or jury may pronounce a judgment awarding damages to or on behalf of any party who has suffered personal injury or death against any person who has sold any alcoholic beverage or beer, unless such jury of twelve (12) persons has first ascertained beyond a reasonable doubt that the sale by such person of the alcoholic beverage or beer was the proximate cause of the personal injury or death sustained and that such person:
    - Sold the alcoholic beverage or beer to a person known to be under the age of twenty-one (21) years and such person caused the personal injury or death as the direct result of the consumption of the alcoholic beverage or beer so sold; or
    - Sold the alcoholic beverage or beer to a visibly intoxicated person and such person caused the personal injury or death as the direct result of the consumption of the alcoholic beverage or beer so sold.

In Tennessee, in both criminal and civil proceedings, the legal presumption for intoxication for adults is .08 BAC and .04 BAC if it is in a commercial vehicle. The legal presumption for intoxication for minors is .02 BAC.

Notable Cases

Cullum v. McCool, 2013 Tenn. LEXIS 1006, 2013 WL 6665074 (Tenn. Dec. 18, 2013) held that when an intoxicated customer came into Walmart and Walmart knew of the intoxication and asked the intoxicated person to leave, Walmart was liable to a third-party, when the intoxicated person struck the third-party, plaintiff, in the Walmart parking lot. In other words, if the intoxicated individual left Wal-Mart's parking lot and instead struck some third-party, then it is unlikely they would have a viable cause of action. However, because the intoxicated individual struck a Wal-Mart customer, there was a heightened duty due to the "special relationship with its customer" that compelled Wal-Mart to take some additional action beyond simply removing the intoxicated person from the store.

West v. East Tennessee Pioneer Oil Co., 172 S.W.3rd 545 (Tenn. 2005) If a convenience store employee provides gas to an intoxicated individual who is also a driver of a vehicle, then if an accident occurs that is reasonably tied to the sale of the gasoline, the gas station can be found responsible for the accident under Tennessee law. Further, even if an employee was not aware that the purchaser of gasoline was intoxicated at the time the gasoline was sold, if the employee later assists the intoxicated individual in pumping gasoline, then the gas station is potentially responsible for that act. The Tennessee Supreme Court, importantly, clarified that they "do not hold that convenience store employees have a duty to physically restrain or otherwise prevent intoxicated persons from driving." Id. at 552. As a result, if an intoxicated individual purchases gas at the pump by credit card and no employee is aware, or should be aware of their intoxicated state until after the gas is put into the vehicle, the employees are not required to physically restrain the individual from leaving the premises if they later learn the individual was intoxicated.

Widner v. Chattanooga Entm't, Inc., 2014 Tenn. App. LEXIS 65, *1, 2014 WL 546347 (Tenn. Ct. App. Feb. 11, 2014) decided the issue of whether a trial court erred in granting summary judgment to a bar in a negligence action, on the basis that there was no sale of alcoholic beverages, pursuant to Tenn. Code Ann. § 57-10-102 (2013), by the bar to a patron of the bar who subsequently crashed her vehicle into the decedent's apartment. The Tennessee Court of Appeals held that no sale of alcoholic beverages by the bar to the patron occurred because the patron, who consumed alcoholic drinks which others purchased for her at the bar, did not order any alcoholic drinks from the wait staff at the bar, was not served any alcoholic beverages by any wait staff at the bar, and did not pay for any alcoholic beverages at the bar.

Statute of Limitations

In Tennessee, the statute of limitations for a negligence claim is 1 years from the date of loss. Tennessee courts apply the "discovery rule," which means the claim begins to run on the date the prospective plaintiff knows or should know he or she possesses a claim.

Comparative Negligence

Tennessee is a modified comparative fault jurisdiction. A plaintiff may not recover if his or her own negligence is "greater than" that of the defendant(s). If a plaintiff's negligence is less then that of the defendants, then his or her recovery is reduced by that proportion of fault attributed to him or her by the jury. Ironically, the adoption of comparative fault in Tennessee involved a case determining the liability between two intoxicated drivers.

Joint & Several Liability

In 1992, Tennessee modified its approach to joint and several liability by adopting comparative fault. The doctrine of joint and several liability is still applicable to cases where liability is considered vicarious. Specifically, the doctrine is still applicable to joint enterprises, the family purpose doctrine, and respondeat superior. However, in one Tennessee decision the Court specifically rejected the theory of joint enterprise where a driver and a passenger were intoxicated and the plaintiff sought to impose joint and several liability through this doctrine.

Contribution Among Joint Tortfeasors

Because a particular defendant will be liable only for the percentage of a plaintiff's damages occasioned by that defendant's negligence, situations where a defendant has paid more than his "share" of a judgment will no longer arise, and therefore the Uniform Contribution Among Tortfeasors Act, T.C.A. § 29-11-101 - 106 no longer determines the apportionment of liability between codefendants.

Tennessee Tort Reform

Under the Tennessee Civil Justice Act of 2011, non-economic damages are capped at $750,000. However, the cap is not applicable for personal injury and wrongful death actions if the defendant was under the influence of alcohol, drugs or any other intoxicant or stimulant, resulting the defendant's judgment being substantially impaired, and causing the injuries or death.

TEXAS

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General Overview of the Law

First Party Liability

Texas courts do recognize an action for first party liability brought by an injured intoxicated adult patron or customer who was served or sold to by a provider. See Smith v. Sewell, 858 S.W.2d 350, 355 (Tex. 1993).

Third Party Liability

Texas courts do recognize an action for third party liability brought by a third party injured by an intoxicated adult or minor patron or customer who was served or sold to by a provider. See Borneman v.Steak & Ale, 22 S.W.3d 411, 412 (Tex. 2000).

Social Host Liability

Texas courts do not recognize an action for first party liability brought by an injured intoxicated adult guest who was served by a social host. A social host who serves alcoholic beverages to adult guests is not a provider if the beverages are served without charge. Smith v. Merritt, 940 S.W.2d 602, 605–06 (Tex. 1997).

Texas courts do recognize an action for third party liability brought by an injured plaintiff against an intoxicated minor guest (under the age of 18) who was served by an adult 21 years of age or older. The adult must not be the minor's parent, guardian, spouse, or an adult in whose custody the minor has been committed by a court. TEX. ALCO. BEV. CODE § 2.02(c).

Liability Involving Minors

As noted above, Texas courts do recognize an action for third party liability brought by an injured plaintiff against an intoxicated minor guest (under the age of 18) who was served by an adult 21 years of age or older. The statute does not distinguish between a minor patron or customer who is served or sold to by a permit holder and a minor guest who is served by a social host.

Key Statues & Regulations

Texas, there are "Dram Shop" laws which specifically create civil liability for alcohol related claims. The following are the key statutes and regulations that create liability:

- TEX. ALCO. BEV. CODE § 2.02(b), which prohibits providers from serving, selling, or providing an obviously intoxicated adult alcohol to the extent the adult presents a clear danger to himself and others; and the intoxication of the recipient of the alcoholic beverage was the proximate cause of the damages suffered.
- TEX. ALCO. BEV. CODE § 2.02(c), which creates liability for an adult 21 years of age or older for damages proximately caused by a minor under the age of 18 if:
  - The adult is not the minor's parent, guardian or spouse, or an adult in whose custody the minor has been committed by a court; and
  - The adult knowingly served or provided the minor any of the alcoholic beverages that contributed to the minor's intoxication, or allowed the minor to be served or provided any of the alcoholic beverages that contributed to the minor's intoxication on the premises owned or leased by the adult.

The Texas Alcoholic Beverage Commission ("TABC") shall inspect, supervise, and regulate every phase of the business of manufacturing, importing, exporting, transporting, storing, selling, advertising, labeling, and distributing alcoholic beverages in the Lone Star State. TEX. ALCO. BEV. CODE § 5.31.

The TABC has primary enforcement responsibility. The commission may authorize its commissioned peace officers, servants and employees to carry out, under its direction, the provisions of the code. TEX. ALCO. BEV. CODE § 5.34. It works with local law enforcement to enforce the alcohol laws.

In Texas, the legal presumption for intoxication for adults 21 years old or older is .08 BAC. For commercial drivers, the presumption is .04 BAC. For anyone younger than 21 years old, the legal presumption for intoxication is any detectable amount (Texas has a zero-tolerance policy for minors).

Notable Cases

Steak & Ale of Tex., Inc. v. Borneman, 62 S.W.3d 898 (Tex. App.—Fort Worth 2001, pet. granted): (holding the Dram Shop Act's silence on the issue of exemplary damages, construing the Act and the code into which it was enacted as a whole and the relevant policy considerations, indicates the legislature did not intend for punitive damages to be available for a violation of the Dram Shop Act).

Whitney Crowne Corp. v. George Distribs., Inc., 950 S.W.2d 82 (Tex. App.—Amarillo 1997, no writ): (holding beer and food provided at an awards banquet for its employees was a social event because the banquet was gratuitously given to the attendants, with nothing on record indicating the participants paid any money consideration for the opportunity to attend).

Statute of Limitations

In Texas, the limitations period for a Dram Shop action is two years. TEX. CIV. PRAC. & REM. CODE § 16.003(a). The discovery rule does not apply to a Dram Shop action.

Comparative Negligence

In Texas, Chapter 33 of the Civil Practice & Remedies Code states a claimant may not recover damages if his percentage of responsibility is greater than 50 percent. TEX. CIV. PRAC. & REM. CODE § 33.001. An intoxicated person suing a provider of alcoholic beverages for his own injuries under chapter 2 of the Texas Alcoholic Beverage Code will be entitled to recover damages only if his percentage of responsibility is found to be less than or equal to 50%. Even if recovery is not barred, any damages must be reduced by a percentage equal to the intoxicated individual's percentage of responsibility. Smith v. Sewell, 858 S.W.2d 350, 356 (Tex. 1993).

Joint & Several Liability

Texas is a modified joint and several liability jurisdiction. In 1995, Texas amended its approach to joint and several liability. The 1995 amendments to the Civil Practice and Remedies Code still do not allow a claimant to recover damages if the claimant's percentage of responsibility is greater than 50%. Each liable defendant, in addition to his liability for his own percentage of responsibility, will also be jointly and severally liable for all damages recoverable by a claimant if the percentage of responsibility assigned to the defendant is greater than 50%. TEX. CIV. PRAC. & REM. CODE § 33.013.

Contribution Among Joint Tortfeasors

Each joint and several tortfeasor paying more than its proportion of damages has a right to contribution from other jointly and severally liable defendants up to the other defendants' unpaid share of damages. TEX. CIV. PRAC. & REM. CODE § 33.015. The defendant can seek contribution if the recipient of the alcoholic beverage is a co-defendant. See F.F.P. Oper. Partners v. Duenez, 237 S.W.3d 680, 693 (Tex. 2007).

UTAH

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General Overview of the Law

Section 32B-15 of the Utah Code, known as the Alcoholic Product Liability Act, specifies that an alcohol manufacturer or vendor is liable for injuries and damages suffered by a person injured in an alcohol-related accident if the manufacturer or vendor "gives, sells, or otherwise provides an alcoholic product" to someone who is:

- under age 21,
- "apparently under the influence" of drugs or alcohol,
- someone whom the manufacturer or vendor "knew or should have known under the circumstances" was under the influence of drugs or alcohol, or
- "a known interdicted person" (meaning someone who has been ordered not to consume alcohol), and
- the person who receives the alcohol later causes an accident as a result of having ingested the alcohol.

First Party Liability

No. See Miller v. Gastronomy, Inc., UT App 80 (2005).

Third Party Liability

The injured person may be able to file a lawsuit against the business or individual who provided the alcohol under circumstances specified in Utah Code Ann 32B-15.

Social Host Liability

Social host liability is limited to situations in which a host who is 21 or older provides alcohol to a minor under age 21.

Liability Involving Minors

Furnishing is prohibited—no explicit exceptions noted in the law.

Key Statues & Regulations

- Utah Code Ann. §32B-15-201: Alcohol vendor or manufacturer is liable for injuries caused by alcohol related accident if the vendor or manufacturer gives, sells, or provides alcohol to certain individuals specified in the Code.
- Utah Code Ann. §32B-15-202: Employer is liable for employee violation of the Act.
- Utah Code Ann. §32B-15-301: Statute of limitations – two years. Maximum awards – $1,000,000 for one person, or $2,000,000 aggregate for all persons injured as a result of one occurrence.
- Utah Code Ann. §32B-15-302: Any person who violates the Alcoholic Beverage Control Act, may be found to be a prima facie party to the offense committed by another, and held liable as the principle offender.
- Utah Code Ann. § 32B-4-404: Violations could include providing an alcoholic beverage to someone who is actually or apparently intoxicated, or a person whom the person providing alcohol knows or should know that the person is actually or apparently intoxicated.

Notable Cases

- Miller v. Gastronomy, Inc., UT App 80 (2005) (Restaurant owner could not be liable to parents of intoxicated patron who died in single vehicle accident after being served.)
- Red Flame, Inc. v. Martinez, 996 P.2d 540, 546 (Utah 2000) (Dramshop act is subject to comparative fault statute.)

- Dramshop Act was a strict liability statute, and
- Miller v. United States, 104 P.3d 1202 (Utah 2005) (Dramshop Act is a strict liability statute, and there is no common law negligence claim against dramshops for selling alcohol to intoxicated persons.)
- Horton v. Royal Order of Sun, 821 P.2d 1167 (Utah 1991) (Dramshop Act gives cause of action to injured third parties, but not to the intoxicated person.)

Statute of Limitations

2 Years. See Utah Code Ann. §32B-15-301

Comparative Negligence

No. See Red Flame, Inc. v. Martinez, 996 P.2d 540, 546 (Utah 2000) (“The extension of comparative fault principles to the Dramshop Act is not required by our prior case law and, I assert, was never intended by the legislature.)

Joint & Several Liability

No. The maximum amount for which a person causing the injury and damage may be liable to a vendor or manufacturer seeking contribution is that percentage or proportion of the damages equivalent to the percentage or proportion of fault attributed to that person causing the injury and damage. See Utah Code Ann. §32B-15-302(1)(b)

Contribution Among Joint Tortfeasors

Yes. The vendor or manufacturer can bring a cause of action for contribution against any person causing injury and damage. See Utah Code Ann. §32B-15-302(1)(b)

VERMONT

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VIRGINIA

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General Overview of the Law

First Party Liability

Virginia courts do not recognize a civil action for first party liability brought by an injured intoxicated adult patron or customer who was served or sold alcohol by a permit holder.

Third Party Liability

Virginia courts do not recognize a civil action brought by a third party injured by an intoxicated adult or minor patron or customer who was served or sold alcohol by a permit holder.

Social Host Liability

Virginia courts do not recognize a civil action for first party liability brought by an injured intoxicated adult guest who was served alcohol by a social host.

Virginia courts do not recognize a civil action for first party liability brought by an injured minor guest who was served alcohol by a social host.

Liability Involving Minors

Virginia courts do not recognize a civil action for first party liability brought by an injured minor patron or customer who was served or sold alcohol by a permit holder.

Also, as noted above, Virginia courts do not recognize a civil action for first party liability brought by an injured minor guest who was served alcohol by a social host.

Key Statues & Regulations

In Virginia, there are no “Dram Shop” or “Social Host” laws and therefore no civil liability for such alcohol-related claims. The following are the key statutes and regulations that create criminal liability:

- Virginia Code Ann. §4.1-304(a), which prohibits the sale of alcoholic beverages to those who the permit holder “knows” or “has a reason to believe” are:
  - “less than 21 years of age”,
  - “interdicted”, or
  - “intoxicated
- Virginia Code Ann. §4.1-304(b), which prohibits the sale of alcohol to persons under the age of 21 and if, at the time of sale, does not require the individual to present bona fide evidence of legal age may be found guilty of a Class 3 misdemeanor.

The Virginia Department of Alcoholic Beverage Control regulates the sale of alcohol in Virginia. Virginia Code Ann. §4.1-101(a)

Virginia Department of Alcoholic Beverage Control also has primary enforcement responsibility. Virginia Code Ann. §4.1-105In

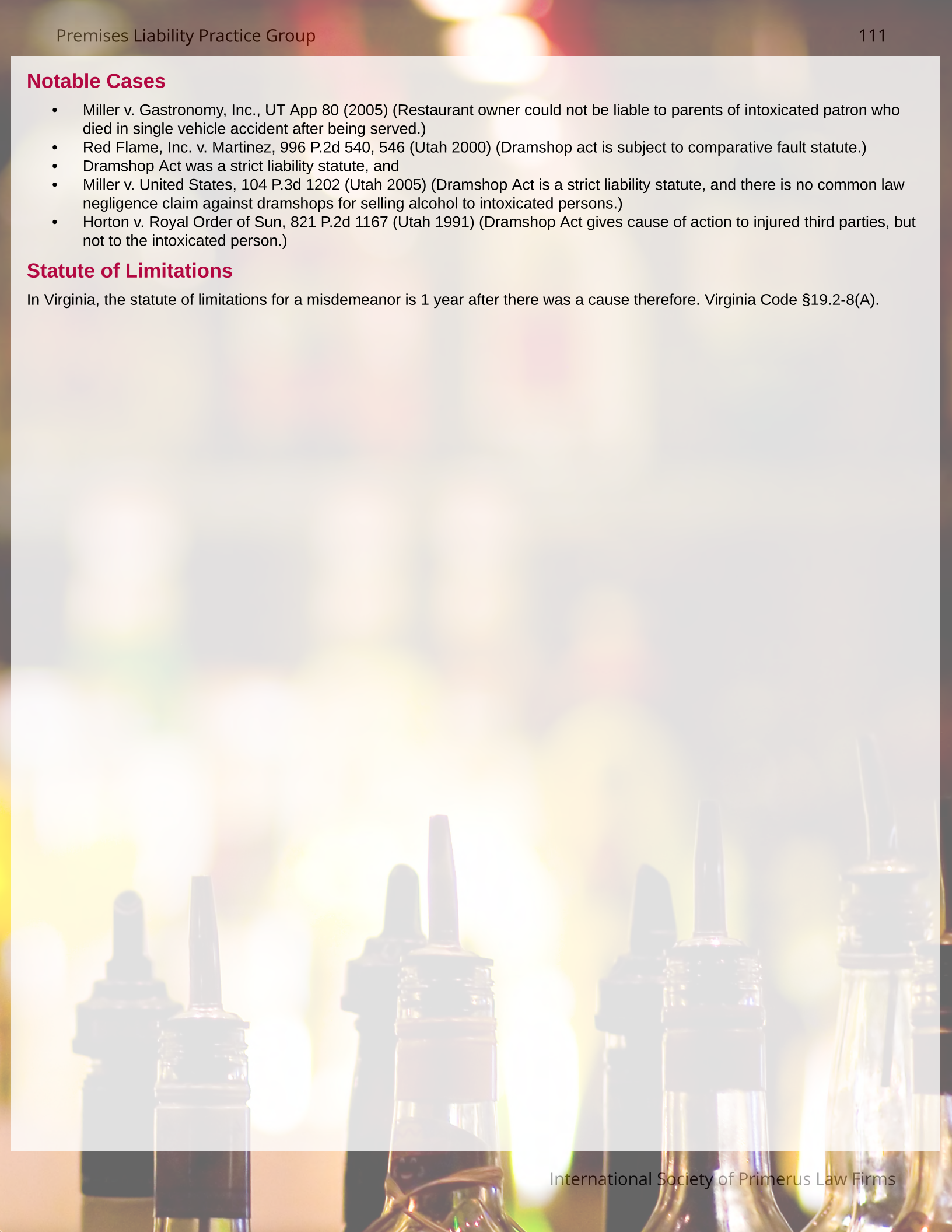
Virginia, the legal presumption for intoxication for adults is .08 BAC or more. Virginia Code Ann. §18.2-266. The legal presumption for intoxication for minors is .02 BAC. Virginia Code Ann. §18.2-266.1.

Notable Cases

- Miller v. Gastronomy, Inc., UT App 80 (2005) (Restaurant owner could not be liable to parents of intoxicated patron who died in single vehicle accident after being served.)
- Red Flame, Inc. v. Martinez, 996 P.2d 540, 546 (Utah 2000) (Dramshop act is subject to comparative fault statute.)
- Dramshop Act was a strict liability statute, and
- Miller v. United States, 104 P.3d 1202 (Utah 2005) (Dramshop Act is a strict liability statute, and there is no common law negligence claim against dramshops for selling alcohol to intoxicated persons.)
- Horton v. Royal Order of Sun, 821 P.2d 1167 (Utah 1991) (Dramshop Act gives cause of action to injured third parties, but not to the intoxicated person.)

Statute of Limitations

In Virginia, the statute of limitations for a misdemeanor is 1 year after there was a cause therefore. Virginia Code §19.2-8(A).



WASHINGTON STATE

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General Overview of the Law

First Party Liability

Washington courts do not recognize an action for first party liability brought by an injured intoxicated adult who was served or sold alcohol by a commercial host.

Washington courts do recognize an action for first party liability brought by an injured intoxicated minor who was served or sold alcohol by a commercial host.

Third Party Liability

Washington courts do recognize an action brought by a third party injured by an adult "apparently under the influence of alcohol" or, minor who was served or sold alcohol by a commercial host.

Social Host Liability

Washington courts do recognize an action for first party liability brought by an injured minor who was served alcohol by a social host.

Washington courts do not recognize an action for first party liability brought by an injured intoxicated adult who was served alcohol by a social host.

Washington courts do not recognize an action brought by a third party injured by an intoxicated adult or minor who was served alcohol by a social host.

Key Statues & Regulations

In Washington, there are no "Dram Shop" laws, which specifically create civil liability for alcohol-related claims. Although the Legislature is silent on the issue of civil liability, Washington Courts have widely acknowledged that the criminal provisions of chapter 66.44 RCW, establish the duty of care in civil suits. The following are the key statutes and regulations that create both civil and criminal liability:

- RCW 66.44.200(1) prohibits the sale of alcohol to "any person apparently under theinfluence of liquor." Businesses that violate the statute by serving drunk drivers will becivilly liable to third-party victims for damages caused by their patron.•
- RCW 66.44.270(1) makes it unlawful for any person to "sell, give, or otherwise supply liquor to any person under the age of twenty-one years or permit any person under that age to consume liquor on his or her premises or on any premises under his or her control."

The Washington State Liquor Control Board regulates the sale of alcohol in Washington.

The Washington State Liquor Control Board has primary enforcement responsibility. It works with local law enforcement to enforce the alcohol laws.

In Washington, in both criminal and civil proceedings, the legal presumption of intoxication for adults is .08 BAC. The legal presumption of intoxication for minors is .02 BAC or higher. The legal presumption of intoxication for commercial vehicle drivers is .04 BAC or higher.

Notable Cases

Barrett v. Lucky Seven Saloon, Inc., 152 Wash. 2d 259, 96 P.3d 386 (2004) (applying a more narrow standard for imposing liability

on commercial hosts. Prior to Barrett, third party liability did not attach when a person was merely "apparently under the influence," under the theory that such a person did not lack will power and was still responsible for his or her actions. The vendor's duty would arise only under common-law principles, when a person was "obviously intoxicated" and thus in a state of helplessness or debauchery such that he or she was unable to voluntarily control bodily actions. The Barrett court held that the "apparently under the influence" standard from RCW 66.44.200 has at least partially replaced the common law standard of "obvious intoxication". The majority's opinion in Barrett elevated a commercial vendor's duty by requiring reflection and inquiry into whether a person is under the influence at the time of service.)

J.B. McLoughlin Co., Inc. 131 Wn.2d 96, 929 P.2d 433 (1997) (banquet-hosting employer may be liable for injuries to third persons proximately caused by intoxication of employee who became intoxicated at the banquet.)

Statute of Limitations

In Washington, the statute of limitations for both negligence based claims is 3 years from the date of loss. The statute of limitations for intentional tort based claims is 2 years from the date of loss. Washington courts apply the "discovery rule," which means the claim begins to run on the date the prospective plaintiff knows or should know he or she possesses a claim (i.e., typically the date of loss in alcohol liability cases).

Comparative Negligence

In Washington, notwithstanding the existence of a duty of care, persons who overconsume alcohol are still subject to the defense of contributory negligence, which may bar the claim entirely if the victim was intoxicated and the intoxication was more than 50% responsible for the injury. This provision applies even if the victim is a minor.

Joint & Several Liability

Joint and several liability is codified in RCW 4.22.070's explicitly listed exceptions. Joint and several liability is retained where the negligent parties were acting in concert or where there was a master/servant or principal/agent relationship at play. A limited form of joint and several liability is retained where the plaintiff is fault-free and judgment has been entered against two or more defendants. Accordingly, joint and several liability may be applicable in a Washington case involving alcohol liability.

Contribution Among Joint Tortfeasors

RCW 4.22.070 provides that if a defendant is jointly and severally liable under one of the exceptions listed, the defendant has a right to contribution.

Punitive Damages

Punitive damages are not available in Washington unless expressly authorized by the legislature.

Key Definitions

- Commercial Host: Taverns, bars, and restaurants, or other premises licensed by liquor board.
- Social Host: Person who owns, leases, or otherwise controls the property.
- "Apparently under the influence": A person is apparently under the influence of alcohol if that influence is readily perceptible to a reasonable person.
- "Obviously Intoxicated": A person is obviously intoxicated if the person's appearance and behavior would lead a reasonable observer to conclude that the person is certainly or unmistakably intoxicated.

Other Considerations

Quasi-commercial hosts: A person or corporation supplying alcoholic beverages pursuant to a business activity may be treated as a commercial host even if the person or corporation is not in the business of supplying alcoholic beverages. The test is whether the supplier of alcohol has a business interest in serving it. For example, where a company held a banquet and encouraged its employees to be present, it became subject to the liability of a commercial host even though it did not charge for the alcohol being served and was not in the business of serving alcohol. Dickinson v. Edwards, 105 Wash. 2d 457, 716 P.2d 814 (1986).

When does "obviously intoxicated" apply? The "obviously intoxicated" common-law standard is to be used in cases for which the statute (RCW 66.44.200) does not apply, such as cases involving intoxication-related assaults. Liability may attach in the context of a criminal assault, if the criminal assault was a foreseeable result of furnishing intoxicating liquor to an obviously intoxicated patron. A criminal assault, however, is not a foreseeable result of furnishing intoxicating liquor to an obviously intoxicated person, unless the drinking establishment which furnished the intoxicating liquor had some notice of the possibility of harm from prior actions of the person causing the injury, either on the occasion of the injury, or on previous occasions."

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General Overview of the Law

First Party Dram Shop Liability

West Virginia courts recognize an action for first party dram shop liability (when a vendor is liable to the intoxicated customer) on a statutory negligence basis.

By reading W. Va. Code §55-7-9 (allowing civil liability for violations of a statute) in tandem with criminal statutes, such as W. Va. Code §11-16-18 (forbidding alcohol be "furnished or given" to an intoxicated patron), the West Virginia Supreme Court of Appeals has recognized a cause of action against one licensed to sell alcohol. Any alcohol-related criminal conduct could couple with §55-7-9 to create liability. In one instance, a cause of action may arise when a vendor sells (or "gives" or "furnishes") alcohol to anyone who is physically incapacitated; in others, the vendor may have sold alcohol to an individual under the age of twenty-one. The basis of liability is as broad as the West Virginia Code.

Doctrinally, the prima facie elements of dram shop liability operate like a statutory negligence action: the putative defendant must breach the statute, that breach must proximately cause injury, and that injury must be the sort of harm that the statute seeks to prevent.

As a negligence action (rather than strict liability), the Court has required a test of knowledge on behalf of the defendant. Therefore actual knowledge of a violation or reasonable indications of a violation (such as incapacity) would trigger the statutory duty. For instance, in the context of serving a physically incapacitated individual, the applicable test would be whether a "reasonably prudent serving person could have known the purchaser was drunk."

As an action rooted in negligence, a plaintiff must show proximate cause. Proximate cause emanates from foreseeability, thus the analysis centers on the harms the statute meant to prevent. The Court has foreseen an extensive array of harms meant to be eliminated by alcohol regulation. Included is physical danger to the consumer as well as "accidents of all kinds" that could otherwise effect third parties (language taken from Bailey v. Black, 183 W. Va. 74, 77 (1990)).

In sum, the putative first party plaintiff must (1) identify infringement of the West Virginia Code, (2) establish that the defendant knew or should have known of the violation, (3) show the statutory violation was the proximate cause of the injuries alleged, and (4) demonstrate the existence of injury to person or property. However, even then, the plaintiff must be wary of his own comparative contributory negligence (see below).

Third Party Dram Shop Liability

West Virginia courts recognize an action by a third party who is injured by an intoxicated customer, regardless of the customer's status as an adult or minor.

With respect to third party liability, the mechanics of the doctrine do not significantly diverge from their operation as to first party liability. W. Va. Code §55-7-9 is liberal in nature, permitting "any person injured by the violation of any statute" to maintain an action for their injuries.

Otherwise, the nuts and bolts of the doctrine operate identically with respect to first and third party liability. The licensee-vendor must breach its statutory duty and the breach statutory duty must be the proximate cause of physical injury. Even if these elements are met, the vendor-defendant can defend with comparative contributory negligence.

Social Host Liability

Though social host liability has not been not been used as the basis of liability in West Virginia, West Virginia courts have shown a willingness to analyze social host liability according to statutory negligence principles. In other words, the West Virginia Supreme Court has indicated that social host liability – in either first or third party contexts – could be predicated on the combination of W. Va. Code §55-7-9 and a West Virginia criminal statute; however, it has yet to actually render a decision affirming or assigning such liability.

The West Virginia Supreme Court of Appeals has specifically stated that there are two conceivable avenues to social host liability: a statutory negligence theory mimicking its "dram shop" counter-part, as well as a common law negligence approach.

Unlike the "dram shop" analysis above, the West Virginia Supreme Court of Appeals has not linked another statutory provision with W. Va. Code §55-7-9 (allowing civil liability for violations of a statute). Under the facts in Overbaugh v. McCutcheon, the West Virginia Supreme Court of Appeals labeled W. Va. Code §60-3-22 as the most germane statutory bar to a social host giving or furnishing alcohol, but ultimately decided the provision only applied to the "sale" of alcohol. Under that statute, absent a sale, no statutory basis existed for social host liability. However, numerous other statutes offer a conceivable basis for social host liability.

In the alternative, the West Virginia Supreme Court of Appeals has entertained and rejected a common law negligence approach. The Court rested its holding on the general common law abstention from liability, as well as public policy rationales. However, the Court left itself room to impose third party liability in cases with "affirmative conduct" or otherwise "aggravated" or "egregious" acts.

As a caveat, one should be careful that they are, indeed, a "social host." Social hosts provide alcohol gratuitously and without remuneration in the context of a social setting.

Fourth Party / Lessor Liability

West Virginia has declined to extend liability to the lessors of the premises where the alcohol was sold, given, or furnished in violation of a statute. Plaintiffs have asserted liability on the basis of the lessor's knowledge. The lessor knew that his tenant was selling alcohol in violation of the statute, so the putative plaintiff argues, and therefore the lessor is at fault as well. The West Virginia Supreme Court of appeals has rejected this reasoning under common law negligence theories as well as certain statutory actions.

The Court has held that the failure of a tenant to lawfully conduct an otherwise lawful business involving the sale of alcoholic beverages is not a basis to hold the landlord liable under common law negligence.

In regard to statutory negligence, the Court analyzes the class of entities the legislature intended for the statute to bind. In some cases, where a statute has expressly prohibited the "sale" of alcohol, the Court inferred that the statute must only apply to those who actually sell the alcohol. To the Court's mind, this category was not broad enough to include landlords.

Liability Involving Minors

As stated above, statutory negligence is the lone route to liability in West Virginia. Several sections of the West Virginia Code, such as § 60-3-22 (sale of liquor to minors), § 11-16-19 (buying, giving, or furnishing of beer to minors), § 60-3-22a (buying for, giving to, or furnishing alcoholic liquors to minors), and § 61-8D-10 (contributing to the delinquency of a minor), could form the statutory basis for actionable behavior. Consequently, a minor may have more avenues to recovery simply because the West Virginia Code includes more statutes that explicitly protect minors.

Minors will likely also have greater success in suits predicated upon a dram shop theory due to West Virginia's jurisprudence on comparative contributory negligence as it applies to minors. First, the West Virginia observes a rebuttable presumption that minors between seven and fourteen cannot be contributorily negligent. Second, West Virginia law generally bars the use of statute to impose negligence on the very class the statute has contemplated to protect. Likewise, the West Virginia Supreme Court of Appeals has applied the doctrine to preclude a finding of contributory negligence on similar grounds. Pitzer v. M. D. Tomkies & Sons, 136 W. Va. 268 (1951). For example a minor may have also violated a statute, such as § 11-16-19(c) (crime for minor to misrepresent age to buy beer), § 60-3A-24 and § 60-3-22a (crime for minor to misrepresent age to purchase liquor), and § 60-8-20a (same for buying wine), but those statutes were likely implemented to protect the deleterious effects of alcohol consumption on minors. However, this logic has not been tested before the West Virginia Supreme Court of Appeals in the dram shop context.

Key Statues & Regulations

West Virginia has repealed its "Dram Shop" laws, which specifically created civil liability for alcohol-related claims. Instead, civil liability is predicated upon the cooperation of two statues, W. Va. Code §55-7-9 and W. Va. Code §11-16-18, which operates as statutory negligence. The following are the key statutes and regulations that create both civil and criminal liability:

- W. Va. Code §55-7-9, which allows any person injured by the violation of any statute torecover damages caused by reason of the violation, thus enabling a civil cause of actionfor such violation.
- W. Va. Code §11-16-18, which prohibits “licensees” (brewers or manufacturers,distributors, and retailers) or his or her agents from the following concerning“nonintoxicating beer”[1]:
  - “sell[ing], furnish[ing], or giv[ing] any nonintoxicating beer … to any person visibly or noticeably intoxicated or to any person known to be insane or known to be a habitual drunkard.” §11-16-18(a)(2)
  - “sell[ing], furnish[ing], or giv[ing] any nonintoxicating beer … to any person who is less than twenty-one years of age”; §11-16-18(a)(3)
- W. Va. Code §11-16-19(c), which makes it a crime for “any person who shall knowingly buyfor, give to or furnish nonintoxicating beer to anyone under the age of twenty-one to whomthey are not related by blood or marriage.”
- W. Va. Code §§ 60-3-22a and 60-3A-24, which make it a crime for “any person who shallknowingly buy for, give to or furnish to anyone under the age of twenty-one to whom theyare not related by blood or marriage, any alcoholic liquors from whatever source.”
- W. Va. Code § § 60-7-12(a)(3) and (6), which prohibits “licensees” (means the holder ofa license to operate a private club (very broad, definition found in § 60-7-2(a)) or his orher agents from the ability to “sell, give away or permit the sale of, gift to or the procurement of any nonintoxicating beer, wine or alcoholic liquors for or to, or permit the consumptionof nonintoxicating beer, wine or alcoholic liquors on the licensee’s premises, by any personless than twenty-one years of age.”
- W. Va. Code § § 60-7-12(a)(4), which prohibits “licensees” (means the holder of a license to operate a private club (very broad, definition found in § 60-7-2(a)) or his or her agentsfrom the ability to “sell, give away or permit the sale of, gift to or the procurement of anynonintoxicating beer, wine or alcoholic liquors, for or to any person known to be deemedlegally incompetent, or for or to any person who is physically incapacitated due toconsumption of nonintoxicating beer, wine or alcoholic liquor or the use of drugs.”
- W. Va. Code § 60-8-20, which prohibits “licensees” (those holding a lisence under § 60-8)“[or] his or her servants, agents or employees to sell, furnish or give wine to any personless than twenty-one years of age, or to a mental incompetent or person who is physicallyincapacitated due to the consumption of alcoholic liquor or the use of drugs.”
- W. Va. Code § 60-8-20a, which makes it crime for “any person who shall knowingly buyfor, give to or furnish wine or other alcoholic liquors from any source to anyone under theage of twenty-one to whom they are not related by blood or marriage”
- W. Va. Code §§ 11-16-18(c) and § 60-3A-25a , exceptions certain licensees and storesfrom civil liability if they requires their employees to use a “transaction scan device.”

The Alcohol Beverage Control Commissioner regulates the sale and distribution of “non-intoxicating beer,” wines, and alcoholic liquors alcohol in West Virginia. Likewise, the Commissioner has primary enforcement responsibility. It works with local law enforcement to enforce the alcohol laws.

In West Virginia, in the operation of a vehicle, the legal presumption for intoxication for adults is .08 BAC, .04 BAC for commercial drivers, and .02 BAC for minors.

Notable Cases

Bailey v. Black, 183 W. Va. 74 (1990): (holding that someone who is (1) licensed to sell alcohol in this state and (2) who sells to an intoxicated person, violates the law, and is liable in tort for damages suffered by others as a result of the illegal sale under a statutory negligence theory; establishes that the seller or agents must be capable of knowing that the buyer is drunk).

Anderson v. Moulder, 183 W. Va. 77 (1990): (holding that the sale of beer to a minor by a licensed vendor gives rise to a civil action against such vendor for injuries suffered by the underage purchaser as a result of his own or another's intoxication).

Marcus v. Staubs, 230 W. Va. 127 (2012): (holding that providing alcohol to a minor forms a “potential basis” for liability for the minor’s subsequent injuries).

Haba v. Big Arm Bar & Grill, 196 W. Va. 129, 134 (1996): (citing numerous West Virginia cases in noting that it has found no authority for landlord liability for its tenant’s failure to lawfully conduct an otherwise lawful business involving the sale of alcohol).

Walker v. Griffith, 626 F. Supp. 350 (W.D. Va. 1986) (deciding West Virginia law): (holding that negligently serving a patron alcohol could be considered the proximate cause of the plaintiff’s injuries because it is foreseeable that such patrons will drive after leaving the bar).

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1 Around the same time West Virginia repealed its Dram Shop statutes, it passed a state Constitutional Amendment that prohibits the consumption of “intoxicating” liquors in public places. Subsequently, it has created a cumbersome work around by statutorily defining ordinary beer as “non-intoxicating.” Therefore, the licensees targeted by the statute are those that sell standard, actually intoxicating, beer.

Overbaugh v. McCutcheon, 183 W. Va. 386 (1990): (holding that absent a basis in either common law principles of negligence or statutory enactment, there is generally no liability on the part of the social host who gratuitously furnishes alcohol to a guest when an injury to an innocent third party occurs as a result of the guest's intoxication.)

Price v. Halstead, 177 W. Va. 592 (1987): (describing “affirmative acts” that could substantiate social host liability based on common law negligence).

Statute of Limitations

In West Virginia, the statute of limitations for both personal injury and property damage claims is 2 years from the date of the injury. West Virginia courts apply the “discovery rule,” which means the claim begins to run on the date the prospective plaintiff knows or should know he or she possesses a claim (i.e., typically the date of loss in alcohol liability cases).

Comparative Negligence

West Virginia is a modified comparative jurisdiction (also called comparative contributory negligence). A plaintiff may not recover if his or her own negligence is “greater than” that of the defendant(s). If a plaintiff’s negligence is less than that of the defendants, then his or her recovery is reduced by that proportion of fault attributed to him or her by the factfinder.

Joint & Several Liability

In 2015, West Virginia modified its approach to joint and several liability by adopting a comparative fault regime. W. Va. Code §§ 55-7-13(a)—(d) mandate the assessment of liability is “several” but not “joint”. Joint lability, however, is available where judgement is unable to be collected from a liable party. However, the Code explicitly exempts defendants who caused injury while in violation of the drunk-driving statutes from this regime–making joint and several recovery possible. The statute further exempts liable defendants whose acts or omissions constitute criminal conduct. Notably, dram shop and social host liability is predicated on the violation of criminal statutes through a statutory negligence regime.

Additionally, West Virginia’s modified comparative fault regime allows fault to be assigned to non-parties, even if they were not or could not have been brought before the court. W. Va. Code § 55-7-13d. Consequently, defendants no longer need to file third-party complaints; they merely need give notice that they intend to place a portion of the fault at the feet of the non-party. That is not to say that these non-parties are made to pay for their portion of the liability Instead, the plaintiff’s award is reduced pro-ratably by the percentage of fault chargeable to the non-party.

Contribution Among Joint Tortfeasors

As noted above, West Virginia has moved to a modified comparative fault regime under which parties are usually only severally liable. Thus each party is only responsible for its portion of the fault and contribution is usually unnecessary. However, if one of the exceptions applies (tortfeasors acting in concert, drunk driving, criminal conduct), contribution is available. It has a statute of limitations of two years from judgment. W. Va. Code § 55-2-12.

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General Overview of the Law

First Party Liability

An injured person, regardless of age, may not sue another person (including a social host or seller) for claims arising from the selling, dispensing or giving away of alcohol beverages to, or the act of procuring alcohol beverages for, the injured person.Wis. Stat. § 125.035(2) (granting immunity to social hosts and sellers);*Anderson v. American Family Mut. Ins. Co.*, 2003 WI 148, ¶ 1, 267 Wis.2d 121, 125-26, 671 N.W.2d 651, 653 ("In Wisconsin, persons who furnish alcohol beverages to others are statutorily immune from civil liability arising out of the act of furnishing the alcohol.");*Meier ex rel. Meier v. Champ's Sport Bar & Grill, Inc.*, 2001 WI 20 ¶¶ 24-26, 214 Wis.2d 605, 618-20, 623 N.W.2d 94, 101 (recognizing immunity of section 125.035 applies to claims by minors against persons providing alcohol to minor for minors' own injuries from consumption) (quoting *Doering v. WEA Ins. Group*, 193 Wis.2d 118, 532 N.W.2d 432 (Wis. 1995))."Person" includes partnerships, associations, public entities and corporations.Wis. Stat. §§ 125.035(1), 990.01(26).

Exception.However, an injured person may sue if the person selling, dispensing, giving away or procuring the alcohol (including a social host or seller) causes the injured person's consumption by force or representing that there is no alcohol in the beverage.Wis. Stat. § 125.035(3).

Third Party Liability

Third Parties may not sue a person (including a social host or seller) for claims arising from the selling, dispensing or giving away of alcohol beverages to, or the act of procuring alcohol beverages for, a tortfeasor.Wis. Stat. § 125.035(2)(granting immunity to social hosts and sellers);*Anderson v. American Family Mut. Ins. Co.*, 2003 WI 148 ¶¶30, 31, 267 Wis.2d 121, 137, 671 N.W.2d 651, 659 ("In Wisconsin, persons who furnish alcohol beverages to others are statutorily immune from civil liability arising out of the act of furnishing the alcohol," and noting section 125.035(2) "effectively codif[ies] the old common-law rule" that sellers of alcohol are not liable for damages arising from acts of intoxicated persons);*Farmers v. Mut. Auto. Ins. Co. v. Gast*, 17 Wis.2d 344, 352-53, 117 N.W.2d 347, 352 (Wis. 1962) (social hosts have no common law liability for damages from acts of intoxicated persons).As noted above, "person" includes partnerships, associations, public entities and corporations.Wis. Stat. §§ 125.035(1), 990.01(26).

Exception.If a provider of alcohol knew or should have known that a person was underage and the alcohol provided to the underage person was substantial factor in bringing about an injury to a third party, the third party may sue the provider.Wis. Stat. § 125.035(4);*see also Sorensen v. Jarvis,*119 Wis.2d 627, 350 N.W.2d 108 (1984) (abrogating common law and permitting negligence claims against sellers for negligently furnishing alcohol to minors);*Koback v. Crook*, 123 Wis.2d 259, 366 N.W.2d 857 (Wis. 1985) (abrogating common law and permitting negligence claims against social hosts for negligently furnishing alcohol to minors);*Meier ex rel. Meier v. Champ's Sport Bar & Grill, Inc.*, 2001 WI 20, ¶33 & n. 15, 214 Wis.2d 605, 623-34, 623 N.W.2d 94, 103 (noting section 125.035 was enacted in direct response to *Sorenson* and *Koback* decisions).

The injured third party may be a person of majority or a minor.*Anderson v. American Family Mut. Ins. Co.*, 2003 WI 148 ¶¶25, 31, 267 Wis.2d 121, 135, 671 N.W.2d 651, 658 ("The statute does not limit third-party status by age, condition or sobriety, or separation of circumstance from the alcohol consumption.");*see also Paskiet by Fehring v. Quality State Oil Co., Inc.*, 164 Wis.2d 800, 476 N.W.2d 871 (Wis. 1991) (in pre-section 125.035 case, Court permitted extension of *Sorenson*, allowing injured minor to sue liquor seller who sold liquor to minors who provided liquor to third party minor who became injured).

A "provider" is a person (social host or seller), "including a licensee or permittee, who procures alcohol beverages for or sells, dispenses or gives away alcohol beverages to an underage in person in violation of Wisconsin Statutes, section 125.07(1)(a).Section 125.07(1)(a) states:

> **(1) Alcohol beverages; restrictions relating to underage persons.**(a)*Restrictions*. 1. No person may procure for, sell, dispense or give away any alcohol beverages to any underage person not accompanied by his or her parent, guardian or spouse who has attained the legal drinking age.

2. No licensee or permittee may sell, vend, deal or traffic in alcohol beverages to or with any underage person not accompanied by his or her parent, guardian or spouse who has attained the legal drinking age.

3. No adult may knowingly permit or fail to take action to prevent the illegal consumption of alcohol beverages by an underage person on premises owned by the adult or under the adult's control. This subdivision does not apply to alcohol beverages used exclusively as part of a religious service.

4. No adult may intentionally encourage or contribute to a violation of sub. (4)(a) or (b).

Wis. Stat. §127.07(1)(a) (bold and italics in original).

In evaluating whether a provider "knew or should have known" a person was underage, "all relevant factors surrounding the procuring, selling, dispensing or giving away of the alcohol beverages may be considered," including the following factors.As well, if the following factors occur, the provider is not liable:

1. The underage person falsely represents that he or she has attained the legal drinking age.

2. The underage person supports the representation with documentation that he or she has attained the legal drinking age.

3. The alcohol beverages are provided in good faith reliance on the underage person's representation that he or she has attained the legal drinking age.

4. The appearance of the underage person is such that an ordinary and prudent person would believe that he or she had attained the legal drinking age.

Wis. Stat. 125.035(4(b)(1)-(4).

Exception. As noted in the *First Party* discussion, which is equally applicable in a *Third Party* setting, an injured person may sue if the person selling, dispensing, giving away or procuring the alcohol (including a social host or seller) causes the tortfeasor to consume alcohol by force or represents that there is no alcohol in the beverage.

Wis. Stat. § 125.035(3).

Social Host Liability

Social hosts are not subject to liability for claims arising from the furnishing of alcohol to persons of majority (subject to certain exceptions), but may be liable for certain claims resulting from furnishing alcohol to a minor. *See First Party Liability* and *Third Party Liability* discussions, *supra,*for details of social host liability.

Social Host Liability

A minor may not sue a social host or seller for injuries to the minor from the minor's own consumption, subject to certain exceptions. *See First Party Liability* discussion*, supra*.

A minor may sue a social host or seller for injuries resulting from the social host or seller's providing alcohol to a minor tortfeasor which causes injury to the first minor.But if the tortfeasor has reached the age of majority at the time of the accident, the injured minor may not sue. *See Third Party Liability* discussion*, supra*.

Where a social host or seller provides alcohol to a minor, who then causes injury to a third party (whether a person of majority or a minor), the social host or seller may be liable.*See supra*,*Third Party Liability* discussion.

Key Statues & Regulations

Wisconsin Statutes, Chapter 125, regulates all matters pertaining to the production, storage, distribution, transportation, sale, and consumption of alcohol beverages.As discussed in detail above, section 125.035 governs immunity from civil liability involving the furnishing of alcohol beverages, and applicable exceptions to such immunity.

Section 125.037 provides that a municipality is not civilly liable for damage to any person or property caused by the consumption of alcohol beverages by that person or any other person due to (1) issuance of a license to sell alcohol, (2) allowing a license or permit holder to sell, dispense or give away alcohol on property owned or leased by the municipality, or (3) failing to supervise or monitor the activities of the licensee or permittee.

Under section 125.039, no license or permit holder, or an employee thereof, is civilly liable for retaining a document presented as proof of age for a reasonable length of time to determine in good faith if the person who presented the document is underage or to notify law enforcement.

Section 125.07 generally restricts persons from selling, distributing, procuring for, or giving away alcohol beverages to individuals who are either underage or intoxicated. Further, underage individuals are banned from entering premises where alcohol is licensed or permitted to be sold. These general prohibitions are subject to many exceptions including:

- Underage individuals accompanied by their parent, guardian, or spouse that has attained the legal drinking age. Wis. Stat. § 125.07, subd. 1.

- Employees, residents, or lodgers/boarders. Wis. Stat. § 125.07, subd. 3(a)(1).
- Certain special business, purpose, recreation, licensing, entertainment, and municipality exceptions. Wis. Stat. § 125.07, subd. 3(a)(2) – (16).

Notable Cases

Nichols v. Progressive Northern Ins. Co., 2008 WI 20, 308 Wis.2d 17, 746 N.W.2d 220 (rejecting claims on public policy grounds against owners of property where underage persons were drinking with knowledge of the owners, but where owners did not provide alcohol to underage persons, and where one of underage guests later caused injury to third party; further noting that liability under these circumstances should be imposed by legislature not the courts).

Anderson v. American Family Mut. Ins. Co., 2003 WI 148, 267 Wis.2d 121, 671 N.W.2d 651 (recognizing immunity under section 125.035 for the furnishing of alcohol beverages is subject to statutory exception where "provider knew or should have known that the person to whom he was providing the alcohol was under the legal drinking age and the alcohol provided to the underage person is a substantial factor in causing injury to a third party []").

Meier ex rel. Meier v. Champ's Sport Bar & Grill, Inc., 2001 WI 20 ¶24, 241 Wis.2d 605, 619, 623 N.W.2d 94, 101 (clarifying that meaning of "third party" in exception to immunity under section 125.035(4)(b) "is someone other than the underage drinker or a provider who provides alcohol that is a substantial factor in causing the third party's injuries;" and rejecting claim against bar by injured party because injured party was not a "third party" where injured party participated in providing alcohol to minor while at bar).

Miller v. Thomack, 210 Wis. 650, 563 N.W.2d 891 (Wis. 1997) (one who gives money to another person with the intent of bringing about the purchase of alcohol for consumption by an underage person "procures" alcohol for the underage person, and is subject to suit under the statutory exception to immunity contained in section 125.035(4)).

Mueller v. McMillan Warner Ins. Co., 2005 WI App. 210, 287 Wis.2d 154, 704 N.W.2d 613 ,*aff'd on other grounds,*2006 WI 54, 290 Wis.2d 571, 714 N.W.2d 183 (holding a child who is merely on the same premises as their parent is not "accompanied" by that parent for purposes of the exception to general immunity for those that furnish alcohol to underage individuals accompanied by a parent in Wis. Stat. § 125.035, subd. 4(b)).

Stephenson v. Universal Metrics, Inc., 2001 WI App 173, 247 Wis.2d 349, 633 N.W.2d 707 (stating Wis. Stat. § 125.035's exemption from civil liability is a broad one which includes individuals that encourage, help, or conspire to encourage or help a person to drink even when they know that person will drive and do nothing to stop that person from consuming alcohol or driving drunk.)

Statute of Limitations

In Wisconsin, actions to recover for injuries to a person must be brought within three years. Wis. Stat. § 893.54.

Comparative Negligence

Wisconsin is a modified comparative fault jurisdiction. A Plaintiff may only recover damages from a defendant if the factfinder at trial finds that the plaintiff's fault does not exceed that of the defendant.If, for example, a plaintiff is found 50% at fault, the plaintiff may recover (subject to a reduction for the plaintiff's percentage of fault), but if the plaintiff is 51% at fault, recovery is barred.*See*Wis. Stat. § 895.045(1);*Zisk v. U.S.*, 970 F.Supp.2d 886, 892 (W.D. Wis. 2013) ("Under Wisconsin's doctrine of 'modified comparative negligence,' if the plaintiff in a negligence action was himself negligent and more responsible for the injury than the defendant, there can be*no*recovery." (italics in original)).

If there is more than one defendant, this comparison is made between the plaintiff and each particular defendant.After this, the plaintiff's total recovery is reduced in proportion to the total fault attributed to the plaintiff by the factfinder. Wis. Stat. § 895.045;*Anderson v. American Family Mut. Ins. Co.*, 2003 WI 148 ¶ 15, 267 Wis.2d 121, 131, 671 N.W.2d 651, 656 ("injured person's contributory fault may bear upon a defendant's ultimate liability.").

Joint & Several Liability

Wisconsin provides that tortfeasors are only jointly and severally liable for an entire award under the following scenarios:

1. A tortfeasor whose fault is 51 percent or more;
2. Two or more tortfeasors who act in a common scheme or plan that results in injury;

Wis. Stat. § 895.045, subd. 1–2.

Contribution Among Joint Tortfeasors

Wisconsin allows for contribution among tortfeasors when a joint tortfeasor pays more than their share of damages.*State Farm Mut. Auto. Ins. Co. v. Schara*, 56 Wis.2d 262, 201 N.W.2d 758 (Wis. 1972). A joint tortfeasor's share of liability is determined by the jury.*Id.*If a tortfeasor settles using a *Pierringer* type agreement or release, this may effect a nonsettling tortfeasor's right to contribution.*See Pierringer v. Hoger*, 21 Wis.2d 182, 124 N.W.2d 106 (1963). In a*Pierringer* agreement or release, settling tortfeasors may contract with the plaintiff to settle for their attributable share of causal negligence; in such a scenario, the nonsettling tortfeasor will not be responsible for the percentage of liability of the settling tortfeasor.

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Thank you for referencing "A Survey of the Law of Dram Shop and Alcohol Liability".

A special thank you to the Premises Liability Executive Committee for their hard work on this compendium.

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