



CLM 2020 Workers Comp & Retail Restaurant & Hospitality Conference Work Plan
May 20-21, 2020 in Chicago, IL

When Serving A Double Means Trouble

Anyone injured, whether personal injury or property damage, may assert a claim as a result of the loss, against a bar, alcohol retailer, or private citizen who served the drunk person. Potential defendants include owners of businesses that serve alcohol; owners of retail stores that sell alcohol; employers that host events where alcohol is served; and/or social hosts.

I. Service of Liquor

Service of Liquor in a Restaurant

At common law there was generally no cause of action against one who sells or gives intoxicating beverages in favor of those injured by the negligent acts of the intoxicated person. However, the legislatures of many states enacted statutes, commonly known as “dram shop acts” or “civil damage acts,” which afforded a cause of action to persons injured in person, property, or means of support, by an intoxicated person or in consequence of the intoxication of any person, against the person who sold or furnished the liquor which caused the intoxication.

Various jurisdictions differ in their dram shop statutes in terms of the persons entitled to sue under the statute, the potential defendants, the nature of the acts that will violate the statute, and even the level of culpability required. Dram shops are commercial entities that serve and/or sell alcohol.

A basic dram shop statute may require proof in order to establish a prima facie case of liquor provider liability: (1) A person was provided alcohol by sale or by furnishing, contrary to the provisions of law; (2) The alcohol provided to the person caused the intoxication; (3) The person was visibly intoxicated or was a minor at the time the alcohol was provided; (4) The liquor provider knew, or was charged with the knowledge of the intoxication or minority of the person; and (5) The person's intoxication caused

him/her to operate a motor vehicle in a manner which caused injury or death to the plaintiff.

Service of Liquor in a Restaurant to habitual drunkards and/or overserving

Liability is imputed to the dram shop for injuries to a third person under the Dram Shop Act only if the dram shop's employees sold or served knowingly served liquor to a person when a reasonable person under the same or similar circumstances would have known that the person was already intoxicated.

If a person is slurring their speech, having trouble standing up and walking, confused, a bartender should make the decision to stop serving drinks to that person. If the bartender continues giving that person drinks, they are knowingly increasing the chances of an accident, especially if the patron is planning on driving home from the bar.

In order for liability to attach, the Plaintiff has to prove that the intoxicated person had a habitual alcohol addiction and that the bar staff knew the person was intoxicated and continued serving them anyways.

An investigation should be completed immediately upon notice of the claim. Investigation should include identifying all potential witnesses; retrieving all electronic evidence; and receipts for the alcohol consumed.

Experts are important in liquor liability cases and can help reduce the liability. Experts in the fields of toxicology, security, and standards (safe alcohol service) are the most utilized experts in these cases. Toxicologists are able to interpret blood alcohol readings and explain how the amount of alcohol in a person affected a person's driving, judgment, etc. A security expert can discuss industry standards and what steps were taken to keep its patrons safe, ie training of employees; enforcement of training; etc. Lastly, a standards expert can testify regarding the policies; signs of intoxication; amount of alcohol in drinks; procedures in place.

Servers/bartenders might argue:

- Person had a low tolerance for alcohol
- Person was drinking on an empty stomach
- Person had been drinking prior to arrival
- Only served a couple drinks

The bar will most likely not be held liable for any accidents or injuries resulting from that patron's drunkenness if it can be proven that the server/bartender could not reasonably be expected to know the person was drunk.

Cases:

Florida Statutes Section 768.125 specifically states: 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 law imposes no general duty on a business owner to ensure the safety of an intoxicated person who is about to leave the premises, and that business has no legal duty to control the conduct of a third person to prevent that person from harming others. *Hall v. West*, 157 So. 3d 329 (Fla. 2d DCA 2015)

The act of serving multiple drinks to an anonymous patron on one occasion is not, alone, sufficient to meet the statutory criteria for liability on the server. *Fleuridor v. Surf Cafe*, 775 So.2d 411 (Fla. 4th DCA 2001)

In Texas, in order to hold a provider of alcoholic beverages liable under the Dram Shop Act, the plaintiff must prove that at the time the provider sold or served alcohol, it was apparent to the provider that the recipient was obviously intoxicated to the extent that the recipient presented a clear danger to himself or herself and to others; and the intoxication of that individual was a proximate cause of the damages suffered. Tex. Alco. Bev. Code Ann. § 2.02(b). Further, in Texas, the test under dram shop statute as to whether recipient of alcoholic beverage was obviously intoxicated at time that provider sold or served beverage is an objective one. V.T.C.A., Alcoholic Beverage Code § 2.02(b). *Steak & Ale of Texas, Inc. v. Borneman*, 62 S.W.3d 898 (Tex. App. 2001)

In California, although it is a misdemeanor to sell, furnish, or give, or cause to be sold, furnished, or given away, an alcoholic beverage to an obviously intoxicated person or a habitual drunkard, no person who sells, furnishes, gives, or causes to be sold, furnished, or given away any alcoholic beverage to an obviously intoxicated person or a habitual drunkard will be civilly liable to any injured person or the estate of such person for injuries inflicted on that person as a result of intoxication by the consumer of such alcoholic beverage. Bus. & Prof. Code, § 25602, subd. (b) (West).

Service of Liquor in a Restaurant to Minors

A bar or tavern has a legal duty to refrain from serving alcoholic beverages to minors, and a breach of that duty may subject the bar or tavern to liability for injuries caused by an intoxicated minor.

In order for liability to attach, the Plaintiff has to prove that the intoxicated patron was under the age of 21 and that the bar staff knew the person was intoxicated and continued serving them anyways.

Servers/bartenders should always require identification from the person prior to serving. If the bartender requests identification and is provided a fake identification card, the server/bartender would most likely not be held liable if he/she bartender could not reasonably be expected to know the person was under 21.

Cases:

In Florida, the statute requires willful conduct, as opposed to merely negligent conduct, for the imposition of liability

A minor stated a cause of action under the Dram Shop Act against a restaurant for injury she suffered in an accident shortly after she was served liquor at the restaurant where the complaint alleged that the minor "appeared to be a minor and was in fact a minor" and that the restaurant "had a duty to check the identification and age of the plaintiff"; such allegations supported the further allegation that the restaurant either knew or should have known that the plaintiff appellant was a minor, and therefore, the sale to her constituted a willful sale under the Act. *French v. City of West Palm Beach*, 513 So. 2d 1356 (Fla. 4th DCA 1987).

In California, a cause of action may be brought by or on behalf of any person who has suffered injury or death against any person licensed, or required to be licensed ... who sells, furnishes, gives or causes to be sold, furnished or given away any alcoholic beverage, and any other person who sells, or causes to be sold, any alcoholic beverage, to any obviously intoxicated minor where the furnishing, sale or giving of that beverage to the minor is the proximate cause of the personal injury or death sustained by that person. Cal. Bus. & Prof. Code § 25602.1 (West)

Reducing Risk of Liquor Liability Claims

- Formal training
 - How to serve alcohol safely
 - No free drinks or heavy pours for better tips
 - How to manage and safely remove persons who cause problems
- Train bartenders to measure liquor accurately
- Train bartenders how to enforce policies safely
- Identify valid identification, that a person is over 21
- Refuse service to anyone who cannot prove their age
- Enforce a cut-off policy for overserved persons

- Ensure bartenders call cabs for intoxicated drivers rather than letting them drive home
- Keep a log behind the bar and instruct employees to note any incidents or potential incidents
- Teach employees how to fill out forms if an incident occurs
- Hire a security company to assist with security for the business
- Institute a separate training for managers and having higher standards for them
- Have a Responsible Alcohol Service Plan every employee has to sign before beginning work; using accounting to help track free service

II. Retail of Liquor

At common law, a person injured by an intoxicated person has no cause of action against the dispenser of the intoxicating liquor.

A person who sells alcoholic beverages to a person of lawful drinking age will not become liable for any injury or damage caused by or resulting from the intoxication of such person.

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.

Selling of Liquor in General

Florida does not recognize a cause of action against an establishment that furnishes or sells alcoholic beverages to an adult whose own negligence subsequently causes injury to him- or herself or others as a result of his or her intoxication.

In Texas, dram shops are defined as “any drinking establishment where alcoholic beverages are sold.” A dram shop's liability is based solely on its negligent serving of alcohol to an obviously intoxicated patron and not on the negligence of the patron.

Selling of Liquor to Minors

Vendor who sells intoxicating beverages to a minor contrary to statute may be liable to third persons injured by minor's operation of motor vehicle. West's F.S.A. § 562.11.

Providing alcoholic beverages to minors involves the obvious foreseeable risk of the minor's intoxication and injury to himself or a third person. *Migliore v. Crown Liquors of Broward, Inc.*, 448 So. 2d 978, 980 (Fla. 1984)

California's Business and Professions Code section 25602.1 (West) imposes liability on licensed vendors providing alcohol to obviously intoxicated minors "where the furnishing, sale or giving of such beverage to the minor is the proximate cause of the personal injury or death sustained by such person." *Rogers v. Alvas*, 160 Cal. App. 3d 997, 1001, 207 Cal. Rptr. 60, 62 (Ct. App. 1984)

III. Employer Events that involve Liquor

An employer who furnishes liquor at a company function may be held liable for the drunk driving of an employee on the basis of respondeat superior principles.

In some jurisdictions, Courts have held that prima facie liability of the employer furnishing the liquor is shown by the following items: (1) The consumption of alcohol by an employee at an employer-hosted party which furthered the employer's interests in some way and at which the employee's presence was requested or required by the employer; (2) The employee negligently consumed alcohol to the point of intoxication when he/she knew or should have known that he or she would be operating a motor vehicle on a public road after the function; (3) The employee caused an accident while driving from the party; and (4) A proximate cause of the motor vehicle accident was the intoxication which occurred at the time the employee negligently consumed the alcohol.

Drinking at a Work Function

Employer liability might be premised on the ground of the employer's direct negligence in connection with its sponsorship and/or participation in a social function for its employees where alcoholic beverages are served. Even though a number of cases have rejected liability in such a situation, at times relying on the employer's position as a social host, other courts have recognized that an employer may be liable for injuries caused to a third party by an employee driving home from a party based on the employer's negligence in connection with the supplying of alcoholic beverages to the employee.

IV. Social Host Liability

Most courts imposing liability on social hosts have not relied on the dram shop statutes, but instead have applied principles of common law negligence. In the very few states in which courts have found a duty on the part of a social host to a person hurt by the intoxicated person, legislatures have quickly reinstated either complete immunity or granted the social host very strong protection. Social host liability is still the minority rule.

In Florida, there is no cause of action against a social host who serves alcoholic beverages to another.

In Texas, the Supreme Court declined to extend the Dram Shop Act's coverage of commercial providers to social hosts because social hosts should not be responsible for knowing when a guest is intoxicated. *Graff v. Beard*, 858 S.W. 2d 918 (Tex. 1993)

In, California, "no social host who furnishes alcoholic beverages to any person may be held legally accountable for damages suffered by that person, or for injury to the person or property of, or death of, any third person, resulting from the consumption of those beverages." Cal. Civ. Code § 1714 (West)

Liquor served at private home

Estate of Massad ex rel. Wilson v. Granzow, 886 So. 2d 1050 (Fla. 4th DCA 2004) – Court found a valid cause of action against the social host for taking charge of the intoxicated man while he was helpless and abandoning him by a pool even though the social host claimed her status as a social host rendered her immune from liability arising from the man's intoxication; the claim was unrelated to the social host's furnishing of alcoholic beverages but rather based on her conduct when he was helpless and unable to adequately aid or protect himself.

Liquor served at private home to a minor

No statutory cause of action against social host existed for third-party injuries resulting from intoxication of minor to whom alcoholic beverages had been furnished at private function. West's F.S.A. § 768.125 *Kirkland v. Johnson*, 499 So. 2d 899 (Fla.1st DCA 1986)

However, in Florida, social host liability for injuries resulting from intoxication of a minor can be imposed under the theory that furnishing alcohol to such a person in violation of the criminal "open house party" statute constitutes negligence per se.

In Texas, the 2005 amendment of the Dram Shop Act permitted limited social host liability. Adults would be liable for serving minors eighteen years old or younger. [HB 2868 would make an adult 21 years of age or older liable for damages caused by the intoxication of a minor under the age of 18 if the adult negligently served or provided alcohol to the minor or if the adult allowed the minor to be served or provided with alcohol on the adult's premises. Liability would not extend to the minor's parent, guardian, spouse, or an adult in whose custody the minor had been committed by a court.]

In California, nothing precludes 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, notwithstanding the specified provision, the furnishing of the alcoholic beverage may be found to be the proximate cause of resulting injuries or death. Civ. Code, § 1714, subd. (d)(1).