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INTRODUCTION

This publication is the fourth annual compilation of current dram shop statutes and relevant court cases interpreting those laws. In addition, court decisions on the common law liability of the server of alcoholic beverages are cited or summarized, where applicable.

The publication was prepared by the Washington, D.C. law firm of Abrams, Westermeier & Goldberg, P.C., which acts as General Counsel to the National Alcoholic Beverage Control Association.

It is current through August 10, 1984.

HIGHLIGHTS OF 1984 ACTIVITY

Statutes

Though the legislatures of more than 20 states considered bills dealing with alcohol server liability, no new statutes were adopted during 1984.

Litigation

The major judicial decisions of 1983-84 focused on the liability of social hosts, i.e., those noncommercial servers of alcoholic beverages whose guests become intoxicated and later cause injury. The significant decision was rendered in New Jersey, where the state Supreme Court held that social hosts who directly serve adult guests can be held liable for injury. This case represents a departure from rulings in other states.

Just prior to the publication of this 1984 edition, the Wisconsin Supreme Court issued a major decision in two cases involving tavern owner liability.

DRAM SHOP LIABILITY

The frequency of alcohol-related traffic accidents and fatalities is currently receiving widespread public attention. The Presidential Commission on Drunk Driving, a group formed in response to public and official demand for action, has written that one-half of all highway deaths are alcohol-related. As this problem has become a source of concern to more and more people, the pressure on public officials to find ways to combat the problem has brought forth a variety of proposals to reduce the number of intoxicated drivers on streets and highways.

One possible means of deterring drunk driving is to impose penalties on the person who sells or provides alcoholic beverages to a driver who later causes a crash. Some states have enacted statutes called "dram shop" laws or "civil damage" laws which specifically establish the civil liability of a tavern or liquor store owner who sells alcohol to a minor, habitual drunkard, or intoxicated person who is subsequently involved in an accident. Alternatively, such cases may be considered by the courts under the principle of common law liability, whereby state courts will allow recovery against a tavern owner on the grounds that he has violated Alcoholic Beverage Control (ABC) laws in selling liquor to a minor or obviously intoxicated person. Some states have neither means for recovering damages, instead following the old common law rule that only the drunk may be held responsible for his actions.

Dram shop laws and common law liability are relatively recent developments in the area of tort law. Prior to the temperance movement of the early nineteenth century, the common law principle of "proximate cause" was universally applied; this held that a tavern owner could not be liable for any damage caused by a drunk because the "proximate cause" of the damage was the drunk, with the tavern owner's contribution too far removed to be considered "proximate cause". This principle of law still holds in many states, generally prohibiting recovery of damages against the supplier of drinks, even if he supplied drinks to a minor or obviously intoxicated person.

In more than a dozen states, the old common law has given way to a doctrine of common law liability. Common law liability permits recovery for damages against a tavern owner and, in some cases, a social host by inferring liability due to the violation of state laws making it illegal to serve alcohol to a minor or intoxicated person. Common law liability assumes that the server could reasonably be expected to foresee damages resulting

from the actions of an intoxicated person, and that the illegal sale of alcohol can be considered a proximate cause of the damages.

The first decision establishing common law liability was Rappaport v. Nichols, 156 A.2d 1 (1959), in which the New Jersey Supreme Court awarded the plaintiff's family compensation from a tavern owner for damages arising from the illegal sale of alcohol to a minor who was later involved in an automobile accident. Since this decision other courts have imposed this type of "third-party" liability upon tavern and liquor store owners who violate ABC laws, thus contributing to the risk of damage accompanying sales of alcohol to an intoxicated person or a minor.

The primary drawback of common law liability as a method to combat drunk driving is that the inconsistencies of interpretation from state to state and even between individual cases within a state make it difficult for a plaintiff to recover damages against the tavern owner. For instance, some state courts have held that a patron of a tavern may recover damages for personal injury arising from the illegal sale of alcohol to the patron, while other courts have barred such recovery. In addition, there are differences in the type of evidence needed to establish that the tavern owner's actions can be considered proximate cause of the damages; some courts have strictly defined standards for such evidence, while others do not. Some states impose liability on social hosts under certain circumstances, while other courts have declined to do so. In states where both common law liability and dram shop laws are possible sources of remedy, courts may require different elements of proof for cause of action under each remedy.

Dram shop laws, although varying from state to state, generally establish the liability of a defendant who sold or gave liquor to a minor, habitual drunkard, or obviously intoxicated person, for damages resulting from an accident in which a third party is injured or killed. The statutes are intended to protect the third party or the family of a third party, who is injured as a result of the actions of an intoxicated driver, by facilitating recovery of damages against the person supplying the alcohol and providing an incentive for more responsible conduct on the part of the supplier of alcohol.

The first dram shop statute adopted in this country was passed in Wisconsin in 1849. It required tavern owners to post a bond conditioned that they "support all paupers, widows and orphans, and pay the expenses of all civil and criminal prosecutions growing out of or justly attributable to . . . traffic in alcoholic beverages." The recovery under the Wisconsin law was limited to the amount of the posted bond.

An Indiana statute, passed in 1853 (though repealed two years later), was the first prototype of the present-day dram shop statute. It stated:

> Any wife, child, parent, guardian, employer other person, who shall be injured in person, or property, or means of support, by any intoxicated person, or in consequence of the intoxication, habitual or otherwise, of any person, shall have a right of action in his or her own name against any person, and his sureties, on the bond aforesaid, who shall, by retailing spiritous liquors, have caused the intoxication of such person, for any and all damages sustained, and for exemplary damages. (Act of March 4, 1853, sec. 10)

Ohio and Pennsylvania followed with statutes in 1854, New York passed a law in 1857, and Maine adopted a liability statute in 1858.

The temperance movement, which was responsible for the passage of these laws, was temporarily sidetracked by the events which led to the Civil War, but it resumed activity after the conflict. By the mid-1870's, 11 states had dramshop liability laws in force. Connecticut, Indiana (which readopted a law after repeal of the earlier statute), Maine and New Hampshire each had statutes which conditioned liability only on the unlawful sale of alcoholic beverages. The laws of Illinois, Iowa, Kansas, Michigan, New York, Ohio and Wisconsin were much broader, being written in such a manner as to cover the giving (without sale) of alcoholic beverages. Thus, although it was possible for social hosts to be covered by these laws, there is no evidence of early cases so interpreting these statutes.

As is the case with common law liability, the specific provisions of dram shop laws vary from state to state. This is because dram shop are drafted in specific rather than general language, requiring certain types of causal evidence, such as proof that the tavern owner or social host named in the case served the patron the intoxicating liquor, that there is reasonable connection between the plaintiff's injury and the partron's actions while intoxicated, and that the plaintiff is of a class able to recover under the statute. Some states limit liability to cases involving sales to minors, others to

"habitual drunkards". Some states restrict the persons who may claim damages under the statutes (e.g., immediate family members), others specify the type and amount of damages recoverable, others impose a statute of limitations. Furthermore, courts tend to interpret dram shop liability differently, with some courts interpreting the statutes narrowly, and others more generously.

OVERVIEW OF DRAM SHOP LIABILITY

State	Statute	Common-Law Liability	No Liability or No Cases
Alabama	X		
Alaska	X		
Arizona		X	
Arkansas			X
California	X		
Colorado	X	X	
Connecticut	X		
Delaware			X
District of Columbia		X	
Florida	X		
Georgia	X		
Hawaii		X	
Idaho		X	
Illinois	X		
Indiana		X	
Iowa	X		
Kansas			X
Kentucky		X	
Louisiana		X	
Maine	X		
Maryland			X
Massachusetts		X	

OVERVIEW OF DRAM SHOP LIABILITY

State	Statute	Common-Law Liability	No Liability or No Cases
Michigan	X		
Minnesota	X		
Mississippi		X	
Missouri		X	
Montana			X
Nebraska			X
Nevada			X
New Hampshire			X
New Jersey		X	
New Mexico	X	X	
New York	X		
North Carolina	X	X	
North Dakota	X		
Ohio	X		
Oklahoma			X
Oregon	X	X	
Pennsylvania	X		
Rhode Island	X		
South Carolina			X
South Dakota		X	
Tennessee			X
Texas			X
Utah	X		

OVERVIEW OF DRAM SHOP LIABILITY

State	Statute	Common-Law Liability	No Liability or No Cases
Vermont	X		
Virginia			X
Washington		X	
West Virginia			X
Wisconsin		X	
Wyoming	X	X	
	23	19	14

§6-5-70. Furnishing liquor to minors.

Either parent of a minor, guardian or a person standing in loco parentis to the minor having neither father nor mother shall have a right of action against any person who unlawfully sells or furnishes spirituous liquors to such minor and may recover such damages as the jury may assess, provided the person selling or furnishing liquor to the minor had knowledge of or was chargeable with notice or knowledge of such minority. Only one action may be commenced for each offense under this section.

§6-5-71. Right of action of wife, child, parent or other person for injury in consequence of illegal sale or disposition of liquor or beverages.

(a) Every wife, child, parent or other person who shall be injured in person, property or means of support by any intoxicated person or in consequence of the intoxication of any person shall have a right of action against any person who shall, by selling, giving or otherwise disposing of to another, contrary to the provisions of law, any liquors or beverages, cause the intoxication of such person for all damages actually sustained, as well as exemplary damages.

(b) Upon the death of any party, the action or right of action will survive to or against his executor or administrator.

(c) The party injured, or his legal representative, may commence a joint or separate action against the person intoxicated or the person who furnished the liquor, and all such claims shall be by civil action in any court having jurisdiction thereof.

Case Comment

Phillips v. Derrick, 54 So.2d 320 (1951).

DeLoach v. Mayer Electric Supply Company, 378 So.2d 733 (1979). Action was brought against employer and catering service to recover for injuries which motorcycle policeman sustained when struck by an employee who allegedly became intoxicated at an open house hosted by the employer. On an appeal by plaintiff, the Supreme Court held that (1) defendants could not be held liable under the Dram Shop Act,

notwithstanding that they were not licensed dispensers of alcoholic beverages, since there was no "sale" to the employee as no consideration was present, and (2) there is no common-law negligence action for dispensing alcohol.

Maples v. Chinese Palace, Inc., 389 So.2d 120 (1980). Plaintiff, mother of a minor daughter who died as a result of injuries sustained while intoxicated, sued to recover damages against the tavern owners who sold her daughter the alcohol. The lower court dismissed the case for failure to state cause of action on all ten counts cited by the Plaintiff. Plaintiff appealed all ten counts. The state Supreme Court upheld the lower court on all counts but two: those brought under §6-5-70 and §6-5-71 (dram shop acts). The Court held that because there was at least some evidence that the facts of the case could support recovery of damages under the dram shop statutes, the court could not dismiss the entire case for failure to state a cause of action. The case was remanded for consideration of these two counts.

AS§04.21.020. Civil liability of persons providing alcoholic beverages. A person who provides alcoholic beverages to another person may not be held civilly liable for injuries resulting from the intoxication of that person unless the person who provides the alcoholic beverages holds a license authorized under AS 04.11.080-04.11.220, or is an agent or employee of such a licensee and

(1) the alcoholic beverages are provided to a person under the age of 21 years in violation of AS 04.16.051, unless the licensee, agent, or employee secures in good faith from the person a signed statement, liquor identification card, or driver's license meeting the requirements of AS 04.21.050(a) and 04.21.050(b), that indicates that the person is 21 years of age or older, or

(2) the alcoholic beverages are provided to a drunken person in violation of AS 04.16.030.

Case Comment

Cherbonnier v. Rafalovich, 88 F. Supp. 900 (1950).

Alesna v. LeGrue, 614 P.2d 1387 (1980).

Nazareno v. Urie, 638 P.2d 671 (1981). Plaintiff filed suit against a bar owner after sustaining injuries when another patron collided with her on the bar's dance floor. After the Superior Court entered judgment in favor of the bar owners, Plaintiff appealed on the grounds that the jury had been improperly instructed, as it had not been told that the violation of a liquor control statute barring the sale of alcohol to intoxicated patrons could be evidence of negligence. The Alaska Supreme Court reversed, finding the bar owners negligent for (1) failing to conduct themselves with reasonable care and prudence when dispensing alcohol and (2) for violation of a statute specifically prohibiting the sale of alcohol to intoxicated patrons. The case was remanded for second trial.

Morris v. Farley Enterprises, Inc., 661 P.2d 167 (1983). Wrongful death action brought against owner of liquor store, which sold alcoholic beverages to minor driver who was involved in fatal automabile collision. Trial court found summary judgment for store, but Supreme Court reversed. Court cited

Nazareno, which involved statute (later repealed) establishing a standard of care for store owners and finding that violation of statute was negligence per se. In absence of statute, Court said that it was reasonable to conclude that death would not have occurred but for sale of alcoholic beverages, and that issue was for jury to decide. Court added that complicity of minor who is party to an illegal liquor transaction should not preclude his action against the seller.

ARIZONA

No Dram Shop Act.

Case Comment

Pratt v. Daly, 104 P.2d 147 (1940).

Collier v. Stamatis, 162 P.2d 125 (1945).

Lewis v. Wolf, 596 P.2d 705 (1979). The mother and father of a woman killed in a collision with another car brought suit against the owners of the bar at which the other driver had been served alcoholic beverages. On appeal, the Court of Appeals held that in the absence of a dram shop law, the bar owners were not liable for the death of the woman killed in the collision despite the fact that the inebriated driver was visibly intoxicated when served.

Ontiveros v. Borak et al., 667 P.2d 200 (1983). Plaintiff brought action against tavern owner for negligence in serving liquor to intoxicated patron, who had been cause of subsequent motor vehicle accident which inflicted serious injuries on Plaintiff. Trial court granted Defendant's motion for summary judgment based on line of cases cited above. State Supreme Court overturned, specifically reversing earlier cases and stating that jury should be allowed to determine causation by Defendant tavern owner under usual principles of Arizona tort law. In its rationale, Court cited recent decisions in Hawaii, Alaska and New Mexico. Court specifically declined to rule on social host question, and rejected argument that because state legislature had considered but failed to adopt dram shop statutes, that this constituted a rejection of tavern owner liability.

Brannigan et al. v. Raybuck et al., 667 P.2d 312 (1983). Companion case to Ontiveros (above). This case involved sale to minor, while Ontiveros involved sale to patron of lawful age, but who was intoxicated at time of purchase. Court found liability on part of tavern owner, and refused to make its decision prospective only.

ARKANSAS

No Dram Shop Act.

Case Comment

Carr v. Turner, 385 S.W.2d 656 (1965). Defendant club sold liquor by the drink to defendant driver who was visibly intoxicated, in violation of statute requiring liquor to be sold only in unbroken packages for consumption off premises and making it a misdemeanor for any person to sell or give away intoxicating liquor to minor or inebriate. While drunk, the driver drove away from the club and hit a parked taxicab. The Arkansas Supreme Court held that the club was not liable, the state having no Dram Shop Act which would otherwise impose liability on the defendant. Although the state has criminal statutes making it a misdemeanor to sell or give away liquor to a minor, habitual drunkard, or intoxicated person, the court held that the defendant did not become liable for damages because of his violation of the criminal statute.

B.&P.C.A. §25602. Sales to habitual drunkards: Civil liability: Consumption of alcoholic beverages as proximate cause of injuries inflicted upon another by intoxicated person.

(a) Every person who sells, furnishes, gives, or causes to be sold, furnished, or given away, any alcoholic beverage to any habitual or common drunkard or to any obviously intoxicated person is guilty of a misdemeanor.

(b) No person who sells, furnishes, gives, or causes to be sold, furnished, or given away, any alcoholic beverage pursuant to subdivision (a) of this section shall 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.

(c) The Legislature hereby declares that this section shall be interpreted so that the holdings in cases such as Vesely v. Sager (5 Cal. 3d 153), Bernhard v. Harrah's Club (16 Cal. 3d 313) and Coulter v. Superior Court (21 Cal. 3d 144) be abrogated in favor of prior judicial interpretation finding the consumption of alcoholic beverages rather than the serving of alcoholic beverages as the proximate cause of injuries inflicted upon another by an intoxicated person.

B.&P.C.A. §25602.1. Sale of alcoholic beverage to intoxicated minor: Creation of cause of action against licensee.

Notwithstanding subdivision (b) of Section 25602, a cause of action may be brought by or on behalf of any person who has suffered injury or death against any person licensed pursuant to Section 23300 who sells, furnishes, gives or causes to be sold, furnished or given away any alcoholic beverage to any obviously intoxicated minor 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.

Civil Code §1714.

(a) Every one is responsible, not only for the result of his willful acts, but also for an injury occasioned to another by his want of ordinary care or skill in the management of his property or person, except so far as the latter has, willfully

or by want of ordinary care, brought the injury upon himself. The extent of liability in such cases is defined by the Title on Compensatory Relief.

(b) It is the intent of the Legislature to abrogate the holdings in cases such as Vesely v. Sager (5 Cal. 3d 153) Bernhard v. Harrah's Club (16 Cal. 3d 313), and Coulter v. Superior Court (21 Cal. 3d 144) and to reinstate the prior judicial interpretation of this section as it relates to proximate cause for injuries incurred as a result of furnishing alcoholic beverages to an intoxicated person, namely that the furnishing of alcoholic beverages is not the proximate cause of injuries resulting from intoxication, but rather the consumption of alcoholic beverages is the proximate cause of injuries inflicted upon another by an intoxicated person.

(c) No social host who furnishes alcoholic beverages to any person shall be held legally accountable for damages suffered by such person, or for injury to the person or property of, or death of any third person, resulting from the consumption of such beverages.

Case Comment

Cory v. Shierloh, 174 Cal. Rptr. 500 (1981).

Saatzer v. Smith, 176 Cal. Rptr. 68 (1981).

Cantor v. Anderson, 178 Cal. Rptr. 540 (1982).

Burke v. Superior Court, et al., 181 Cal. Rptr. 149 (1982).

Hagen v. Dias, 185 Cal. Rptr. 530 (1982). A minor brought suit against a liquor licensee to recover for injuries sustained after he and an adult became drunk and proceeded to drive home, whereupon the adult caused an accident. Plaintiff based his claim against the licensee on the grounds that he allowed the adult to drive him home due to his impaired judgment as a result of his intoxication, and thus the licensee was liable for the injuries he sustained. The Superior Court dismissed Plaintiff's suit, and the Court of Appeals affirmed. The Court interpreted California's dram shop act as extending liability of the liquor licensee only to third persons injured as a result of a minor's intoxication, and not to the minor himself. In other words, in all instances other than injuries caused by an intoxicated minor who has been illegally served alcohol, the common law rule that the proximate cause of any

injuries is the consumer, not the supplier, of the alcohol holds. Thus, a minor may not recover for injuries caused by an adult under these statutes.

Clendening v. Shipton, 196 Cal. Rptr. 654 (1983). Court of Appeals for Fourth District ruled that B.&P.C.A. §25602(b) and (c), effective January 1, 1979, are not retroactive in their operation.

Strang v. Cabrol, 202 Cal. Rptr. 410 (1984). Court of Appeals for Third District held that 1979 amendments to law provide that there will be no liability on licensee for sale to minor, unless minor, at time of sale, is "obviously intoxicated." Court indicates its disagreement with Burke (above).

COLORADO

§13-21-103. Damages for selling liquor to drunkard.

Every husband, wife, child, parent, guardian, employer, or other person who is injured in person, or property, or means of support by any intoxicated person, or in consequence of the intoxication of any person, has a right of action, in his name, against any person who, by selling or giving away intoxicating liquors to any habitual drunkard, causes the intoxication, in whole or in part, of such habitual drunkard; and all damages recovered by a minor under this section shall be paid either to the minor or to his parent, guardian, or next friend, as the court directs. The unlawful sale or giving away of intoxicating liquors works a forfeiture of all rights of the lessee or tenant under any lease or contract of rent upon the premises. No liability shall accrue against any such person as provided unless the husband, wife, child, parent, guardian, or employer first, by written or printed notice, has notified such person, or his agents, or employees not to sell or give away any intoxicating liquors to any habitual drunkard.

Case Comment

Kerby v. Flamingo Club, Inc., 532 P.2d 975 (1974). The plaintiff, the widow of a cab driver assaulted and killed in tavern parking lot, brought action against the tavern for damages for her husband's wrongful death. The deceased was summoned to the club to pick up passengers. When a woman passenger was pulled from his cab, the driver interceded on her behalf and was attacked by four or more patrons of the tavern. The tavern owner was found liable to the injured party because he furnished alcohol to patrons when they were in such a condition as to be deprived of their willpower or lack responsibility for their behavior. Such intoxication was found to be a proximate cause of the fatal injuries.

C.G.S.A. §30-102. Liquor seller liable for damage by intoxicated persons, notice of action.

If any person, by himself or h's agent, sells any alcoholic liquor to an intoxicated person, and such purchaser, in consequence of such intoxication, thereafter injures the person or property of another, such seller shall pay just damages to the person injured, up to the amount of twenty thousand dollars, or to persons injured in consequence of such intoxication up to an aggregate amount of fifty thousand dollars, to be recovered in an action under this section, provided the aggrieved person or persons shall give written notice to such seller within sixty days of the occurrence of such injury to person or property of his or their intention to bring an action under this section. In computing such sixty day period, the time between the death or incapacity of any aggrieved person and the appointment of an executor, administrator, conservator or guardian of his estate shall be excluded, except that the time so excluded shall not exceed one hundred twenty days. 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 damaged, and the time, date and place where the injury to person or property occurred. No action under the provisions of this section shall be brought but within one year from the date of the act or omission complained of.

Case Comment

Sanders v. Officers' Club of Connecticut, Inc., 397 A.2d 122 (1978). Administratrix of estate of individual who, while preparing to tow disabled vehicle, was struck and fatally injured, brought suit against the club which had served a quantity of liquor to the driver who struck decedent. The court held that the defendant club was precluded from raising the special defenses of contributory negligence or assumption of risk, in view of the absence of any allegation that the plaintiff's decedent had in any way participated in the driver's intoxication.

Kowal v. Hofher, 436 A.2d 1 (1980). Trial court noted that state has no common-law action in negligence, and that §30-102 is exclusive remedy for injuries. State Supreme Court disagreed that statute is exclusive remedy, stating that there is a common-law remedy where conduct by defendant constitutes "wanton and reckless misconduct."

Passini v. Decker, 467 A.2d 442 (1983). Neither participation nor assumption of risk is available as a defense to action brought under state Dram Shop Act.

DELAWARE

No Dram Shop Act.

Case Comment

Taylor v. Ruiz, 394 A.2d 765 (1978). Plaintiff brought action against the tavern owner and patron for injuries sustained when she was struck by an automobile operated by patron. Tavern owner moved for summary judgment on the basis of no common law or statutory duty. The court held that under the statute making it a criminal offense to serve alcoholic beverages to an intoxicated person, if tavern owner or its agents knew or should have known that patron was intoxicated, and the continuing service of alcoholic beverage to patron while intoxicated was the proximate cause of injury suffered by plaintiff, plaintiff would be entitled to recover from tavern owner.

Wright v. Moffitt, 437 A.2d 554 (1981). Plaintiff sued a tavern owner to recover for injuries he sustained when struck by a car after becoming intoxicated at the owner's bar. The Superior Court dismissed the case for failure to state a cause of action. On appeal, the Supreme Court affirmed. The Court held that neither common law nor state liquor control statutes provided the plaintiff with cause of action, as plaintiff's injuries arose as a result of his voluntary intoxication, and, in the absence of a dram shop act allowing recovery for personal injuries sustained, the tavern owner could not be held liable.

§25-121. Sale to minors or intoxicated persons -- Liability of licensee.

(a) Licenses issued hereunder shall not authorize the sale or delivery of beverages, with the exception of beer and light wines, to any person under the age of twenty-one years, or beer or light wines to any person under the age of eighteen years, the sale, service, or delivery of beverages to any intoxicated person, or to any person of notoriously intemperate habits, or to any person who appears to be intoxicated; and ignorance of age of such minor shall not be a defense to any action instituted under this section. No licensee shall be liable to any person for damages claimed to arise from refusal to sell such alcoholic beverages.

(b) No person being the holder of a license issued under section 25-111(a)(13) shall permit on the licensed premises the consumption of alcoholic beverages, with the exception of beer and light wines, by any person under the age of twenty-one years, or permit the consumption of beer and light wines by any person under the age of eighteen years, or the consumption of any beverage by any intoxicated person, or any person or notoriously intemperate habits, or any person who appears to be intoxicated; and ignorance of the age of any such minor shall not be a defense to any action instituted under this section. No licensee shall be liable to any person for damages claimed to arise from refusal to permit the consumption of any beverage on any premise licensed under 25-111(a)(13).

Case Comment

Marusa v. District of Columbia, 484 F.2d 828 (1973). A shooting victim brought actions against the District of Columbia, its police chief and a bar owner seeking recovery for injuries sustained when victim was shot by a police officer after the officer had allegedly consumed excessive amounts of liquor at defendant's bar. The United States District Court for the District of Columbia granted defendants' motion to dismiss, and plaintiffs appealed. The Court of Appeals held that no federal statutory basis existed for plaintiff's action, but also held that (1) plaintiff stated a cause of action against the District of Columbia and the police chief on common-law ground, (2) plaintiff's complaint was timely filed within the applicable three-year limitation period for

negligence actions, and (3) plaintiff's allegations as to defendant bar owner's violation of his statutory duty owed to plaintiff, stated a cause of action against the owner. The Court reversed and remainded for further proceedings.

Cartwright v. Hyatt Corporation, et al., 460 F.Supp. 80 (1978). Plaintiff, administrator of estate of deceased automobile passenger, brought wrongful death and survivor actions against operator of other automobile and hotel corporation that served the other operator alcoholic beverages. The Court held that plaintiff could not recover from hotel corporation that served alcoholic beverages to opeator of other automobile, in absence of evidence that, at time drinks were provided to operator, operator appeared to be intoxicated to those serving or buying the drinks.

FLORIDA

F.S.A §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.

Case Comment

Davis v. Shiappacossee, 155 So.2d 365 (1963). Supreme Court of Florida ruled that violation of §562.11, which prohibits sale of alcoholic beverages to minor, constituted negligence per se and gives rise to cause of action by minor.

Prevatt v. McClennan, 201 So.2d 780 (1967). District Court of Appeal broadened holding in Davis to indicate that statute also gives rise to cause of action by injured third party.

United Services Auto Assn. v. Butler, 359 So.2d 498 (1978). District Court of Appeal found that §562.11 does not create a cause of action against a social host who supplies alcoholic beverages to a minor who becomes intoxicated and later causes injury.

Burson v. Gate Petroleum Company, 401 So.2d 922 (1981). Plaintiff sued store owner to recover for injuries sustained when hit by a truck driven by minors, one of whom had purchased beer in the owner's store. The lower court held that since the purchaser of the beer was not the driver of the vehicle at the time of the accident, the sale of the beer was not the proximate caused of the plaintiff's injuries, and entered summary judgment in favor of the defendants. The District Court of Appeals upheld, stating that the sale of the beer to the passenger of the vehicle was not the proximate cause of the plaintiff's injuries, as it could not be shown that the

defendant could reasonably have foreseen the conse- quences of his sale of beer to the passenger of the vehicle, i.e., that he would share the beer with the minor driver who would later cause an accident. Thus, negligence per se could not be proven.

Allen v. Babrab, Inc., 438 So.2d 356 (1983). Supreme Court held that tavern owner may be liable for injuries to its patrons caused by tortious conduct of a third party where such disorderly conduct is generally foreseeable, regardless of whether the owner had reason to know of the dangerous propensities of the particular tortfeasor.

Armstrong v. Munford, Inc., 439 So.2d 1009 (1983). District Court of Appeal held that by enacting §768.125, the legislature established requisities of action by an injuried third party out of circumstances violative of §562.11. §768.125 requires that selling must be done "willfully". District Court specifically asks Supreme Court to review this case.

Migliore v. Crown Liquors of Broward, Inc., 448 So. 2d 978 (1984). Supreme Court follows holding in Prevatt, stating that, prior to the 1981 effective date of §768.125, a vendor who sells intoxicating liquors to a minor contrary to §562.11 may be liable to a third party who is injured by the minor's operation of an automobile. Providing alcoholic beverages to minors involves the obvious foreseeable risk of the minor's intoxication and injury to himself or a third person, said the court. Court further states that §768.125, rather than creating cause of action for third persons against dispensers of alcoholic beverages, is a limitation on liability, since the legislature was presumed to be acquainted with Davis and Prevatt when it passed law.

Barber v. Jensen, 450 So.2d 831 (1984). In case decided same day as Migliore, Supreme Court stated that prior to the effective date of §768.125, a third party who could establish proximate causation for his injuries had cause of action against person who furnished alcoholic beverages to minor in violation of §562.11.

§51-1-18. Furnishing alcoholic beverages to minor children; gambling with minor children.

(a) A father or, if the father is dead, a mother, shall have a right of action against any person who shall sell or furnish alcoholic beverages to his or her underage child for the child's use without the permission of the child's parent.

Case Comment

Keaton v. Fenton, 249 S.E.2d 629 (1978).

Reeves v. Bridges, 284 S.E.2d 416 (1981). The father of a minor brought action against defendant liquor store owner to recover for injuries his son sustained after buying alcoholic beverages with his older brother's identification. The lower court ruled that in order to be found liable for damages under the dram shop statute, the defendant must have knowingly violated his duty to the plaintiff, as set forth in the statute, by selling his minor son liquor. The Supreme Court affirmed, holding that the defendant had no way of knowing that plaintiff's son was a minor, and since he did not act with any intent to sell liquor illegally, he is not liable for damages under this statute. The Court emphasized that the statute does not impose strict liability upon the defendant.

Nunn v. Comidas Exquisitos, Inc., 305 S.E.2d 487 (1983). State Court of Appeals reaffirmed no liability rule in Keaton, even in view of subsequent reenactment of criminal statute making it illegal to serve one who is in a "state of noticeable intoxication." Court said criminal statute had no bearing on common-law tort liability of defendant.

No Dram Shop Act.

Case Comment

Ono v. Applegate, 612 P.2d 533 (1980). In consolidated actions arising out of a vehicular collision, recovery was sought against defendant driver and against the bar on the theory that it negligently supplied liquor to such driver when she was under the influence of liquor and negligently allowed her to leave in an intoxicated condition. The Court rendered judgment on the basis of the jury verdict finding that the defendant driver was 75% at fault and that the bar was 25% at fault, and bar appealed. The Supreme Court held that (1) a person who is injured by an inebriated automobile driver may recover, in absence of dram shop legislation, from the tavern which provided alcohol to the driver in violation of the liquor control law; (2) the statute prohibiting the sale or service of alcohol to a person under the influence of intoxicating liquor imposes a duty of care on the tavern; (3) the violation of liquor control law was properly submitted to the jury as evidence of negligence; (4) the instruction that "Plaintiffs have the burden of establishing that defendant [bar] knew or reasonably should have known that [defendant driver] was under the influence of intoxicating liquor at the time she was so served" was sufficiently clear in regard to the knowledge or notice requirement; (5) evidence that defendant driver had been drinking prior to her arrival at bar was relevant to the issue of her apparent state of intoxication; (6) the consequences of serving liquor to the intoxicated driver, such as further inebriation and injurious conduct, were "foreseeable intervening acts" which would not relieve bar of liability; and (7) the jury's determination that the bar was 25% liable for plaintiff's injuries was supported by substantial evidence.

IDAHO

No Dram Shop Act.

Case Comment

Alegria v. Payonk, 619 P.2d 135 (1980). Action was brought against tavern owners for negligence in serving alcoholic beverages to known minor resulting in automobile accident. Summary judgment was engered in favor of the tavern owner. On appeal, the Idaho Supreme Court held that (1) the sale of alcoholic beverages by a licensed vendor to an actually, apparently and obviously intoxicated person known to be a minor, is capable of being a contributing actual and proximate cause of damage resulting to a third person so as to give rise to a cause of action against such vendor, and (2) genuine issues of material fact existed as to whether the tavern owners could reasonably have foreseen that their sale of intoxicants to the minor might result in injury to third parties, and whether conduct of the tavern owners in so acting fell below that of a person of ordinary prudence acting under the same circumstances and conditions thus precluding summary judgment in favor of the tavern owners. The Supreme Court reversed the decision of the District Court and remanded.

S.H.A. ch.43 ¶135. Actions for damages caused by intoxication - Lessor's liability - Forfeiture of lease - Maximum recovery - Limitations.

Every person who is injured in person or property by any intoxicated person, has a right of action in his own name, severally or jointly, against any person who by selling or giving alcoholic liquor, causes the intoxication of such person. Any person owning, renting, leasing or permitting the occupation of any building or premises with knowledge that alcoholic liquors are to be sold therein, or who having leased the same for other purposes, shall knowingly permit therein the sale of any alcoholic liquors that have caused the intoxication of any person, shall be liable, severally or jointly, with the person selling or giving the liquors. However, if such building or premises belong to a minor or other person under guardianship or conservatorship the guardian or conservator of such person shall be held liable instead of the ward. A married woman has the same right to bring suit and to control it and the amount recovered as a feme sole. All damages recovered by a minor under this Act shall be paid either to the minor, or to his parent, guardian or next friend as the court shall direct. The unlawful sale or gift of alcoholic liquor works a forfeiture of all rights of the lessee or tenant under any lease or contract of rent upon the premises where the unlawful sale or gift takes place. All suits for damages under this Act may be by any appropriate action in the circuit court. An action shall lie for injuries to means of support caused by an intoxicated person or in consequence of the intoxication, habitual or otherwise, of any person resulting as aforesaid. The action, if the person from whom support was furnished is living, shall be brought by any person injured in means of support in his name for his benefit and the benefit of all other persons injured in means of support. However, any person claiming to be injured in means of support and not included in any suit brought hereunder may join by motion made within the times herein provided for bringing such action or the personal representative of the deceased person from whom such support was furnished may so join. In every such action the jury shall determine the amount of damages to be recovered without regard to and with no special instructions as to the dollar limits on recovery imposed by this Section. The amount recovered in every such action is for the exclusive benefit of

the person injured in loss of support and shall be distributed to such persons in the proportions determined by the judgment or verdict renedered in the action. If the right of action is settled by agreement with the personal representative of a deceased person from whom support was furnished, the court having jurisdiction of the estate of the deceased person shall distribute the amount of the settlement to the person injured in loss of support in the proportion, as determined by the Court, that the percentage of dependency of each such person upon the decreased person bears to the sum of the percentages of dependency of all such persons upon the deceased person. In no event shall the judgment or recovery under this Act for injury to the person or to the property of any person as aforesaid exceed $15,000, and recovery under this Act for loss of means of support resulting from the death or injury of any person, as aforesaid, shall not exceed $15,000 for each person so injured where such injury occurred prior to July 1, 1956, and not exceeding $20,000 for each person injured after July 1, 1956. Every action hereunder shall be barred unless commenced within one year next after the cause of action accrued.

Case Comment

Cunningham v. Brown, 174 N.E.2d 153 (1961). Supreme Court cited history of 1872 state dram shop law, said that legislature created exclusive remedy and that no common law liability exists.

Miller v. Moran, 421 N.E.2d 1046 (1981). Appellate Court, Fourth District, said that noncommercial supplier of liquor not liable under statute. Court cited several other state decisions in finding no liability against social host.

Lowe v. Rubin, 424 N.E.2d 710 (1981). Appellate Court, Fifth District, agrees with Miller.

Ruth v. Benvenutti, 449 N.E.2d 209 (1983). Defendant served liquor to minor in violation of specific request by mother, who subsequently sued when son was injured in automobile accident. Suit was based on common law theory of willful and wanton misconduct. Third District Appellate Court indicated that common law theory is inappropriate because the only remedy in Illinois is under state Dram Shop statute. However, court suggested that either the state Supreme Court or the legislature should review this situation.

Morgan v. Kirk Brothers, Inc., 444 N.E.2d 504 (1983). State Contribution Act permits third-party suit against tavern where third party bringing complaint was not the injured person.

Heldt v. Brei, 455 N.E.2d 842 (1983). Appellate Court, First District, said that even though son, who held party at home where he resided with parents, charged for drinks, neither son nor parents are liable for damages resulting from accident caused by intoxicated guest because they are not in the business of dispensing alcoholic beverages.

INDIANA

No Dram Shop Act.

Case Comment

Elder v. Fisher, 217 N.E.2d 847 (1966).

Brattain v. Herron, 309 N.E.2d 150 (1974).

Parrett v. Lebamoff, 408 N.E.2d 1344 (1980). The administratrix of the estate of the deceased brought action against tavern operators for the wrongful death of her husband to whom the defendants had served alcoholic beverages before he was killed in an automobile accident. The Superior Court dismissed the complaint for failure to state a claim. The Court of Appeals, in reversing that decision, held that contributory negligence may constitute a defense of an action brought under the statute making it unlawful to sell alcoholic beverages to a person known by the seller to be intoxicated, but if the actions of the defendant were willful, wanton or reckless, recovery is not barred.

Elsperman v. Plump, 446 N.E.2d 1027 (1983). Complaint against bartender and tavern owner for serving alcoholic beverages to patron who subsequently killed 18-month-old child in automobile accident. Court of Appeals indicated that state cases have "clearly established a rule that a seller of alcoholic beverages may be held liable for injuries inflicted by an intoxicated person as a result of his intoxication where such result was reasonably forseeable and the sale of the intoxicant was in violation of law." Only issue in this case involved sufficiency of evidence for jury to conclude that bartender knew patron was intoxicated at time of serving.

I.C.A. §123.92. Civil liability applicable to sale or gift of beer or intoxicants by licensees.

Every husband, wife, child, parent, guardian, employer or other person who shall be injured in person or property or means of support by any intoxicated person or resulting from the intoxication of any such person, shall have a right of action, severally or jointly, against any licensee or permittee, who shall sell or give any beer or intoxicating liquor to any such person while he or she is intoxicated, or serve any such person to a point where such person is intoxicated for all damages actually sustained. If the injury was caused by an intoxicated person, a permittee or licensee may establish as an affirmative defense that the intoxication did not contribute to the injurious action of the person.

Every liquor control licensee and class "B" beer permittee shall furnish proof of financial responsibility either by the existence of a liability insurance policy or by posting bond in such amount as determined by the department.

§123.93. Limitation of action.

Within six months of the occurrence of an injury, the injured person shall give written notice to the licensee or permittee or such licensee's or permittee's insurance carrier of his intention to bring an action under this section, indicating the time, place and circumstances causing the injury. Such six month period shall be extended if the injured party is incapacitated at the expiration thereof or unable, through reasonable diligence, to discover the name of the licensee, permittee, or person causing the injury or until such time as such incapacity is removed or such person has had a reasonable time to discover the name of the licensee, permittee or person causing the injury.

Case Comment

Lewis v. State, 256 N.W.2d 181 (1977). Two actions were brought to recover damages from State for injuries sustained by plaintiffs as a result of an automobile accident on the theory that it was the result of a state liquor store employee's negligence in selling liquor to a minor and the State's negligence in the design and construction of the highway on which

the accident occurred. The District Court denied the State's motion for summary judgment. After the State was granted leave to bring an interlocutory appeal, the Supreme Court held that: (1) a state liquor store employee is not a "member of the Liquor Control Commission" within the meaning of the statute limiting the personal liability of a member of the Commission; (2) the statute prohibiting the sale of liquor to minors sets a minimum standard of care for conduct generally required of the reasonably prudent man under like circumstances for purposes of common-law action of negligence based on the sale of furnishing of intoxicating liquor; (3) the sale of furnishing of intoxicating liquor in violation of such statute can be the proximate cause of an injury sustained as a result of an intoxicated individual's tortious conduct; (4) the Tort Claims Act provision that "The provisions of this chapter shall not apply to ... any claim based upon ... the exercise or performance or the failure to exercise or perform a discretionary function or duty ..." was not preclusive of plaintiffs' right to recover on the theory of negligence. The Court affirmed and remanded.

Snyder v. Davenport, 323 N.W.2d 225 (1982). Plaintiff brought suit against a driver who hit her car while intoxicated, and four liquor licensees who sold him liquor even though he was intoxicated. Plaintiff based her suit on negligence and recklessness, instead of upon Iowa's dram shop act. The lower court granted the licensees' motion to dismiss claims against them, and the Supreme Court affirmed. Here, the Court held that the third party liability established by the dram shop statute usurp the common law principle of negligence in a case involving the sale of alcohol to an intoxicated patron. Thus, the sole cause of action against the licensees would be the dram shop act, and the claim based upon negligence must be dismissed.

Rippel v. J.H.M. of Waterloo, Inc., 328 N.W.2d 499 (1983). Automobile passenger injured in accident involving intoxicated host driver could not recover damages, since passenger knew driver was intoxicated and neither sought nor wanted other transportation. Assumption of risk defense available; Supreme Court also cites elements to be considered in determining this defense.

DeMore by DeMore v. Dieters, 334 N.W.2d 734 (1983). Statute (§123.47) prohibiting selling or giving of beer to minors does not permit action against a defendant who gives permission for a beer party on his property, when he neither purchases nor procures the beer.

Nelson v. Restaurants of Iowa, Inc., 338 N.W.2d 881 (1983). Supreme Court ruled that 1962 revision of statute (originally adopted in 1862) removed exemplary (i.e., punitive) damages from nature of award and limited recovery to actual damages.

Haafke v. Mitchell, 347 N.W.2d 381 (1984). Issue in this case was whether statute pre-empts other claims and provides exclusive remedy against licensee, as stated in Snyder. Supreme Court said that liability may lie against a party (e.g., an employee of a licensee) to whom statute is inapplicable; liability also may lie against licensee in situations where statute is inapplicable, as, in this case, a sale to a minor (statute covering only sale to intoxicated persons).

KANSAS

No Dram Shop Act.

Case Comment

Hardy v. Haggerman. District Court of Shawnee County, in Memorandum Decision, states that sale of alcoholic beverages to minor in violation of statute is not negligence per se. Court says that 1949 repeal of state dram shop statute (originally adopted in 1868) evidenced clear intention of legislature that there would no longer be strict liability on those who sell liquor. Court said that act of legislature in repealing statute does not, however, preclude use of ordinary negligence standards to govern conduct of those who sell liquor. Court notes "recent trend . . . in favor of allowing liability", but says it does not seek to judicially impose a dram shop act. Court "merely finds that under ordinary common law negligence standards, a liquor store owner or employee could be guilty of negligence in selling liquor to a minor." Court further states that imposition of a dram shop statute providing liability without fault is best left to legislature or state Supreme Court. [NOTE: Case was settled shortly after this decision, in January, 1984, and is therefore unreported.]

KENTUCKY

No Dram Shop Act.

Case Comment

Pike v. George, 434 S.W.2d 626 (1968). Plaintiff brought action against the owners of a liquor store for injuries he sustained in an accident involving an intoxicated minor driver, in whose car plaintiff was a passenger. The Circuit Court dismissed the complaint for failure to state a cause of action. The Court of Appeals reversed, holding that, although Kentucky follows common law rule generally holding no liability against alcohol dispenser, it was unwilling to state that there are no circumstances under which licensee may be held liable. The Court said that allegations that defendants owned the liquor store and that they willfully sold liquor to the minor who became intoxicated and as a result of that intoxication lost control of the automobile, causing it to be wrecked and causing plaintiff to be injured, stated a cause of action.

LOUISIANA

No Dram Shop Act.

Case Comment

Lee v. Peerless Insurance Company, 183 So.2d 328 (1966). No liability imposed on seller of alcoholic beverages.

Pence v. Ketchum, 326 So.2d 381 (1976). Supreme Court reversed Lee, holding complaint sufficient to allege breach of two duties: statutory duty of alcoholic beverage retailer not to serve an intoxicated person, and the duty of a business invitor to avoid affirmative acts increasing the peril of an intoxicated patron.

Thrasher v. Leggett, 373 So.2d 494 (1979). Supreme Court held that both Lee and Pence were in part correct, though it reverted more to Lee in holding that cause more proximate to an injury to an intoxicated person which results from his intoxication is the consumption of the alcohol and not the sale.

Sanders v. Hercules Sheet Metal, Inc., 385 So.2d 772 (1980). No liability on employer who permitted intoxicated employee to leave office party. The duty, said the court, is to avoid affirmative acts which increase risk of peril to an intoxicated person, but court found no affirmative act in this case.

Chausse v. Southland Corporation, 400 So.2d 1199 (1981). Suit was filed against a store owner whose employee sold beer to a 16-year-old boy, who later caused an accident, killing one of his minor passengers and injuring two others. The lower court held that plaintiffs could not recover for injuries sustained due to their contributory negligence, and plaintiffs appealed. The Court of Appeals reversed, finding that the statute barring the sale of liquor to minors is intended to protect minors against the consequences of their own negligence, and that the death of one minor and the injuries sustained by the others are obviously some of the consequences that the legislation is meant to prevent. Court distinguished Thrasher, which applied to adult.

Garcia v. Jennings, 427 So.2d 1329 (1983). Adults who furnished liquor to minor and permitted minor, in an intoxicated condition, to exit automobile near bayou, could be held liable for minor's drowning death. Statute prohibits adult from purchasing alcoholic beverages on behalf of minor; Court likened this case to Chausse.

17 M.R.S.A.§2002. Responsibility for injuries by drunken persons.

Every wife, child, parent, guardian, husband or other person, who is injured in person, property, means of support or otherwise by any intoxicated person or by reason of the intoxication of any person, shall have a right of action in his own name against anyone who, by selling or giving any intoxicating liquors or otherwise, in violation of law, has caused or contributed to the intoxication of such person. In such action the plaintiff may recover both actual and exemplary damages. The owner, lessee or person renting or leasing any building or premises, having knowledge that intoxicating liquors are sold therein contrary to law, is liable, severally or jointly, with the person selling or giving intoxicating liquors. In actions by a wife, husband, parent or child, general reputation of such relationship is prima facie evidence thereof, and the amount recovered by a wife or child shall be her or his sole and separate property.

Case Comment

Gardner v. Day, 50 A. 892 (1901). Plaintiff brought action to recover damages for injury to her means of support (her husband) by reason of his intoxication, which resulted in his death, caused by the defendant by giving or selling to him intoxicating liquors. The Court held that where a wife has been injured in her means of support by reason of the death of her husband, caused by his intoxication, she can maintain an action under this statute against the person who sold or gave him the liquor that produced the intoxication. The facts were held to constitute a cause of action.

Currie v. McKee, 59 A. 442 (1904).

MARYLAND

No Dram Shop Act.

Case Comment

Felder v. Butler, 438 A.2d 494 (1981). Plaintiffs brought suit against defendant tavern owner for allegedly serving liquor to a visibly intoxicated parton, who then collided with a vehicle driven by plaintiffs. The Maryland Court of Appeals declined, in the absence of a specific statutory provision, to alter the early common law rule that an innocent third party does not have a cause of action against a vendor of alcoholic beverages for injuries suffered as a result of the intoxication of the vendor's patron. The Court upheld the decision of the lower court in favor of the defendant. The Court suggested, however, that the legislature may wish to determine if the public policy of the State continues to favor a rule which, in any and all circumstances, precludes consideration of whether the sale of intoxicating liquor to an inebriated patron may be a proximate caused of subsequent injury caused to others by the intoxicated customer.

Fisher v. O'Connor's, Inc., 452 A.2d 1313 (1982). Court of Special Appeals, noting that Felder dealt only with actions brought by injured third party, states that same rationale acts to bar action by person who is injured as a result of his own intoxication. Cause of action, said the Court, "must arise from an act of the Legislature." Court indicated that statute making it a misdemeanor to sell alcoholic beverages to an intoxicated person does not create a civil cause of action. [NOTE: Certiorari denied by State Court of Appeals.]

MASSACHUSETTS

No Dram Shop Act.

[EDITOR'S NOTE: See Chapter 139, §§16, 16A, which permits state to enjoin operation of licensed alcoholic beverage establishment as common nuisance, in situations where liquor is "habitually served to persons who are intoxicated or . . . to persons whom the operators of said premises know or have reason to know will operate a motor vehicle under the influence of intoxicating liquor . . ."]

Case Comment

Adamain v. Three Sons, Inc., 233 N.E.2d 18 (1967).

Wiska v. St. Stanislaus Social Club, Inc., 390 N.E.2d 1133 (1979).

O'Hanley v. Ninety-Nine, Inc., 421 N.E.2d 920 (1981).

Cimino v. The Milford Keg, Inc., 431 N.E.2d 920 (1982).

Michnik - Zilberman v. Gordon Liquors, Inc., 440 N.E.2d 1297 (1982). The widow of a bicyclist who was struck and killed by an intoxicated minor brought action against the owner of the retail store for negligence in selling liquor to a minor in violation of statute. The Superior Court entered judgment in favor of the Plaintiff. The store owner appealed, on the grounds, among others, that the accident was not foreseeable as a matter of law, since the minor was sober at the time of the sale, the seller was not aware that he would drink while driving, and the seller had no evidence that the minor was not of age. The Court affirmed the lower court's judgment in favor of plaintiff, holding that (1) tavern keepers and retail liquor vendors have a duty to refuse to sell liquor to minor, (2) a reasonably prudent person could foresee the risks involved in selling liquor to a minor, whether or not he knew for certain that the minor would be driving, and (3) given the prevalence of accidents caused by drinking while driving, a reasonably prudent person should be aware of the possibility that this would occur.

M.C.L.A. §436.22(5); MSA §18.993(5). Actions for injuries, loss of support; limitations.

A wife, husband, child, parent, guardian, or other person injured in person, property, means of support, or otherwise, by a visibly intoxicated person by reason of the unlawful selling, giving, or furnishing of intoxicating liquor to the person, if the sale is proven to be a proximate caused of the injury or death, shall have a right of action in his or her name against the person who by the selling, giving, or furnishing the liquor has caused or contributed to the intoxication of the person or who has caused or contributed to the injury. The principal and sureties to a bond given under this act shall be liable, severally and jointly, with the person selling, giving, or furnishing a spirituous, intoxicating, or malt liquor. In an action pursuant this section, the plaintiff shall have the right to recover actual damages in a sum not less than $50.00 in each case in which the court or jury determines that intoxication was a proximate cause of the injury or death. A surety shall not be liable in excess of the amount of the bond required by this act. An action shall be instituted within 2 years after the injury or death and all factual defenses open to the alleged intoxicated person or minor shall be open and available to the principal and surety. In the event of the death of either party, the right of action given in this section shall survive to or against his or her executor or administrator. In each action by a husband, wife, child, or parent, the general reputation of the relation of husband and wife or parent and child shall be prima facie evidence of the relation, and the amount recovered by either husband, wife, parent, or child shall be his or her sole and separate property. The damages together with the costs of the action shall be recovered in an action of trespass before a court of competent jurisdiction. If the parents of the injured or deceased person are entitled to damages, the father and mother may sue separately, but recovery by 1 is a bar to action by the other. An action against a retailer, wholesaler, or anyone covered by this act or a surety, shall not be commenced unless the minor of the alleged intoxicated person is a named defendant in the action and is retained in the action until the litigation is concluded by trial or settlement. The bond required by this action shall continue from year to year unless sooner canceled by the surety.

Case Comment

Brooks v. Cook, 7 N.W. 216 (1880). Intoxicated adults may not recover for their injuries.

Behnke v. Pierson, 21 Mich. App. 219 (1970). Court of Appeals said that state law makes no provision for holding private individuals liable for furnishing alcoholic beverages without monetary gain for social courtesy or hospitality reasons.

Manuel v. Weitzman, 191 N.W.2d 474 (1971). Supreme Court said that statute affords exclusive remedy for injuries.

Lover v. Sampson, 205 N.W.2d 69 (1972). Court of Appeals said that state law is not applicable to private individuals who are not tavern owners. Says that Manual also does not apply since it only applies to tavern owners and furnishing beverages to adults (not, as here, to minors).

Schutz v. Murphy, 297 N.W.2d 676 (1980).

Meste v. Curley, 310 N.W.2d 242 (1981).

Browder v. International Fidelity Insurance Company, 321 N.W.2d 668 (1982). Supreme Court said that legislature obviously intended dram shop act to be the exclusive cause of action for recovery.

Cussans v. Harris, 325 N.W.2d 793 (1982).

Cornack v. Sweeney, 339 N.W.2d 26 (1983). Court of Appeals restated Browder, holding no common law action for negligence remains for negligence in selling to minors or visibly intoxicated persons. Citing Brooks, Court said that there is no indication that legislature intended to exempt minors from rule prohibiting intoxicated person to recover for injuries. Injured intoxicated minor has no greater right to recover under statute than intoxicated adult.

Lucido v. Apollo Lanes & Bar, Inc., et al., 333 N.W.2d 246 (1983). Minor plaintiff was served alcoholic beverages at two bars, which did not inquire about his age and served him while he was visibly intoxicated. He later was involved in an automobile accident, sustaining injuries. He sued both bars. The Court of Appeals upheld the trial court's award of summary judgment in favor of Defendants, stating that earlier cases had indicated that the state Dram Shop law is the exclusive remedy for injuries arising our of the serving of alcoholic beverages, that ther is no common-law remedy in the state and that a minor is not an innocent person entitled to recovery under the statute.

Longstreth v. Fitzgibbon, 335 N.W.2d 677 (1983). Statute not limited to licensees. Court of Appeals held that civil action possible against a social host or others not under purview of Liquor Control Act for furnishing alcoholic beverages to minor.

Barrett v. Campbell, 345 N.W.2d 614 (1983). Passenger injured in automobile accident not entitled to recover from seller to driver, since passenger participated in purchasing drinks.

Hasty v. Broughton, 348 N.W.2d 299 (1984). Resort to legislative history important since act creates remedy and right which did not exist at common law. Court of Appeals refused to extend liability to intoxicated minor or adult for his or her own injuries.

MINNESOTA

Minn. Stats. 340.95. Injuries caused by intoxication, civil actions.

Every husband, wife, child, parent, guardian, employer, or other person who is injured in person or property, or means of support, or incurs other pecuniary loss by any intoxicated person, or by the intoxication of any person, has a right of action, in his own name, against any person who, by illegally selling or bartering intoxicating liquors or non-intoxicating malt liquors, caused the intoxication of that person, for all damages sustained. All damages recovered by a minor under this section shall be paid either to the minor or to his parent, guardian, or next friend, as the court directs. All suits for damages under this section shall be by civil action in any court of this state having jurisdiction. Actions for damages based upon liability imposed by this section shall be governed by section 604.01. The provisions of section 604.01, as applied under this section, do not apply to actions for injury to persons, property, or loss of means of support brought by a husband, wife, child, parent, guardian or other dependent of an intoxicated person.

Minn. Stats. 340.951. Notice of Injury.

Every person who claims damages, and every person or his insurer who claims contribution or indemnity, from any municipality owning and operating a municipal liquor store or from the licensee of any licensed liquor establishment for or on account of any injury within the scope of section 340.95, shall give a written notice to the governing body of the municipality or the licensee of the liquor establishment, as the case may be, stating:

(1) The time and date when, and person to whom the liquor was sold or bartered;

(2) The name and address of the person or persons who were injured or whose property was damaged;

(3) The approximate time and date and the place where any injury to person or property occurred. Every municipality or licensee who claims contribution or indemnification from any other licensee or municipality shall give a written notice in

the form and manner specified in this section to the other municipality or licensee.

No error or omission in the notice shall void the effect of the notice, if otherwise valid, unless the error or omission is of a substantially material nature.

In the case of claims for contribution or indemnity this notice shall be served within 120 days after the injury occurs, or within 60 days after receiving written notice of a claim for contribution or indemnity, whichever is applicable, and no action for contribution or indemnity therefor shall be maintained unless the notice has been given. In the case of a claim for damages the notice shall be served by the claimant's attorney within 120 days of the date of entering an attorney-client relationship with the person in regard to the claim, and no action for damages shall be maintained unless the notice has been given.

Actual notice of sufficient facts to reasonably put the governing body of the municipality or the licensee of the liquor establishment, as the case may be, or its insurer, on notice of a possible claim, shall be construed to comply with the notice requirements herein.

No action shall be maintained for injury under section 340.95 unless commenced within two years after the injury.

Minn. Stats. 340.11 subd. 21. This section, adopted in 1983, is not reprinted here. However, it requires that all licensees submit proof of financial responsibility for liability under §340.95 after August 1, 1983. Such proof can be satisfied by submission of evidence of insurance coverage in the amount of $50,000 for each individual and $100.00 for each occurrence.

Case Comment

Hammerschmidt v. Moore, 274 N.W.2d 79 (1978).

Robinson v. LaMott, 289 N.W.2d 60 (1979). Bar patron sued bar and its bonding company, because patrron was allegedly sold intoxicating liquor while intoxicated and was struck by automobile after leaving bar. The Supreme Court held that (1) the Minnesota Civil Damage Act does not create a cause of action in favor of one injured by reason of his own intoxication, whether or not he is an alcoholic; (2) such Act is the exclusive remedy against such liquor vendors; and (3) a party injured because of his own intoxication is not precluded

from proceeding under applicable statute against a liquor vendor's surety bond because of his inability to otherwise recover under such Act, since applicable statute is by its own terms a penal statute, and thus recovery under that section should not be precluded by plaintiff's culpability or inability to otherwise recover under §340.95, or at common law.

Wegan v. Village of Lexington, 309 N.W.2d 273 (1981).

Cady v. Coleman, 315 N.W.2d 593 (1982). Action was brought on behalf of automobile occupants injured in a collision with vehicle driven by an intoxicated driver. The intoxicated driver had attended a social gathering with business clients who purchased drinks for defendant driver, after he was visibly intoxicated. Suit was brought against defendant driver, the country club in which defendant driver became intoxicated, and the various businesses represented by the clients who purchased liquor for defendant driver.

Respondent contended that appellant, a law firm whose employee purchased liquor for defendant driver, was liable to them under the Minnesota Civil Damages Act, because appellant "sold or bartered," rather than gave, liquor to defendant driver. The district court denied appellant's motion for summary judgment, holding that the furnishing of liquor to defendant driver could have been a barter, since appellant provided him with entertainment with the expectation that defendant driver could continue to refer business to the law firm.

The Minnesota Supreme Court reversed, holding that since the Legislature amended §340.95 in 1977 by deleting the words "or giving," the Legislature intended to insulate social hosts from liability regardless of the terms under which they provide their guests with liquor. The Court also held that no barter took place because no consideration was given in exchange for appellant's liquor.

Also see Conde v. City of Spring Lake Park, 314 N.W.2d 836 (1982) where the Minnesota Supreme Court held that "the specific removal of the word 'giving' is legislative activity which we interpret here as intent to preempt a Civil Damages Act or common-law remedy against social hosts."

Johnson v. Moberg, 334 N.W.2d 411 (1983). Supreme Court declared unconstitutional a less restrictive standard (sale to "intoxicated" person) for liability of 3.2 beer vendor than existed for vendor of intoxicating liquor (sale to "obviously intoxicated" person).

Walker v. Kennedy, 338 N.W.2d 254 (1983). Supreme Court stated that person who furnished party facilities, but not liquor served there, was not liable for injuries to intoxicated minor.

Pautz v. Cal-Ross, Inc., 340 N.W.2d 338 (1983). Supreme Court, distinguishing Conde, stated that vendor of intoxicating liquor is entitled to contribution from intoxicated person with respect to damages sustained by the person's wife and child in a fire set by the intoxicated person.

Hollerich v. City of Good Thunder, 340 N.W.2d 665 (1983). Supreme Court stated that an after hours sale is an illegal sale within the meaning of the dram shop law, but the plaintiff must show a link between the sale and the intoxication of the purchaser (here, nothing apparent that sale was made to intoxicated individual).

McGuire v. C&L Restaurant, Inc., 346 N.W.2d 605 (1984). Supreme Court held that statute, in effect between 1977 and 1982, limiting liability of vendor of intoxicating liquor to $250,000, but imposing no limit on sale by vendor of 3.2 beer, was unconstitutionally discriminatory. Statute repealed in 1982.

MISSISSIPPI

No Dram Shop Act.

Case Comment

Munford, Inc. v. Peterson, 368 So.2d 213 (1979). The parents and brothers of a minor passenger who died as a result of an automobile accident brought a wrongful death action against the driver and the seller of alcoholic beverages. The Circuit Court entered a verdict in favor of plaintiffs for $100,000 against the seller of the alcoholic beverages and returned a verdict in favor of the driver. Seller appealed. The Supreme Court held that a complaint alleging a violation of the statute governing the sale of alcoholic beverages stated a cause of action, the violation of a statute constitutes negligence per se and, if that negligence proximately caused or contributed to the injury, then the injured party is entitled to recover.

MISSOURI

No Dram Shop Act.

Case Comment

Sampson v. W.F. Enterprises, Inc., 611 S.W.2d 333 (1981). Parents brought action against the owners of two cocktail lounges and a motor vehicle dealership for the alleged wrongful death of their minor son. The Circuit Court dismissed the plaintiff's petition. The Court of Appeals reversed, holding that under the statute prohibiting as a misdemeanor the sale of intoxicants to minors, a civil cause of action can arise in favor of a minor who suffers injury as a result of becoming intoxicated on liquor sold to him in a drinking establishment.

Nesbitt v. Westport Square, Ltd., 624 S.W.2d 519 (1981). Extended holding in Sampson to permit a third party a cause of action against a tavern owner for injuries caused by an intoxicated minor who had been served liquor in the taver.

Carver et al. v. Schafer et al., 647 S.W.2d 570 (1983). Plaintiffs sought damages for wrongful death from tavern owner who sold drinks to an already intoxicated adult, who caused the death of appellant's husband. Court noted Sampson holding that violation of a statute which forbids serving liquor to a minor may constitute negligence per se. This case constituted simple negligence, and Court found that state public policy requires a standard of ordinary care against injuries reasonably to be anticipated. Standard in this case imposed a duty to avoid supplying patron with alcoholic beverages once it become apparent that he was intoxicated. Court said this standard is supported by the "well-documented forseeability of accident caused by drunken drivers." Case remanded for trial.

MONTANA

No Dram Shop Act.

Case Comment

Deeds v. United States, 306 Fed. Supp. 348 (1969). Defendant non-commissioned officers' club found liable for injuries caused by intoxicated patron, since club violated state law in serving alcoholic beverages to patron, knowing he was a minor and obviously intoxicated.

Runge v. Watts, 589 P.2d 145 (1979). Passenger in intoxicated minor's automobile brought action alleging negligence on the part of homeowner in serving alcoholic to the minor driver whose intoxication resulted in plaintiff's injury. The District Court dismissed the claim and the passenger appealed. The Supreme Court held that in an action by a passenger in the minor's automobile, any contributory negligence on the part of the minor would not bar recovery by the passenger. However, said the Court, and that in absence of a statute to the contrary, there can be no cause of action against one furnishing liquor so long as the person to whom liquor was sold or given was not in such a state of helplessness as to be deprived of his willpower or responsibility for his behavior.

Johnson v. United States, 496 Fed. Supp. 597 (1980). Court followed Deeds, did not mention Runge, in holding military club liable since it permitted driver to remain past 2 a.m. closing time and continue to consume alcoholic beverages.

NEBRASKA

No Dram Shop Act.

Case Comment

Holmes v. Circo, 244 N.W.2d 65 (1976). An injured party instituted action against a tavern owner and his employee to recover damages for injuries sustained when the vehicle in which she was riding collided with an automobile driven by a third party who allegedly was served alcohol in the owner's tavern. The District Court dismissed the petition for failing to state a cause of action. On appeal, the Nebraska Supreme Court held that in absence of legislation specifically so providing, the tavern owner or operator would not be liable to third parties injured by the intoxicated persons to whom the tavern owner had served liquor in violation of the Liquor Control Act.

NEVADA

No Dram Shop Act.

Case Comment

Hamm v. Carson City Nuggett, Inc., 450 P.2d 358 (1969). Action for wrongful death was brought by the heirs of predestrians killed by an automobile driven by a drunken driver, against the tavern keeper who allegedly sold liquor to the offending driver. On appeal from summary judgment the Nevada Supreme Court held that the heirs did not have a claim for wrongful death against the tavern keeper and that the violation of the statute providing that any person in charge of a saloon or bar who sells intoxicating liquor to any person who is drunk is guilty of a misdemeanor does not impose civil liability on one in charge of the bar nor is such violation negligence per se.

Davies v. Butler, 602 P.2d 605 (1979).

Van Cleve v. Kietz-Mill Minit Mart, 633 P.2d 1220 (1981).

Bell v. Alpha Tau Omega Fraternity, 642 P.2d 161 (1982).

Yoscovitch v. Wasson, 645 P.2d 975 (1982). A minor driving a car collided with an injured a motocyle passenger after having consumed alcoholic beverages, and the motorcyle passenger brought action to recover damages against the driver and the store owners who sold him the alcohol. The lower court granted the store owner's motion to dismiss, and plaintiff appealed. The Supreme Court of Nevada affirmed, holding that plaintiff had no grounds for recovery on the basis of a causal connection between the sale of the alcohol and the accident, and that the violation of statutes prohibiting the sale of alcohol to minors did not impose civil liability upon store owners to third parties injured by an intoxicated customer.

NEW HAMPSHIRE

No Dram Shop Act.

Case Comment

Ramsey v. Anctil, 211 A.2d 900 (1965). Supreme Court held that repeal of state's dram shop statute (in effect between 1870 and 1934) did not abrogate common-law principles of negligence. Court said that violation of statute prohibiting sale of alcoholic beverages to minors, habitual drunkards and those under the influence of alcohol was evidence of negligence. Court also said defense of contributory negligence was available.

Burns v. Bradley, 419 A.2d 1069 (1980). Plaintiff brought suit against defendant tavern owner to recover damages for injuries sustained when plaintiff, after becoming intoxicated at the tavern, fell over an unmarked embankment on the tavern property. The Superior Court granted the tavern owner's motion for directed judgment, and the plaintiff appealed. The New Hampshire Supreme Court upheld the lower court on the grounds that the tavern owner had not acted negligently in serving the plaintiff drinks, as there was no evidence that (1) plaintiff was intoxicated while drinking at the bar, (2) he acted in a manner which led or should have led the tavern owner to believe that he was intoxicated, or (3) that the tavern owner had in fact directly served the plaintiff the intoxicating liquor. Therefore, the tavern owner could not be held liable for the plaintiff's injuries.

NEW JERSEY

No Dram Shop Act.

Case Comment

Rappaport v. Nichols, 156 A.2d 1 (1959). First case imposing liability to third parties at common law against tavern owner for negligence in serving intoxicated patron.

Soronen v. Olde Milford Inn, Inc., 218 A.2d 630 (1966). Expansion of Rappaport, holding licensee who served intoxicated customer liable to customer for injury.

Aliulis v. Tunell Hill Corp., 284 A.2d 180 (1971).

Anslinger v. Martinsville Inn, Inc., 298 A.2d 84 (1972). Court of Appeals refused to impose liability on business associates for injuries a drunken guest suffered after leaving their social affair. Court also ruled that decedent's drunkenness constituted contributory negligence, available to social host as defense (as distinguished from its unavailability where defendant is a licensee).

Linn v. Rand, 356 A.2d 15 (1976). Suit brought by guardians of infant struck by a car driven by minor defendant who had been served alcoholic beverages by defendant host prior to the accident. On appeal by plaintiff, the Court held that the social host, who furnished excessive amounts of liquor to the minor, knowing that the minor was about to drive a car on public highways, could be held liable for the intoxicated minor's negligent acts which caused injury to the innocent third-party infant.

Mt. Hope Inn v. Traveler's Indemnity Co., 384 A.2d 1159 (1978). A tavern brought action against its insurer to determine the insurer's obligation to defend a claim for damages sought by a patron who was injured by an intoxicated patron. The insurer had refused to defend the claim, based upon a provision in the contract between itself and the Inn, releasing the insurer from liability in claims involving the sale and/or service of alcohol to an intoxicated patron. The Superior Court issued judgment in favor of the tavern. The Court noted that the Inn never sold the intoxicated patron liquor; all liquor was consumed at another bar prior to his

arrival at the Inn. However, the Court held, a tavern "may b liable for failure to protect a patron from other partrons whc are intoxicated even though it may not have contributed to such intoxication." Thus, the insurer is obligated to defend the tavern on this claim of negligence.

Figuly v. Knoll, 499 A.2d 564 (1982).

Kelly v. Gwinnell et al., 476 A.2d 1219 (1984). Supreme Court overrules Figuly, holding that host who serves liquor to 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. Court, in footnote, expressed no opinion on availability of contributory negligence as a defense, quoting Anslinger. Court says its decision is only limited to situations where social host directly serves the guest and continues to do so even after the guest is visibly intoxicated.

41-11-1 NMSA 1978. Tort Liability for Alcoholic Liquor Sales or Service.

A. No civil liability shall be predicated upon the breach of Section 60-7A-16 NMSA 1978 by a licensee, except in the case of the licensee who:

(1) sold or served alcohol to a person who was intoxicated; and

(2) it was reasonably apparent to the licensee that the person buying or apparently receiving service of alcoholic beverages was intoxicated; and

(3) the licensee knew from the circumstances that the person buying or receiving service of alcoholic beverages in intoxicated.

B. No licensee is chargeable with knowledge of previous acts by which a person becomes intoxicated at other locations unknown to the licensee.

C. As used in this section, "licensee" means a person licensed under the provisions of the Liquor Control Act and the agents or servants of the licensee.

D. No person who has gratuitously provided alcoholic beverages to a guest in a social setting may be held liable in damages to any person for bodily injury, death or property damage arising from the intoxication of the social guest unless the alcoholic beverages were provided recklessly in disregard of the rights of others, including the social guest.

E. A licensee may be civilly liable for the negligent violation of Sections 60-7B-1 and 60-7B-1.1 NMSA 1978. The fact-finder shall consider all the circumstances of the sale in determining whether there is negligence such as the representation used to obtain the alcoholic beverage. It shall not be negligence per se to violate Sections 60-7B-1 and 60-7B-1.1 NMSA 1978.

Case Comment

Marchiondo v. Roper, 563 P.2d 1160 (1977).

Hall v. Budagher, 417 P.2d 71 (1966).

Lopez v. Maez, 651 P.2d 1269 (1982). Plaintiff brought wrongful death and personal injury action on behalf of his family and himself against tavern owner, alleging that he furnished intoxicating liquor to patron who was visibly intoxicated. Patron subsequently hit Plaintiff's car, causing injury. Lower courts dismissed case, citing Hall and Marchiondo, which held that state did not have dram shop statute and there was no recognition of such liability at common law. State Supreme Court overruled Hall and Marchiondo, holding that there is a duty imposed on persons selling or serving alcoholic beverages to the public by virtue of state liquor regulation. Breach of this duty may result in liability being determined and damages being imposed.

MRC Properties, Inc. v. Gries, 652 P.2d 732 (1982). Social host liability case which followed Lopez by one month. State Supreme Court applied the same rationale, finding duty of care existed by state statute.

[NOTE: All of the above cases were decided prior to the adoption of the state's Dram Shop statute in April, 1983.]

NEW YORK

General Obligations Law §11-101. Compensation for injury caused by the illegal sale of intoxicating liquor.

1. Any person who shall be injured in person, property, means of support, or otherwise by any intoxicated person, or by reason of the intoxication of any person, whether resulting in his death or not, shall have a right of action against any person who shall, by unlawfully selling to or unlawfully assisting in procuring liquor for such intoxicated person, have caused or contributed to such intoxication; and in any such action such person shall have a right to recover actual and exemplary damages.

2. In case of the death of either party, the action or right of action given by this section shall survive to or against his or her executor or administrator, and the amount so recovered by either a husband, wife or child shall be his or her sole and separate property.

3. Such action may be brought in any court of competent jurisdiction.

4. In any case where parents shall be entitled to such damages, either the father or mother may sue alone therefor, but recovery by one of such parties shall be a bar to suit brought by the other.

Case Comment

Berkely v. Park, 262 NYS2d 290 (1965).

Edgar v. Kajet, 375 NYS2d 548 (1975).

Anderson v. Comardo, 436 NYS2d 669 (1981). In Dram Shop Act case, third-party defendant who, while intoxicated, allegedly caused an automobile accident that resulted in death and injuries, moved for dismissal of the claim filed against him by the sellers of the intoxicants, on the grounds that neither indemnity nor contribution ought to be available to violators of the Dram Shop Act. The Supreme Court held that: (1) the sale of liquor to an intoxicated person is active wrongdoing separate from but on equal footing with the inebriate's act which resulted in injury; thus, a Dram Shop Act violator is foreclosed from seeking indemnification from his

vendee, and (2) that Dram Shop Act defendants could maintain claims for contribution against the third-party defendant.

Magee v. Landers, 471 NYS2d 799 (1983). Sponsor of party at tavern could not be held liable for damages caused by intoxicated patron. Statute must be construed narrowly, said the court, and the sponsor did not "sell" the alcoholic beverages and did not control their dispensing.

G.S.§18B-120. Definitions.--As used in this Article:

(1) "Aggrieved Party" means a person who sustains an injury as a consequence of the actions of the underage person, but does not include the underage person or a person who aided or abetted in the sale or furnishing to the underage person.

(2) "Injury" includes, but is not limited to, personal injury, property loss, loss of means of support, or death. Damages for death shall be determined under the provisions of G.S. 28A-18-2(b). Nothing in G.S. 28A-18-2(a) or subdivision (1) of this section shall be interpreted to preclude recovery under this Article for loss of support or death on account of injury to or death of the underage person or a person who aided or abetted in the sale or furnishing to the underage person.

(3) "Underage person" means a person who is less than the age legally required for purchase of the alcoholic beverage in question.

(4) "Vehicle" shall have the same meaning as prescribed by G.S. 20-4.01(49).

G.S.§18B-121. Claim for relief created for sale to underage person.--An aggrieved party has a claim for relief for damages against a permittee or local Alcoholic Beverage Control Board if:

(1) The permitte or his agent or employee or the local board or its agent or employee negligently sold or furnished an alcoholic beverage to an underage person; and

(2) The consumption of the alcoholic beverage that was sold or furnished to an underage person caused or contributed to, in whole or in part, an underage driver's being subject to an impairing substance within the meaning of G.S. 20-138.1 at the time of the injury; and

(3) The injury that resulted was proximately caused by the underage driver's negligent operation of a vehicle while so impared.

G.S.§18B-122. Burden of proof and admissibility of evidence. --The plaintiff shall have the burden of proving that the sale or

furnishing of the alcoholic beverage to the underage person, as defined, was, under the circumstances, negligent. Proof of the sale or furnishing of the alcoholic beverage to an underage person, as defined, without request for identification shall be admissible as evidence of negligence. Proof of good practices (including but not limited to, instruction of employees as to laws regarding the sale of alcoholic beverages, training of employees, enforcement techniques, admonishment to patrons concerning laws regarding the purchase or furnishing of alcoholic beverages, or detention of a person's identification documents in accordance with G.S. 18B-129 and inquiry about the age or degree of intoxication of the person), evidence that an underage person misrepresented his age, or that the sale or furnishing was made under duress is admissible as evidence that the permittee was not negligent.

G.S.§18B-123. Limitation on damages.--The total amount of damages that may be awarded to all aggrieved parties pursuant to any claims for relief under this Article is limited to no more than five hundred thousand dollars ($500,000) per occurrence. When all claims arising out of an occurrence exceed five hundred thousand dollars ($500,000), each claim shall abate in the proportion it bears to the ttoal of all claims.

G.S.§18B-124. Joint and several liability.--The liability of the negligent driver or owner of the vehicle that caused the injury and the permittee or ABC Board which sold or furnished the alcoholic beverage shall be joint and several, with right of contribution but not indemnification.

G.S.§18B-125. Exception. This Article does not create a claim for relief against the following:

(1) One who holds only a brown bagging permit, a special occasions permit, or a limited special occasions permit;

(2) One who holds only a special one-time permit under G.S. 18B-1002;

(3) One who holds only permit listed in G.S. 18B-1100;

(4) One who holds any combination of the permits listed in this section.

G.S.§18B-126. Statute of limitations.--The statute of limitations is as provided in G.S. 1-54.

G.S.§18B-127. Duty of clerk of superior court.--When execution on a judgment on a cause of action under G.S. 18B-121 is returned unsatisfied, in whole or in part, the clerk of superior court to whom such return is made shall transmit to the Commission certified copies of the judgment, the execution and return and any other proceedings upon the judgment.

G.S.§18B-128. Common law rights not abridged.--The creation of any claim for relief by this Article may not be interpreted to abrogate or abridge any claims for relief under the common law, but this Article does not authorize double recovery for the same injury.

[NO LEGISLATIVE INTENT AS TO CIVIL LIABILITY FOR SALES TO INTOXICATED PERSONS. The original inclusion and ultimate deletion in the course of passing this act of statutory liability for certain persons who sell or furnish alcoholic beverages to intoxicated persons does not reflect any legislative intent one way or the other with respect to the issues of civil liability for negligence by persons who sell or furnish those beverages to such persons.]

[APPLICABILITY OF DRAM SHOP PROVISIONS. Sections 37, 38, 39 and 40 of this Act (pertaining to dram shop liability and cited above) apply only to acts and omissions occurring on or after the effective date of this act (October 1, 1983).]

Case Comment

Chastain v. Litton Systems, Inc., 694 F.2d 957 (1982). Administrator of the estate of a woman who was killed when struck by a car operated by a man who had become intoxicated at his employer's Christmas party, brought suit against the employer, alleging negligence in allowing the employee to become intoxicated and then allowing him to drive home in the condition. The district court granted the employer's motion for summary judgment and dismissed the claim, ruling that Litton Systems had acted as a social host, and thus was not liable for an adult guest's voluntary intoxication, that the employer did not violate liquor control laws, and could not be responsible for the conduct of its employees outside the realm of his employment. The Circuit Court reversed and remanded. Viewing the facts in light most favorable to the Plaintiff, the Court ruled that summary judgment could not be granted as the facts left considerable question as to the negligence of the employer, which should be decided by a jury. First, as Litton required their employees to check in at the party, although they could leave whenever they wished, there is reasonable

dispute as to whether Litton was acting as a social host or furthering its business interests. If acting as a social host, Litton would not be liable; however, if acting in a business capacity, Litton could be proven negligent for not providing reasonable care to ensure that its employees were not too intoxicated to drive. Second, the question of the driver's contributory negligence and the issue of whether the employee acted outside the scope of his employer's care when he caused the accident should be decided by a jury, not dismissed by summary judgment.

Hutchens et al. v. Hankins et al., 303 S.E.2d 584 (1983). Plaintiffs sued tavern owner for wrongful death and injuries caused by automobile accident involving intoxicated driver; claim was that tavern owner failed to exercise reasonable care in selling alcoholic beverages to obviously intoxicated patron. Trial court granted motion to dismiss for failure to state a claim. State Court of Appeals overturned and found that licensee may be held liable for injuries or damages proximately resulting from acts of persons to whom beverages were illegally furnished while intoxicated. Court specifically declined to rule on (1) whether a noncommercial furnisher of alcoholic beverages may be subject to civil liability; (2) whether off-premises retailers may be held civilly liable for sales to intoxicated customers. Court noted that this case is one of first impression in North Carolina, adding that Chastain is a federal decision (Fourth Circuit Court of Appeals) applying North Carolina law. State court engaged in lenghty discussion about history and purpose of common law liability, and concluded that liability could be found against defendent tavern owner.

Freeman v. Finney, 309 S.E.2d 531 (1983). Selling beer to minors constitutes negligence per se. However, court ruled that jury should decide whether the seller should have foreseen that minor would give beer to another minor, who negligently drove automobile, causing an accident.

§5-01-06. Recovery of damages resulting from intoxication.

Every spouse, child, parent, guardian, employer, or other person who is injured by any intoxicated person, or in consequence of intoxication, shall have a right of action against any person who caused such intoxication by disposing, selling, bartering, or giving away alcoholic beverages contrary to statute for all damages sustained, and in the event death ensues, the survivors of the decedent are entitled to such damages as defined in Section 32-21-02.

Case Comment

Feuerherm v. Ertelt, 386 N.W.2d 509 (1979). Wife brought action to recover against bar in which husband was involved in altercation with a patron on basis of alleged violations of Dram Shop Act. The District Court entered judgment in favor of the wife, and the bar appealed. The Supreme Court held that action brought under the Dram Shop Act is not a strict liability tort action and comparative negligence law did not apply. Judgment was affirmed.

§4399.01. Action against seller of liquor for injury caused by intoxicated person to whom sale is prohibited.

A husband, wife, child, parent, guardian, employer, or other person injured in person, property, or means of support by an intoxicated person, or in consequence of the intoxication, habitual or otherwise, of a person, after the issuance and during the existence of the order of the Department of Liquor Control prohibiting the sale of intoxicating liquor as defined in Section 4301.01 of the Revised Code to such person, has a right of action in his own name, severally or jointly, against any person selling or giving intoxicating liquors which caused such intoxication, in whole or in part, of such person.

§4399.02. Owner and lessee liable.

The owner of a building or premises and the person renting or leasing them who know that intoxicating liquors are to be sold therein in violation of law, or, having leased them for other purposes, who knowingly permit intoxicating liquors to be sold therein which cause the intoxication, in whole or in part, of a person described in section 4339.01 of the revised Code, shall be liable severally or jointly with the person selling or giving such intoxicating liquors for all damages sustained, as well as exemplary damages.

Case Comment

Mason v. Roberts, 294 N.E.2d 884 (1973). Supreme Court held that Dram Shop Act did not provide the exclusive remedy against commercial providers of alcoholic beverages. Two situations will subject licensee to liability: First, where sale is contrary to statute; Second, where the evidence is such that, to the seller's knowledge, the purchaser's will to refrain is so impaired that it is not possible for him to refrain from drinking liquor when it is placed before him.

Kemock v. Mark II, 404 N.E.2d 766 (1978).

Tomlinson v. McCutcheon, 554 F. Supp. 186 (1982). Motorist whose automobile was struck by a drunk driver brought suit to recover damages, naming the tavern owner who had served the driver as a defendant. The tavern owner moved for summary

judgment, on the grounds that (1) Ohio's dram shop law was inapplicable, since no order had been issued forbidding the sale of alcohol to the motorist, and (2) Ohio's law prohibiting the sale of liquor to an intoxicated person did not impose any duty upon him to protect third parties. The U.S. District Court denied the motion, agreeing with his first point but taking issue with the second. The Court, after analyzing the reasoning in the Mason and Kemock decisions, held that the liquor control law barring the sale of liquor to intoxicated persons was enacted to protect third parties as well as the patrons of a bar, that violation of this statute constitutes negligence on the part of the tavern owner, that the sale of the liquor could be regarded as proximate cause of the injuries, and that the plaintiff is of a class protected by the statute.

Settlemyer v. Wilmingtyon Veterans Post No. 49, American Legion, Inc., 464 N.E.2d 521 (1984). Ohio Supreme Court, in case dealing with social host liability, found that case failed to state a cause of action under the Mason decision. First, court said that Mason involved sale of alcoholic beverages by commercial provider; second, court said that actual knowledge of patron's intoxication would have to be shown. Court specifically declined to extend Mason rationale to social hosts, stating that commercial providers should be held to higher standards and that extension is a policy matter for consideration by the legislature.

OKLAHOMA

No Dram Shop Act.

Case Comment

No current case comment.

§30.950. Licensee and permittee liability.

No licensee or permittee is liable for damages incurred or caused by intoxicated patrons off the licensee's or permittee's business premises unless the licensee or permittee has served or provided the patron alcoholic beverages when such patron was visibly intoxicated.

§30.955. Private host liability.

No private host is liable for damages incurred or caused by an intoxicated social guest unless the private host has served or provided alcoholic beverages to a social guest when such guest was visibly intoxicated.

Case Comment

Davis v. Billy's Con-Teena, Inc. 587 P.2d 75 (1978). Court held that tavern owners who served beer to a minor in violation of statute could be held liable for death of third party killed in automobile accident caused by intoxicated minor. Court used theory of negligence per se.

Miller v. City of Portland, 604 P.2d 1261 (1980). State Supreme Court refused to extend holding in Davis to include cause of action by underage customer. The Court said that so doing would be inconsistent with apparent legislative policy and would reward to violator with cause of action based upon conduct which the legislature has chosen to prohibit and penalize. The Court said it was also inappropriate to create a common law cause of action. The Court also discussed the state's Dram Shop Act, repealed in 1979, and said that since it didn't create a cause of action in behalf of the intoxicated person, the legislature must have considered this and rejected it.

Sager v. McClendon, 672 P.2d 697 (1983). State Supreme Court stated that §30.950 does not create a new claim of action for person harmed by his own intoxication. Court noted that the state's former statute (§30.730, repealed in 1979) authorized a claim for a spouse, parent or child of an intoxicated person, but not for the intoxicated individual himself.

47 P.S. §4-497. Liability of Licensees.

No licensee shall be liable to third persons on account of damages inflicted upon them off of the licensed premises by cutomers of the licensee unless the customer who inflicts the damages was sold, furnished or given liquor or malt or brewed beverages by the said licensee or his agent, servant or employee when the said customer was visibly intoxicated.

Case Comment

Jardine v. Upper Darby Lodge #1973, Inc. 198 A.2d 555 (1964).

Simon v. Shirley, 409 A.2d 1365 (1979).

Couts v. Ghion, 421 A.2d 1188 (1980).

Speicher v. Reda, 434 A.2d 186 (1981). Plaintiff filed suit against the driver of a car who struck the Plaintiff's motorcycle while intoxicated, severely injuring the husband, and against the tavern owner who had allegedly served him liquor prior to the accident. The Court of Common Pleas granted the defendant tavern owner's compulsory nonsuit, on the grounds that there was no evidence that the tavern owner had served the driver alcohol while he was "visibly intoxicated", and thus the tavern owner could not be liable for damages under Pennsylvania's dram shop law. On appeal, the Superior Court held that compulsory nonsuit may be granted only in a case where "the facts and circumstances lead unerringly but to one conclusion". Testimony at the trial indicated that the driver exhibited signs of obvious intoxication, not the least of which was the driver's plea of guilty to driving while intoxicated. Relying on Couts, the Court held that there was sufficient circumstantial evidience of intoxication to set aside the order for compulsory nonsuit, and a new trial was ordered.

Klein v. Raysinger, 470 A.2d 507 (1983). State Supreme Court cites "great weight" of authority for supporting view that in case of an "ordinary able bodied man" it is the consumption of alcohol, and not the furnishing thereof, which is the proximate cause of injury and therefore there can be no liability on a social host serving an adult guest.

Congini by Congini v. Portersville Valve Co., 470 A.2d 515 (1983). Companion case to Klein, decided same day. Court distinguished Klein, stating that there is statute making persons under 21 incompetent to handle alcohol, and thus service by social hosts to under-age persons compels different result, and possible liability on social host. Court said that claim may be asserted by an injured third party and by the minor who is served alcohol illegally. Contributory negligence is available as a defense.

RHODE ISLAND

R.I.G.L. §3-11-1. Liability of furnisher of beverages for injuries by intoxicated persons.

If any person in a state of intoxication commits any injury to the person or property of another, the person who furnished him with any part of the beverage which occasioned his intoxication, if the same was furnished in violation of this title, shall be liable to the same action by the party injured as the person intoxicated would be liable to; and the party injured, or his or her legal representative, may bring either a joint action against the person intoxicated and the person who furnished the beverage, or a separate action against each.

R.I.G.L. §3-11-2. Habitually intemperate persons - Notice by family or employer - Liability.

The husband, wife, parent, child, guardian or employer of any person who has or may hereafter have the habit of drinking intoxicating beverage to excess, may give notice in writing, signed by him or her, to any person requesting him not to sell or deliver intoxicating beverage to the person having such habit. If the person, so notified, at any time within twelve (12) months thereafter sells or delivers any intoxicating beverage to the person having such habit, or permits such person to loiter on his premises, the person giving the notice may in a civil action recover of the person notified such sum as may be assessed as damages; provided, the employer giving said notice shall be injured in his person, business or property. A married woman may bring such action in her own name, and all damages recovered by her shall enure to her separate use. In case of the death of either party, the action and right of action shall survive to or against his executor or administrator.

Case Comment

No current case comment.

SOUTH CAROLINA

No Dram Shop Act.

Case Comment

No current case comment.

SOUTH DAKOTA

No Dram Shop Act.

Case Comment

Griffin v. Sibek, 245 N.W.2d 481 (1976).

Walz v. City of Hudson, 327 N.W.2d 120 (1982). The decision in this case overrules that of Griffin v. Sibek, in which the court held that the common law barred recovery against a bar owner for injuries sustained as a result of the illegal sale of liquor. In this case, the trial court, following Griffin, granted defendant's motion to dismiss for failure to state a claim. Plaintiff appealed, seeking a decision which would grant a cause of action against the defendant. The Supreme Court of South Dakota, noting the "tragic" contribution of alcohol to the state's traffic fatalities, overturned Griffin. The court wrote that negligence was "the breach of a legal duty imposed by statute or law." Laws prohibiting the sale of alcohol to intoxicated persons are intended to protect persons such as the plaintiff from the possibility of harm caused by an intoxicated driver. A liquor store employee who violates the law in this manner clearly breaches a standard of care which the statute imposes, and thus is negligent as a matter of law. It follows, said the Court, that such negligence must be a proximate cause of any resulting injury and defenses, such as contributory negligence, are available when appropriate.

TENNESSEE

No Dram Shop Act.

Case Comment

Mitchell v. Ketner, 393 S.W.2d 755 (1964). Court of Appeals engages in lengthy discussion of New Jersey Rappaport case, says it is unwilling to hold that, no matter what the circumstances, the act of the purchaser and not the sale constitute the proximate cause of injury to third parties. Ultimate test, said the court, is one of foreseeability, which rests on such factors as the apparent condition of the buyer of the alcoholic beverages and whether he is likely to become the driver of an automobile or inflict injury upon third parties reasonably to be anticipated or foreseen. Court says that each case must be studied on its own facts. In this case, however, no evidence of visible intoxication at time of purchase.

Brookins v. The Round Table, Inc., 624 S.W.2d 547 (1981). Minor brought action against tavern owner for injuries sustained by minor when he was involved in automobile accident. Although the Court of Appeals said that violation of a penal statute (here, the selling of alcoholic beverages to a minor) constituted negligence per se, the court awarded summary judgment for the tavern owner because the minor admitted to the illegal purchase of liquor. However, the Supreme Court reversed and remanded for trial, saying that because a minor was involved, a jury should decide whether he had the capacity to understand the illegal consequences of his action.

TEXAS

No Dram Shop Act.

Case Comment

No current case comment.

[EDITOR'S NOTE: In Clark v. Otis Engineering Corp., 633 S.W.2d 538 (1982), Texas Supreme Court held employer liable for actions of intoxicated employee where employer recognized the intoxication and sent the worker home because he was in no condition to perform his work duties.]

§32-11-1. (1) Any person who gives, sells, or otherwise provides intoxicating liquor to another contrary to subsection 16-6-13.1(8)(d), subsection 32-1-36.5(1), subsection 32-71-14 or subsection 32-7-24(b) or (c), and thereby causes the intoxication of the other person, is liable for injuries in person, property, or means of support to any third person, or the spouse, child, or parent of that third person, resulting from the intoxication.

(2) A person who suffers an injury referred to in subsection (1) of this section, shall have a cause of action against the intoxicated person and the person who provided the intoxicating liquor in violation of subsection (1) above, or either of them.

(3) If a person having rights or liabilities under this section dies, the rights or liabilities provided by this section shall survive to or against that person's estate.

§32-11-2. No provision of this act shall create any civil liability on the part of the state, its agencies, employees, or political subdivisions, arising out of their activities in regulating, controlling, authorizing, or otherwise being involved in, the sale or other distribution of intoxicating liquor.

Case Comment

No current case comment.

7 V.S.A. §501. Unlawful sale of intoxicating liquors; civil action for damages.

A husband, wife, child, guardian, employer or other person who is injured in person, property or means of support by an intoxicated person, or in consequence of the intoxication of any person, shall have a right of action in his or her own name, jointly or severally, against a person or persons, who, by selling or furnishing intoxicating liquor unlawfully, have caused in whole or in part such intoxication. If such intoxicating liquor was so sold or furnished to such person in a rented building, and the owner of such building, or his agent in charge thereof, knew or had reason to know that intoxicating liquor was sold or kept for sale by his tenant in such building contrary to law, such owner may be joined as defendant in such action, and judgment therein may be rendered against him. Upon the death of either party, the action and right of action shall survive to or against his executor or administrator. The party injured or his legal representatives may bring either a joint action against the person intoxicated and the person or persons who furnished the liquor and the owner of the building, or a separate action against either or any of them.

Case Comment

Ackerman v. Kogut, 84 A.2d 131 (1951). Action was brought against a restaurant operator and others, for injuries sustained when plaintiff was struck by an allegedly intoxicated motorist to whom the defendant had sold intoxicating liquor. On appeal, the Supreme Court held that the Liquor Control Board's regulation that no alcoholic liquor shall be sold or furnished to a person apparently under the influence of liquor, was not issued under an unconstitutional delegation of legislative power since traffic in intoxicating liquor is a mere matter of privilege and discretion was lawfully delegated to the Board without prescribing definite rules of action.

VIRGINIA

No Dram Shop Act.

Case Comment

No current case comment.

WASHINGTON

No Dram Shop Act. [Prior statute, RCW 4.24.100, repealed 1955]

Case Comment

Halvorson v. Birchfield Boiler, Inc., 458 P.2d 897 (1969). Supreme Court stated that common-law rule of non-liability of server to able-bodied adult prevails, with following exceptions: obviously intoxicated persons, persons in a state of helplessness or those with a "special relationship" to the furnisher of liquor.

Callan v. O'Neil, 578 P.2d 890 (1978). Court of Appeals said violation of statutory prohibition against sales to minor constitutes negligence per se.

Wilson v. Steinbach, 656 P.2d 1030 (1982). Supreme Court restated rule in Halvorson, stated that any change would have to be made by the Legislature.

Baughn v. Malone, 656 P.2d 1118 (1983). Court of Appeals holding, following Callan.

Halligan v. Pupo, 678 P.2d 1295 (1984). Court of Appeals said that "relevant inquiry is whether social host had authority to deny further service of alcohol when intoxication became apparent." Case involved open bar situation. Court declined to follow Halvorson's ruling in light of state Surpeme Court's "new" interpretation in Wilson. Court says is no distinction between social and commercial providers of alcohol.

Young v. Caravan Corp., 663 P.2d 834 (1983). Mother of minor brought wrongful death suit, alleging that defendant was negligent in serving her son, who was also intoxicated at time. State Supreme Court, noting that case was one of first impression for it (though lower courts had ruled in Callan and Baughn), agreed with earlier decisions that violation of statutes prohibiting sale to minor constitutes negligence per se. However, the Court pointed out, as in Callan, that if tavern owner takes reasonable precautions to check age of patrons, negligence per se will not be imposed as a matter of law. Court also found that minor's violation of statute prohibiting purchase by those under age constituted contributory negligence, as a matter of law, and that trial court should determine proximate cause of accident and measure of plaintiff's contributory negligence.

WEST VIRGINIA

No Dram Shop Act.

Case Comment

No current case comment.

WISCONSIN

No D[illegible]am Shop Act. [Prior statute, §176.35, repealed 1982.]

Case Comment

Garcia v. Hargrove, 176 N.W.2d 566 (1970).

Olsen v. Copeland, 280 N.W.2d 178 (1979).

Hennes v. Loch Ness Bar, 344 N.W.2d 205 (1983). Court invalidated Minnesota judgment imposing liability on Wisconsin tavern for selling alcohol in Wisconsin to patron, who drove across state line into Minnesota and caused accident and injury.

Sorenson v. Jarvis, Ferraro v. Jarvis, 350 N.W.2d 108 (1984). Supreme Court specifically overrules Garcia and Olsen, holding that, where there is sufficient proof at trial, a vendor who negligently supplies intoxicating beverages to a minor and the intoxicants so furnished cause the minor to be intoxicated or cause the minor's driving ability to be impared shall be liable to third person. Court held that, although sale is negligence per se, defendant has all of the defenses available under criminal statute, and also is entitled to benefit of comparative negligence rule. Court applies new rule prospectively, only for acts of negligence of a vendor selling to a minor on or after September 1, 1984.

§12-5-502. Liability for sale, etc., to child, ward or habitual drunkard when written notice thereof given.

Whenever any court, parent or guardian gives written notice to any licensee that his or her child or ward is under the age of nineteen (19), or any spouse or dependent gives written notice to a licensee that his or her spouse or person liable for the support of the dependent in an habitual drunkard and by reason of habitual drunkenness is neglecting to provide support for the spouse or dependent and the licensee or permittee so notified thereafter sells or gives any alcoholic liquor or malt beverage to the child, ward or habitual drunkard, the person giving the notice may bring an action in district court, against the licensee and upon proof of acts stated in the notice recover in the action the actual damages sustained, punitive damages and costs.

Case Comment

Parsons v. Jow, 480 P.2d 396 (1971).

Snyder v. West Rawlins Properties, Inc., 531 F. Supp. 701 (1982). Action was brought by the widow of decedent who was killed in a one-vehicle accident. Plaintiffs contended that tavern owners were negligent in serving decedent who was visibly intoxicated. The Court held that although some states have created an exception to the common law by finding liability for the sale of liquor to a person who is already intoxicated, the Supreme Court of the State of Wyoming has not done so. The Court held that it is not the province of the U.S. District Court to unilaterally make such a decision.

McClellan et al. v. Tottenhoff et al., 666 P.2d 408 (1983). Complaint alleged that defendants negligently sold liquor to a minor, that the minor had become intoxicated and killed a third party in an automobile accident and that the sale of the liquor was the proximate cause of the accident. Trial court, citing Parsons, dismissed the claim, but the Supreme Court reversed Parsons, stating: "The rule that there is no cause of action when a vendor sells liquor to a consumer who injures a third party was created by the courts. We see no reason to wait any longer for the legislature to abrogate it. Common law created by the judiciary can be abrogated by the judidicary." Henceforth, said the court, cases involving

vendors of liquor and injured third parties will be approached in the same manner as other negligence cases, that is, the establishment of a general duty to use reasonable care and the foreseeability of the resulting harm to establish proximate cause.