



DRAM SHOP LIABILITY IN NEW YORK

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DRAM SHOP LIABILITY IN NEW YORK

I. GENERAL OBLIGATIONS LAW §11-101.

Gives a right of action by the injured party against any person who supplied the intoxicated individual with alcohol, if that seller engaged in the unlawful selling or assisted in the procurement of liquor to the intoxicated person or unlawfully contributed to such intoxication.

II. ALCOHOLIC BEVERAGE CONTROL LAW §65.

Which makes it illegal for any vendor of liquor to sell, deliver, or give away alcoholic beverages to any person who is either under 21 years of age, “visibly intoxicated”.

III. VISIBLY INTOXICATED.

- A. A question of fact to the jury as to whether an illegal sale occurred.
- B. A plaintiff must prove the vendor knew or should have known that the patron was already intoxicated before serving him alcohol.
- C. The plaintiff has the burden of proving that the commercial establishment sold alcohol to a defendant while he was “visibly intoxicated.”

CASES:

Sorensen v. Denny Nash, Inc.¹ – Although his blood alcohol level indicated that he was legally intoxicated, the other patrons at the bar claimed that he was not

“visibly intoxicated.” The court granted the defendant’s motion for summary judgment.

Donato v. McLaughlin.² - Witnesses stated that the intoxicated individual was not acting unusual, was not slurring his words and was not shouting, all of which would demonstrate a person to be “visibly intoxicated.” Proof of visible intoxication was found lacking by the Court.

Adamy v. Ziriakus.³ The tortfeasor’s high blood alcohol content; police statements that his eyes were glassy and bloodshot at the scene of the accident; testimony that he was unresponsive, swaying and staggering while standing and walking. Based on this evidence it was permissible for a jury to find that the patron was in fact “visibly intoxicated.”

IV. EXTRATERRITORIAL EFFECT.

A. Rutledge v. Rockwells of Bedford.⁴ – Vendor liable who sold liquor to a visibly intoxicated person in New York State even though plaintiff’s death occurred later that evening while driving in Connecticut. The Court held that:

“Insofar as the alleged egregious act by the tavern keeper occurred in New York State, the remedial objective of the statute would be nullified in the plaintiff were denied recovery merely because the decedent drove his vehicle across the State line before the fatal accident occurred.”

V. UNDERAGE DRINKERS.

A. “Visibly intoxicated” standard is not required to find the sale of liquor illegal under the Dram Shop Liability law.

B. Intoxication at the time of the accident is a relevant factor because liability arises under the Dram Shop Act only when the injuries are caused by an intoxicated person.

CASES:

Johnson v. Plotkin.⁵ – Two establishments sold alcohol to a minor, who at that time was not visibly intoxicated, and probably not intoxicated at all. Later that evening, after becoming intoxicated, the minor caused an accident, killing one

passenger in his car and seriously injuring another. The court found that the operators of the two facilities supplied the minor with liquor and contributed to his intoxication.

VI. AT THE TAVERN.

CASES:

Carver v. P.J. Carney's.⁶ – The Appellate Division, First Department, denied the tavern's motion for summary judgment after the plaintiff was struck in the fact by an intoxicated patron on the sidewalk outside the premises. Though the tavern's bartender stated that the patron did not appear intoxicated, two witnesses said the patron was served alcohol prior to the assault when he was unsteady, aggressive and boisterous.

Coffey v. Esparra.⁷ - The plaintiff alleged that he was struck by the defendant driver's vehicle after the driver left the defendant restaurant. However, the driver testified that she had nothing to drink in the six hours before she went to the restaurant and had just one alcoholic beverage during her time there. Because the plaintiff was unable to submit evidence of the driver's "visible intoxication" while at the restaurant, the First Department granted the motion for summary judgment.

Kaufman v. Quickway, Inc.⁸ - Just seven minutes after purchasing beer from the defendant convenience store, a motorist struck a vehicle driven by the plaintiff's son, killing both himself and the son. The plaintiffs commenced this action under the Dram Shop Act alleging that the convenience store sold alcohol to the motorist when he was visibly intoxicated.

The New York Court of Appeals held that although there was evidence that the motorist was visibly intoxicated at the time of purchase, the plaintiffs failed to demonstrate that there was a reasonable or practical connection between the alleged unlawful sale of alcohol and the resulting accident.

Sullivan v. Mulinos of Westchester, Inc.⁹ - The plaintiff's decedent lost control of his vehicle while driving over the Tappan Zee Bridge and his vehicle was propelling into the Hudson River. The plaintiff filed an action on behalf of herself, her children and the estate of her deceased husband against both the restaurant and the tavern that her deceased husband had patronized earlier in the night.

The court found issues of fact as to whether the husband had been served alcohol while visibly intoxicated at both establishments, however, the court dismissed the claims for loss of services and loss of consortium as they are not recoverable under the “strictly construed” Dram Shop Act. The court also denied recovery on behalf of the decedent’s estate because a consumer of alcohol has no cause of action against the seller for the consumer’s injuries resulting from his own voluntary intoxication.

O’Gara v. Alacci.¹⁰ - The intoxicated plaintiff was struck by a car driven by the defendant/third-party plaintiff. When the plaintiff commenced a negligence action against the driver, the driver then commenced a third-party action against the bar seeking contribution alleging the bar unlawfully served alcohol to the plaintiff when she was visibly intoxicated. The Second Department held that though sellers of alcohol owe no duty to protect consumers from the result of their voluntary intoxication, the sellers do have a duty to the public not to sell liquor to visibly intoxicated people. As the driver is a member of the “public”, he could seek contribution from the bar for breaching its duty.

Oursler v. Brennan.¹¹ - The plaintiff and his decedent wife attended a Halloween party at a bowling alley, where the decedent became intoxicated. The plaintiff purchased his wife’s first beer when they arrived and a second beer later that night. The court held that the plaintiff’s conduct did not constitute “guilty participation” because the decedent had also purchased her own drinks, had friends buy her drinks and had been provided by the bar with free “Jell-O shots.”

VII. IN THE HOME.

New York common law provides that social hosts or homeowners generally have a duty to act in a reasonable manner to prevent harm to guests on their property. Specifically, their duty is to control the conduct of guests on their property when they reasonably believe that such control is necessary and when they have the opportunity to do so. However, once a guest leaves their property, the host’s duty to that guest generally ends. Furthermore, the host does not have a duty to prevent an intoxicated guest from leaving his or her premises. Thus, socials hosts generally are not liable for injuries to third parties that are caused by the voluntary intoxication of a guest, even when the social host provides the alcohol.

CASES:

Martino v. Stolzman.¹² - The plaintiffs sued the hosts of a New Year's Eve party after suffering injuries as a result of an intoxicated guest backing out of the hosts' driveway and into an oncoming vehicle. The New York Court of Appeals dismissed both the Dram Shop and negligence claims asserted against the defendant hosts, declining to extend the social hosts' liability beyond their premises and stating that the hosts were no longer in a position to control the intoxicated guest when he got in his vehicle.

Murphy v. Cominsky.¹³ - The plaintiff brought a Dram Shop suit against the defendants who provided alcohol to minors at a house party, resulting in their intoxication. The party was hosted by a minor while his parents were out of town. The plaintiff alleged that the minors got "rowdy" and agitated the host's dog, causing it to bite the plaintiff in the face. The court held that the plaintiff had stated a legally cognizable claim for the defendants' violation of the Dram Shop Act because the statute requires only "some reasonable or practical connection between the [providing] of alcohol and the resulting injuries."

Barry v. Gorecki.¹⁴ - A party guest's mother, individually and on behalf of her son, brought a personal injury action against homeowners, the homeowners' underage son who hosted a party and the liquor store that sold beer to the underage host prior to the party. During the party, a fight occurred causing the host to move everyone outside. A neighbor called the police, and when they arrived, many of the partygoers scattered. The plaintiff's son ran through the host's backyard, with which he was unfamiliar, and fell off a cliff resulting in his injuries.

The Fourth Department granted the absent homeowners' motion for summary judgment, holding as a matter of law that the homeowners did not have a legal duty to the guest because they were not present on the property nor did they consent to their son hosting a party.

¹ 249 A.D.2d 745, 671 N.Y.S.2d 559 (3d Dept. 1998).

² 195 A.D.2d 685, 599 N.Y.S.2d 754 (3d Dept. 1993).

³ 92 N.Y.2D 396, 681 N.Y.S.2D 463 (1998).

⁴ Rutledge, supra note 3.

⁵ 79 N.Y.2d 977, 583 N.Y.S.2d 195 (1991).

⁶ 103 A.D.3d 447, 962 N.Y.S.2d 3 (1st Dept. 2013).

⁷ 88 A.D.3d 621, 931 N.Y.S.2d 600 (1st Dept. 2011).

⁸ 64 A.D.3d 978, 882 N.Y.S.2d 554 (3d Dept. 2009) *aff'd*, 14 N.Y.3d 907, 905 N.Y.S.2D 532 (2010).

⁹ 73 A.D.3d 1018, 901 N.Y.S.2d 663 (2d Dept. 2010).

¹⁰ 67 A.D.3d 54, 887 N.Y.S.2d 106 (2d Dept. 2009).

¹¹ 67 A.D. 3d 36, 884 N.Y.S.2d 534 (4th Dept. 2009).

¹² 18 N.Y.3d 905, 964 N.E.2d 399 (2012).

¹³ 100 A.D.3d at 1494.

¹⁴ 38 A.D.3d 1213, 833 N.Y.S.2d 329 (4th Dept. 2007).