



Alcohol-service liability: Consequences of guest intoxication

Dogan Gursoy^{a,*}, Christina G. Chi^{b,1}, Denney G. Rutherford^c

^a Washington State University, College of Business, School of Hospitality Business Management, 479 Todd Hall, PO Box 644742, Pullman, WA 99164-4742, USA

^b Washington State University, College of Business, School of Hospitality Business Management, 481 Todd Hall, PO Box 644742, Pullman, WA 99164-4742, USA

^c Rutherford & Associates, LLC, USA

ARTICLE INFO

Keywords:

Serving alcohol
Liability
Negligence
Guest
Host
Dram shop

ABSTRACT

The purpose of this study is to examine the legal responsibilities of owners of establishments that sell and/or serve alcoholic beverages to their patrons and other people who may be assaulted or injured by those patrons in the establishment or after leaving the establishment. Examination of 246 actual court cases revealed that the plaintiff's claims are likely to fall under either the restaurant, bar, hotel, club or other hospitality operators' failure to exercise reasonable care to protect patrons from injury at the hands of other patrons, failure to maintain a safe and orderly establishment, or from patrons injuring bystanders in violation of a dram shop act. However, findings indicated that violations of a dram shop act are likely to have the most devastating effect on the business.

© 2010 Elsevier Ltd. All rights reserved.

1. Introduction

There is no doubt that the sale of alcoholic beverages is an important revenue source for many hospitality establishments (Pratten, 2006). However, those establishments that serve alcoholic beverages also face the potential for civil and criminal liability. An establishment may develop and exercise great policies and practices to protect their patrons, but despite the best intentions, tragedy can quickly occur when individuals consume excessive amounts of alcoholic beverages resulting in drunken driving, assault or personal injury (Toomey et al., 1999). Since the sales of alcohol to people who are visibly intoxicated is illegal in almost every State in the United States of America (USA), the establishment that served, or over served, the intoxicated individuals may be held at least partially responsible for the damage and suffering those individuals have caused (Saltz, 1987). In most cases, plaintiffs are likely to sue those establishments because they have a better chance of getting money from the establishment than they do from the person who actually caused the injury. The majority of claims brought against an establishment that serves alcohol for personal injuries can be classified based on the establishment's negligence in failing to supervise the premises or based on the over serving of alcoholic beverages to intoxicated patrons.

Since the sales of alcoholic beverages comes with great legal responsibility and in some cases establishments that serve alco-

hol may be held at least partially responsible for damages and suffering caused by individuals who were served or over served, it is vital for hospitality establishments to understand their legal responsibilities related to sales of alcoholic beverages. However, even though nearly every State in the United States of America prohibits sales and service of alcohol to obviously intoxicated people, studies suggest that 79 percent of establishments that serve alcoholic beverages will serve alcohol to patrons who appear obviously intoxicated (Toomey et al., 1999, 2004). The high noncompliance rates may be due to the fact that most owners are either not aware of or not care about the potential consequences of their service decisions. Therefore, the purpose of this paper is to examine the legal responsibilities of owners of establishments that serve alcoholic beverages to their patrons and other people who may be assaulted or injured by those patrons in the establishment or after leaving the establishment in the United States of America. Even though the study was conducted in the United States of America, findings are likely to have implications internationally. Throughout the paper the term tavernkeeper will refer to owners, including corporations that own restaurants, bars, or other establishments that serve alcohol, and individuals that own these businesses. The term tavern will include any establishment that serves alcohol.

2. Responsibilities of tavernkeepers

Even though those establishments that serve alcoholic beverages may face the potential for civil and criminal liability, this study focuses on legal challenges they may face under civil law, not criminal law, in the United States of America. The main distinction between the civil law and criminal law in the United States is that in criminal law, if a defendant is found guilty, the guilty defendant

* Corresponding author. Tel.: +1 509 335 7945.

E-mail addresses: dgursoy@wsu.edu (D. Gursoy), cgenqi@wsu.edu (C.G. Chi), denneyford@cablespeed.com (D.G. Rutherford).

¹ Tel.: +1 509 335 7661.

is punished by either (1) incarceration in a jail or prison, (2) fine paid to the government, or, in exceptional cases, (3) execution of the defendant: the death penalty. In contrast, a defendant in civil litigation is never incarcerated and never executed. In general, a losing defendant in civil litigation only reimburses the plaintiff for losses caused by the defendant's behavior (Standler, 1988).

According to Coffee (1992) five attributes distinguish the criminal law from the civil law. Those five attributes are: "(1) the greater role of intent in the criminal law, with its emphasis on subjective awareness rather than objective reasonableness; (2) the criminal law's focus on risk creation, rather than actual harm; (3) its insistence on greater evidentiary certainty and its lesser tolerance for procedural informality; (4) its reliance on public enforcement, tempered by prosecutorial discretion; and (5) its deliberate intent to inflict punishment in a manner that maximizes stigma and censure. In contrast, tort law usually seeks only to force defendants to internalize the social costs that their conduct imposes on others. Its focus then is on harm, not blame." Coffee (1992, p. 1878) Another difference between the criminal law and the civil law is that criminal laws are legislative acts, while the civil law is largely judge-made and more dynamic. The civil law tends to develop through judicial enlargement (Coffee, 1992).

Historically, in the United States of America, under the common law, there was no established liability for an establishment that sells and/or serves alcoholic beverages regarding the negligence of the customer when either the customer or third parties were injured as a result of the consumption of alcohol (Barnes v. B.K. Credit Service, Inc., 1984). The common law notion was that the consumption of the alcoholic beverage rather than the sale and/or service of that alcoholic beverage was the proximate cause of alcohol-related injuries. However, starting late 1950s, states began to enact dram shop statutes as a means of avoiding the common law as a result of studies suggesting that laws allowing individuals to sue bars for the drunken behavior of their patrons are the policies that work the best in lowering the alcohol-related motor-vehicle fatality rates (Whetten-Goldstein et al., 2000). In 1959, the New Jersey Supreme Court "took upon itself to fill a judicially-perceived vacuum of restraint on commercial vendors of alcoholic beverages." (Kaplin and Lee, 2006; Rinden, 1984–1985). These dram shop statutes placed various levels of responsibility on tavern owners for the consequence of actions of their intoxicated customers. It is important to remember that dram shop liability is a form of civil liability, not a criminal liability, imposed on commercial servers of alcoholic beverages, such as bars and restaurants (Whetten-Goldstein et al., 2000). However, dram shop liability laws vary widely by state in regards to serving alcohol to an intoxicated person. For instance, several states such as Nevada have no dram shop liability laws at all. While some states such as Illinois, are on the more strict end of the spectrum and impose comparative negligence upon the chain of vendors who sold an intoxicated person a beverage during a night of drinking, including those who may have just sold the first beverage, most states hold accountable the retailers who know or should have known they are selling alcohol to obviously intoxicated people or minors (Personal Injury, 2010).

In today's legal environment, tavernkeepers owe patrons the duty to exercise reasonable care to protect them from reasonably foreseeable injury while they are on the premises (Teshima, 1986). This involves tort theory, where the plaintiff contends that the defendant was negligent in some manner that resulted in their injury. Negligence is the failure to use reasonable care. According to Barth (2001), reasonable care requires the tavernkeeper to correct potentially harmful situations that the tavernkeeper knows exist or that the tavernkeeper could have reasonably foreseen. The level of reasonable care that must be exercised in a given situation can sometimes be difficult to establish. Breaching an existing duty of care owed the person while they were at the tavern exposes a tav-

ernkeeper to liability and the potential of having to compensate a plaintiff for any resulting injuries.

In determining whether or not the tavernkeeper has violated this duty of care, courts look to the circumstances surrounding the plaintiff's injury. If a court finds that the injury was foreseeable, the tavernkeeper may be held liable for the injury (Teshima, 1986). An injury is considered foreseeable if the tavernkeeper allowed a person on the premises known to cause problems, allowed a person whose conduct had become aggressive to remain on the premises, failed to take action against a threatening patron, tolerated disorderly conditions, failed to intervene in a fight as soon as possible, failed to provide adequate staff to police the premises, or failed to call the police when they should have (Teshima, 1986). A tavernkeeper who fails to protect their patrons from harmful individuals or circumstances while at the tavern may be held liable for the injury to the patron (Teshima, 1986). Tavernkeepers are expected to take affirmative action to control the behaviors of aggressive patrons by discontinuing their service of alcohol or asking them to leave. They are also expected to maintain a clean and orderly environment in the tavern by providing adequate staff to police the premises and ensure that the tavern is safe for all patrons.

In addition to failing to protect patrons from foreseeable injuries while on the premises, tavernkeepers may also be held liable for injuries that their patrons cause to other individuals. Many states have enacted statutes that make commercial sellers of alcohol liable for injuries to innocent third parties that result from the tavernkeeper furnishing intoxicating beverages to their patrons. These statutes are known as dram shop acts (Colman et al., 1985). Dram shop acts created a cause of action for innocent injured third parties where no cause of action existed under the common law (Rose, 2010). In simplified terms dram shop acts allow injured innocent bystanders to sue a tavernkeeper. Dram shop acts are based on the idea that tavernkeepers owe a legal duty of care to anyone who might foreseeably suffer harm at the hands of a drunken patron (Rose, 2010). The most common cause of dram shop liability is an automobile accident caused by an intoxicated driver (Rose, 2010). In order for a tavernkeeper to be held liable for an injury a patron caused to an innocent third party under a dram shop act the plaintiff must prove that the tavernkeeper (1) sold and served intoxicating beverages to a patron when he/she knew, or should have known, that the patron was intoxicated or knew, or should have known, that the patron would become intoxicated from the drinks served; and (2) that as a foreseeable result of the patron's intoxication, the plaintiffs were injured (Eclavea et al., 2009). Eclavea et al. (2009) suggest that the patron must be visibly intoxicated not just slightly impaired when served intoxicating beverages for the tavernkeeper to be held liable. If a tavernkeeper stops serving a visibly intoxicated person then he or she is not liable for damages the patron later inflicts. Because it is reasonably foreseeable that if a tavernkeeper serves an intoxicated patron more intoxicating beverages and that patron drives, an accident might occur, and therefore, tavernkeepers can be held responsible for any damages the accident causes.

However, it is hard to define what "visible intoxication" is. Signs of visible intoxication may include but not limited to the number of drinks served to a person, the slurring of the person's speech, the existence of bloodshot eyes, and the demeanor of the person. Since each person is likely to act differently when consuming alcohol, the number of drinks and the blood alcohol level is likely to vary for each "visibly intoxicated" (Chamlin et al., 2010). According to Oregon Liquor Control Commission (2010), visible intoxication is intoxication that other people can see. If a server and or the tavernkeeper can tell on sight that a person has been drinking, the person is visibly intoxicated. Oregon Liquor Control Commission lists 50 signs of visible intoxication (Table 1). Oregon Liquor Control Commission argues that if a person shows just one or two of these signs

Download English Version:

<https://daneshyari.com/en/article/1009974>

Download Persian Version:

<https://daneshyari.com/article/1009974>

[Daneshyari.com](https://daneshyari.com)