

JUSTICE FOR ALL

LIQUOR LIABILITY – SELLER BEWARE!!

Alcohol is a controlled substance, much like any prescription drug. For a business to legally sell alcohol it must maintain the proper licenses and abide by all applicable laws, or risk losing its license, being fined, and even being sued. Unfortunately, this typically occurs only after someone has already been harmed.

At the time of release of this issue of *For the People*, over 2,000 people in this country had died of alcohol-related car wrecks so far *this year*. According to the National Highway Traffic Safety Administration, an alcohol-related wreck resulting in injuries occurs every minute and someone is killed by a drunk driver every 40 minutes. In response to a 2007 survey, over 18% of 18 to 20 year olds admitted driving drunk in the past year. Drinking and driving is a serious problem.

This issue of *Justice for All* discusses liquor liability – what an establishment must do to comply with the law and the consequences of failing to do so. It is not my intent to persuade any adult that they should or should not drink, but to explain the law as it relates to the sale of alcohol. Hopefully, this will help you to understand your rights if either you or someone you know is injured as the result of a business selling or serving alcohol in violation of the law.

What is a “dram” and what does it have to do with liquor liability?

In Alabama, the primary law that protects individuals who have been injured due to the illegal sale of alcohol is the Dram Shop Act. Common examples are serving a visibly intoxicated adult customer and selling alcohol to a minor, who then injures someone in a car wreck.

But what is a “dram”? Many of the laws in our country and state originated in England, where a “dram” once described a very small amount (about a teaspoon) of liquid. The term “dram shop” basically refers to a bar or tavern. “Dram shop laws,” including Alabama’s Dram Shop Act, are intended to make sure businesses act responsibly when selling or serving alcohol. This is true in some instances even if the amount of alcohol in question would not fill up a teaspoon.

ALABAMA’S DRAM SHOP ACT

The principal purpose of Alabama’s Dram Act is to hold a business liable for providing alcohol to someone in violation of the law. For instance, if a convenience store sells alcohol to a visibly intoxicated customer, who later injures or kills someone, the store may be responsible for the resulting injuries or death. In most all instances, this involves the drunk customer driving an automobile and later getting involved in a wreck. The injured individual is thus attempting to hold the business that sold the alcohol liable for the actions of the drunk driver/customer. This is generally referred to as “liquor liability.”

The scope of Alabama's Dram Shop Act is fairly broad, so as to include any *business or individual* who sells, serves, or simply *gives* alcohol to someone. Thus, the *individual* who sold the alcohol may also be liable. Likewise, the business and individual server/cashier can be held responsible for any resulting injuries, even if they simply *gave* the alcohol to the customer.

“In violation of the law”

In order for there to be liability under the Dram Shop Act, the alcohol must have been provided “in violation of the law.” Courts have concluded that selling alcohol to someone who is visibly intoxicated is “in violation of the law,” as is the sale of alcohol to someone under 21.

The Alabama Supreme Court has been reluctant to extend Dram Shop liability to people who provide alcohol to social guests at their home. The reason for this is that, unless the guest is a minor, serving alcohol to a guest at your home is normally not “in violation of the law.” This is true even if you happen to live in a dry county.

The same principles apply where a company hosts a social function, such as a Christmas party, and its employees or other guests are drinking alcohol. In such situations, the Alabama Supreme Court has determined that Alabama's Dram Shop Act does not apply.

In contrast, if someone sold alcohol to another person in a dry county, this would likely be considered “in violation of the law,” and thus covered under the Dram Shop Act.

The “in violation of the law” requirement of Dram Shop liability is much easier to prove in the traditional context where a *business* sells or serves alcohol to someone visibly intoxicated or to a minor, because the sale of alcohol is heavily regulated by the Alabama Beverage Control Board (ABC Board). The failure to comply with these regulations is “in violation of the law.”

But no one forced them to drink alcohol or get drunk!

Under the Dram Shop Act, consent (the voluntary consumption of alcohol) is not a defense to liability. There are two primary reasons for this: 1) the person suing under the Act is not the one who drank the alcohol; and 2) the Act is intended to deter businesses from over-serving their customers. Think of it this way – the more alcohol a business sells, the more money it makes. The *business* is responsible for deciding when enough is enough, *not the intoxicated customer*.

What damages are available?

An individual (if injured) or his estate (if killed) may recover both compensatory and punitive damages from a business that has violated the Act. Compensatory damages cover such things as medical bills, lost wages, and pain and suffering. Punitive damages are intended to punish the liable business for what it did or to deter it from doing the same thing again in the future. A spouse, child, or parent of the injured person also may recover damages for their loss, to include loss of support.

ALABAMA'S CIVIL DAMAGES ACT

This statute is similar to the Dram Shop Act, but limited solely to the sale or furnishing of alcohol to “minors.” For purposes of the Civil Damages Act, a “minor” is considered anyone under the age of 21. This differs from the legal age of majority in Alabama – 19. The reason, obviously, is because you must be at least 21 to legally purchase alcohol in Alabama.

Although it is limited in scope by the “under 21 years of age” requirement, the Civil Damages Act is broader than the Dram Shop Act in that it prohibits the unlawful sale or *furnishing* of alcohol to minors. As a result, a business can be held liable for violating the Civil Damages Act if, under the circumstances, it should have known

that a minor would consume some of the alcohol. For example, a bar or restaurant would probably be liable under this statute if an adult and a minor sat down at a table and the adult ordered two alcoholic beverages, but the minor ordered nothing to drink.

In contrast, if an adult and a minor go into a convenience store and the adult purchases alcohol, it is unlikely that the store would be liable under the Civil Damages Act. But, if the adult or minor said that the minor would be drinking some of the alcohol, the store may be liable.

What if the business didn't know he was under 21?

The burden is on the seller of alcohol to prove that it had reason to believe the person being provided the alcohol was at least 21. Normally, this means that the server or cashier must ask to see identification and be satisfied that it is not a "fake I.D." Merely because they thought the minor "looked at least 21" is insufficient. If there is doubt, the business will probably lose on this issue.

Why should a "kid" who buys alcohol be able to sue the bar or store?

Under the Civil Damages Act, only a parent or legal guardian of the minor can sue a business for selling or furnishing alcohol to the minor. The underage drinker has no claim.

Also, it is worth noting that only one parent (or guardian) can file suit for a violation of this Act. Therefore, if the minor's parents are divorced, they cannot each maintain separate claims. One violation, one claim.

What if no one is injured as a result of the minor purchasing alcohol?

Unlike the Dram Shop Act, no one has to be injured in order for there to be a claim under the Civil Damages Act. The violation occurs at

the time the alcohol is sold or provided. However, if the minor is injured or dies as a result of the purchase and consumption of the alcohol, this may be offered as evidence in support of the claim and the damages to be awarded.

What damages are available under the Civil Damages Act?

Only punitive damages (to punish or deter) may be awarded for a violation of the Civil Damages Act. Thus, if the minor is injured or dies, compensation for medical bills, lost wages, and pain and suffering cannot be recovered.

What if someone else is injured as a result of the minor purchasing alcohol and getting intoxicated?

Others who are injured due to a minor being served alcohol cannot maintain a claim under the Civil Damages Act. Any recovery would need to be under the Dram Shop Act because the sale of alcohol to the minor was "in violation of the law."

What if the alcohol is furnished by a friend or the parent of a friend?

The Alabama Supreme Court has never decided whether a claim may be maintained under the Civil Damages Act if the minor is furnished alcohol by someone other than a business. On the one hand the stated purpose of the Act is to "curtail the *sale* of alcoholic beverages to minors." On the other, providing alcohol to a minor could be in violation of Alabama's Open House Party law, which prohibits an adult from having a party at their home at which alcohol is being provided to minors. This is a question that needs to be answered.

Does a business that sells alcohol have insurance to cover either of these claims?

Under regulations adopted by the ABC Board, all businesses that sell alcohol in Alabama

must maintain at least \$100,000.00 (per incident) in liquor liability insurance coverage. The larger the business (such as a chain restaurant), the more likely it is that they will have higher limits of coverage.

CONCLUSION

Many, and hopefully most, restaurants, bars, and stores know the law and refuse to serve customers who are underage or visibly intoxicated. This is the responsible thing to do. Others, however, are more concerned about increasing profits than protecting their customers and other individuals. This is truly a shame. Alabama's Dram Shop Act and Civil Damages Act are intended to prevent such unlawful and irresponsible acts, thereby reducing the likelihood of additional injuries or deaths from alcohol-related wrecks.

ADDENDUM / ARBITRATION REVISITED

In the August 2008 issue of *Justice for All*, I discussed arbitration and asked each of you to contact your Congressman and United States

Senators to voice your support for the Arbitration Fairness Act of 2007. A similar bill (the Arbitration Fairness Act of 2009 – H.R. 1020) is currently before the House of Representatives.

Arbitration is a scam that has been perpetrated on consumers far too long. It is time to limit, if not completely eliminate, this practice. Please let your Congressman and Senators know that you support this important piece of legislation.

The contact information for our two Senators and Congressman (for most of us) is as follows:

Senator Richard Shelby: 1000 Glenn Hearn Blvd., Box 20127, Huntsville, AL 35824; (256) 772-0460; senator@shelby.senate.gov.

Senator Jeff Sessions: Regions Bank, 200 Clinton Ave., Suite 802, Huntsville, AL 35801; (256) 533-0979; senator@sessions.senate.gov.

Congressman Parker Griffith (5th Congressional District): 2101 Clinton Ave., Suite 302, Huntsville, AL 35805; (256) 551-0190; or e-mail from his website at <http://griffith.house.gov>.



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