"Dram Shop Acts – Are Not the Solution"

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Abstract

Dram Shop Acts have traditionally applied to establishments which sold alcholic drinks. In those situations, the acts (statutes) imposed liability on the subject tavern, liquor store or restaurant.

The Acts would hold the establishments in question liable for selling alcohol to individuals who were visibly intoxicated and subsequently were responsible for the death or injury to third persons or themselves.

The laws are intended to provide the public with protection from intoxicated persons, who decide to drive on the public roads and highways.

However, there is no federal law concerning dram shop offenses. As each State has the legislative authority to impose their own enforcement and penalty, leaving the matter open for numerous outcomes and differing enforcements.

Keywords: Dram shop, intoxicated, alcohol, neglidence and criminal liability

Dram shop acts generally only extend liability to businesses who serve visibly or habitually intoxicated individuals. In most states that have such laws the Courts impose liability and allow for recovery of damages where the defendant knew (or should have known) that the customer was obviously intoxicated.

In some states the legislatures have created an exception if the employee attends a training program, while other states will take the intoxicated individual's own negligence into consideration.

In Maryland, the Courts have held that there is no such liability. The state does not have a dram shop act, and as a result, no alcohol selling establishment is responsible for the actions of intoxicated patrons. (Warr v. JMGM Group, LLC, 443 Md 170 (2003) D/B/A, Dogfish Head Alehouse).

In writing for the majority of the Court, Judge Battaglia stated that "whether the person or entity sued had control over the conduct of the third party who caused the harm by virtue of some special relationship." (Warr v. JMGM Group, LLC.)

"In Warr, the Plaintiffs were unable to establish any relationship with the tavern or identify control by the tavern over Mr. Eaton's conduct when he left Dogfish Head Alehouse. Moreover, the Court declined to recognize a duty on the part pf Dogfish Head Alehouse." (Retrieved from http:///fsb-law.com/ on 5/19/10). The Court further stated that "human beings, drunk or sober, are responsible for their own torts. " (Warr v JMGM Group LLC).

"Furthermore, the majority would not recognize dram-shop liability on the basis of public policy because the Maryland legislature is better suited to create law that is rooted in public policy." (Fsb-law.com 5/19/16). Therefore, any changes on the law would have to come from the General Assembly. With that being said, Maryland is one of the eight states that do not hold liquor establishments liable for the subsequent acts of intoxicated patrons. (Felder v. Butler, 292 Md. 174 (1981) Retrieved 5/27/16 http://digitalcommons.law.umaryland.edu?cgi/view content.cgi? article).

In most states, however, this is not the case, and liquor establishments may be sued for the torts and/or crimes of patrons. In order to avoid these problems, some establishments have trained their servers not to serve intoxicated persons, and also provide for transportation for customers who are too drunk to drive or otherwise encourage them to take a taxi cab home. (Retrieved 5/19/16 from http://www.insureon.com/blog/past/2013/07/31/maryland-courts-no dram shop laws for Old Line State). As already stated, however, "Maryland Courts have decided that the legislature is where such statutes should be created." (Retrieved 5/19/16 from http://gg law. com/Articles/Maryland Court of Appeals rules against creation of dram shop law.)

As of June 14, 2013, "thirty states have statutory provisions that allow licensed establishments such as, restaurants, bars, and liquor stores to be held liable for selling or serving alcohol to individuals who cause injuries or death as a result of their intoxication. (Retrieved 5/20/16 http:// www.ncsl.org/research/financial-services-and-commerce/).

"Most states actually require that liquor establishments carry insurance solely because they may be held liable for the subsequent acts of their intoxicated customers." (Retrieved 5/20/16, http:// business-law.lawyers.com/business-litigation/).

It should also be noted that some studies have shown that "the number and consistency of findings indicate strong evidence of the effectiveness of dram shop laws in reducing alcohol-related harms. It will be important to assess the possible effects of legal modifications to dram shop proceedings, such as the imposition of the statute of limitations, increased evidentiary requirements, and caps on recoverable amounts." (Am J. Prev Med 2011; 41(3):334.

In addition at the present time, "evidence is insufficient to determine the effectiveness of enhanced enforcement of overservice laws for preventing excessive alcohol consumption and related harms." (Am J. Prev. Med. 2011; 41(3):334-335). Published by Elservier Inc. on behalf of the American Journal of Preventive Medicine.

In terms of tort liability, the previous reasoning was that the proximate cause of the injuries was the consumption of alcohol and not the serving. States are now stating that it is reasonably foreseeable, that an intoxicated patron is likely to cause harm to themselves or third parties, (Madeleine E. Kelly, Marquette Law Review, Vol. 64:217).

Once courts have recognized the theory of tort liability, they must then deal with the potential defenses of contributory negligence, comparative negligence and assumption of risk. As far as the defense of contributory negligence is concerned, one need look no further than Folda v. City of Bozeman (177 Mont. 537, 522 P.2d. 767 (1978)) and Swartzenberger v. Billings Labor Temple (179 Mont. 145, 586 P 2d 712, (1978)).

Some courts have actually stated that "those who fail to exercise moderation and temperance can find no solace in the courts for injuries they've inflicted upon themselves "(Kelly, Marquette, Vol 69:217 pg. 220). In fact, one court has gone so far as to state, "Governmental paternalism protecting people from their own conscious folly fosters individual irresponsibility and is normally to be discouraged. To go yet another step and allow monetary recovery to one who knowingly becomes intoxicated and thereby injuries himself is in our view indefensible." (Kindt v. Kauffnman, 57 Cal App 3d @ 855-56, 129 Cal Rptr @ 610 (1976)).

This is not to say that the assumption of risk defense is not a viable defense, because in fact it is. Courts have reasoned that a person may not have the capacity to appreciate the risk, but are still responsible because of voluntary intoxication.

Since contributory negligence acts as a complete bar to recovery, a majority of states have enacted comparative negligence statutes, whereby, the negative effects of contributory negligence are reduced for the plaintiff.

However, in the technical report conducted by rhe United States Department of Transportation, it "concluded that server liability with incentives for preventative serving-practices had more potential for reducing alcohol-involved traffic problems than strict liability alone. " (U.S. Dept. of Transportation, "Alcoholic Beverage Server Liability and the Reduction of Alcohol-Ralated Problems: Evaluation of Dram Shop Laws, June 1990).

Conclusion

It should be patently obvious, even to the casual observer, that states are recognizing that individuals who are intoxicated tend to make bad choices. Additionally, the various tort defenses of contributory negligence, comparative negligence and assumption of risk, will all need to be considered when a potential plaintiff plans to file suit.

In addition, the Transportation Department study determined, "that the most current statutory responses to dram shop liability do not necessarily contribute to the prevention pf alcohol-related traffic crashes."

Unfortunately, there is no easy answer to this problem, and therefore would not be accommodated or resolved by an easy solution to the tragedies that intoxicated individuals create.

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