

DRAM SHOP LIABILITY

Civil Liability Caused By Criminal Acts of Drunk Drivers

Sobering Facts About Drunk Driving Crashes in Pennsylvania



Sobering Facts About Drunk Driving Crashes In Pennsylvania



2003–2012

4,663 people were killed in crashes involving a drunk driver in Pennsylvania.

See https://www.cdc.gov/motorvehiclesafety/pdf/impaired_driving/Drunk_Driving_in_PA.pdf

Sobering Facts About Drunk Driving Crashes In Pennsylvania

Since 2003, Pennsylvania law created and recognized a tiered approach to DUI penalties based on BAC results and prior offenses:

- General impairment: .08% - .099%
- High BAC: .10% - .159%
- Highest BAC: .16% or higher

Drunk Driving Crashes:
Who is at Fault?



Drunk Driving Crashes: Who Is At Fault?

The drunk driver and ...

Drunk Driving Crashes: Who Is At Fault?

Yes...the bar that served the drunk driver the alcohol may also share in the fault for the crash under Pennsylvania's Dram Shop Law

Dram Shop Liability

Pennsylvania Liquor Code, Sections 4-493 and 4-497, provides the basis for imposing liability for negligent service of alcohol by liquor licensees.



Pennsylvania Dram Shop Law – Liquor Code

What Does “Dram Shop” Mean?

The name “Dram Shop” comes from England, where liquors were sold by the spoonful, or “Dram”

Pennsylvania Dram Shop Law – Liquor Code

UNLAWFUL ACTS RELATIVE TO LIQUOR, MALT AND BREWED BEVERAGES AND LICENSEES

Section 47 Pa. C.S. §4-493(1) of the Liquor Code provides:

It shall be unlawful—

(1) FURNISHING LIQUOR OR MALT OR BREWED BEVERAGES TO CERTAIN PERSONS. For any licensee or the board, or any employe, servant or agent of such licensee or of the board, or any other person, to sell, furnish or give any liquor or malt or brewed beverages, or to permit any liquor or malt or brewed beverages to be sold, furnished or given, to any person visibly intoxicated, or to any minor

Pennsylvania Dram Shop Law – Liquor Code

LIABILITY OF LICENSEES

Section 47 P.S. 4-497 provides as follows:

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

Pennsylvania Dram Shop Law – Liquor Code

Section 4-497 "does not create a cause of action against the licensee but in fact limits the extent of a licensee's liability."

Detwiler v. Brumbaugh, 441 Pa. Super. 110, 656 A.2d 944 (1995).

Pennsylvania Dram Shop Law – Liquor Code

A plaintiff must prove two things in order to establish liability against a liquor licensee.

1. That an employee or agent of the licensee served alcoholic beverages to a customer while visibly intoxicated; and
2. That this violation of the statute proximately caused the plaintiff's injuries.

See Fandozzi v. Kelly Hotel, 711 A.2d 524, 525-26 (Pa. Super. 1998) *appeal denied*, 558 Pa. 601, 735 A.2d 1269 (1999).

Pennsylvania Dram Shop Law – Liquor Code

“A violation of [the Dram Shop] statute is deemed negligence *per se*, and the defendant will be held liable if the violation is the proximate cause of the injuries.”

See Fandozzi v. Kelly Hotel, Inc., 711 A.2d 524 (Pa. Super. 1998); *Miller v Brass Rail Tavern*, 702 A.2d 1072 (Pa. Super. 1997); *Detwiler v. Brumbaugh*, 656 A.2d 944, 946 (Pa. Super. 1995).

Liability For Service
Of Alcohol To “Visibly
Intoxicated” Patrons



Proof of "Visible Intoxication"

- Visible intoxication can be proven by either direct or circumstantial evidence.
- While expert testimony can be utilized to present "relation back" evidence, such testimony, standing alone, is insufficient to establish visible intoxication.

See Jardine v. Upper Darby Lodge No. 1973, Inc., 413 Pa. 626, 198 A.2d 550 (1964); *Johnson v Harris*, 419 Pa. Super 541, 615 A.2d 771 (1992); *Connor v. Duffy*, 438 Pa. Super. 277, 652 A.2d 372 (1994).

Proof of “Visible Intoxication”

- It is insufficient for a plaintiff to establish merely that alcoholic beverages were served to a patron or that the patron was intoxicated at the time of the accident that caused injuries to another.
- Without evidence of “visible intoxication,” a licensee cannot be held liable for damages to a third party.

Hiles v Brandywine Club, 443 Pa. Super. 462, 662 A.2d 16 (Pa. Super. 1995), *appeal denied*, 544 Pa. 631, 675 A.2d 1249 (Pa. 1996); *Holpp v Fez, Inc.*, 440 Pa. Super 512, 517, 656 A.2d 147, 149 (1995).

Proof of "Visible Intoxication"

Emphasis Must Be On Physical Appearance, Conduct And Demeanor

- Red or Blood Shot Eyes
- Slurred Speech
- Difficulty Standing, Sitting or Walking
- Falling Asleep at Bar
- Vomiting
- Spilling Drinks
- Argumentative, loud, hostile or combative conduct

Liability For Service
Of Alcohol To Minors



Liability for Service of Alcohol to Minors

- Service of alcohol to anyone under age 21 constitutes negligence *per se*. *Herr v. Booten*, 398 Pa. Super. 166, 172, 580 A.2d 1115, 1118 (Pa. Super. 1988).
- Liability will attach even if the minor is not visibly intoxicated. *Matthews v Konieczny*, 515 Pa. 106, 527 A.2d 508 (Pa. 1987).
- Seller's duty to refrain from selling alcohol to minors can be breached by indirect sale to an adult intermediary intended for a minor, if the seller knows or should have known that the alcohol was being purchased for use by a minor. *Thomas v. DuQuesne Light Co.*, 376 Pa. Super. 1, 545 A.2d 298, 294 (Pa. Super. 1988), *aff'd*, 528 Pa. 113, 595 A.2d 56 (Pa. 1991).

Social Host Liability For Service of Alcohol



Liability of Social Host for Service of Alcohol to Adults

- No liability for social host who serves alcoholic beverages to adult guests, even if visibly intoxicated. See *Klein v. Raysinger*, 504 Pa. 141, 470 A2d 507 (Pa. 1983); *Manning v. Andy*, 454 Pa. 237, 310 A.2d 75 (Pa. 1973).
- No liability even if social host knew or should have known that the visibly intoxicated adult guest intended to drive a motor vehicle. *Klein v Raysinger*, 504 Pa. 141, 470 A2d 507 (Pa. 1983).
- “[I]n the case of an ordinary able bodied man it is the consumption of the alcohol, rather than the furnishing of alcohol, which is the proximate cause of any subsequent occurrence.” *Klein v Raysinger*, 504 Pa. 141, 470 A2d 507 (Pa. 1983).

Liability of Social Host for Service of Alcohol to Minors

- Service of alcohol to minors is negligence *per se*. *Congini v Portersville Valve Co.*, 504 Pa. 157, 163, 470 A.2d 515, 518 (Pa. 1983).
- Social host can be held liable even if the minor was not served to the point of intoxication. *Orner v. Malick*, 515 Pa. 132, 527 A.2d 521 (Pa. 1987).
- “[B]reach occurs with the service any alcohol to a minor, not just an amount sufficient to intoxicate the minor.” *Orner v Malick*, 515 Pa. 132, 137, 527 A.2d 521, 524 (Pa. 1987).
- “[A]n actor’s negligence exists in furnishing intoxicants to a class of persons legislatively determined to be incompetent to handle its effects.” *Congini v Portersville Valve Co.*, 504 Pa. 157, 163, 470 A.2d 515, 518 (Pa. 1983).

Liability of Social Host for Service of Alcohol to Minors

- In order to establish liability, it must be shown that the host “knowingly furnished” alcoholic beverages to a minor.
- No social host liability where the Defendant was “not involved in the planning of [the] event[] or the serving, supplying or the purchasing of the liquor.” *Alumni Ass’n v Sullivan*, 524 Pa. 356, 572 A.2d 1209 (Pa. 1990).
- Standard requires actual knowledge on the part of the social host as opposed to imputed knowledge imposed as a result of a relationship between the parties. *Alumni Ass’n v Sullivan*, 524 Pa. 356, 572 A.2d 1209 (Pa. 1990); *Winwood v Bregman*, 788 A.2d 983 (Pa. Super. 2001).

Investigation and Discovery

- Eye Witnesses and “Audible” Witnesses
- Videotape – both inside and outside
- Bar’s computerized POS records, receipts, invoices or credit card slips
- Facebook and other Social Media
- Emails and Text messages
- Piggyback on Police Investigation
- Site Inspection
- Bar Policies and Procedures
- Training and Certifications
- Depose Corporate Designee
- Experts – Toxicologist and Hospitality Standards

Common Defenses To Dram Shop Liability

- Lack of Proof of “Visible Intoxication”
- Lack of Proof of “Causation”
- Preliminary Objections to Common Law Negligence Claims
- Exclusion of Evidence of DUI Conviction/BAC Results
- Comparative Negligence

Joint and Several Liability

- In 2011, Pennsylvania passed the Fair Share Act, 42 Pa.C.S.A. §7102
- Under the Act, tortfeasor is only responsible for his or her percentage share of award unless the tortfeasor is found to be 60 percent or more responsible
- Specific exception for “a civil action in which a defendant has violated section 497 of the Act of April 12, 1951 known as the Liquor Code.”
- A liquor licensee found to be only 1 percent responsible, remains jointly and severally liable for the entirety of any verdict or award

Punitive Damages

- Demand Punitive Damages
- “Automobiles represent the most lethal and deadly weapons today entrusted to our citizenry. When automobiles are driven by intoxicated drivers, the possibility of death and serious injury increases substantially. Every licensed driver is aware that driving while under the influence of intoxicating liquor presents a significant and very real danger to others in the area.” *Focht v. Rabada*, 217 Pa. Super. 35, 41, 268 A.2d 157, 161 (Pa. Super. 1970).
- A jury could find a reckless indifference to the safety of others in serving alcohol to a visibly intoxicated patron. *See Tuski v. Ivyland Cafe Ltd.*, 2004 Phila. Ct. Com. Pl. LEXIS 91, (CCP Phila. 2004), *aff'd*, 888 A.2d 19 (Pa. Super. 2005), *appeal denied*, 586 Pa. 773, 895 A.2d 1263 (Pa. 2006).