

Judicial Interpretation of Pennsylvania's Dram Shop Law

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ABSTRACT

Protecting people from harm can be considered a goal of liquor control law. Pennsylvania's Dram Shop Law can be examined against that social standard. The first issue in this paper concerns the awarding of punitive damages in the context of violating the Dram Shop sections in Pennsylvania's Liquor Code. This paper does not include discussion of separate liability, both civil and criminal, for service of alcohol to minors and other persons by a social host. Instead, it only focuses on civil liability in reference to the awarding of punitive damages, not criminal liability, on required licensees under the Pennsylvania Liquor Code. The second issue involves the liability in Pennsylvania under the Dram Shop Statute when a liquor licensee sells alcohol to a third party who then provides this alcohol to a visually intoxicated person (VIP).

Keywords: liquor control law, social legislation, punitive damages, visibly intoxicated persons, Pennsylvania statutes

INTRODUCTION

Liquor control laws, such as those found in the Commonwealth of Pennsylvania, are enacted and, then, refined through judicial interpretation to attain a number of social ends. The protection of people from harm caused by intoxicated individuals is certainly a goal of such legislation. The evolution of awarding punitive damages and the fixing of liability under Pennsylvania's Dram Shop Law show some of the difficulties found in achieving such a social goal through legislation and judicial interpretation of such legislation.

The purpose of this study is to examine court awarded damages in Pennsylvania under the commonwealth's Dram Shop Law of the Liquor Code. One area of case law examined deals with the awarding of punitive damages based on the direct selling of alcohol to a visibly intoxicated person (VIP) by those licensed to sell alcohol under Pennsylvania's Liquor Code. A second area of case law considered looks at the possible efforts by courts to extend liability of licensed sellers of alcohol in situations where alcohol is sold to parties who subsequently provide that alcohol to VIP's.

Punitive damages as imposed on a variety of licensed businesses, bars, restaurants and even individuals in a private event setting for selling alcohol to intoxicated persons in Pennsylvania. The awarding of such damages on a consistent basis arguably sets some atmosphere of deterrence for businesses serving intoxicated persons. The cases cited indicate that change in social behavior concerning the retail sale of alcoholic beverages.

The liability involved in the selling of alcoholic beverages to someone who then provides that alcohol to a VIP is less well established in Pennsylvania, however. There is case interpretation of liability for businesses which sell alcohol to those who then provide it to minors. The suggestion is that such case law could be extended to include liability for businesses which sell alcohol through third parties to VIP's who cause harm to other members of society.

PUNITIVE DAMAGES

Pennsylvania Statute Title 47 Section 4-493(1) of the Liquor Code states the following: "It shall be unlawful—Furnishing liquor or malt or brewed beverages to certain persons. For any licensee or the board, or any employee, 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. Provided further, That notwithstanding any other provision of law, no cause of action will exist against a licensee or the board or any employee, servant or agent of such licensee or the board for selling, furnishing or giving any liquor or malt or brewed beverages or permitting any liquor or malt or brewed beverages to be sold, furnished or given to any insane person, any habitual drunkard or person of known intemperate habits unless the person sold, furnished or given alcohol is visibly intoxicated or is a minor."

Furthermore, in Pennsylvania Statute Title 47 Section 4-497 of the Pennsylvania Liquor Code, liability for the liquor licensee is established by this language:

"No licensee shall be liable to third person on account of damages inflicted upon them off of the licensed premises by customers of the licensee unless the customer who inflicts the damages was sold, furnished or given liquor or malt or

brewed beverages by the said licensee or his agent, servant or employe[e] when the said customer was visibly intoxicated.”

As a result of the above, over a long period of time, it is well settled law in Pennsylvania that under the Pennsylvania Dram Shop provisions an injured party must prove two things: (1) A person was served alcohol by a licensee or its employee or agent while visibly intoxicated. (2) The statute violation proximately caused the harm. (*Schuenemann v. Dreemz*)

Accordingly, numerous legal cases have been brought in the courts establishing liability on businesses, bars, restaurants as well as individuals including in a private event setting provided there was a licensee-requiree present.

Most liability cases concern automobile accidents caused by the intoxicated person. However, other possible instances where liability could arise involve this intoxicated person engaging in a physical fight as well as when this intoxicated person falls.

In *Jardine v. Upper Darby Lodge No. 1973, Inc.*, the Pennsylvania Supreme Court in an opinion written by Justice Musmanno held that it is not only a violation of statutory law but also a violation of the common law if a licensed person engaged in the selling or furnishing of alcohol does so to a visibly intoxicated person or a to a minor. This court also held that violation of the statute constitutes negligence and if the unlawful act or acts are the proximate cause of injury then the violator is responsible in damages for the loss suffered. (*Jardine v. Upper Darby Lodge No. 1973, Inc.*)

It should be pointed out, however, that in *Detwiler v. Brumbaugh*, the Pennsylvania Superior Court held that Section 4-497 “does not create a cause of action against the licensee but in fact limits the extent of licensee’s liability” by requiring visible intoxication. (*Detwiler v. Brumbaugh*)

Signs of visible intoxication must be proven in the case and examples of such observable intoxication include bloodshot eyes, slurred speech, staggering, poor coordination.

An expanding basis of liability for the licensee-requiree was decided by the Pennsylvania Supreme Court in the consolidated cases of *Matthews v. Konieczny* and *Mancuso v. Bradshaw*, by the court holding that alcohol service to minors formed the basis for negligence with regard to those affected by this service. It then stated through Justice McDermott that Pennsylvania Statute Title 47 Section 4-497 applies only to “legally competent” customers and does not protect a licensee from liability resulting from service to minors and others not legally competent. The result of these cases means that the plaintiff in these types of lawsuits does not need to prove “visible intoxication” at the time of alcohol service. *Matthews v. Konieczny Mancuso v. Bradshaw*

In *CGB Occupational Therapy, Inc. v. RHA Health Servs., Inc.*, the court stated that punitive damages can be awarded based upon numerous and intangible factors. (*CGB Occupational Therapy, Inc. v. RHA Health Servs., Inc.*) The awarding of punitive damages are not recoverable in Pennsylvania unless actual damages are present. (*Halstead v. Motorcycle Safety Found., Inc.*) The basis for punitive damages is premised upon the wrongdoer displaying outrageous conduct, bad motive or reckless indifference to the interest of others, but not when only negligent conduct is present. (*Dowhouer v. Judson*) In the court case of *Richter v. Jaco Inc.*, it was held that punitive damages must be based upon conduct that is malicious, wanton, reckless, willful or oppressive. Punitive damages are awarded to punish the conduct of the wrongdoer and to deter the wrongdoer or others like him from similar conduct in the future. (*Focht v. Rabada; In re Iskric*)

The amount of punitive damages awarded by the court in Pennsylvania is based upon the character of the act, the nature and extent of the harm, and the wealth of the wrongdoer. These damages must be reasonably related to punishing and deterring the particular behavior of the wrongdoer. (*Empire Trucking Co., Inc. v. Reading Anthracite Coal Co.*) Finally, the amount of punitive damages must have a reasonable relationship to the amount of actual damages awarded. (*Weider v. Hoffman*)

In Pennsylvania, the courts have allowed the awarding of punitive damages when the Dram Shop provisions in the state's Liquor Code have been violated. The court in *Tuski, v. Ivyland Café* held that a Dram Shop plaintiff was entitled to punitive damages because liquor licensee "knew of facts which created a high degree of risk of physical harm to another and failed to act to prevent that harm". A defendant-patron who was also the manager of Ivyland Café had been serving himself alcohol at defendant-licensee's establishment. Defendant-licensee's president who was also defendant-patron's father and knew of defendant-patron's alcohol problem, was present when defendant-patron served himself alcohol while visibly intoxicated. Defendant-patron then left defendant-licensee's establishment in a motor vehicle and hit a flagman (the plaintiff) rendering said plaintiff a quadriplegic. Defendant-patron fled the scene and drove to his home where "he crashed his car into a pole supporting the home's carport". The court found that punitive damages were appropriate in part because defendant-licensee stood by "and did nothing when he witnessed [defendant-patron] drinking at the Ivyland Café in the moments leading to the accident..." (*Tuski, v. Ivyland Café*)

In *Painter v. Reifsnyder*, the defendant-licensee served a customer alcoholic beverages after he had become visibly intoxicated. This customer then proceeded to operate a motor vehicle and collided with a vehicle occupied by the plaintiffs, killing one and injuring another. The plaintiffs filed a Dram Shop action against the defendants seeking punitive damages. The court in this case reiterated the purpose of the Dram Shop provisions in the Pennsylvania Liquor Code is to serve "as a deterrent to tavern owners in serving a visibly intoxicated patron who might leave the tavern and injure himself or another person in an accident involving the use of or maintenance of a motor vehicle." The court concluded by stating that the plaintiffs do not need to "allege intentional conduct as defined in the [Pennsylvania] No-Fault [Insurance] Act to recover punitive damages" (*Painter v. Reifsnyder*)

Rivero v. Timblin, involved a defendant-patron drinking alcohol at two bars prior to operating a motor vehicle while intoxicated and with a suspended operator's license due to a prior DUI. While operating such motor vehicle the defendant-patron drove in the wrong direction on a highway and collided head-on with a vehicle in which the plaintiffs' three decedents were riding and were killed in the accident. The plaintiffs filed a claim for punitive damages and the court held it could be justified if the facts as stated in the plaintiffs' complaint pertaining to defendant's outrageous conduct or reckless indifference to the well-being of another were proven to the fact-finder. (*Rivero v. Timblin*)

In *Sims*, Judge Wettick in Allegheny County, Pennsylvania held that based upon the evidence introduced at the trial to establish that defendant-licensee served alcohol to defendant-patron while visibly intoxicated, the latter of whom caused injuries in an automobile accident, it could possibly support a finding of reckless indifference and the awarding of punitive damages in the case. (*Sims*)

In *Faust et al. v. JP McGrady's et al.*, a civil case heard in the Court of Common Pleas of Northampton County, Pennsylvania, the plaintiffs' filed a wrongful death action against a defendant-licensee, a bar located in Bethlehem, Northampton County Pennsylvania. The basis of

the lawsuit concerned this tavern, known as McGrady's, serving alcohol to another defendant, Tyron Martin, while visibly intoxicated. The defendant Martin then left this tavern and drove his automobile colliding with another automobile driven by plaintiffs' decedent. The Court pointed out, that if the facts as alleged by plaintiffs in their Complaint were true according to the fact-finder in the case, then these plaintiffs would be entitled to punitive damages. The allegations in the Complaint included that defendant Martin displayed numerous signs of visible intoxication "including but not limited to speaking in a loud voice, drinking alcoholic beverages very quickly, slurred speech, swaying, stumbling, staggering, displaying lack of coordination or concentration and glassy, blood shot (sic) eyes" as well defendant-licensee continuing to serve defendant Martin alcohol knowing that he was intoxicated and would be driving home alone, and the failure of defendant-licensee to stop him or contact law enforcement to prevent this. The Court held that defendant-licensee "disregarded a risk known to it or so obvious that it must be taken to have been aware of that risk, and so great as to make it highly probable that harm would follow, such that an award of punitive damages would be proper" (Faust et al. v. JP McGrady's et al.)

Based upon the cited court cases, it is clear that punitive damages are an appropriate legal remedy that may be awarded in Dram Shop law violations. The standards for awarding of these damages must, however, be based in part upon the course of conduct of a defendant as outlined above.

LIABILITY

The other issue that now needs to be addressed in this paper is the liability in Pennsylvania under the Dram Shop Law concerning a liquor licensee selling alcohol to a third party who then provides this alcohol to a visibly intoxicated person (VIP).

In a minority of the states who have adopted variations of Dram Shop Acts, a licensee may be held liable to parties who are injured as a result of service to a third person who subsequently provides a VIP with alcohol. In these cases, courts have adopted variations of a "knew or should have known" standard to determine whether or not the licensee can be held liable for the actions of the VIP that resulted in injury. Pennsylvania is not one of the states which have adopted this standard, and Pennsylvania state law and jurisprudence seemingly require that, in order to hold the licensee liable, the alcohol be furnished directly from the licensee to the VIP.

Pennsylvania courts are not as liberal when determining liability against licensees, perhaps because Pennsylvania Statute Title 47 Section 4-497 explicitly requires that the "customer who inflicts the damages was sold, furnished or given liquor or malt or brewed beverages by the said licensee or his agent, servant or employe[e] when the said customer was visibly intoxicated" in order to find liability on the part of the licensee for damage caused to third parties by said customer, *emphasis added*. As a result, all of the relevant case law in Pennsylvania involves allegations that the licensee or his agents served a VIP, and there are no instances (except for instances with minors) where a licensee's liability is alleged based on the licensee's service to a third part who subsequently supplies the alcohol to a VIP.

In *Detwiler v. Brumbaugh*, a motorist was injured when her vehicle was struck by an intoxicated driver and she subsequently brought a Dram Shop action against the licensees who owned the establishment where the intoxicated driver had consumed liquor. The court held that Section 4-497 of the Pennsylvania Liquor Code does not insulate employees of a licensee from liability to a third persons when they serve a visibly intoxicated customer, and it stated that it

disagreed with the trial court's holding that Section 4-497 should be read "to make only licensee potentially liable to third parties." The court alternatively stated that "Section 4-497 is clearly a limiting provision designed to specifically shield licensees from liability to third parties except in those instances where the patron served was visibly intoxicated." The Detwiler court did, however, state that "Section 4-493 of the Liquor Code sets forth the duties associated with the service of alcohol," when it stated that according to Section 4-493(1), it shall be unlawful "for any licensee...or any employee, servant or agent of such licensee...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..." While the Detwiler court went on to state that "[t]his section clearly imposes a duty on those parties identified to refrain from selling liquor to a visibly intoxicated individual," this reasoning may also be extended to suggest that the section also imposes a duty to not "permit" visibly intoxicated individuals to be "furnished or given" alcohol. (*Detwiler v. Brumbaugh*)

The connection between sections 4-493(1) and 4-497 is further discussed in *Hiles v Brandywine Club*, where the court found that a licensee must be found to have "served [a patron] while he was visibly intoxicated pursuant to section 4-497" in order to establish liability on the part of said licensee. In discussing the relationship between Sections 4-493(1) and 4-497, the Hiles court explained that "[s]ection 4-493(1) and the case law arising from this section was undoubtedly the impetus for the legislature's subsequent addition of the specific, third-party liability statute, section 4-497;" however, the court went on to say that "[s]ection 4-497 is clear; imposing liability on licensees for third party injuries is governed by the specific provisions of 4-497. We need not look elsewhere in disposing of the third-party liability issue instantly before us." (*Hiles v Brandywine Club*)

In *Barrie v. Pa. Liquor Control Board*, a minor purchased alcohol from a liquor licensee who furnished said alcohol to other minors, one of whom (plaintiff) accidentally drowned as a result of his intoxication from alcohol. In this instance, while the court did find the plaintiff to be 70% comparatively negligent, thereby barring his claim per the Comparative Negligence Act, the court did find the licensee to be 10% negligent for furnishing the alcohol to the third party minor who then supplied the plaintiff with alcohol. Accordingly, this court did find that there was some liability on the part of the licensee. (*Barrie v. Pa. Liquor Control Board*)

Similarly, *Matthews v. Konieczny* involved a minor who purchased alcohol for several other minors with combined funds, which resulted in the minor-defendant crashing his automobile and killing the minor-plaintiff, who was a passenger in the vehicle. In ruling for the plaintiff, the Pennsylvania Supreme Court found that the relevant case law "would definitely permit a third party suit bought by one injured as a result of service to minor." Additionally, the court found that a licensee could still be found to be negligent where said licensee had no knowledge that the third party purchaser would then supply the alcohol to the ultimate actors in the incident, as "it is the service of a minor in violation of the statutorily dictated duty which forms the basis of a finding of negligence." (*Matthews v. Konieczny*)

An extension of this argument could be made by stating that the same section of the Liquor Code which prevents sales to minors (Section 4-493(1)) also deems it unlawful for a licensee "to permit any liquor or malt or brewed beverages to be sold, furnished or given, to any person visibly intoxicated," and negligence can therefore be established on the part of the licensee even if they don't directly serve the VIP. This argument, however, would be an extension of existing case law, as it has not yet been made in Pennsylvania Courts. It also should be noted that in *Matthews v. Konieczny* the court emphasized that "such liability is not absolute

and/or irrebuttable, and...the defendants in a suit such as this can, where applicable, attempt to establish the comparative negligence of the actor(s) involved. (Matthews v. Konieczny)

While some states recognize variations of a “knew or should have known” standard, Title 47 P.S. Section 4-497 (the section of Pa’s Dram Shop Act that deals with licensee’s duty to third parties who are injured due to service of a VIP) mandates that “[n]o licensee shall be liable to third persons on account of damages inflicted upon them off of the licensed premises by customers of the licensee unless the customer who inflicts the damage was sold, furnished or given liquor or malt or brewed beverages by the said licensee or his agent, servant or employe[e] when the said customer was visibly intoxicated,” and no Pennsylvania cases, except cases involving minors, have alleged liability against a licensee for service of alcohol to a third party who then furnishes a VIP. There is, however, foundation for a reasonable extension of existing case law to establish liability.

CONCLUSION

Intoxicated individuals can, and do, cause harm to themselves and other members of society. Pennsylvania’s Dram Shop Law is a manifestation of the social concern over such actions. Through such laws and the application of those laws by the judicial system, society expects to be protected and to hold intoxicated perpetrators of harm accountable.

That expectation of protection and accountability pertains to those who sell alcohol as well. Businesses, bars, restaurants and others licensed to sell alcohol under Pennsylvania’s Liquor Code face punitive damages imposed by courts as shown in the first set of cases considered in this study. Those licensed to sell need to protect society from direct sale of alcohol to VIP’s. Pennsylvania courts impose punitive damages in those cases.

The examination of a second set of cases in this paper indicates that courts in Pennsylvania do not extend such liability when a liquor licensee sells alcohol to a third party who then provides that alcohol to a VIP. There is liability to the seller when a third party supplies the alcohol to a minor. There is also some basis in the law which could allow courts to impose liability when a business sells alcohol to a third party who then provides that alcohol to a VIP. Pennsylvania courts may be moving toward punitive damages in the second set of cases.

REFERENCES

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