



If you have questions or would like further information regarding Liquor Control Act, please contact:

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ILLINOIS LAW MANUAL

CHAPTER IV

STATUTORY CAUSES OF ACTION

F. LIQUOR CONTROL ACT (DRAM SHOP ACT)

1. Introduction

The Dram Shop Act creates a cause of action against owners of businesses that sell liquor and also against lessors or owners of the premises on which the liquor is sold for physical injury to a person, for injury to tangible property or for injury to means of support caused by an intoxicated person.

2. Statutory Language

The Liquor Control Act provides an action for damages caused by intoxication and sets limitations on damages in the following section:

Every person who is injured within this State, in person or property, by any intoxicated person has a right of action in his or her own name, severally or jointly, against any person, licensed under the laws of this State or of any other state to sell alcoholic liquor, who by selling or giving alcoholic liquor within or without the territorial limits of this State, causes the intoxication of such person. . . . Any person owning, renting, leasing or permitting the occupation of any building or premises with knowledge that alcoholic liquors are to be sold therein, or who having leased the same for other purposes, shall knowingly permit therein the sale of any alcoholic liquors that have caused the intoxication of any person, shall be liable, severally or jointly, with the person selling or giving the liquors. . . . An action shall lie for injuries

to either means of support or loss of society, but not both, caused by an intoxicated person or in consequence of the intoxication of any person resulting as hereinabove set out. . . . The action, if the person from whom support or society was furnished is living, shall be brought by any person injured in means of support or society in his or her name for his or her benefit and the benefit of all other persons injured in means of support or society. . . . For all causes of action involving persons injured, killed, or incurring property damage after September 12, 1985 but before July 1, 1998, in no event shall the judgment or recovery for injury to the person or property of any person exceed \$30,000 for each person incurring damages, and recovery under this Act for loss of means of support resulting from the death or injury of any person shall not exceed \$40,000. For all causes of action involving persons injured, killed or incurring property damage on or after July 1, 1998 in no event shall the judgment or recovery . . . exceed \$45,000 for each person incurring damages, and recovery under this Act for either loss of means of support or loss of society resulting from the death or injury of any person shall not exceed \$55,000. Beginning in 1999, every January 20, these liability limits shall automatically be increased or decreased, as applicable, by a percentage equal to the percentage change in the consumer price index-u during the preceding 12-month calendar year. . . . Nothing in this Section bars any person from making separate claims which, in the aggregate, exceed any one limit where such person incurs more than one type of compensable damage, including personal injury, property damage, and loss to means of support or society. However, all persons claiming loss to means of support or society shall be limited to an aggregate recovery not to exceed the single limitation set forth herein for the death or injury of each person from whom support or society is claimed.

Nothing in this Act shall be construed to confer a cause of action for injuries to the person or property of the intoxicated person himself, nor shall anything in this Act be construed to confer a cause of action for loss of means of support or society on the intoxicated person himself or on any person claiming to be supported by such intoxicated person. . . .

Each action hereunder shall be barred unless commenced within one year next after the cause of action accrued. 235 ILCS 5/6-21(a).

3. Persons Entitled to Recover under the Dram Shop Act

Recovery is limited to third parties who suffer damages as a result of the actions of an intoxicated person. The Act specifically provides that the intoxicated person

cannot recover for injuries to his person or property or for loss of means of support. 235 ILCS 5/6-21(a); see also Holmes v. Rolando, 320 Ill. App. 475 (1943); Monsen v. DeGroot, 130 Ill. App. 3d 735 (1985). Further, any person claiming to be supported by the intoxicated person cannot recover loss of means of support. A surviving spouse may however recover medical, hospital and funeral expenses under the Family Expense Statute even when incurred by the intoxicated spouse. Schramer v. Tiger Athletic Association of Aurora, 351 Ill. App. 3d 1016 (2nd dist. 2004).

The liability of the Dram Shop Act is not based in tort but in strict liability. Hopkins v. Powers, 113 Ill. 2d 206, 211 (1986). Therefore, a co-defendant may not prosecute a cross-claim for contribution in an action based on the Dram Shop Act. Id. See also Jodelis v. Harris, 118 Ill. 2d 482 (1987).

4. Persons Who May be Liable under the Dram Shop Act

The Dram Shop Act creates a cause of action against three different groups of people. The first group are persons “licensed under the laws of this State or of any other state to sell alcoholic liquor, who by selling or giving alcoholic liquor, within or without the territorial limits of this State, causes the intoxication of such person.” 235 ILCS 5/6-21(a). The Illinois Supreme Court has interpreted this to permit Illinois courts to retain jurisdiction over dram shop licensees in other states if they have minimum contact with Illinois. Dunaway v. Fellous, 155 Ill. 2d 93 (1993).

Second, any person, at least 21 years of age, who pays for a hotel or motel room or facility knowing that it will be used by persons under the age of twenty-one for the consumption of alcohol, is liable to anyone injured “in person or property” by a person

under 21 who becomes intoxicated by the consumption of alcohol on the premises. 235 ILCS 5/6-21.

Third, any person who owns, rents, leases, or permits occupation of a building or premises knowing that alcohol is sold on the property, and who permits the sale of alcohol on the property that causes the intoxication of any person, is liable along with the person selling or giving the alcohol. Jackson v. Moreno, 278 Ill. App. 3d 503 (1996).

The Dram Shop Act provides the sole remedy against tavern operators and owners of tavern premises for injuries caused by an intoxicated person. Knierim v. Izzo, 22 Ill. 2d 73 (1961); Jodelis v. Harris, 118 Ill. 2d 482 (1987).

5. Elements of Cause of Action

The plaintiff in a Dram Shop Act action has the burden of proving each of the following:

- a. That the alleged intoxicated person was intoxicated at the time of the occurrence;
- b. That the defendant, his agents or employees, sold or gave intoxicating liquor consumed by the intoxicated person;
- c. That the liquor consumed caused the intoxication of the intoxicated person;
- d. That the intoxicated person's intoxication was at least one cause of the occurrence in question;
- e. That as a result of the occurrence the plaintiff suffered injury or damage to his property.

a. Proof of Intoxication

Under the Dram Shop Act, one may only seek recovery against any person who, by selling or giving alcoholic liquor, causes the intoxication. Graham v. United National Investors, 319 Ill. App. 3d 593, 597 (4th Dist. 1997). A defendant must have caused the intoxication and not merely furnished a nominal amount of liquor. Nelson v. Araiza, 69

Ill. 2d 534, 540-41 (1978); Walter v. Carriage House Hotels, Ltd., 164 Ill. 2d 80, 86-87 (1995). The Illinois Pattern Jury Instructions state that a person is “intoxicated” when, as a result of drinking alcoholic liquor, there is an impairment of his mental or physical faculties so as to diminish his ability to think and act with ordinary care. I.P.I. 150.15. In Weiner v. Trasatti, 19 Ill. App. 3d 240 (1974), the Appellate Court stated that “evidence that the alleged intoxicated person consumed alcoholic liquor, together with evidence of unusual behavior or opinion evidence that he was drunk, would entitle a jury, under such circumstances, to conclude that the person was intoxicated.” See also Reed for Use & Benefit of Reed v. Fleming, 132 Ill. App. 3d 722, 726 (1985).

b. Direct Sale Requirement

The Dram Shop Act does not state whether there must be a direct sale or gift of alcohol to the person who caused the harm. A number of cases have held that a direct sale to the person who caused the harm is necessary. Albertina v. Owens, 3 Ill. App. 3d 703 (1971); McCoy v. Spalding, 41 Ill. App. 2d 292 (1963); Blackwell v. Fernandez, 324 Ill. App. 597 (1945). Other cases have held that the direct sale does not have to be to the intoxicated person. Bennett v. Auditorium Bldg. Corp., 299 Ill. App. 139 (1939). More recent cases have held a dram shop operator liable if he knew or should have known that the intoxicated person who caused the harm would consume the liquor. Welch v. Convenient Food Mart, 106 Ill. App. 3d 131 (1982); Tate v. Coonce, 97 Ill. App. 3d 145 (1981); Taylor v. Village Commons Plaza Inc., 164 Ill. App. 3d 460 (1987). The dram shop owner must know or should know that a particular person will consume the alcohol. It is not enough that an unspecified or absent person consumed the alcohol. Welch, supra.

6. Defenses

a. Contributory Negligence

Illinois courts have not recognized contributory negligence as a defense in dram shop cases. Merritt v. Chonowski, 58 Ill. App. 3d 192 (1978); Walter v. Carriage House Hotels, Ltd., 164 Ill. 2d 80 (1995).

b. Complicity

Complicity relates to the plaintiff's role in causing the intoxication of the person who harmed the plaintiff. The idea is that a plaintiff should not be able to recover for injuries caused by an intoxicated person when the plaintiff contributed to the intoxication. The Illinois Supreme Court held in Nelson v. Araiza, 69 Ill. 2d 534, 543 (1977), that "only one who actively contributes to or procures the intoxication of the inebriate is precluded from recovery." Generally, whether a plaintiff is barred by his own conduct is a question of fact. Nelson v. Araiza, 69 Ill. 2d 534, 543 (1977); Walter v. Carriage House Hotels, Ltd., 164 Ill. 2d 80, 86-87 (1995); Graham v. United Nat. Investors, Inc., 319 Ill. App. 3d 593 (2001). However, in cases where there is sufficient evidence to support the doctrine, it will be a question of law. Nelson, 69 Ill. 2d at 543. Complicity is an affirmative defense which must be raised by the defendant. Goodknight v. Piraino, 197 Ill. App. 3d 319 (1990).

A court will instruct a jury that, if the plaintiff did any of the following acts, then the plaintiff cannot recover damages from the dram shop owner:

- (1) willingly caused the intoxication of the intoxicated person;
- (2) willingly encouraged the drinking which caused the intoxication of the intoxicated person;
- (3) voluntarily participated to a material and substantial extent in the drinking which led to the intoxication of the intoxicated person;

- (4) actively contributed to or procured the intoxication; or
- (5) provoked the conduct of the intoxicated person which caused the injury.

I.P.I. 150.17

c. Provocation

Provocation is a defense that can be used when the plaintiff provoked the conduct of the intoxicated person. The theory behind the defense is that, because the plaintiff provoked the injurious conduct, he should not be able to recover. Provocation, like complicity, is an affirmative defense. Illinois Appellate Courts are split as to whether this is a valid defense. The First, Second, and Third Districts have ruled that provocation is a defense. Williams v. Franks, 11 Ill. App. 3d 937 (1973); Gilman v. Kessler, 192 Ill. App. 3d 630 (1989); Akin v. J.R.'s Lounge, Inc., 158 Ill. App. 3d 834 (1987). The Fifth District has held that “provocation is not a defense to a dram shop action in Illinois.” Galyean v. Duncan, 125 Ill. App. 3d 464 (1984).

d. One-Year Limitations Period

The Dram Shop Act contains a one-year limitations period. Therefore, a claimant must file the cause of action for injuries caused by an intoxicated person within one year of the action accruing. This one-year limitation is not tolled for minors. Demchuck v. Duplanich, 92 Ill. 2d 1(1982).

7. Damages

The Dram Shop Act limits the amount of recoverable damages. 235 ILCS 5/6-21. For occurrences up to July 1, 1998, recovery cannot exceed \$30,000 for a bodily injury claim or \$30,000 for each property damage claim. Id. Recovery for loss of means of support cannot exceed \$40,000. Id. These limits apply to all defendants as a

class and, therefore, a plaintiff may not obtain a separate recovery from all the dram shop defendants. Id. Pain and suffering is recoverable under the Dram Shop Act. Any recovery for pain and suffering would count towards the \$30,000 personal injury limit allowed under the Act. Loss of consortium is not recoverable under the Act.

The statutory recovery amounts have been increased based on the consumer price index since 1998.