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Liquor liability: how to avoid losses when serving alcohol

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Dram shops may be liable when customers hurt others

A man walking home from a trade association meeting at a local motel was hit by a car and suffered serious injuries that required surgery.

When tested at the hospital, the injured guest's blood alcohol level was very high, indicating that he had been intoxicated at the time of the accident.

According to the motel bartender, the man began drinking around 11 a.m. while he was decorating the room for a party that was to take place later that evening. He got so drunk, he decided to walk home after dinner.

The man later claimed that the bartender "was feeding me drinks all night long."

Even though the man's dark clothing may have contributed to the cause of the accident, the motel was still responsible for a loss in the hundreds of thousands of dollars.

Dram shop liability laws

Liquor liability laws, also known as dram shop liability, have been enacted to protect the general public from alcohol-related injuries, such as the above incident. These laws establish the liability of businesses that sell or serve alcoholic beverages to a minor or a visibly intoxicated person, who then harms a third party or suffers injury.

The majority of states have laws establishing potential liability for sellers of alcohol. However, the standard used to determine when dram shop liability applies varies from state to state. For example, in Illinois, a recovery can be made when a patron is served and becomes intoxicated; while in Texas, a recovery can be made when an obviously intoxicated patron is served.

In some jurisdictions, the intoxicated person can also successfully sue the establishment for injuries sustained in a subsequent accident.

Some of the largest recent verdicts in the United States have involved liquor liability lawsuits. Most often, this liability is the result of an intoxicated person who leaves an establishment, drives a vehicle, and then is the cause of a serious accident due to their impaired condition. In many states, the establishment may be “jointly and severally liable” for the acts of the intoxicated driver, which may cause the establishment to shoulder a disproportionate percentage of the verdict due to the driver’s lack of financial and insurance resources.

Unless an incident occurs on the insured premises, such as an assault or slip-and-fall, the restaurant or bar often has no knowledge of the potential liability until they are sued — usually many months or even years after the accident.

Plaintiffs’ attorneys can use this time to conduct a detailed investigation, interview witnesses and even visit the establishment to observe procedures before the restaurant knows a claim will be made.

What can establishments that serve liquor do to properly manage the risk of a claim or litigation based on allegations of unlawful sale of alcohol? The suggestions below may help to minimize the potential for liquor liability incidents and lawsuits arising from them.



What to do to help prevent an incident

The best defense of a liquor liability claim is prevention through continual training, well-documented and enforced procedures, and management commitment to support the program as part of the culture of the business.

These include:

- Understand what the legal standard is in your state. If you are uncertain, consult with your legal counsel.
- Educate and train all employees about the alcohol-related risks and applicable state laws by using a training service. Examples include ServSafe ([servsafe.com/alcohol](https://www.servsafe.com/alcohol)), TIPS: Training for Intervention Procedures ([gettips.com](https://www.gettips.com)), or TAM: Techniques of Alcohol Management ([tamusa.org](https://www.tamusa.org)).

- Create a written policy and procedure manual, or “house rules,” and ensure they are regularly monitored and enforced.
- Check valid identification for anyone who is not obviously over 30.
- Advise staff each day what the date is to determine the legal drinking age of 21.
- Provide regulated-poured or measured drinks.
- Discourage service of shots.
- Discourage offering complimentary drinks to any patrons.
- Discourage liquor sales quotas for any employee or manager.
- Encourage service of light alcoholic beverages, nonalcoholic beverages and food, especially later in the evening.
- Post signs about responsible drinking.
- Have a system which makes it easy to keep track of the number of drinks served to each individual and have guideline limits of the number and types of drinks that can be served to individuals.
- Beware of special treatment given to “regulars.”
- Hire a sufficient number of age-appropriate valets, if providing valet service.
- Develop and enforce a policy that prohibits any staff members from consuming alcohol at your establishment while off duty.
- Support your employees when they are required to “cut off” guests at the bar, and keep a log on when and who is being cut-off.
- Do not serve alcohol to a patron who arrives at your establishment showing signs of intoxication.
- Have information available about your community’s ride service plan. These plans may be provided by private or public transportation services, such as cab companies. If your community does not have a ride service plan, work with other businesses, service organizations and city government to establish one. The National Highway Traffic Safety Administration has information about establishing alternative driving programs.
- Develop a process for arranging taxi service or other alternate transportation. If you provide transportation, such as a cab, make sure the intoxicated person uses the provided transportation.
- Train valets to refuse to give keys to visibly intoxicated guests and how to manage such a situation.
- Train staff on how to defuse arguments that may lead to an assault and when to contact the police.
- Coach managers on how to immediately intercede in a developing incident.

What to do after an incident occurs

If an incident occurs, or becomes known, report it to your insurance agent whether you think you are at fault or not. Timely investigation is critical to developing the best defenses possible.

Obtain full details about the patron regarding:

- Amount of time spent on the premises.
- Type and amount of beverages consumed.
- Type and amount of food eaten and when consumed.
- All receipts for purchases by the patron at the location.
- Description of patron's conduct and appearance.
- Any companions and/or witnesses.
- Any knowledge of prior visits and behavior of the customer.
- Train employees to refrain from speaking with anyone who questions them about an incident.
- Obtain statements from all involved employees or provide a list of all employees' contact information to the insurance agent.
- Save any surveillance video of the patron from the interior of the bar and parking lot area.

Other tips

- Maintain documentation of alcohol-related incidents successfully handled by the staff to show your policies have worked and that, because of proper training and management support, these incidents have been infrequent.
- Maintain table reservation records for as long as possible.
- If valet service is hired through an independent company, then require a contract under which the valet company agrees to indemnify you and includes you as an additional insured on their liability insurance policy.
- Be sure that the policy provides the highest limits that can be negotiated. Also require proof that their employees are properly trained. Consult with your legal counsel to assure the proper provisions are in the contract.
- Maintain credit card and other transaction receipts.
- Consider installing video cameras to provide a visual record.