

THE ILLINOIS DRAM SHOP ACT

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Dram Shop Acts across jurisdictions vary as to the extent to which the purveyor of alcoholic beverages will be blamed for an intoxicated person's behavior. However, the Illinois legislature has stated the Illinois Dram Shop Act is intended "to place responsibility for damages caused by intoxicants on those who profit from the sale of alcohol...[and] to protect the health, safety, and welfare of the people from the dangers of traffic in liquor." Therefore, the Act creates strict liability for licensees in Illinois.

Under the Illinois Dram Shop Act, plaintiffs can recover from licensees involved in the sale or gift of alcoholic beverages for damages after demonstrating:

1. Proof of sale or gift in Illinois;
2. Injuries sustained by a third party as a result of tortious act of the patron;
3. Proximate cause between the sale or gift and intoxication; AND
4. Intoxication is at least one cause of the third party's damages.

CAUSES OF ACTIONS – PARTIES TO ACTIONS

Every person who is **injured IN Illinois**, in person or property, by any intoxicated person, has a right of action in his or her name, severally or jointly against any person, licensed under the laws of Illinois or any other state to sell alcoholic liquor, who **by selling or giving** alcoholic liquor **CAUSES the intoxication** of the person who causes the injury(ies). Any person owning, renting, leasing or permitting the occupancy of any building or premises with knowledge that alcoholic liquors are to be sold at those premises, or who, if leased for another purpose, knowingly permits the sale of any alcoholic liquors at those premises 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 also lie for injuries to 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 here in above set out.

Thus, each person sustaining bodily injuries or property damage may sue in his/her own name for those elements of loss. In the case of married persons, each spouse is statutorily liable for the necessary medical expenses of the family. Thus, if an injured husband has substantial medical expenses, his wife can sue to recover them as property damage, since she would be liable to pay them under the Family Expense Act. Similarly, an injured child may need expensive medical care for which both parents are liable. Both parents can sue for these expenses as property damage. Since bodily injury recovery and property damage recoveries are currently capped, plaintiffs frequently use this concept to enlarge the potential damage awards. An injured husband who undergoes surgery can sue for his injury and recover the bodily injury cap. His wife can sue for the medical bills and recover the property damage cap. Of course, duplicate recoveries are not permitted. The husband would limit his "prayer for relief" to his pain and suffering, his lost wages and the nature and extent of his injury. His wife would claim the actual cost of medical treatment.

The Act requires that actions for injury to means of support be brought by the person injured in his own name for his own benefit and the benefit of all other persons injured in means of support. The recovery is for an aggregate amount that is capped and is shared proportionally by all persons dependent for their support on the injured provider. If more than one person is providing support, the aggregate recovery applies to each provider. Thus, if a mother and father are fatally injured and both provided monetary support to their children, two aggregate limits are exposed. By judicial construction, means of support is defined in terms of earnings and monetary contributions historically contributed by a provider. A mere expectancy of future support not presently provable is not actionable. For example, children of a father who has been ordered by the court to pay child support but has not done so have no legitimate claim for injury to means of support.

Loss of society and companionship as well as loss of personal or household services do not constitute injury to means of support. However, there is a recoverable cause of action for loss of society.

Loss of society means the mutual benefits that each family member receives from the other's continued existence, including love, affection, care, attention, companionship, comfort, guidance and protection. Family includes spouse, children, parents, brothers, and sisters. In conjunction with injury to means of support, the recovery is for an aggregate amount that is capped and is to be apportioned among all plaintiffs who sustain the loss.

DEFENSES AND LIMITATIONS

The Illinois Dram Shop Act itself does not describe any affirmative defenses. The Courts have, over the years, fashioned two such defenses. Both defenses are based on the concept that only an innocent party should recover. The first defense, complicity, requires proof that the plaintiff actively contributes to or procures the intoxication of the person(s) causing the injury. This has been held to include encouraging the drinking or by participating, to a material and substantial degree, in the drinking activity. It is not necessary to prove that the plaintiff actually purchased the liquor for the alleged inebriate. If complicity is proved, the cause of action fails.

The second affirmative defense, provocation, is currently recognized in three of the five Appellate Court Districts in Illinois, but has not been addressed, except by implication, by the Illinois Supreme Court. This defense requires proof that the plaintiff caused or provoked the alleged intoxicated person to harm the plaintiff. It is typically asserted as a defense in claims arising from "bar fights". It is not necessary to prove conduct which would entitle the inebriate to exercise a right of self defense. Extremely offensive conduct or "fighting words" may be sufficient to establish the defense, which, if proved, is a complete bar to recovery.

Other forms of plaintiff conduct, such as contributory negligence, comparative fault, and assumption of the risk, have not been held to bar recovery under the Illinois Dram Shop Act.

All causes of action must, as a condition precedent to recovery, be brought within one year of accrual. This applies even to minors and persons under a disability.

The Act has no extra-territorial effect. If the sale or gift of liquor is in Illinois but the injury occurs in another state, no cause of action accrues under the Act. However, if the gift or sale occurs in another state and the injury takes place in Illinois, the Act provides for recovery. Whether or not Illinois will be able to establish jurisdiction over an entity where the sale of alcohol is regulated by another state will undoubtedly depend on the contacts such entity has with Illinois.

To date, the courts have repeatedly stated that licensees who sell or give alcoholic beverages will only have responsibility as stated under the Dram Shop Act. In other words, the Dram Shop Act is the exclusive remedy for those who want to hold licensees responsible for their injuries as a result of the sale or gift of alcoholic beverages.

The Act provides that no cause of action exists for injuries to the person or property of the intoxicated person; nor shall anything in the act be construed to confer a cause of action for the loss of means of support or loss of society on the intoxicated person or on any person claiming to be supported by such intoxicated person or claiming the society of such person.

The Act provides that a licensed distributor or brewer whose ONLY CONNECTION with the furnishing of alcoholic liquor which is alleged to have caused intoxication was the furnishing or maintaining of any apparatus for the dispensing or cooling of beer is not liable. If such licensee is named as a defendant, a proper motion to dismiss shall be granted.

The Courts have ruled that those persons who own, rent or permit the occupancy of any building or premises with knowledge that alcoholic liquors are to be sold therein, but retain no right of management or control of the

building or premises, are NOT proper party defendants. Such is usually the case with land trusts and contract sellers. If such “landlord” is named as a defendant, a proper motion to dismiss shall be granted.

Statutorily, for all causes of action involving persons, entitled to recovery on or after January 20, 2010, the following recovery caps apply:

Injury in Person	\$60,247.68*	(applies per person)
Injury in Property	\$60,247.68*	(applies per person)
Injury in Means of Support OR		
Loss of Society	\$73,636.05*	(applies as an aggregate)

Every January 20, * these recovery limits shall be automatically 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. CPI-u means the index published by the Bureau of Labor Statistics of the United States Department of Labor that measures the average change in prices of goods and services purchased by all urban consumers.

CONTRIBUTION AND ALLOCATION OF LOSS AMONG DEFENDANTS

Dram shop actions were unknown at the common law and are purely a creature of statute. A dram shop action in Illinois is not an action sounding in tort. Instead it has been held by the Supreme Court to be *sui generis* – one of a kind. Since the Contribution Act applies only to actions sounding in tort, it does not apply in dram shop cases. Therefore, if a drunk driver causes injury and is sued at common law, she/he may not seek contribution from the tavern which caused his or her intoxication. Conversely, the tavern may not seek contribution from the drunk driver.

Despite the fact that the remedy of contribution is not available in dram shop cases, losses are still allocated among responsible parties. The courts have always adhered to the principle that for one injury there can only be one recovery. Thus, if a plaintiff recovers damages for personal injuries from a drunk driver and then sues the tavern, the tavern may assert as a set-off, against total damages, the full amount of the recovery. For instance, a plaintiff may settle his or her bodily injury claim against a drunk driver for a specified sum. If the plaintiff then sues the tavern for those same injuries, the tavern may assert the sum paid by the drunk driver as a set-off against the total amount of damages assessed for those injuries by the court. If a jury were to award X dollars for the injuries, the tavern would only have to pay X-the set-off, subject to the statutory caps. The set-off is always against total damages, not against the statutory liability cap.

Allocation of loss among more than one purveyor of liquor is done on a basis of joint and several liability. Each licensee found to be responsible is liable for all damages assessed, up to the statutory caps. However, each licensee is entitled to set-off for amounts paid by other settling licensees. This allocation is often done on an *ad hoc* basis among the licensees. If a plaintiff should choose not to sue one of the responsible licensees, the remedy of contribution is not available to the licensees which are sued.

CONCLUSION

In Illinois, those in the business of selling alcoholic beverages may be held responsible for the acts of their intoxicated patrons. As discussed above, the sole remedy for damages for injuries occurring in Illinois is that prescribed by the Illinois Dram Shop Act. In addition, there is potential liability for licensees if the injury(ies) occur in another state. The best method for the licensee to protect himself/herself is a Liquor Liability Policy. But, unfortunately for the licensee, the insurance policies providing protection for the exposures generated by the sale or gift of alcoholic beverages by those required to be licensed in Illinois are NOT uniform. Therefore, it is necessary to examine and analyze the various policy provisions of the different insurance companies to determine what is and is not “covered”! For more information concerning exposures to loss or insurance protection that should be provided, please contact me at 1-800-445-DRAM or AllenM@ilcasco.com .