

ACTIONS BASED ON STATUTES

150.00

DRAM SHOP ACT

PERMISSION TO PUBLISH GRANTED IN 2003.

INTRODUCTION

Section 6-21 of the Liquor Control Act of 1934 (the Dramshop Act) (235 ILCS 5/6-21 (2000)) 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 or loss of society, but not both, caused by an intoxicated person.

The plaintiff must prove that the intoxication was caused by consumption of liquor provided by a defendant and that the injury, property damage, or loss of means of support or loss of society was caused by the act of an intoxicated person. *Davis v. Oettle*, 43 Ill.App.2d 149, 193 N.E.2d 111 (4th Dist.1963); *Hernandez v. Diaz*, 31 Ill.2d 393, 202 N.E.2d 9 (1964); *Clifton v. Nardi*, 65 Ill.App.3d 344, 382 N.E.2d 514, 22 Ill.Dec. 194 (1st Dist.1978). The concept of causation is one commonly understood and the jury need not be instructed as to its meaning. *Kingston v. Turner*, 115 Ill.2d 445, 505 N.E.2d 320, 106 Ill.Dec. 14 (1987). More than one dram shop may cause a single intoxication. In order to “cause” the intoxication the liquor must be a material and substantial factor in the intoxication. There is no liability for providing a de minimus amount. However, two 12 ounce cans of beer sold immediately before the collision is sufficient. *Mohr v. Jilg*, 223 Ill.App.3d 217, 586 N.E.2d 807, 166 Ill.Dec. 849 (4th Dist.1992). See also *Kingston*. An example of an action is one brought as the result of a collision of a car driven by an intoxicated person with another car, injuring its driver and killing the passenger, the father of four. In that case, there would be injury to the person of the driver, to the property of the driver, and injury to the means of support of the family of the passenger or, at his election, loss of society.

The practitioner should consider whether there is a basis to seek recovery simultaneously for property damage, personal injury, and damage to means of support or loss of society. *Shiflett v. Madison*, 105 Ill.App.2d 382, 388-389, 245 N.E.2d 567, 570-571 (1969); *Kelly v. Hughes*, 33 Ill.App.2d 314, 179 N.E.2d 273 (2d Dist.1962). Separate recoveries can be obtained as to each of these types of damage where applicable, and statutory limitations upon the amount of recovery apply to each element separately and not to the aggregate amount recovered. However, a plaintiff must elect between loss of society and loss of means of support as the statute provides that the plaintiff may not recover for both. 235 ILCS 5/6-21(a) (1998). Note, however, that if more than one dram shop is liable, the limits apply to all dram shops liable as a group. In other words, dram shops cannot be “stacked.”

Pursuant to the Dram Shop Act, recovery is limited to \$15,000 for personal injury and property damage and \$20,000 for loss of support for actions arising prior to September 12, 1985.

However, for causes of action arising after that date, the limits of recovery have been raised by the 1985 amendment to the Dram Shop Act to \$30,000 for personal injury and property damage and \$40,000 for loss of support. Effective July 1, 1998, the limits were raised to \$45,000 for personal injury or property damage and \$55,000 for either loss of means of support or loss of society. Beginning in 1999 the amount is to be adjusted for inflation. It has been held that the legislature's increase in the liability limits did not change existing case law in regard to stacking. *Rinkenberger v. Cook*, 191 Ill.App.3d 508, 548 N.E.2d 133, 138 Ill.Dec. 903 (4th Dist.1989).

The dram shop litigant must also be aware of the types of expenditures which qualify as recoverable damages. As a general rule, medical expenses incurred on behalf of the injured person constitute personal injury damages, not property damage. *Thorsen v. City of Chicago*, 74 Ill.App.3d 98, 392 N.E.2d 716, 30 Ill.Dec. 61 (1st Dist.1979); *Rinkenberger v. Cook*, 191 Ill.App.3d 508, 548 N.E.2d 133, 138 Ill.Dec. 903 (4th Dist.1989). However, if the injured person is a minor or spouse physically injured by an intoxicated person, and the parent or non-injured spouse is obligated to pay the medical expenses under the family expense statute, 750 ILCS 65/15 (1994), these medical expenses may be considered property damage. *Thompson v. Tranberg*, 45 Ill.App.3d 809, 360 N.E.2d 108, 4 Ill.Dec. 361 (2d Dist.1977); *Kelly v. Hughes*, 33 Ill.App.2d 314, 179 N.E.2d 273 (2d Dist.1962); *Shepherd v. Marsaglia*, 31 Ill.App.2d 379, 176 N.E.2d 473 (2d Dist.1961); *Fortner v. Norris*, 19 Ill.App.2d 212, 153 N.E.2d 433 (3d Dist.1958).

In *Ragan v. Protko*, 66 Ill.App.3d 257, 383 N.E.2d 745, 22 Ill.Dec. 937 (5th Dist.1978), the court concluded that in order for a parent to recover for his adult child's medical and funeral expenses, he must be legally liable for the charges, and this liability must not arise due to a voluntary assumption of financial responsibility. *Maras v. Bertholdt*, 126 Ill.App.3d 876, 467 N.E.2d 599, 81 Ill.Dec. 728 (2d Dist.1984), also suggested (in dictum) that if the plaintiff-estate has paid the decedent's medical and funeral bills, the bills would be recoverable as property damage inasmuch as the estate has a legal obligation to pay the bills and suffered a loss of property.

Relying on *Demikis v. One Cent Club*, 319 Ill.App. 191, 48 N.E.2d 782 (1943), and *Shiflett v. Madison*, 105 Ill.App.2d 382, 245 N.E.2d 567 (1969), the court in *Maras v. Bertholdt*, supra, held that pain and suffering is an element recoverable as a personal injury. The Maras court further held that recovery for pain and suffering survives the death of the injured party, and that the plaintiff could recover for decedent's pain and suffering if the plaintiff could prove that the decedent consciously suffered pain following the accident. Prior to the 1998 amendment, loss of consortium was not recoverable under the Dram Shop Act. *Knierim v. Izzo*, 22 Ill.2d 73, 174 N.E.2d 157 (1961). Effective July 1, 1998, plaintiff may recover loss of society. 235 ILCS 5/6-21 (1998).

Recovery for loss of support under the Act is justified under the theory that a person actually contributing to support prior to the time of his death would likely have continued such support had he lived. *Angeloff v. Raymond*, 70 Ill.App.3d 594, 388 N.E.2d 1128, 27 Ill.Dec. 165 (2d Dist.1979). The law requires a showing that support was in fact rendered, and recovery cannot be based upon the future potential of support not presently provable. *Angeloff v. Raymond*, supra, *Penoyer v. Hare*, 76 Ill.App.3d 225, 394 N.E.2d 1082, 31 Ill.Dec. 764 (2d Dist.1979). Support must be measured by such tangibles as loss of wages and inability to continue to earn a living. *Stevens v. B & L Package Liquors, Inc.*, 66 Ill.App.3d 120, 383 N.E.2d 676, 22 Ill.Dec. 868 (5th Dist.1978). It need not be proven that the decedent had a legal obligation to support the plaintiff. Support actually received, though voluntarily contributed, is

sufficient and there need not be a legal claim to support. *Robertson v. White*, 11 Ill.App.2d 177, 136 N.E.2d 550 (1st Dist.1956).

Services rendered by a wife in performance of her household and domestic duties do not constitute a loss of means of support under the Act. Although there is a language in *Weiner v. Trasatti*, 19 Ill.App.3d 240, 311 N.E.2d 313 (1st Dist.1974), suggesting that domestic services are a means of support, the Illinois decisions since *Weiner* have continued to back away from that language. These courts construe the *Wiener* language as dicta, having no precedential value. See *Farmers State Bank & Trust Co. v. Lahey's Lounge, Inc.*, 165 Ill.App.3d 473, 519 N.E.2d 121, 116 Ill.Dec. 531 (4th Dist.1988) (summarizing decisions); *Wilberton v. Freddie's Pepper Box, Inc.*, 148 Ill.App.3d 319, 499 N.E.2d 615, 102 Ill.Dec. 58 (1st Dist.1986); *Maras v. Bertholdt*, 126 Ill.App.3d 876, 467 N.E.2d 599, 81 Ill.Dec. 728 (2d Dist.1984); *Penoyer v. Hare*, 76 Ill.App.3d 225, 394 N.E.2d 1082, 31 Ill.Dec. 764 (2d Dist.1979); *Martin v. American Legion Post No. 784*, 66 Ill.App.3d 116, 383 N.E.2d 672, 22 Ill.Dec. 864 (5th Dist.1978); *Stevens v. B & L Package Liquors, Inc.*, 66 Ill.App.3d 120, 383 N.E.2d 676, 22 Ill.Dec. 868 (5th Dist.1978). Means of support as defined in the post *Weiner* decisions relates to a party's wage earning potential and does not include maternal duties and domestic chores. Note however that the cases holding loss of society is not recoverable as part of loss of support have been affected by the statutory amendment effective July 1, 1998, allowing recovery for loss of means of support.

The presumption of loss existing under the Wrongful Death Act when beneficiaries are lineal next of kin does not exist under the Dram Shop Act. *Howlett v. Doglio*, 402 Ill. 311, 83 N.E.2d 708 (1949); *Knierim v. Izzo*, 22 Ill.2d 73, 174 N.E.2d 157 (1961).

In addition to those statutory amendments noted above, other amendments of significance to the Dram Shop Act occurred in 1965, 1971, 1986 and 1998. The 1965 Amendment allowed a person who was injured in means of support to maintain a loss of support action in his own name, even if the person providing the support was alive at the time the action was brought. Prior to 1965, the person providing the support was a necessary party in such cases. See *Simmons v. Hendricks*, 32 Ill.2d 489, 207 N.E.2d 440 (1965).

The 1971 amendment eliminated the words "in whole or in part" from the first sentence of the Act. Prior to the 1971 amendment, liability was imposed upon any defendant who "by selling or giving alcoholic liquor has caused the intoxication, in whole or in part, of such person ..." Thus, a dram shop plaintiff must now prove that the defendant dram shop "caused" the intoxication of the allegedly intoxicated person. The amendment established a requirement that the charged defendant must have done more than furnish a negligible amount of intoxicating liquor. *Kingston v. Turner*, 115 Ill.2d 445, 457; 505 N.E.2d 320, 325; 106 Ill.Dec. 14, 19 (1987); *Caruso v. Kazense*, 20 Ill.App.3d 695, 697, 313 N.E.2d 689, 691 (3d Dist.1974); *Nelson v. Araiza*, 69 Ill.2d 534, 372 N.E.2d 637, 14 Ill.Dec. 441 (2d Dist.1977); *Henry v. Bloomington Third Ward Community Club*, 89 Ill.App.3d 106, 411 N.E.2d 540, 44 Ill.Dec. 418 (4th Dist.1980). However, more than one dram shop can be liable if more than one "caused" the intoxication. *Thompson v. Tranberg*, 45 Ill.App.3d 809, 812; 360 N.E.2d 108, 111; 4 Ill.Dec. 361, 364 (2d Dist.1977).

A 1986 amendment provides that anyone at least 21 years old, who pays for a hotel or motel room or facility knowing that such place is to be used by anyone under 21 for the unlawful consumption of liquor and such consumption causes the intoxication of the person under 21, shall be liable to anyone who is injured by the intoxicated person. 235 ILCS 5/6-21.

The 1998 amendment increased the limits, provided for limit “indexing” and allowed for recovery for loss of means of support. The definition of loss of means of support is identical to the language of IPI 31.11. The Dram Shop Act itself contains a one-year limitations period. 235 ILCS 5/6-21 (1998). This restriction is statutory and not subject to the general provisions of the Limitations Act (735 ILCS 5/13-101 et seq. (1994)). The dram shop limitations period is not tolled for injuries to minors. *Seal v. American Legion Post No. 492*, 245 F.2d 908 (7th Cir.1957); *Lowrey v. Malkowski*, 20 Ill.2d 280, 170 N.E.2d 147 (1960); cert. denied, 365 U.S. 879, 81 S.Ct. 1029, 6 L.Ed.2d 191 (1961); *Demchuk v. Duplancich*, 92 Ill.2d 1, 440 N.E.2d 112, 64 Ill.Dec. 560 (1982). Nor is it equitably tolled merely because discovery could not be obtained because of a driver's invocation of the fifth amendment based on pending criminal charges. *Bradford v. Soto*, 159 Ill.App.3d 668, 512 N.E.2d 765, 111 Ill.Dec. 376 (2d Dist.1987).

The Dram Shop Act has limited extra-territorial effect. Thus, no cause of action arises under the Act for injuries occurring outside the State of Illinois, even though the gift or sale of alcoholic liquors which caused the occurrence may have occurred within this state and the person harmed is a resident of Illinois. *Graham v. General U.S. Grant Post No. 2665*, V.F.W., 43 Ill.2d 1, 248 N.E.2d 657 (1969); *Colligan v. Cousar*, 38 Ill.App.2d 392, 187 N.E.2d 292 (1st Dist.1963); *Eldridge v. Don Beachcomber, Inc.*, 342 Ill.App. 151, 95 N.E.2d 512 (1st Dist.1950). This holding was codified by Public Act 84-1381, effective September 12, 1986, which explicitly provided that only persons injured “within this state” have a cause of action under the Dram Shop Act. However, that same amendment to the Act states that a cause of action can be maintained against any person, “licensed under the laws of this state or of any other state to sell alcoholic liquor,” who sells or gives liquor “within or without the territorial limits of this state.” Thus, although a prerequisite to a cause of action is that the injury occur within Illinois, a sale of liquor outside of Illinois causing injury within Illinois is now actionable under the Illinois Dram Shop Act. This 1986 amendment statutorily overrules prior cases (e.g., *Wimmer v. Koenigseder*, 108 Ill.2d 435, 484 N.E.2d 1088, 92 Ill.Dec. 233 (1985)) which held that no cause of action arises for injuries occurring in Illinois following the sale of alcoholic liquors outside of Illinois to Illinois residents.

An insurance carrier which has paid first party benefits to the injured victim has the right, as subrogee of an injured party, to bring an action against the responsible dram shop. *Dworak v. Tempel*, 17 Ill.2d 181, 161 N.E.2d 258 (1959).

An intoxicated person has no cause of action for his own injuries. *Holmes v. Rolando*, 320 Ill.App. 475, 51 N.E.2d 786 (4th Dist.1943); *Monsen v. DeGroot*, 130 Ill.App.3d 735, 475 N.E.2d 5, 86 Ill.Dec. 199 (1st Dist.1985). Contributory negligence is not a defense in dram shop cases. *Merritt v. Chonowski*, 58 Ill.App.3d 192, 373 N.E.2d 1060, 15 Ill.Dec. 588 (3d Dist.1978). Also, the doctrine of comparative negligence has not been recognized in a dram shop action. *Reeves v. Brno, Inc.*, 138 Ill.App.3d 861, 486 N.E.2d 405, 93 Ill.Dec. 304 (2d Dist.1985). Furthermore, the Dram Shop Act does not create tort liability for purposes of the Contribution Act, since the liability created by the Dram Shop Act does not sound in tort. *Hopkins v. Powers*, 113 Ill.2d 206, 497 N.E.2d 757, 100 Ill.Dec. 579 (1986); *Jodelis v. Harris*, 118 Ill.2d 482, 517 N.E.2d 1055, 115 Ill.Dec. 369 (1987).

The Dram Shop Act provides the sole remedy against tavern operators and owners of tavern premises for any injury caused by an intoxicated person or in consequence of intoxication. *Knierim v. Izzo*, 22 Ill.2d 73, 174 N.E.2d 157 (1961); see also *Hopkins v. Powers*, 113 Ill.2d 206,

497 N.E.2d 757, 100 Ill.Dec. 579 (1986). However, the Dram Shop Act does not insulate a tavern owner from all potential common law liability. Thus, a tavern keeper has a duty to see that his guests are free from annoyance of injury as much as any possessor of land must act as a reasonable man in avoiding harm to invitees from negligence or even intentional attacks of third persons. *Lessner v. Hurtt*, 55 Ill.App.3d 195, 371 N.E.2d 125, 13 Ill.Dec. 430 (2d Dist. 1977). It has been held that this duty of a tavern keeper to a patron is a “high duty of care.” *Hayes v. O'Donnell*, 76 Ill.App.3d 695, 395 N.E.2d 184, 32 Ill.Dec. 237 (2d Dist. 1979). While the tavern owner's duty may decrease when the patron leaves the bar, the tavern operator is in a special relationship with third persons on his premises and has a duty to take reasonable action to protect invitees from foreseeable damages caused by third persons. *St. Phillips v. O'Donnell*, 137 Ill.App.3d 639, 484 N.E.2d 1209, 92 Ill.Dec. 354 (2d Dist. 1985). The tavern keeper must take reasonable affirmative action to protect against misconduct of third parties, when the danger is apparent and the circumstances are such as to put a prudent person on notice of the probability of danger. *Yangas v. Charlie Club, Inc.*, 113 Ill.App.3d 398, 447 N.E.2d 484, 69 Ill.Dec. 267 (3d Dist. 1983). See also *Osborne v. Stages Music Hall, Inc.*, 312 Ill.App.3d 141, 726 N.E.2d 728, 244 Ill.Dec. 753 (1st Dist. 2000).

A tavern keeper may be liable to his business invitees on the same basis as any other owner or occupier of property, even though the sale and consumption of alcoholic beverages may have been a factor in the injury. In *Harris v. Gower, Inc.*, 153 Ill.App.3d 1035, 506 N.E.2d 624, 106 Ill.Dec. 824 (5th Dist. 1987), a complaint alleging that the tavern owners negligently removed an unconscious and intoxicated patron from the tavern and placed him in his car where he subsequently froze to death was held to state a cause of action for common-law negligence rather than negligence in the sale of intoxicating liquor, and thus was not barred by the existence of the Dram Shop Act as the exclusive remedy against tavern owners for injuries resulting from intoxication.

The two defenses which were generally recognized are commonly referred to as “complicity” and “provocation.” Earlier cases based the defense of complicity on the proposition that a plaintiff cannot recover for injuries or damage inflicted by an intoxicated person when the plaintiff contributes to a material and substantial degree to the intoxication. *Osinger v. Christian*, 43 Ill.App.2d 480, 193 N.E.2d 872 (1st Dist. 1963); *Holcomb v. Hornback*, 51 Ill.App.2d 84, 200 N.E.2d 745 (4th Dist. 1964). In *Nelson v. Araiza*, 69 Ill.2d 534, 543; 372 N.E.2d 637, 641; 14 Ill.Dec. 441, 445 (1978), a number of inconsistent judicial definitions and applications of the complicity doctrine were “distilled” into this rule of law: “only one who actively contributes to or procures the intoxication of the inebriate is precluded from recovery.” See also *Parsons v. Veterans of Foreign Wars Post 6372*, 86 Ill.App.3d 515, 408 N.E.2d 68, 41 Ill.Dec. 722 (5th Dist. 1980). Following *Nelson*, there were several decisions that seemed to authorize other definitions of complicity. In *Walter v. Carriage House, Hotels Ltd.*, 164 Ill.2d 80, 646 N.E.2d 599, 207 Ill.Dec. 33, (1995), the Supreme Court noted the bright line drawn by the *Nelson* court and found that IPI 150.17 did not reflect the law following *Nelson*. IPI 150.17 has been amended to follow *Nelson*.

Whether or not a plaintiff is barred by his conduct under the doctrine of complicity is generally a question of fact for the jury. Complicity is an affirmative defense which must be raised by the defendant. *Goodknight v. Piraino*, 197 Ill.App.3d 319, 554 N.E.2d 1, 7; 143 Ill.Dec. 208, 214 (4th Dist. 1990); cf. *Darguzas v. Robinson*, 162 Ill.App.3d 362, 515 N.E.2d 451, 452; 113 Ill.Dec. 642, 643 (2d Dist. 1987) (referring to the “affirmative defense of complicity”).

Since complicity is not predicated on the plaintiff's contribution to his injury, but only upon his contribution to the intoxication, the question arises as to whether or not provocation is a defense to a claim under the Illinois Liquor Control Act. In *Nelson v. Araiza*, 69 Ill. 2d 534, 372 N.E.2d 637, 14 Ill.Dec. 441 (1978), the Illinois Supreme Court held that since the Illinois Liquor Control Act was not predicated on negligence, contributory negligence was not a defense in a dramshop case, and held that the doctrine of complicity was an affirmative defense under the Act. The Nelson court did not specifically address the issue of provocation. Before and after Nelson, but preceding *Walter v. Carriage House Hotels*, 164 Ill.2d 80, 646 N.E.2d 599, 207 Ill.Dec. 33 (1995), a variety of cases held under the old Act that provocation was an affirmative defense which must be raised by the defendant. *Tresch v. Nielsen*, 57 Ill.App.2d 469, 207 N.E.2d 109 (1st Dist. 1965); *Williams v. Franks*, 11 Ill.App.3d 937, 298 N.E. 401 (1st Dist. 1973); *Aiken v. J.R.'s Lounge, Inc.*, 158 Ill.App.3d 834, 512 N.E.2d 130, 111 Ill.Dec. 226 (3rd Dist. 1987); *Gilman v. Kessler*, 192 Ill.App.3d 630, 548 N.E.2d 1371, 139 Ill.Dec. 657 (2nd Dist. 1989).

However, *Galyean v. Duncan*, 125 Ill.App.3d 464, 466 N.E.2d 264, 80 Ill.Dec. 812 (5th Dist. 1984), held that provocation was not a defense to the Act, refusing a defendant's proposed instructions on provocation. But see *Werner v. Nebal*, 377 Ill.App.3d 447, 878 N.E.2d 811, 316 Ill.Dec. 89 (1st Dist. 2007) (refusing an instruction on the issue of provocation because the facts did not warrant it, but stated that provocation is an affirmative defense under the Act.)

Charitable organizations selling liquor are liable, as is a trustee operating a dram shop pursuant to testamentary direction. *Klopp v. Benevolent Protective Order of Elks*, 309 Ill.App. 145, 33 N.E.2d 161 (3d Dist.1941); *Moran v. Katsinas*, 17 Ill.App.2d 423, 150 N.E.2d 637 (3d Dist. 1958), *aff'd*, 16 Ill.2d 169, 157 N.E.2d 38 (1959). However, a trustee under a land trust is not liable under the Dram Shop Act. *Wendt v. Myers*, 59 Ill.2d 246, 319 N.E.2d 777 (1974); *Robinson v. Walker*, 63 Ill.App.2d 204, 211 N.E.2d 488 (1st Dist. 1965).

Because the Dram Shop Act is designed to regulate the liquor traffic as a business, it does not apply to an individual who serves intoxicants to his guests. *Cruse v. Aden*, 127 Ill. 231, 20 N.E. 73 (1889); *Blackwell v. Fernandez*, 324 Ill.App. 597, 59 N.E.2d 342 (1st Dist. 1945). Thus, social hosts whose guests became intoxicated are not liable under the Act. *Miller v. Moran*, 96 Ill.App.3d 596, 421 N.E.2d 1046, 52 Ill.Dec. 183 (4th Dist. 1981); *Richardson v. AnSCO, Inc.*, 75 Ill.App.3d 731, 394 N.E.2d 801, 31 Ill.Dec. 599 (3d Dist. 1979); *Heldt v. Brei*, 118 Ill.App.3d 798, 455 N.E.2d 842, 74 Ill.Dec. 413 (1st Dist. 1983); *Wienke v. Champaign County Grain Ass'n*, 113 Ill.App.3d 1005, 447 N.E.2d 1388, 69 Ill.Dec. 701 (4th Dist. 1983); *Puckett v. Mr. Lucky's, Ltd.*, 175 Ill.App.3d 355, 357; 529 N.E.2d 1169, 1170; 125 Ill.Dec. 93, 94 (4th Dist. 1988). The Act has also been held not to be applicable to a noncommercial supplier and employer who served intoxicating liquor to his minor employee. *Martin v. Palazzolo Produce Co.*, 146 Ill.App.3d 1084, 497 N.E.2d 881, 100 Ill.Dec. 703 (5th Dist.1986).

Illinois does not recognize a common law action for negligently furnishing alcoholic beverages which cause intoxication and result in injury. See e.g., *Puckett v. Mr. Lucky's, Ltd.*, 175 Ill.App.3d 355, 357-358; 529 N.E.2d 1169, 1170-1171; 125 Ill.Dec. 93, 94-95 (4th Dist. 1988) (holding that there is no common law right to recover against a tavern for giving away or selling intoxicating liquor because the Dram Shop Act provides the exclusive source of such liability); but see *Quinn v. Sigma Rho Chapter of Beta Theta Pi Fraternity*, 155 Ill.App.3d 231, 237; 507 N.E.2d 1193, 1197-1198; 107 Ill.Dec. 824, 828-829 (4th Dist. 1987), recognizing that the furnishing of intoxicating beverages to underage persons does not of itself create a legal duty

necessary for the establishment of a common law negligence action, but also finding that a fraternal organization may be held liable in negligence, under appropriate circumstances, for foreseeable injuries sustained by membership applicants required to engage in illegal and excessively dangerous activities.

Comments, instructions and related notes to “in consequence” actions have been omitted in that they apply only to causes of action accruing before 9/12/85. In the event a practitioner should need to review those, they are in the 1995 edition.

Introduction revised October 2008.

150.01 Dram Shop Act--Injury to Person or Property by an Intoxicated Person

There was in force in the State of Illinois at the time of the occurrence in question a statute called the Dram Shop Act providing that every person who shall be injured in person or property by any intoxicated person as a result of his intoxication shall have a right of action [in his own name] against any person who shall, by selling or giving alcoholic liquor, have caused the intoxication of such intoxicated person.

Notes on Use

This instruction is to be used when the seller alone is sued for injury to person or property by an intoxicated person. This instruction should be given with IPI 150.02 (elements), IPI 150.15 (defining intoxicated), and, if necessary IPI 150.16 (defining alcoholic liquor). These dramshop instructions should be used with as much of IPI 30.01-30.16 on damages as is applicable under the pleadings and proof. IPI 30.01 should be changed from “have resulted from the negligence [wrongful conduct] of the defendant” to “caused by the intoxicated person.”

150.02 Dram Shop Act--Issue/Burden of Proof

[In this lawsuit] [In Count _____,] plaintiff [(name)] claims [(he/she)] is entitled to recover damages from the defendant. The plaintiff must prove:

First, [(allegedly intoxicated person)] was intoxicated at the time of the [(e.g., collision)].

Second, the defendant, his agents or servants, sold or gave intoxicating liquor consumed by [(allegedly intoxicated person)].

Third, the liquor thus consumed caused the intoxication of [(allegedly intoxicated person)].

Fourth, [(allegedly intoxicated person)]'s intoxication was at least one cause of the occurrence in question.

Fifth, as a result of the occurrence, plaintiff suffered [injury] [damage to his property].

If you find from your consideration of all the evidence that each of these propositions has been proved, then your verdict should be for the plaintiff. But if, on the other hand, you find from your consideration of all the evidence that any of these propositions has not been proved, then your verdict should be for the defendant.

Instruction and Notes on Use revised May 2009.

Notes on Use

This instruction lists the elements in a cause of action against the seller alone for injury to person or property by an intoxicated person. Therefore, it is to be used with IPI 150.01. The addition of the last paragraph to this instruction is to advise the jury of the effect of their finding of the evidence and eliminates the need to give IPI 21.02 as a separate instruction.

Comment

While the defendant's actions must be a "material and substantial factor" in causing the intoxication (*Thompson v. Tranberg*, 45 Ill.App.3d 809, 360 N.E.2d 108, 4 Ill.Dec. 361 (2d Dist. 1977)), the Illinois Supreme Court held that the use of the Thompson language in a jury instruction was "confusing," "uninstructive" and "unnecessary." *Kingston v. Turner*, 115 Ill.2d 445, 461; 505 N.E.2d 320, 327; 106 Ill.Dec. 14, 21 (1987). The word "causes" is not a "technical legal term requiring definition" and "has a commonly understood meaning familiar to any jurors," and therefore it was inappropriate to define it using the Thompson language. *Id.* at 459-60, 505 N.E.2d at 326-327, 106 Ill.Dec. at 20, 21 (quoting in part *Caruso v. Kazense*, 20 Ill.App.3d 695, 697; 313 N.E.2d 689, 691 (3d Dist. 1974)). Pursuant to the Supreme Court's guidance, the word "caused" in element 3 will remain unmodified and undefined.

150.03 Dram Shop Act--Injury to Means of Support by an Intoxicated Person--Seller Sued

There was in force in the State of Illinois at the time of the occurrence in question a statute called the Dram Shop Act providing that every person who shall be injured in [means of support] [loss of society] by an intoxicated person or persons shall have a right of action against any person or persons who shall, by selling or giving alcoholic liquor, have caused the intoxication of such intoxicated person

[The suit is brought in the name of [plaintiff's name], for the exclusive benefit of [those claiming loss of support], the person(s) who claim(s) to have been injured in (his) (their) means of support, and (he) (they) (is) (are) the real (party) (parties) in interest.]

Notes on Use

This instruction is to be used when the seller alone is sued for injury to means of support or loss of society caused by an intoxicated person. A plaintiff cannot recover for both loss of society and loss of means of support.

This instruction should be given with IPI 150.04 (elements of cause of action), IPI 150.15 (defining intoxicated), IPI 150.14 (defining means of support), IPI 31.11 (defining loss of society), IPI 150.13 (damage for injury to means of support), and, if necessary, IPI 150.16 (defining alcoholic liquor).

Comment

The instruction is based on that part of 235 ILCS 5/6-21 (1998), which applies in cases of injury to means of support caused by an intoxicated person. Generally, the act of the intoxicated person must be a tort for which he would be liable at common law. *Hill v. Alexander*, 321 Ill.App. 406, 427, 53 N.E.2d 307, 316 (1st Dist. 1944).

150.04 Dram Shop Act--Issue/Burden of Proof--Loss of Means of Support or Society

[In this lawsuit] [In Count _____,] plaintiff [(name)] claims [(name)] is entitled to recover damages from the defendant. The plaintiff must prove:

First, [(allegedly intoxicated person)] was intoxicated at the time of the [(e.g., collision)].

Second, the defendant, his agents or servants, sold or gave intoxicating liquor consumed by [(allegedly intoxicated person)].

Third, the liquor consumed caused the intoxication of [(allegedly intoxicated person)].

Fourth, [(allegedly intoxicated person)]'s intoxication was at least one cause of the [injury] [death] of [(name)].

Fifth, as a result of the occurrence, [plaintiff's name] [names of real parties in interest] [has] [have] suffered [injury to [his] [their] means of support] [a loss of society].

If you find from your consideration of all the evidence that each of these propositions has been proved, then your verdict should be for the plaintiff. But if, on the other hand, you find from your consideration of all the evidence that any of these propositions has not been proved, then your verdict should be for the defendant.

Instruction and Notes on Use revised May 2009.

Notes on Use

This instruction defines the elements necessary to be proved when a seller alone is sued for injury to means of support or loss of society caused by an intoxicated person. It should be given with IPI 150.03. The addition of the last paragraph to this instruction is to advise the jury of the effect of their finding of the evidence and eliminates the need to give IPI 21.02 as a separate instruction. If loss of society is an issue, IPI 31.11 should be used.

Comment

See Comment to IPI 150.02.

150.07 Dram Shop Act--Joint Liability of Owner, Lessor, etc.

The Dram Shop Act also provides that any person owning, renting, leasing or permitting the occupation of any building or premises, and having knowledge that alcoholic liquors are to be sold therein or who, having leased the same for other purposes, shall knowingly permit the sale therein of alcoholic liquors that have caused the intoxication of any person, shall be liable jointly with the person selling or giving alcoholic liquors.

Notes on Use

This instruction is to be used where both seller and another (such as the owner, lessor, etc.) are sued. It should be given with other instructions according to the theory of liability. For example:

(a) Injury to person or property by an intoxicated person, give with IPI 150.01 and IPI 150.09.

(b) Injury to means of support by an intoxicated person, give with IPI 150.03 and IPI 150.11.

Pursuant to an amendment to the Dram Shop Act, effective September 12, 1985, there is no cause of action under the Act for loss of means of support to dependents of the intoxicated person himself or by any person claiming to be supported by such intoxicated person.

In addition, in all three instances use IPI 150.15 (defining intoxicated) and, if necessary, IPI 150.16 (defining alcoholic liquor). Finally, if the injury is to means of support, IPI 150.14 (defining means of support) and IPI 150.13 (damages for means of support) should also be given. IPI 31.11 (defining loss of society) should be given if that is the loss claimed.

150.08 Dram Shop Act--Injury to Person or Property--Only Owner, Lessor, etc. Sued-- Statutory Provisions

There was in force in the State of Illinois at the time of this occurrence a statute called the Dram Shop Act providing that any person owning, renting, leasing or permitting the occupation of any building or premises and having knowledge that alcoholic liquors were to be sold therein, or who having leased the same for other purposes, shall knowingly permit the sale therein of alcoholic liquors, and if the sale or gift of alcoholic liquors in those premises has caused the intoxication of any person, then every person injured in person or property by the intoxicated person shall have a right of action [in (his)(her) own name] against the person owning, renting, leasing or permitting the premises to be so used for the sale or gift of alcoholic liquors.

Notes on Use

This instruction is to be used where the owner or another alone is sued for injury to person or property caused by an intoxicated person. It should be given with IPI 150.09 (elements of the cause of action), IPI 150.15 (defining intoxicated) and, if necessary, IPI 150.16 (defining alcoholic liquor). These dramshop instructions should be used with as much of IPI 30.01-30.16 on damages as is applicable under the pleadings and proof. IPI 30.01 should be changed from “have resulted from the negligence [wrongful conduct] of the defendant” to “caused by the intoxicated person.”

150.09 Dram Shop Act--Burden of Proof--Injury to Person or Property by an Intoxicated Person--Tavern Operator and Property Owner Both Sued

[In this lawsuit] [In Count _____,] plaintiff [(name)] claims [(name)] is entitled to recover damages from the defendant. The plaintiff must prove:

First, [(name of intoxicated person)] was intoxicated at the time of the [(e.g., collision)].

Second, the defendant [(tavern operator)], or his agents or servants, sold or gave intoxicating liquors consumed by [(name of intoxicated person)].

Third, the liquor thus consumed caused the intoxication of [(name of intoxicated person)].

Fourth, [(intoxicated person)] intoxication was at least one cause of the occurrence in question.

Fifth, as a result of the occurrence, plaintiff suffered [injury] [damage to his property].

In the case against the defendant [name of property owner], the plaintiff has the burden of proving all the foregoing foregoing propositions and also must prove the further proposition that the defendant [name of property owner] [either] [owned], [rented], [leased] [or] [permitted the occupation of] the premises [knowing that alcoholic liquors were to be sold there] [or] [although (owning), (renting), (leasing) (or) (permitting the occupation of) the premises for purposes other than selling alcoholic liquors, knowingly permitted them to be sold there].

Notes on Use

This instruction lists the elements which must be proved in a suit for injury to person or property by an intoxicated person.

The instruction should be given with IPI 150.07 if the owner and seller are sued jointly. In that case identify the defendants by name in elements two and three.

The instruction should be given with IPI 150.08 if the owner is sued alone. In that case omit the bracketed material in element three.

These dramshop instructions should be used with as much of IPI 30.01-30.16 on damages as is applicable under the pleadings and proof. IPI 30.01 should be changed from “have resulted from the negligence [wrongful conduct] of the defendant” to “caused by the intoxicated person.” You must also use an appropriate “effects of finding” instruction (i.e. 20.02) and a conclusion (i.e. 20.02(b) or 150.17) if complicity is plead.

Comment

See Comment to IPI 150.02.

150.10 Dram Shop Act--Injury to Means of Support--Loss of Society--Only Owner, Lessor, etc. Sued

There was in force in the State of Illinois at the time of the occurrence in question a statute called the Dram Shop Act providing that every person who shall [be injured in means of support] [suffer a loss of society] by an intoxicated person shall have a right of action against any person owning, renting, leasing or permitting the occupation of any building or premises and having knowledge that alcoholic liquors were to be sold therein or who having leased the same for other purposes shall knowingly permit the sale therein of alcoholic liquors that have caused the intoxication of such intoxicated person.

[The suit is brought in the name of [plaintiff's name] for the exclusive benefit of [those claiming loss of support], the person(s) who claim(s) to have been injured in (his) (their) means of support, and (he) (they) (is) (are) the real (party) (parties) in interest.]

Notes on Use

This instruction is to be used where the owner or lessor alone is sued for injury to means of support by the intoxicated person.

This instruction should be given with IPI 150.11.

In addition, it should be used with IPI 150.15 (defining intoxicated), IPI 150.14 (defining means of support), and IPI 150.13 (damages for injury to means of support), and, if necessary, IPI 150.16 (defining alcoholic liquors).

150.11 Dram Shop Act--Burden of Proof--Injury to Means of Support by an Intoxicated Person--Tavern Operator and Property Owner Both Sued

[In this lawsuit] [In Count _____,] plaintiff [(name)] claims [(name)] is entitled to recover damages from the defendant. The plaintiff must prove:

First, [(name of intoxicated person)] was intoxicated at the time of the [(e.g., collision)].

Second, the defendant [(tavern operator)], or his agents or servants, sold or gave intoxicating liquors consumed by [(name of intoxicated person)].

Third, the liquor thus consumed caused the intoxication of [(name of intoxicated person)].

Fourth, [(intoxicated person)] intoxication was at least one cause of [(injured person)]'s [injury] [death].

Fifth, as a result of the occurrence, [(plaintiff's name)] [one or more of the following: [(names of real parties in interest)]] [has] [have] suffered [injury] [to (his) (their) means of support] [damage to his property].

In his case against the defendant [name of property owner], the plaintiff has the burden of proving all of the foregoing propositions and also must prove the further propositions that the defendant [name of property owner] [either] [owned], [rented], [leased] [or] [permitted the occupation of] the premises knowing that alcoholic liquors were to be sold there [or] [although (owning), (renting), (leasing) (or) (permitting the occupation of) the premises for purposes other than selling alcoholic liquors, knowingly permitted them to be sold there].

Notes on Use

This instruction sets forth the elements in a cause of action for injury to means of support or loss of society by the intoxication of a person.

The instruction should be given with IPI 150.07 if the owner and seller are sued jointly.

The instruction should be given with IPI 150.10 if the owner is sued alone. IPI 31.11 (defining loss of society) should be given if that is the loss claimed. Appropriate effect of findings instruction and a concluding paragraph are also required.

Comment

See Comment to IPI 150.02.

150.13 Dram Shop Act--Damages--Apportionment--Means of Support--Loss of Society

If you decide for the plaintiff on the question of liability, you must then fix the total amount of money which will reasonably and fairly compensate the person[s] you find [has] [have] suffered [loss to [his] [their] means of support] [for their loss of society], for such loss.

[You should also state the proportions in which the amount shall be distributed among those persons.]

Notes on Use

Use the second paragraph if more than one person claims loss of support and if plaintiff requests that the jury apportion the damages. In that case, a verdict form must also be submitted which includes the names of the claimants and a line for each on which the jury can fill in the amount awarded to that person. The Committee recommends that the verdict form use dollar amounts rather than percentages.

IPI 41.04 may be used with this instruction if there are two or more defendants.

IPI 150.14 should be used to define means of support. IPI 31.11 defines loss of society.

Comment

Prior to the September 12, 1985, amendment to the Dram Shop Act, the amount that can be recovered for loss of support resulting from an injury to the person furnishing support is an aggregate of \$20,000. Under the September 12, 1985, amendment, the amount that can be recovered for loss of support resulting from an injury to the person furnishing support is an aggregate of \$40,000. Effective on July 1, 1998, this was raised to \$55,000 and added an alternative to recover loss of society but not both. This is true regardless of the fact that several persons claim loss of support. See *Moran v. Katsinas*, 16 Ill.2d 169, 157 N.E.2d 38 (1959).

No special instructions as to the dollar limits on recovery may be given the jury. 235 ILCS 5/6-21 (1994).

235 ILCS 5/6-21 (1998) provides in part that the amount awarded, “shall be distributed to such persons in the proportions determined by the judgment or verdict rendered in the action.” Therefore, because of the inclusion of the words “or verdict,” it seems proper either for the jury in its verdict or the court after the verdict to allocate the sum among the persons claiming loss of support. The defendant or defendants cannot object that the jury has not made an allocation because this determination is a matter between the beneficial plaintiffs in which the defendants have no real interest. *Peters v. Kamiczaitis*, 161 Ill.App. 575 (3d Dist. 1911).

A jury may not return a verdict apportioning damages between joint defendants, as for example, between the first tavern and the last tavern where the intoxicated person was served liquor. *Schwehr v. Badalamenti*, 14 Ill.App.2d 128, 134-136; 143 N.E.2d 558, 561-562 (4th Dist. 1957).

150.14 Dram Shop Act--"Means of Support"--Defined

The phrase, "means of support" includes the necessities of life, and comforts as well. Whatever lessens or impairs the ability to supply the necessities of life and suitable comforts which might reasonably be expected from the person who furnished support, considering his occupation and capacity for earning money, may be regarded as lessening or impairing the "means of support" referred to in these instructions.

Comment

Under the September 12, 1985, amendment to the Dram Shop Act, there is no cause of action remaining under the Act for loss of means of support to dependents of the intoxicated person himself or by any person claiming to be supported by such intoxicated person. For causes of action arising after that amendment, therefore, this instruction only has applicability for loss of means of support caused by an intoxicated person.

In *McMahon v. Sankey*, 133 Ill. 636, 24 N.E. 1027 (1890), the court approved an instruction similar to this one and also approved deleting from another instruction the question of whether the person injured in means of support was financially independent. No definite basis for estimating damages need be proved, nor need there be a legal liability for support. *Pearson v. Renfro*, 320 Ill.App. 202, 50 N.E.2d 598 (2d Dist. 1943) (injured sons contributed to parent's household expenses); *Herring v. Ervin*, 48 Ill.App. 369 (3d Dist. 1892).

Possible prospective support is not sufficient. See the Introduction.

150.15 Dram Shop Act—“Intoxicated” Defined

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.

Notes on Use

This instruction may also be used in negligence or other cases in which intoxication is claimed. See IPI 12.01.

Comment

This instruction was approved in *Navarro v. Lerman*, 48 Ill.App.2d 27, 36, 198 N.E.2d 159, 162-163 (1st Dist. 1964). See also *Woolley v. Hafner's Wagon Wheel, Inc.*, 22 Ill.2d 413, 420; 176 N.E.2d 757, 760-761 (1961).

150.16 Dram Shop Act—“Alcoholic Liquor” Defined

The term “alcoholic liquor” means and includes every liquid or solid containing alcohol, wine, beer, or spirits including brandy, rum, whiskey, and gin and capable of being consumed as a beverage by a human being, but does not mean or include any such liquid or solid which contains one-half of one per cent, or less, of alcohol, by volume.

Comment

The definition is based on 235 ILCS 5/1-3.01 to 5/1-3.05 (1994), especially the latter. An instruction in the words of the statute was approved in *Cox v. Hrasky*, 318 Ill.App. 287, 295; 47 N.E.2d 728, 732 (4th Dist. 1943).

150.17 Dram Shop Act—Affirmative Defense--Complicity

[In this lawsuit][In Count ____] the defendant claims the plaintiff should not recover because of plaintiff's conduct in causing [(allegedly intoxicated person)]'s intoxication. To establish this defense the defendant must prove the plaintiff actively contributed to or procured the intoxication of [(allegedly intoxicated person)].

If you find the plaintiff actively contributed to or procured the intoxication of [(allegedly intoxicated person)], then your verdict should be for the defendant.

Instruction, Notes on Use and Comment revised May 2009.

Notes on Use

Use in conjunction with the issue/burden of proof instruction IPI 150.02 and/or 150.04.

Comment

This is the only definition of complicity after *Nelson v. Araiza*, 69 Ill.2d 534, 372 N.E.2d 637, 14 Ill.Dec. 441 (1978). There the court enumerated why the other previous alternatives including provocation were not complicity.

After *Nelson*, several appellate cases seemed to adopt pre-*Nelson* definitions of complicity. In *Walter v. Carriage House Hotels, Ltd.*, 164 Ill.2d 80, 646 N.E.2d 599, 207 Ill.Dec. 33 (1995), the Supreme Court again dealt with the issue of complicity. The court started with a detailed review of *Nelson*. The court explained how post-*Nelson* cases ignored the clear language of *Nelson*: that a plaintiff is guilty of complicity only if he actively contributed to or procured the intoxication of the intoxicated person.

Since *Walter*, this is the only definition used in reported cases. See *Kulikowski v. Lawson*, 305 Ill.App.3d 110, 710 N.E.2d 1275, 238 Ill.Dec. 173 (3d Dist.1999) and dissenting opinion in *Charles v. Seigfried*, 165 Ill.2d 482, 651 N.E.2d 154, 209 Ill.Dec. 226 (1995).

150.17A Dram Shop Act--Effect of Finding Complicity Defense

[Withdrawn]

Instruction withdrawn May 2009.

Comment

See IPI 150.17.

150.18 Dram Shop Act--Injury to Person or Property--Person Paying for Hotel or Motel Room or Facility

There was in force in the State of Illinois at the time of this occurrence a statute called the Dram Shop Act, providing that any person at least 21 years of age who pays for a hotel or motel room or facility knowing that the room or facility is to be used by any person under 21 years of age for the unlawful consumption of alcoholic liquors shall be liable to any person who is injured in person or property by the intoxicated person under 21 years of age who used the room or facility for such consumption and became intoxicated.

Notes on Use

This instruction is to be used where a person at least 21 years of age, who pays for the hotel or motel room or facility, is sued for injury to person or property caused by an intoxicated person under 21 years of age. It should be given with IPI 150.19 (elements of the cause of action), IPI 150.15 (defining intoxicated) and, if necessary, IPI 150.16 (defining alcoholic liquor). These dramshop instructions should be used with as much of IPI 30.01 through 30.16 on damages as is applicable under the pleadings and proof. IPI 30.01 should be changed from “have resulted from the negligence (wrongful conduct) of the defendant” to “caused by the intoxicated person.”

Comment

This provision was added by amendment to 235 ILCS 5/6-21(c)(1994).

150.19 Dram Shop Act--Burden of Proof--Injury to Person or Property by an Intoxicated Person Under 21--Person Paying for Hotel or Motel or Facility

[In this lawsuit] [In Count ____,] plaintiff [(name)] claims [(name)] is entitled to recover damages from the defendant. The plaintiff must prove:

First, [(name of intoxicated person under 21 years of age)] was intoxicated at the time of the [(e.g., collision)].

Second, the defendant, [(person allegedly paying for room or facility)], paid for a hotel or motel room or facility.

Third, the defendant [(person allegedly paying for room or facility)], was at least 21 years of age when he paid for the hotel or motel room or facility.

Fourth, the defendant [(person allegedly paying for room or facility)], knew that the hotel or motel room or facility was to be used by a person under 21 years of age for the unlawful consumption of alcoholic liquors.

Fifth, the liquor thus consumed caused the intoxication of [(name of intoxicated person under 21 years of age)].

Sixth, [(intoxicated person under 21 years of age)]'s intoxication was at least one cause of the occurrence in question.

Seventh, as a result of the occurrence, plaintiff suffered [injury] [damage to his property].

Notes on Use

This instruction lists the elements which must be proved in a suit for injury to person or property by an intoxicated person under 21 years of age with respect to a person who pays for a hotel or motel room or facility. See 235 ILCS 5/6-21(a)(1994).

The instruction should be given with IPI 150.18 and with an appropriate effect of finding concluding paragraph.

These dramshop instructions should be used with as much of IPI 30.01-30.16 on damages as is applicable under the pleadings and proof. IPI 30.01 should be changed from "have resulted from the negligence [wrongful conduct] of the defendant" to "caused by the intoxicated person."