

case study

Investigating a Case of Dram Shop Legislation Where a Three Drink Maximum is Imposed

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Introduction

Third-party liability, more commonly known as dram shop legislation, occurs when an uninvolved individual is injured by an intoxicated person (Saltz, Robert F., 2006). According to dram shop legislation any individual or business that suffers personal injury and/or property damage resulting directly from the actions of an intoxicated individual has legal standing to sue the outlet which sold the last alcoholic beverage to the person responsible for inflicting the damage (Tennissen, 2008). Additionally, the inebriated patron responsible for the damages to the third-party cannot sue the seller if she or he is also injured.

Dram shop laws are based upon the understanding that a business or entity that profits from the sale of alcoholic beverages is liable for any resulting damages to a third-party upon departure from the establishment (Conner, Warren, Close, & Sparks, 1999) that intentionally sells alcoholic beverages to a known intoxicated individual may be considered negligent and held liable in court. In order to avoid being held accountable for the actions of an intoxicated individual, beverage service should be refused and the patron escorted from the establishment once the bartender or manager determined the person has had too much to drink (Tennissen, 2008).

While dram shop legislation is particularly important from an operational perspective, there is minimal academic literature related to this topic. Using the Theory of Planned Behavior as a theoretical foundation (Ajzen, 1991), this case examines the actions taken by a stadium in an attempt to curtail potential alcohol-related incidences and lawsuits resulting for the overconsumption of alcoholic beverages. This case is intended to serve a dual purpose; providing a real-life scenario which students may assess from a practitioner's standpoint, while also using a theoretical framework to contribute to the current body of knowledge related to dram shop legislation.

Background

Lion Stadium, located in Amarillo, Texas, plays host to National Football League (NFL) games, concerts, and other large-scale events on a regular basis. During football games, the concession stands serve beer to patrons who are 21 years or older with a strict limit of three

beers per game. The three-beer limit was instituted based upon evidence that the average football game lasts approximately five hours. According to the National Highway Traffic Safety Administration, a 160lb individual who consumes 3 regular beers during a five hour period should register a Blood Alcohol Content of .02, which is well below the legal limit (.08), thus causing little to no physical impairment (Ranney, Mazzae, Garrott, & Goodman, 2000 & Goodman 2000). In an effort to ensure patrons remain safe and to prevent overconsumption or intoxication, stadium administration implemented a three-drink limit.

Patrons were made aware of the three-drink policy through signage posted at each concession stand as well as a bolded notation printed on admission tickets to the stadium. Employees were trained and tested on the policy during new-hire orientation, servers directly connected to alcohol service were required to become Texas Alcohol Beverage Commission (TABC) certified within seven days of employment, and venue security guards were posted at each concession stand and instructed to pay special attention to the number of alcoholic beverages patrons purchased. The policy was enforced as best as possible by all employees but despite their best efforts, stadium officials continued to have problems with drunken and disorderly fans. While some of this could be attributed to pre-game tailgating, many employees suspected patrons were finding creative ways to circumvent the three-drink rule. Since the policy was dependent upon employee diligence and patron honesty, it was easily dodged by visiting concession stands on different levels or areas of the stadium where the individual was not identified as someone who had previously made a purchase. Moreover, it was ultimately discovered some concession stands had chosen to ignore stadium policy and intentionally served patrons more than the allowed amount of alcohol.

Stadium officials were familiar with dram shop legislation and in the stadium's five years of operation no lawsuits, citations or fines related to alcoholic beverage service had been filed. Additionally, there had been no cases of a patron being injured onsite due to an alcohol related mishap. However, the local Texas Alcohol Beverage Commission had begun monitoring alcoholic beverage service more closely due to several recent Dram Shop cases filed in the region and the increased number of drunk-driving fatalities across the state.

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A New Policy

Although the venue had a clear history with the TABC, it was apparent to stadium administrators the current measures to enforce the three-drink maximum policy were ineffective and changes were necessary if they were to maintain a spotless record. Rather than putting forth efforts to retrain staff or implement policies based upon employee trust, stadium administration implemented new point-of-sale technology to limit the number of alcoholic beverages permissibly sold to a patron during sporting events. The new technology required servers to scan the patron's driver's license in order to unlock the beer tap, which would then dispense 12 full ounces of beer. The patron's identification information would be temporarily stored in a database for the duration of the game, thus recording how many alcoholic purchases were made. Once the patron's ID had been scanned three times at any concession stand during a game, the computer system would prohibit the beer tap from unlocking, preventing the sale of additional alcoholic beverages.

The new technology fared well with patrons; however, the staff was less pleased with the new process. Although concession employees were paid a fair wage, many had become accustomed to receiving higher tips when they overlooked the three-drink policy.

Over the next three months, stadium officials audited the Point-of-Sale (POS) control systems after each game and were pleased to see the new technology was effective in enforcing the three-drink policy. Roughly all the operating concession stands were reporting similar alcoholic beverage sales, consumption rates, and keg turnover. It was decided annual audits of the control system would be sufficient to ensure continued function and success.

An Unfortunate Accident

After one particular game with high attendance, the crowd was dispersing as usual from the stadium to the various parking locations in the vicinity. The stadium was located in a highly developed area of the city and did not have adequate parking available for patrons, thus forcing many people to park in neighboring residential areas. As a group of people was crossing the street adjacent to the stadium, a car disregarded the traffic signal and began to cross the intersection. The driver of the vehicle hit one pedestrian and proceeded to run into a fire hydrant. The pedestrian was critically injured while the driver sustained minor cuts and bruises.

Emergency services were called to the scene and the injured pedestrian was rushed to a local hospital. The driver of the vehicle was questioned and asked to complete field sobriety tests including a Breathalyzer. The driver failed the sobriety tests and the Breathalyzer showed .18 blood alcohol content, more than double the legal limit. The driver mentioned he had been drinking at the game and was just leaving the stadium when the accident occurred; he thought he

was fine to drive home as he lived only a couple miles away. With the driver showing a blood alcohol content of .18, it was clear he was too inebriated to operate a vehicle.

Dram Shop Lawsuit

The injured person (the third-party) suffered extensive injuries, which would likely impact his long-term employment eligibility. The victim obtained legal representation and filed suit against Lion Stadium and the driver for unspecified damages.

Due to the lawsuit, Lion Stadium completed an internal audit of the POS system in order to determine whether protocol was followed. As patrons' driver's license information was only stored for the duration of the game, administration was unable to locate records regarding the number of beers the driver attempted to purchase while at the stadium. The next best alternative was to review alcohol sales records for the night in question. By reviewing sales records, administration would be able to determine if there was a concession POS that had malfunctioned and also view the alcohol consumption rates at each of the operating concessions. If a discrepancy was found, it could provide an explanation for the over service of alcohol. As reported in the six months prior during the initial audit, the 25 operating concessions sold roughly the same number of beers as prior to the implementation of the new POS technology. Despite steady sales numbers each concession location reported patrons attempting to purchase more than the maximum number of alcoholic beverages, but the new POS technology prohibited those sales. However, one finding from the audit generated due to the lawsuit found a particular stand was using significantly more kegs than others over the past four months.

Discussion

There are several issues at hand when examining this situation and the resulting outcome. First, the original Lion Stadium policy was enforced based upon employee trust, which left stadium officials vulnerable to dram shop lawsuits should an employee knowingly violate the maximum consumption policy. Dram shop legislation varies from state-to-state (Saltz, Robert F, 1993). For the purposes of this case, Texas will be used in determining the repercussions subject to the establishment and the server.

Section 2.02 of the Texas Alcoholic Beverage Code, otherwise known as the Dram Shop Act, states "Providing, selling, or serving an alcoholic beverage may be made the basis of a statutory cause of action... upon proof that: at the time the provision occurred it was apparent to the provider that the individual being sold, served, or provided with an alcoholic beverage was obviously intoxicated to the extent that he presented a clear danger to himself and others; and the intoxication of the recipient of the alcoholic beverage was a proximate cause of the damages suffered" (Tennissen, 2008). Aside from the implementation of new POS software, what other precautionary

measures could stadium administrators have implemented? If negligence on the part of stadium administrators is proven in a court of law; should concession employees also be punished or was it the sole responsibility of administration (Saltz, Robert F., 2006)? Explain.

After the implementation of the new policy, points of sale reports were indicative that the concession staff is adhering to the new alcohol regulations imposed. However one concessionaire is reporting higher keg use but similar sales reports to the other locations. What does this indicate? How could you explain identical sales figures but higher alcohol utilization?

The over service of alcohol is identified as an indication of poor ethical adjuration to the Duties of Care that owners and operators, servers, and other key individuals interacting with consumers are legally obligated to adhere to. How and what specific Duties of Care were violated (Lake, 2000)? What are the legal ramifications from knowingly violating these ethical guidelines (Herstein, 2010)? Should other measures have been implemented by management to avoid a mishap such as this (Carvolth, 1988; Watson, 2004)?

From an operational and human resource standpoint, Lion Stadium administrators and management have several issues to address. If it is found there was an error in paperwork, is Lion Stadium still liable (Taylor, 2000)? If the staff at the concession has manipulated the control system how should management address this (Greenberg, 1990)? What feasible future measures should be implemented to ensure a situation such as this does not occur again (Herath & Rao, 2009)?