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TORTS

Dram Shop Law: Codify Third Party Liability

CODE SECTION:	O.C.G.A. § 51-1-40 (amended)
BILL NUMBER:	HB 1495
ACT NUMBER:	1419
SUMMARY:	The Act establishes that servers of alcoholic beverages shall be liable for the acts of certain intoxicated persons.
EFFECTIVE DATE:	April 12, 1988

History

At common law, an individual who provided alcoholic beverages to another was not liable if that other person caused injury to himself or to a third person after becoming intoxicated.[1] No cause of action existed because the consumption of alcohol, rather than its provision, was deemed the proximate cause of any subsequent injury.[2]

Modern courts, however, have been willing to impose liability upon commercial vendors who provide alcoholic beverages to individuals in certain circumstances.[3] In the last twenty years, some courts have also been willing to extend liability to social hosts who provide alcohol to guests when these guests become intoxicated and cause harm to themselves or to third parties.[4]

Georgia case law establishes dram shop[5] liability without relying on a specific dram shop act by the legislature.[6] In *Sutter v. Hutchings*,[7] the Supreme Court of Georgia first imposed liability on a social host who provided alcohol to an obviously intoxicated minor. Since the host knew that

1. Note, *Social Host Liability: Opening a Pandora's Box*, 61 IND. L.J. 85 (1985) [hereinafter *Pandora's Box*].

2. *See* Kingen v. Weyant, 148 Cal. App. 2d 656, 307 P.2d 369 (1957); Mitchell v. Ketner, 54 Tenn. App. 656, 393 S.W.2d 755 (1964); *Pandora's Box*, *supra* note 1.

3. *See, e.g.*, Tibbs v. Studebaker's of Savannah, Inc., 184 Ga. App. 642, 362 S.E.2d 377 (1987) (liability imposed for providing alcohol to persons noticeably intoxicated).

4. Sutter v. Hutchings, 254 Ga. 194, 327 S.E.2d 716 (1985); Southern Bell Tel. & Tel. Co. v. Altman, 183 Ga. App. 611, 359 S.E.2d 385 (1987).

5. A dram shop is "[a] drinking establishment where liquors are sold to be drunk in the premises; a bar or saloon." BLACK'S LAW DICTIONARY 444 (5th ed. 1979).

6. A dram shop act "impose[s] liability on the seller of intoxicating liquors . . . when a third party is injured as a result of the intoxication of the buyer where the sale has caused or contributed to such intoxication. Some acts apply to gifts as well as sales." BLACK'S LAW DICTIONARY 444 (5th ed. 1979).

7. 254 Ga. 194, 327 S.E.2d 716 (1985).

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the teenager would soon be driving an automobile, the host was held liable for injury to a third party when the teenager later was involved in an automobile accident. The Georgia Supreme Court held that the duty to abstain from serving alcoholic beverages "to the driver who is noticeably intoxicated" extends to social hosts as well as to commercial sellers.[8]

The court used the Georgia Code and previous court decisions to establish dram shop liability for social hosts in Georgia.[9] The court specifically noted the Code prohibition against providing alcoholic beverages to intoxicated persons.[10] The court also quoted the Code provision establishing that "[n]o person knowingly, by himself or through another, shall furnish [or] cause to be furnished . . . any alcoholic beverage to any person under 19 years of age."[11] Further, the court, in a previous decision, stated that a person owes a duty not to subject others to an unreasonable risk of harm.[12] *Sutter* extends this duty to alcohol-related cases based on the court's finding of legislative intent.[13]

The question of proximate cause was more difficult for the *Sutter* court to resolve. The court admitted that in many circumstances the act which proximately causes damage to a third party is the consumption of alcohol. Under such circumstances the consumer of the alcohol is solely liable because the act of providing alcohol is too remote to satisfy proximate cause requirements.[14] However, the court held that injury to a third party is foreseeable when alcohol is provided to a teenager who is obviously intoxicated and who will soon be driving an automobile.[15]

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8. Sutter v. Hutchings, 254 Ga. 194, 197, 327 S.E.2d 716, 719 (1985) (applying O.C.G.A. §§ 3-3-22, -23 and 51-1-6 (1982)).

9. In *Sutter*, the court also relied on the decisions of courts from other jurisdictions, especially New Jersey. In the New Jersey cases, the courts found liability for furnishing alcohol to noticeably intoxicated persons when the furnisher knew that these persons would soon drive an automobile. *Sutter*, 254 Ga. at 195, 327 S.E.2d at 717. Kelly v. Ginnell, 96 N.J. 538, 547, 476 A.2d 1219, 1228 (1984); Linn v. Rand, 140 N.J. Super. 212, 215—16, 356 A.2d 15, 19 (1976).

10. *Sutter*, 254 Ga. at 197, 327 S.E.2d at 719—20 (citing O.C.G.A. § 3-3-22 (1982)). O.C.G.A. § 3-3-22 states: "No alcoholic beverage shall be sold . . . given, provided, or furnished to any person who is in a state of noticeable intoxication."

11. *Sutter*, 254 Ga. at 197, 327 S.E.2d at 719—20 (quoting O.C.G.A. § 3-3-23 (1982)). The legal drinking age is now twenty-one years of age. O.C.G.A. § 3-3-23 (Supp. 1988); *see* 1986 Ga. Laws 789.

12. *Sutter*, 254 Ga. at 197, 327 S.E.2d at 719—20 (referring to Bradley Center v. Wessner, 250 Ga. 199, 201, 296 S.E.2d 693, 695 (1982)).

13. *Sutter*, 254 Ga. at 197, 327 S.E.2d at 719—20. "[I]n view of risks involved and the General Assembly's efforts to control drunk driving for the protection not only of those drivers but others on the highways, we conclude that these statutory duties protect third parties as well as those noticeably intoxicated and under 19." *Id.* (quoting O.C.G.A. §§ 3-3-22, -23 (1982)).

14. *Id.* at 197—98, 327 S.E.2d at 720.

15. *Id.* at 198, 327 S.E.2d at 719. The court noted that this holding was analogous to its finding in Crisp v. Wright, 56 Ga. App. 338, 192 S.E. 390 (1937). In *Crisp*, the court imposed liability upon the owner of an automobile who entrusted it to another person.

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In cases following *Sutter*, the Georgia Court of Appeals expanded dram shop liability to providers of alcohol, to their employees, and to bars serving patrons when those who received the alcohol were obviously intoxicated. In *Southern Bell Telephone & Telegraph v. Altman*,[16] the court held a business host responsible for injury resulting from the consumption of alcoholic beverages provided to an employee.[17] Similarly, in *Tibbs v. Studebaker's of Savannah, Inc.*,[18] the court found that a commercial establishment is liable for third party injuries when it sells alcoholic beverages to someone who is obviously intoxicated.[19] The Georgia Supreme Court denied certiorari in these cases.[20]

HB 1495

HB 1495 was introduced to codify the Georgia dram shop liability decisions.[21] Critics of the original bill at first feared the measure would narrow the liability of persons, especially bar owners, who provide alcoholic beverages to others. One critic, the Metropolitan Atlanta Council on Alcohol and Drugs, feared the bill would decrease the liability of providers of intoxicating beverages for injuries to third parties.[22]

The first section of the bill contained the common law definition of proximate cause for injuries resulting from intoxication. The original bill stated, "The General Assembly finds and declares that the consumption of alcoholic beverages, rather than the sale or furnishing or serving of such beverages, is the proximate cause of any injury, including death and property damage, inflicted by an intoxicated person upon himself or upon

16. 183 Ga. App. 611, 359 S.E.2d 385 (1987).

17. However, the court found that Southern Bell had satisfied its duty to third parties by its exercise of reasonable care. The intoxicated employee was driven home by a coworker under the employer's direction. The intoxicated employee subsequently, while still intoxicated, drove his car and caused an accident in which he was killed. *Id.* at 612, 359 S.E.2d at 386.

18. 184 Ga. App. 642, 362 S.E.2d 377 (1987).

19. In *Tibbs*, the court relied on *Southern Bell*, to affirm that "one who provides alcoholic beverages to a noticeably intoxicated person, knowing that the person will soon be driving a vehicle may be liable for a third party's injuries caused by the negligence of the intoxicated driver." 184 Ga. App. at 643, 362 S.E.2d at 378 (quoting *Southern Bell*'s approval of the *Sutter* holding).

20. *See* Fulton County Daily Rep., Feb. 4, 1988, at 4, col. 3.

21. Representative Thomas Chambless, House District No. 133, stated on the floor of the House, "It's not revolutionary. It's a simple effort to codify the law as it presently exists." Fulton County Daily Rep., Feb. 4, 1988, at 1, col. 1.

22. *Id.* at col. 3. Representative Thomas Chambless stated that it was his opinion that the bill as originally written would not relieve anyone of liability. Representative Chambless affirmed that his purpose in introducing the bill was to codify decisions by the Georgia courts which established dram shop liability. Telephone interview with Representative Thomas Chambless, House District No. 133 (Mar. 11, 1988) [hereinafter Chambless Interview].

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another person."[23] Although dram shop liability establishes that the proximate cause of injury is both the provision and consumption of alcoholic beverages, this provision in the original bill could have eliminated the liability of liquor providers in Georgia.[24]

The original bill further provided two specific areas in which a person is liable for furnishing alcoholic beverages to another person who later causes injury to himself or to a third party. If intoxicating beverages are provided to an underage person who is about to drive a vehicle or if intoxicating beverages are provided to a person who is obviously intoxicated and is about to drive a vehicle, liability attaches to the provider.[25]

The original bill posed a problem for enforcement and interpretation. The first section of the original bill established that the consumption and not the serving of intoxicating beverages was the proximate cause of injury.[26] This was arguably inapposite to later sections of the bill, which established liability for providers of alcoholic beverages under certain circumstances.[27]

The Senate amended the bill in order to avoid possible ambiguities between these sections of the bill.[28] The amendment established that if alcoholic beverages are served to a person under the legal drinking age who will soon drive a vehicle and who later has an accident, the provider may be liable for any injuries caused to third persons.[29] Further, anyone pro-

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23. HB 1495, as introduced, 1988 Ga. Gen. Assem. If the person selling or providing alcoholic beverages was furnished with proper identification (as defined in O.C.G.A. § 3-3-23(d) (Supp. 1988)) by the consumer and that identification was relied upon by the seller or provider, there is an irrebuttable presumption that the alcoholic beverages were not sold, furnished, or served willfully, knowingly, and unlawfully. H.B. 1495, as introduced, 1988 Ga. Gen. Assem.

24. HB 1495, as introduced, 1988 Ga. Gen. Assem. These provisions in the original bill might have been in conflict with the provision in section one, defining proximate cause. If the consuming, rather than the providing, of alcoholic beverages is the proximate cause of injury, the provider of intoxicating beverages may be totally exempt from liability. The original bill raised ambiguities which would make the law unclear.

25. HB 1495, as introduced, 1988 Ga. Gen. Assem. These two provisions survived unchanged. O.C.G.A. § 51-1-40(b) (Supp. 1988). The Act exempts persons who own, lease, or otherwise lawfully occupy a premise, unless that premise is licensed for the sale of alcoholic beverages from liability for the actions of any person who consumes alcoholic beverages on that property without the consent of the owner, lessee, or lawful occupant. O.C.G.A. § 51-1-40(d) (Supp. 1988). The Act also exempts the provider or seller of the alcohol from liability to the consumer for injuries sustained because of consumption of that alcohol. O.C.G.A. § 51-1-40(b) (Supp. 1988).

26. HB 1495, as introduced, 1988 Ga. Gen. Assem.

27. *Id.*

28. According to Representative Chambless, the bill was amended to avoid the possibility that the law would eliminate dram shop liability in certain circumstances because of the definition of proximate cause in the original bill. Representative Chambless does not think that the amended language was necessary, but he did not oppose it. Chambless Interview, *supra* note 22. *See* O.C.G.A. § 51-1-40(a) (Supp. 1988).

29. The Act provides:

> [A] person who willfully, knowingly, and unlawfully sells, furnishes, or

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viding alcoholic beverages to a person who is noticeably intoxicated and who will soon be driving a vehicle also may be liable for third party injuries.[30] To avoid possible ambiguities, the Senate amendment was adopted by the conference committee; other differences in the two versions were resolved, and the Conference Committee Report passed both houses.[31]

J. Voyles

> serves alcoholic beverages to a person who is not of lawful drinking age, knowing that such person will soon be driving a motor vehicle, or who knowingly sells, furnishes, or serves alcoholic beverages to a person who is in a state of noticeable intoxication, knowing that such person will soon be driving a motor vehicle, may become liable for injury or damage caused by or resulting from the intoxication of such minor or person when the sale, furnishing, or serving is the proximate cause of such injury or damage.

O.C.G.A. § 51-1-40(b) (Supp. 1988).

HB 1123, also passed this session, amends O.C.G.A. § 51-1-18 to allow the custodial parent or parents to bring a cause of action against persons who "sell or furnish alcoholic beverages" to their underage child without their permission. O.C.G.A. § 51-1-18(a) (Supp. 1988).

30. O.C.G.A. § 51-1-40(b) (Supp. 1988).

31. Chambless Interview, *supra* note 22.

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