

Colorado Dram Shop Law

Legal View

By Jeffrey R. Kelley, Esq.

Although the answer to this question may seem obvious, it can actually be quite complicated. Particularly when called upon to advise a client whether to pursue a “Dram Shop” case. This term describes the legal doctrine in many states, including Colorado, for holding taverns, liquor stores or other establishments, accountable for serving alcohol to minors or intoxicated persons to protect the public. Over many years of law practice, I have handled Dram Shop cases against restaurants, bars and even social hosts. As with every case, you don’t know what the facts are until you begin discovery and get the testimony from the persons involved, and in many cases the facts evolve about a profit-based protocol of a corporate defendant.

One such case was about a young lady who had been in a serious car crash involving alcohol, and specifically that her new boyfriend (and driver) was intoxicated. My client made a tragic mistake of going to a sports bar near closing time for “last call”, and only minutes after leaving the bar they “T-boned” another car when her boyfriend failed to stop at a red light. What we eventually found out was in less than an hour her boyfriend consumed at least four to five “Irish Car Bombs” served to him by friends who operated the bar. An Irish Car Bomb consists of a pint of Guinness, or other stout beer, with a shot glass of Baily’s Irish Cream and Jamison’s Whisky dropped in to the beer. The result is a lethal Irish “milkshake” meant to be chugged down quickly. My client did not know her boyfriend consumed this much alcohol this quickly, since she was busy talking to other people in a different location of the very busy, large sports bar. Nor did she know he had been drinking before he picked her up to go to the bar.

Colorado’s Dram Shop law falls under Colorado Revised Statute Section 12-47-801. In order to prevail in a case under the Colorado Dram Shop Statute, the claimant must show the bar sold, or provided alcohol to, a minor under age 21, or a *visibly intoxicated* person who subsequently injures another person. In 2011, the Colorado Supreme Court held that vendors are also liable if they sell or provide alcohol to an obviously intoxicated person or a minor, even if the subsequent injury was not a foreseeable consequence of intoxication. A noteworthy, recently filed case is that of Mr. Coy, who fell 60 feet to his death after a Bronco game. He had a blood alcohol content of 1.71. Mr. Coy’s case will involve many other issues as well, but his visible intoxication will be a central part of the suit.

“Visibly intoxicated” is a somewhat subjective term, used to describe someone who is clearly intoxicated to the point that they may be considered a danger to themselves or others. Slurred speech, staggering, trouble standing up, confusion or difficulty walking are behaviors that would tip off a bartender or vendor to consider refusing service to that person. Of course, a customer brings many unknowns to the situation as they may have been drinking on an empty stomach, had a low tolerance for liquor, or had been drinking previously.

In our case, the boyfriend was not on the bar’s premises very long, and they argued the bar employees did not have sufficient time to observe signs of intoxication. However, it was clear the servers provided multiple, potent alcoholic drinks to a patron who had clear plans to drive home, and they knowingly increased the chances someone would likely be injured. Our

toxicologist opined it would have been impossible for the staff of the bar to not see signs of intoxication with this volume of alcohol service. The bar's expert said their servers would not know he was "visibly intoxicated" since the effects of intoxication would not be fully observable during the time he was at their location. The prevailing witness testimony was that the boyfriend not only consumed the Car Bombs at the bar, but ordered additional drinks at various other locations, and was visibly intoxicated. The accelerated consumption of alcohol at the bar made it clear he would have been showing signs of visible intoxication as he consumed the lethal high alcohol content beverages in less than an hour.

With this testimony and its concerns for likely exposure to a significant judgement, the bar settled the case. Clearly, a jury would have been highly critical of the bar's indifference to the safety of the public, which indeed was the direct result of severe and serious injuries to not only my client, but the other car's driver, and even the boyfriend himself, who was handed down a long jail sentence. The Colorado Supreme Court has held that the Dram Shop law provides the sole means for someone injured by an intoxicated person to obtain a remedy from the establishment which sold or provided alcohol to a minor or an intoxicated person. Importantly, under the Colorado Dram Shop statute, there is a one year statute of limitations to bring an action. This is one of the shortest time periods in Colorado one must file suit, or will be forever barred from doing so.

I am glad to have helped this young lady recover compensation for her serious and permanent injuries, and changed conduct of management to become more responsible to the public and bring forth added safe guards concerning service of alcohol to its customers. In the end, we all want to be responsible persons and take responsibility for our own actions. The Colorado legislature has mandated our Dram Shop law which requires certain standards to be met to find liability before imposing penalties for violation of the law.

Do you have a legal question? Send your question to Gilpin County attorney Jeff Kelley (Jeff@klfpc.com). Appointments for in person legal counsel are available in both Black Hawk and Denver offices.

Note: All legal claims are different and require full analysis by an attorney.