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# Liability of Tavernkeeper for Subsequent Act of Intoxicated Patron - State v. Hatfield

## LIABILITY OF TAVERNKEEPER FOR SUBSEQUENT ACT OF INTOXICATED PATRON

### *State v. Hatfield*[1]

Defendants operated a tavern in a remote section of Baltimore County which could be reached conveniently only by automobile. Plaintiffs alleged that the defendants knowingly sold liquor to one Love, a minor, in violation of statute,[2] and knowingly continued to sell to him in further violation after they knew, or should have known, that he was intoxicated and unable properly to operate his automobile. After leaving the tavern, Love drove at an unreasonable speed, on the left of the highway, and crashed into a car operated by one Joyce, and killed him. The plaintiffs allege this accident was the direct result of defendant tavern keeper's negligent and unlawful conduct.

Suit for wrongful death was filed in the name of the State of Maryland, for the benefit of the surviving widow of the deceased.[3] The defendants demurred. The lower court sustained the demurrer without leave to amend, and the plaintiffs appealed. The Court of Appeals held that, in absence of statute, no cause of action could be established against the seller of intoxicating liquor for causing the intoxication of a person whose subsequent negligent or wilful act caused an injury to the plaintiff.

This case can be analyzed from two separate points of view. First is the view adopted by the lower court and upheld in the Court of Appeals regarding the common law liability of saloonkeepers for the result of sales of intoxicants to an able-bodied man. Or, as an alternative, the basic rules of proximate cause can be applied.

In many states, statutes known as "Civil Damage Laws" have been enacted which impose an almost absolute liability on liquor dealers for injuries sustained by innocent persons injured by those who purchased the intoxicants from the saloonkeeper.[4] Cases under these so-called "dram shop laws" have been successfully litigated in many juris-

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[1] 197 Md. 249, 78 A. 2d 754 (1951).

[2] Md. Code Supp. (1947), Art. 2B, Sec. 103 [Now Md. Code (1951), Art. 2B, Sec. 114, as amended by Md. Laws (1953), Ch. 700].

[3] Md. Code Supp. (1947), Art. 67, Secs. 1-4 [Now Md. Code (1951), Secs. 1-4]. This action was created in Maryland in 1852 and was based on Lord Campbell's Act of England in 1846.

[4] These statutes have closely followed the Illinois statute of 1872; now Ill. Rev. Stat. (1953), Ch. 43, Sec. 135.

dictions.[5] No such statute has ever been passed in Maryland, perhaps on the ground that such a law would impose too great a burden on taverns. As Judge Markell clearly points out in the principal case:

> "In the course of the last hundred years there probably has seldom, if ever, (except during prohibition) been a regular session of the General Assembly at which no liquor laws were passed. On few subjects are legislators kept better informed of legislation in other states. In the face of the flood of civil damage laws enacted, amended and repealed in other states and the Volstead Act — and of the total absence of authority for such liability, apart from statute — the fact that there is now no such law in Maryland expresses the legislative intent as clearly and compellingly as affirmative legislation would."[6]

Though no prior Maryland case directly in point can be found, a wealth of authority from other jurisdictions can be cited, holding that in the absence of statute the common law did not hold the saloonkeeper liable for the actions of those he permitted to become intoxicated.[7] In a Wisconsin case relied on by defendants it is specifically stated that:

> "The cases are overwhelmingly to the effect that there is no cause of action at common law against a vendor of liquor in favor of those injured by the intoxication of the vendee."[8]

The reason for the common law rule is not quite clear. Perhaps it stems from the doctrine of proximate cause, with the court's feeling that the act of the purchaser is an intervening superseding cause. On the other hand the tendency to accept the non-liability rule without too close an analysis of the reason therefore is illustrated by the language of a recent Georgia case which stated:

> "Whatever the reasons for such a rule, and whether we agree or disagree with them, the courts have no

[5] Freese v. Tripp, 70 Ill. 496 (1873); Struble v. Nodwift, 11 Ind. 64 (1858); Mulford v. Clewell, 21 Ohio St. 191 (1871); Bertholf v. O'Reilly, 74 N. Y. 509 (1878) (Held constitutional).

[6] State v. Hatfield, *supra*, n. 1, 256.

[7] Sworski v. Coleman, 204 Minn. 474, 283 N. W. 778 (1939); Hitson v. Dwyer, 61 Cal. App. 803, 143 Pac. 2d 952 (1943); and authorities collected in 30 Am. Jur., Sec. 607, p. 573, and 48 C. J. S., Sec. 430, p. 716, which states:

> "At common law, and apart from statute, no redress exists against persons selling, giving, or furnishing intoxicating liquor, . . . for resulting injuries or damages due to the acts of intoxicated persons, . . ."

[8] Demge v. Feierstein, 222 Wis. 199, 268 N. W. 210, 212 (1936).

> authority to grant recoveries or authorize actions unknown to the common law."[9]

This seems to express the view adopted by the Court of Appeals in deciding the principal case. That is, to do otherwise would amount to judicial legislation. But, *quaere:* whether it would be any more judicial legislation than many other judicial expansions of common law rules to meet changing conditions?

Though the common law liability may not exist yet perhaps a different result might be had if the case were viewed purely as a matter of proximate cause. Many tests have been suggested to aid in finding the proximate cause of an injury.[10] The courts have generally adopted either the "but for"[11] or the "substantial factor"[12] method in deciding whether the defendants negligence was the proximate cause of the resulting injury. The former test asks the question, "but for the defendant's negligent conduct would the accident have occurred anyway?" The latter test inquires if the defendant's negligent conduct was a substantial factor in bringing about the plaintiff's injury. Since the principal case was decided on different grounds, neither test was applied to the facts of this case. In applying the "but for" test, is it reasonable to suppose that if the tavernkeeper had not sold liquor to an already intoxicated minor the accident in which the innocent motorist was killed would not have occurred? Using the alternate test, would supplying an intoxicated minor with liquor be a "substantial factor" causing the resulting collision?

It has been held that:

> "Where the negligence of the defendant greatly multiplies the chances of accident to the plaintiff, and is of a character naturally leading to its occurrence, the mere possibility that it might have happened without the negligence is not sufficient to break the chain of cause and effect between the negligence and the injury."[13]

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[9] Henry Grady Hotel Co. v. Sturgis, 70 Ga. App. 379, 28 S. E. 2d 329, 333 (1943).

[10] PROSSER, TORTS, (1st Ed., 1941), Sec. 45.

[11] *Op. cit., ibid,* 322; Hayes Freight Lines v. Wilson, 226 Ind. 1, 77 N. E. 2d 580, 582 (1948). See also for interesting discussions on Proximate Cause, Smith, *Legal Cause in Actions of Tort,* 25 Harv. L. Rev. 103 (1911), Edgerton, *Legal Cause,* 72 U. of Pa. L. Rev. 211 (1924), and Green, RATIONALE OF PROXIMATE CAUSE (1927).

[12] 2 RESTATEMENT, TORTS, (1934), Sec. 431.

[13] Reynolds v. Texas & P. Ry. Co., 37 La. Ann. 694, 698 (1885).

Can it not be argued that the defendant's act of selling liquor to a drunken minor multiplied the chances of the subsequent accident particularly in view of the isolated area in which the defendant's tavern was located?

Selling liquor to an already intoxicated minor, in violation of a statute, is to say the least, evidence of negligence.[14] A basic rule of tort law is that one guilty of doing an wrongful act is liable for all damages which are the proximate and natural outgrowth of the act.[15] The accident, in the principal case, could be easily reasoned to be a proximate and natural outgrowth of the tavernkeeper's negligence — certainly not an entirely unconnected or even unforseeable result.

But is the act of Love an independent intervening cause which would break the chain of causation and relieve the defendants of liability?[16] Where a minor was sold intoxicating liquor and while under its influence committed a murder it has been held that no action would lie against the saloonkeeper since the subsequent criminal act of the minor was an independent intervening act which cut off any liability of the vendor of the liquor.[17] However, the commission of murder is highly unforeseeable, while negligent operation of an automobile by an intoxicated minor is not. Knowing the isolated location of their tavern, it should have been apparent that the intoxicated purchaser would have to leave the tavern by automobile. Knowing this the tavernkeeper should have foreseen that selling liquor to the purchaser, in his condition, would greatly multiply the chances of his having an accident and injuring other users of the highway. Here, the selling of liquor was not a remote cause; it was a directly contributing and proximate cause of the resulting automobile accident. It should be remembered the tavern derived its patronage entirely from motorists. Therefore, should not the accident which resulted have been easily foreseeable to a reasonable man?

On frequent occasion the Court of Appeals has faced the question of proximate cause. It has held a bus operator liable to an alighting passenger who was struck by a speeding car when the bus straddled the road at night leaving its

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[14] Violation of a statute is evidence of negligence in Maryland, State v. Hecht Company, 165 Md. 415, 169 A. 311 (1933).

[15] PROSSER, *op. cit., supra*, n. 10, Sec. 48; Lashley v. Dawson, 162 Md. 549, 160 A. 738 (1932); Northeast Auto Wreckers v. Sanford, 43 A. 2d 292 (D. C. Mun. Ap., 1945).

[16] RESTATEMENT, TORTS, (1934), Sec. 442(e)(f).

[17] Waller's Adm'r v. Collinsworth, 144 Ky. 3, 137 S. W. 766 (1911); see also exhaustive note in 130 A. L. R. 366.

interior light unlit.[18] The Court, speaking through Judge Offutt said:

> "... 'no wrongdoer ought to be allowed to apportion or qualify his own wrong, and that, as a loss has actually happened whilst his own wrongful act was in force and operation, he ought not to be permitted to set up as a defense that there was a more immediate cause of the loss, if that cause was put into operation by his own wrongful act'."[19]

Applying Judge Offutt's careful reasoning, one would have to conclude the wrongful act of the tavernkeeper in the principal case remained in force and operation until the time of the fatal accident.

The Court has also allowed recovery against the city where a pedestrian was struck by a trash can placed so near the street by a city employee that a passing vehicle struck the can and threw it against the plaintiff.[20] In this case the actual injury was caused by the motorist striking the can, but the court felt the proximate cause was the city's negligence in setting the stage for the accident. Applying this concept to the principal case, the actual cause of Joyce's death was the minor's negligent operation of the automobile, but did not the operators of the tavern set the stage for the accident through their negligence? One has to wonder if the principal case doesn't represent a retreat from the more liberal view followed by the Court of Appeals in the above cases?

Perhaps a rough analogy can be drawn to the question of liability of parents for the torts of their children, particularly in regard to the so-called "family car doctrine". This doctrine, which holds the head of a family liable for damages caused by members of the family in the operation of the family car, has been repeatedly rejected by the Court of Appeals.[21] And yet in the case of *Rounds, Admr. v. Phillips*,[22] the court held it was sufficient to create liability if it could be proved that a parent failed to prohibit the operation of an automobile by his child when he knew or should have known that the child was incompetent in the operation of an automobile. Thus, though the Court of Appeals refuses to impose absolute liability on the head of

[18] Lashley v. Dawson, *supra*, n. 15.
[19] *Ibid*, 563.
[20] Baltimore v. Terio, 147 Md. 330, 128 A. 353 (1925); see also: Blood v. Good Humor, 179 Md. 384, 18 A. 2d 592 (1941).
[21] Myers v. Shipley, 140 Md. 380, 116 A. 645 (1922); Baitary v. Smith, 140 Md. 437, 116 A. 651 (1922).
[22] 166 Md. 151, 170 A. 532 (1934); noted 2 Md. L. Rev. 288 (1938).

a family for the negligence of an offspring in the operation of the parent's automobile, liability is not excluded in every case. The *Rounds* case indicated the court will judge every case of this type on its merits and not follow any basic overall rule.

Applying such an approach to the principal case, it is felt that to judge all cases in relation to the common law liability of saloonkeepers will in many cases render unfair results. To give saloonkeepers absolute freedom from liability for subsequent damage caused by those they permit to become intoxicated would be as unjust as creating absolute liability under the "family car doctrine", which Maryland has refused to do.

It is suggested that those cases which involve a saloonkeeper's liability should be determined by the basic rules which apply to any other proximate cause case. To continue to follow the solidified rule of the common law would be to grant a certain unwarranted immunity to taverns. This does not mean that the absolute liability as imposed by statute in many states is preferable; rather each case should be treated on its merits. In cases where the saloonkeeper merely supplied intoxicants to his patron in a legal and reasonable manner, no recovery should be had by one later injured by the intoxicated vendee. But where the saloonkeeper knowingly supplies intoxicants to one already intoxicated, and in violation of statute, it would seem that this might be found to be the proximate cause of the subsequent injury of a third party and recovery could be had. That is to say, the tavernkeeper should not be permitted to hide his negligence behind the common law rule denying liability, at least not predicated upon an assumption that to rule otherwise would be judicial legislation. If Courts had not accepted in the past the responsibility of expanding the common law as the needs of society demanded, pressures for change in the "horse and buggy days" rules would have long since resulted in abolition of the common law in favor of codification of all law.