

Social Hosts Can Be Liable for Serving Liquor to a Minor

By: Chester A. Lizak

As of October 1, 2004, pursuant to the provisions of the "Drug or Alcohol Impaired Minor Responsibility Act," a social host can be liable for injuries caused by serving liquor to a minor.

Prior to the adoption of the statute, the Illinois courts have held that the legislature limited alcohol-related liability through the Dramshop Act. The Dramshop Act imposes liability on places that sell liquor. Since the Dramshop Act does not concern itself with social hosts, the courts have consistently held that social hosts are not liable for over serving either adults or minors.

In 2003, the Illinois Supreme Court in the Mraz case held that a social host could not be held liable for the death of a 16-year-old who had consumed a quart of vodka.

In this case, Michael Mraz, 21 years old, and Brian Mraz, 18 years old, induced 16 year old Elizabeth to drink a quart of vodka. They did so by offering her money, by goading and by applying great social pressure. After consuming the entire bottle of vodka, Elizabeth lost consciousness. She was placed in the family room by Michael and Brian where they observed her vomiting profusely and making gurgling sounds. Michael and Brian allegedly refused to drive Elizabeth home, did not contact her parents, did not seek medical attention, and prevented other individuals at their home from calling 911. Dennis Mraz, father of Michael and Brian, ordered his two sons to remove Elizabeth from their home, which they did. Elizabeth died later that day.

A lawsuit was filed on behalf of Elizabeth's estate. It went all the way up to the Illinois Supreme Court which upheld a trial court decision dismissing the lawsuit. The Supreme followed a long line of cases holding that since the Dramshop Act did not extend liability to social hosts, no cause of action was available against a social host who provided the alcoholic beverages.



Only Chief Justice McMorro dis-sented. She suggested that an adult social host should be civilly liable for providing alcohol to a minor who becomes intoxicated.

The supreme court opinion suggested that it was the duty of the legislature to address the various factual situations where a social host might be held liable for alcohol related injuries. The court held that until the legislature changes the law by statutory enactment, civil liability for alcohol-related injuries is limited under the Dramshop Act to two groups of defendants:

1. Dramshop owners; and
2. Persons 21 years of age or older who pay for a hotel or motel room knowing that the room will be used by underage persons for the unlawful consumption of alcohol.

The Illinois courts have also recognized that fraternities and individual fraternity members may be held liable for injuries suffered by under-age college students who are required to drink to intoxication in order to become a member of the fraternity under circumstances where the fraternity's conduct violated the hazing statute.

Shortly after the Mraz opinion, the Illinois legislature enacted the "Drug or Alcohol Impaired Minor Responsibility Act."

The Act makes liable any person over 18 years of age who "willfully" supplies alcohol or illegal drugs to a person under 18 years of age which causes the minor's intoxication for injuries to third persons caused by the minor or injuries to the minor him or herself.

The Act also permits a cause of action against an adult who "willfully" permits consumption of alcoholic liquor or illegal drugs on non-residential premises, owned or controlled by the person over the age of 18. Accordingly, it appears that parents will not be responsible for the conduct of their children over 18

Think Post-Judgment Collection Before You Even Enter into the Contract

By: Julia E. Jensen

When you enter into a contract with another party, you expect the other side to do what they say they will - to repaint your house professionally, to pay you for the product you send them or to repay the money you lend them. But sometimes they don't. You hire DiMonte & Lizak, LLC, we file suit, and the court grants you a judgment. A judgment is known to the collection bar as a "Hunting License." With it, we can initiate post-judgment collection.

Some post-judgment collection tools are familiar. They include wage garnishments and real estate levies. Did you know we can also seize bank accounts and collect money owed to your debtor by unrelated third parties? Certain assets, such as cash value life insurance, qualified retirement plans and a portion of home equity called "Homestead" are exempt from claims of creditors, but there are many assets that can be seized and turned over to you. We need to know where to look for these assets. The most valuable commodity in post-judgment collection is information, and the best time to obtain the information is when you both are still smiling and shaking hands - before you enter into the contract.

The best way to obtain this information is to ask for a financial statement. But sometimes this is not practical. Even if you do, the information can become outdated. Another simpler method may be to just ask questions.

Whether it's your first meeting with a new client or service provider, or if you have an ongoing relationship, take the time to ask some questions. If it's a business, find out where they bank or where their office is located. Do they have satellite offices or other real estate? Who are their current customers? Are there any new projects on the hori-

zon, standing orders or constant work with certain customers? Also, ask if they have any expensive equipment or vehicles or if they are related or a subsidiary to other businesses.

If it's an individual, find out where they live, who they live with, who their employer is, where they bank, if they invest in the stock market or mutual



funds, if they have side businesses, if they are collectors or have expensive hobby equipment, what vehicles they own, and what real estate they own.

And when you find information, write it down, and keep it where you can retrieve it when you need it. Contact management software on your computer (Palm Pilot® or Microsoft Outlook® for instance) can be a great place to keep helpful notes. Also, if you are paid by check, make a copy and leave it in your file. All this information may lead to assets which can be liquidated or seized to satisfy your judgment. Keep in mind the time to have these conversations is anytime during the relationship.

Example: Last winter, my client, a sewer company, repaired a sewer at a municipal building. My client was hired

by another contractor, but that contractor failed to pay. When I called that contractor, he begged me not to contact the municipality, stating that they were a longtime client and he had future jobs lined up. We gave the contractor an opportunity to pay the invoice, and when he didn't, we got a judgment and immediately sent a citation to the municipality and tied up the funds the municipality was going to pay the contractor. The contractor sent us the total invoice price by the end of the week. That was a great ending because we knew where to find some assets.

While these topics may seem intrusive at a business lunch or a first time meeting, most can be easily introduced into the conversation. Besides, people like to talk about themselves and their business, and they also enjoy an avid listener.

A judgment is only a hunting license, but with the right information, and the right attorneys, that judgment can be turned into cash. Please contact me if you would like to discuss further how you can implement this technique.



Employment and Labor Law Question and Answer Corner

This Issue's Topic: Disciplinary Write-ups

By: Margherita M. Albarello

Q: What information should disciplinary write-ups contain?

A: A good disciplinary memo includes the details of the offense, a recitation of the policy violated, why or how the offense harmed your operation, your expectations for improved performance and a timeline for those expectations to be met, the consequences of the employee's failure to meet these expectations, and a summary of the employee's response to the discipline, whether it is defensiveness, acceptance, or a commitment to change.

Q: Can disciplinary write-ups be used in a legal proceeding?

A: Yes. For this reason every disciplinary memo should be drafted with the understanding that it could be, and more than likely will be, used as an exhibit in a legal proceeding, whether it is an unemployment compensation hearing, a hearing before the Equal Employment Opportunity Commission, or a federal court jury trial.

Q: Can e-mail write-ups be used in legal proceedings?

A: Yes. Virtually nothing is protected from being produced in litigation unless it is protected by confidentiality rules like attorney-client privilege. All e-mails and electronic memos are fair game during the fact-finding process in civil litigation. This is another reason why e-mails should not be written in a casual fashion.

Do you have particular questions you'd like addressed in this column? If so, email them to Margherita M. Albarello at malbarello@dimonteandlizak.com.

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years of age who provide alcoholic liquor or illegal drugs at parties in the parents' home to individuals who are under 18 years of age. Parents would only be liable if they provided the alcohol or illegal drugs being consumed.

Parents would also be liable if they "willfully" permitted consumption of alcohol or illegal drugs at places other than their homes, if they had control over such location.

The new statute does not provide any cap on damages. It provides that the injured party can receive economic damages such as cost of medical treatment, loss of income and other pecuniary losses proximately caused by the impairment of the person under the age of 18. In addition, the injured party may recover non-economic damages for physical and emotional pain, emotional distress and similar non-pecuniary losses. It also provides that the injured party may secure reasonable attorneys fees, reasonable expenses for expert testimony and punitive damages.

The foregoing lists of damages is unprecedented. It is in stark contrast to the damages that are available under the Dramshop Act against dramshop owners. Under the Dramshop Act, the dramshop owner's liability was limited in the case of death or injury to any person to \$55,000.00 as of January 20, 1999. The Act provided for an increase in the limitation on damages that was tied to percentage increases in the Consumer Price Index. As a consequence, the limitation on damages in 2004 is approximately \$63,000.00.

The Dramshop Act does not allow recovery against a dramshop for reasonable attorneys fees, reasonable expenses for expert testimony or punitive damages. The liquor lobby is alive and well.

The new Act does not provide for social host liability for serving alcoholic liquor or illegal drugs to person over 18 years of age. The new Act covers only injuries that were the result of serving liquor to a person under 18 years of age.

The unlimited liability under the new statute, including the possibility of substantial punitive damages, should cause individuals to refuse to allow an under-age person to be served liquor in their homes. If you are inclined to tolerate your children's desire to have alcohol at their parties, remember that you could lose your home and all of your assets if some young person becomes seriously injured as a result of drinking. You should also be aware that your homeowner's insurance may or may not cover you for social host liability. It definitely will not cover you for punitive damages. Insurance companies will also argue that the exclusion in their policy for "expected or intended injuries" includes the intentional act of serving alcohol to a minor.

If your children are pushing for an under-age liquor party, give them a copy of this article. Tell them that I said that they cannot have such a party.

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