



Dram Shop Liability Is Not Just For Bars – Take Care When Serving Alcohol



By Justin O. Sorrell, RBE Partner

Alcohol is a highly regulated substance. State governments often regulate who, what, when, where, and how alcohol can be produced, sold, purchased, and consumed. For example, many states have “dram shop” laws which regulate when a bar (also known as a “dram shop”) may provide alcohol to a patron. Under Indiana’s Dram Shop Act, a person who “furnishes” alcohol to another may be liable for damages (including injury or death) caused by the other person’s intoxication if the furnisher had actual knowledge that the person who consumed the alcohol was visibly intoxicated when the alcohol was furnished. *See* Ind. Code § 7.1-5-10-15.5. The term “furnish” includes bartering, delivering, selling, exchanging, providing, or giving away alcohol.

The Dram Shop Act most often is discussed in the context of bars and other establishments which sell alcohol to the public. However, the Dram Shop Act is not limited to the commercial sale of alcohol. For example, Indiana’s courts have determined that a person “furnishes” alcoholic beverages to another person when one is the “active means” by and through which the alcohol is placed in the other person’s control. This may occur by purchasing beverages on the other person’s behalf, by knowingly allowing another to take possession of beverages, by selling the beverages to a third person with knowledge that the third person intends to furnish them to another, or by buying another person a drink. *See Lather v. Berg*, 519 N.E.2d 75 (Ind. Ct. App. 1988). Thus, liability may extend to a “social host,” such as somebody who serves alcohol for free at a house party.

Further, Indiana’s courts have determined that even absent active service of alcohol, simply allowing another to take alcohol from one’s possession may constitute “furnishing” under the Dram Shop Act. For example, in *Brattain v. Herron*, 309 N.E.2d 150 (Ind. Ct. App. 1974), a sister allowed her underage brother and two friends to drink alcohol from her refrigerator, after which the brother and two friends were involved in a fatal car crash. The jury found the sister negligent for knowingly giving alcohol to the minor who later caused the car crash, even though she gave it to him for free. On appeal, the Court of Appeals observed that, even though the sister did not actively serve the alcohol, she still was aware her brother and friends were obtaining alcohol from her refrigerator. Thus, the Court of Appeals affirmed the jury’s verdict.

In another case, *Gentry v. Day*, 22 N.E.3d 710 (Ind. Ct. App. 2014), an eighteen-year-old hosted a party at his father's home while the rest of his family was away. The host contributed money toward alcohol which was purchased by another friend and kept in the trunk of the friend's car during the party. A different friend arrived, the host permitted him to drink the alcohol, and the friend later caused a car crash which killed another partygoer. The trial court granted summary judgment to the eighteen-year-old party host. On appeal, the Court of Appeals observed that, while the host did not personally purchase the alcohol, he: (1) contributed money, (2) allowed the partygoer who caused the crash onto the premises, and (3) gave the partygoer permission to drink the alcohol. The Court thus decided there was a genuine issue of material fact as to whether the host "furnished" alcohol to the partygoer and the Court reversed the trial court's entry of summary judgment.

However, there are limits to the reach of the Dram Shop Act. In *Rogers v. Martin*, 63 N.E.3d 316 (Ind. 2016), two co-hosts of a social gathering jointly purchased and owned alcohol, which one of the co-hosts consumed during a house party before getting into a fistfight which ultimately resulted in the death of a party guest. The deceased guest's estate sued one of the co-hosts in part under the Dram Shop Act, arguing that the co-host was negligent because she "furnished" alcohol to the other co-host who killed the party guest. The trial court granted summary judgment in favor of the co-host on the Dram Shop claim because the co-host did not "furnish" alcohol to the other co-host. On transfer, the Indiana Supreme Court observed that the term "furnish" in the context of the Dram Shop Act requires transfer of possession of the alcohol. Because both co-hosts owned the alcohol jointly, neither could transfer possession to the other, therefore neither could have "furnished" alcohol to the other. Thus, the Supreme Court affirmed the trial court's grant of summary judgment in favor of the co-host on the Dram Shop claim.

Finally, in *Lather v. Berg*, 519 N.E.2d 755 (Ind. Ct. App. 1988), a friend provided money for two other friends to buy alcohol. The two friends acquired the alcohol together, and one of the friends became intoxicated and killed a police officer in a car crash. The officer's estate sued, and the trial court entered summary judgment in favor of the friend who had provided money for the purchase of alcohol. The Court of Appeals concluded that a person who loans money to another cannot be considered to have furnished alcohol, even if the loaner knows the other person will use that money to buy alcohol in violation of the law. Thus, the Court affirmed summary judgment in favor of the friend who provided money.

In the end, liability under Indiana's Dram Shop Act can be very fact-based. Ultimately, it is essential to exercise care and good judgment when engaging in any activity which could be construed as "furnishing" alcohol to another. If you find yourself in a situation where your actions vis-à-vis the provision of alcohol are being questioned, we recommend you contact an attorney.



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ABOUT THE AUTHOR

Justin is an experienced litigator who represents and advises business clients in many types of disputes in federal and state courts across Indiana. He regularly defends employers in lawsuits including wage and retaliation claims, trade secret and confidentiality claims, non-competition and non-solicitation covenants, and breach of contract claims. Additionally, Justin has experience in defending claims involving construction-related commercial property damage, products liability, insurance coverage, collections, and appeals, and he has served as local counsel in federal and state courts across Indiana. He defends employers before the Indiana Worker's Compensation Board, and has experience in other business-related areas, including bank loan transactions, loan work-outs, and bankruptcy. He also has significant experience in discovery of electronically-stored information ("ESI"), and advises clients on how to maximize value and minimize expense.

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