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Dram Shop or Civil Damages Acts - A Hidden Cost of Selling Liquor

Jay Myster

DRAM SHOP OR CIVIL DAMAGE ACTS— A HIDDEN COST OF SELLING LIQUOR

"By drunkeness men do oftentimes shorten their days; go out of the ale-houses drunk, and break their necks before they come home. Instances, not a few, might be given of this, but this is so manifest a man need say nothing."

John Bunyan: **The Life and Death of Mr. Badman,** 1680

NATURE OF THE ACT

In a number of states rather unique statutes have been adopted to establish the civil liability of liquor vendors.[1] The statutes are unique in that they have no counterpart in common-law doctrine. At common-law no remedy existed against the dispenser of liquor for injuries and damages inflicted by his intoxicated patrons.[2] Evidently, the dispensing of liquor constituted neither a direct wrong nor an actionable negligence.[3] The rationale was that the act of drinking the liquor was more proximately the cause of the injury than the act of selling it.[4]

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1. Ala. Code Ann. tit. 7, §§ 121, 122 (1960) (liability for illegal sales); Del. Code Ann. tit. 4, 7 §§ 715 (a) (6), 716 (1953) (for sale to person of known intemperate habits with notice); Ill. Stat. Ann. ch. 43, § 135 (Supp. 1960) (libility placed on seller and owner of premises for any sale contributing in whole or in part to intoxication); Iowa Code Ann. § 129.2 (1949) (liability for illegal sales and compensation for care where sale is illegal); Me. Rev. Stat. ch. 61, § 95 (1945) (seller liable for injuries caused by intoxication); Mich. Comp. Laws § 436.22 (2) (1948) (liability in case of unlawful sales); Minn. Stat. Ann. § 340.95 (1957) (liability for injuries caused by intoxicated person or by the intoxication); Nev. Rev. Stat. § 202.070 (1959) (liability to parents only in case of sales to minors); N.Y. Civil Rights Law § 16 (McKinneys, 1948) (liability in case of unlawful sales); N.C. Gen. Stat. §§ 14-331, 14-332 (1953) (liability to parents for sales to unmarried minors in violation of law); N.D. Cent. Code § 5-01-21 (1961) (liability for sales in violation of law); Ohio Rev. Code §§ 4399.01, .02 (1953) (operator and owner with knowledge are liable where sale is to a person to whom they have been forbidden to sell; building may be sold to pay fine or damages); Okla. Stat. tit. 37, § 121 (1951) (liability for injuries in case of illegal sales); Ore. Rev. Stat. §§ 30.730 (1959) (sellers liable for all damages resulting from sale or gift; applies equally to bartenders and other employees); R.I. Gen. Laws § 3-11-1 thru 5 (1957) (liable for illegal sales and for sales after notice; servere penalties in case adultering liquor is sold); S.D. Code § 5.0208 (1939) (action against licensee on bond for acts in violation of Alcoholic Beverage Law); Vt. Stat. Ann. tit 7, § 501 (1958) (liability for illegal sales only; seller and owner of premises liable); Wash. Rev. Code § 71.08.080 (1959) (seller liable to person injured by sale to an habitual drunkard); Wis. Stat. Ann. § 176.35 (1957) (liability for sales to minors and habitual drunkards after notice); Wyo. Stat. Ann. § 12-34 (1959) (liability for sales to minors and habitual drunkards after notice).

2. Hinston v. Dwyer, 61 Cal. App. 2d 803, 143 P.2d 952, 955 (1943); Howlett v. Doglio, 402 Ill. 311, 83 N.E.2d 708, 712 (1949); Sworski v. Colman, 204 Minn. 474, 283 N.W. 778 (1939); Iszler v. Jorde, 80 N.W.2d 665, 667 (N.D. 1951); Demge v. Feierstein, 222 Wis. 199, 268 N.W. 210, 212 (1936) ("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.")

Now, however, in the states which have enacted Dram Shop or Civil Damage Acts entirely new remedies have been created. As a type of regulatory legislation these statutes are not really new. In fact, they have been on the books of some jurisdictions for nearly a century. There was even a similar federal statute in force during the period of national prohibition.[5]

The legislative intent in imposing this new remedy, a legal liability on the seller of intoxicating liquor for wrongs done as a result of intoxication, is to punish those who furnish the means of intoxication, making them liable in damages.[6] It apparently is an act to assure compensation to those who are injured as a result of another's intoxication.[7]

The legislature's right to create this liability is a proper exercise of its police power.[8] That is, it may enact laws for the purpose of protecting the health, morals, and safety of the people. In doing this the legislature may prohibit traffic in intoxicating liquors, license it, or even permit it under any condition which in their judgment they may approve.[9] Within this legislative power, civil damage or dramshop acts are constitutional even though they do not require proof of a causal relation between the sale of intoxicating liquor and the intoxicants which cause the injury.[10] To all appearances the sale of

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3. Hinston v. Dwyer, 61 Cal. App. 2d 803, 143 P.2d 952 (1943); Howlett v. Doglio, 402 Ill. 311, 83 N.E.2d 703 (1949); Cruse v. Aden, 127 Ill. 231, 20 N.E. 73 (1889); Sworski v. Colman, 204 Minn. 474, 283 N.W. 778 (1939).

4. Cherbonnier v. Rafalovich, 88 F. Supp. 900, 901 (D.C. Alaska 1950); Hinston v. Dwyer, 61 Cal. App. 2d 803, 143 P.2d 952 (1943); Beck v. Groe, 245 Minn. 28, 70 N.W.2d 886, 891 (1955); see Tarwater v. Atlantic Co., 176 Tenn. 510, 144 S.W.2d 746 (1940), where a painter, employed by a contractor to do painting at corporations place of business, and corporation distributed a large quantity of free beer to the fellow employees of the painter, and they became highly intoxicated, and one of them dropped a large plank causing injuries to the painter, it was held that the voluntary act of the fellow employee who dropped the plank was the "proximate cause" of the injuries, and the corporation was not liable to the painter.

5. Volstead Act, 27 U.S.C. § 32 (1919).

6. Hyba v. C. A. Horneman, 302 Ill App. 143, 23 N.E.2d 564 (1939); **accord,** Iszler v. Jorde, 80 N.W.2d 665 (N.D. 1951) "It was the intention of the legislature to create liability in a class of cases where there was no liability under common law."

7. Delude v. Rimek, 35 Ill. App. 466, 115 N.E.2d 561 (1953); Manthei v. Heimerdinger, 332 Ill. App. 335, 75 N.E.2d 132 (1947); Adamson v. Dougherty, 248 Minn. 535, 81 N.W.2d 110 (1957).

8. Crane v. Campbell, 245 U.S. 304, 307 (1917); Pierce v. Albanese, 144 Conn. 241, 129 A.2d 606 (1957); Gibbons v. Cannaven, 393 Ill. 376, 66 N.E.2d 370 (1946).

9. Crane v. Campbell, 245 U.S. 304 (1917); Gibbons v. Cannaven, 393 Ill. 376, 66 N.E.2d 370 (1946).

10. Pierce v. Albanese, 144 Conn. 241, 129 A.2d 606 (1957). It should be noted that most civil damage acts provide that the liquor sold must have caused or contributed to the intoxication.

intoxicating liquor is a legal—but ill-favored—undertaking in the eyes of the legislature.

In line with the legislative intent to establish liability as a punishment, civil damage or dram shop acts were described as penal or admonitory in character, and as such they should be strictly construed.[11] On the other hand, they have also been characterized as remedial; to be "liberally" construed; "to suppress the mischief and advance the remedy."[12] Differences in the views expressed might be due to the nature of the issue before the court; *i. e.*, whether contributory negligence may be a factor in relieving a seller's liability in a particular case.[13] These interpretations, of course, are subject to the limitation that the statute cannot be enlarged by construction beyond the meaning of the clear language used by the legislature.[14]

CAUSE OF ACTION

While varying widely in detail, civil damage statutes typically provide that the supplier of intoxicants shall be liable to a party injured in person, property, or means of support by any intoxicated person, or in consequence of the intoxicants furnished by such supplier.[15] These dram shop statutes are construed as giving rise to two separate and distinct rights of action: (1) that granted to one sustaining injuries inflicted directly "by an intoxicated person," here and (2) that granted for such injuries sustained indirectly or "in consequence" of the intoxication.[16]

Where an action is brought for an injury inflicted by an intoxicated person it is not necessary that the intoxication be the proximate cause of the injury. But where an action is brought for injuries inflicted in consequence of the intoxica-

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11. Howlett v. Doglio, 402 Ill. 311, 83 N.E.2d 708 (1949); Schmidt v. Driscoll Hotel Inc., 249 Minn. 376, 82 N.W.2d (1957); Adamson v. Dougherty, 248 Minn. 535, 81 N.W.2d 110 (1957).

12. Pierce v. Albanese, 144 Conn. 241, 129 A.2d 606 (1957); Randall v. Village of Excelsior, 258 Minn. 81, 103 N.W.2d 131 (1960); Beck v. Groe, 245 Minn. 28, 70 N.W.2d 886 (1955); Iszler v. Jorde, 80 N.W.2d 665 (N.D. 1951).

It should be noted that under the North Dakota Act it could also be construed strictly as a penal statute. N.D. Cent. Code § 5-01-21 (1961).

13. Beck v. Groe, 245 Minn. 28, 70 N.W.2d 886 (1955); Adaminson v. Dougherty, 248 Minn. 535, 81 N.W.2d 110 (1957) "The language of the Beck case . . . that a suit under the Civil Damage Act is a means to impose a penalty on a dealer of intovicating liquor, was used to indicate that the defenses of contributory negligence or lack of guilty knowledge are not available . . ." **Id.** at 114.

14. Howlett v. Doglio, 402 Ill, 311, 83 N.E.2d 708 (1949); Beck v. Groe, 245 Minn. 28, 70 N.W.2d 886 (1955).

15. See statutes cited in note 1, **supra.** See also Iszler v. Jorde, 80 N.W.2d 665 (N.D. 1951).

16. Economy Auto Insurance Co. v. Brown, 334 Ill. App. 579, 79 N.E.2d 854 (1948).

tion there can be no recovery unless the intoxication was the proximate or at least a contributing cause of the injury.[17] The injury must be the natural and probable consequence of the intoxication and of such a character as an ordinarily prudent person should foresee as a result of the intoxication.[18]

In order that a party may maintain one of the two rights of action arising under the provisions of the acts, the following elements must be shown to state a good cause of action: (1) intoxication of the party causing the damage as the result of the vendor's sale of intoxicating liquor; (2) damage or injury to plaintiff's person, property, or means of support; and (3) noncomplicity of plaintiff in procuring such intoxicants for the party causing damage.[19] In addition, the North Dakota statute requires one to show that the dramshop operator must have dispensed intoxicants "contrary to the provisions of any statute."[20] Perhaps this requirement was designed to relieve some of the inequality which exists in holding a dramshop operator liable without regard to any violation of a statutory duty.[21]

PARTIES PLAINTIFF

It is clear that intoxication alone does not give rise to a cause of action. The intoxication must be coupled with an act which causes an injury to person, property, or means of support.[22]

Injury to the person means actual physical harm or suffering, sustained by the plaintiff at the hands of the intoxicated person.[23] As for injury to property, it was sufficient to show, in *Iszler v. Jorde*[24] that plaintiffs were deprived of the decedent's substantial services on their farm by his death and also that they had to pay the decedent's funeral expenses. Thus, impairment of assets, as well as damage to tangible or

17. Pierce v. Albanese, 144 Conn. 241, 129 A.2d 606 (1957); Cope v. Gepford, 326 Ill. App. 171, 61 N.E.2d 394 (1945).
18. Danhoff v. Osborne, 110 Ill App. 2d 529, 135 N.E.2d 492, 494 (1956).
19. London & Lancashire Indem. Co. of America v. Duryea, 143 Conn. 53, 119 A.2d 325 (1955); Krotzer v. Drinka, 344 Ill. App. 256, 100 N.E.2d 518.
20. See N. D. Cent. Code § 5-01-21 (1961).
21. See **e. g.,** Ill. Stat. Ann. ch. 43, § 135 (Supp. 1960).
22. See N. D. Cent. Code § 5-01-21 (1961).
23. Hammell v. Mannshardt, 248 App. Div. 624, 288 N.Y.S. 215 (1936); **compare** Welch v. Jugenheimer, 56 Iowa 11, 8 N.W. 165 (1881) (mental anguish does not constitute injury in person), **with** Heikkala v. Isaacson, 178 Mich. 176, 144 N.W. 508 (1913) (assault by intoxicated person upon another drinker in the saloon is sufficient), and Ryerson v. Phelps, 163 Mich. 237, 128 N.W. 200 (1910) (assault on one's wife constitutes an injury in person).
24. 80 N.W.2d 665 (N.D. 1951); see also Fleming v. Gemein, 168 Mich. 541, 134 N.W. 969 (1912), where injuries to the furniture of household goods of a wife due to the acts of her intoxicated husband have been held recoverable under the act.

real property, gives rise to a proper cause of action.

In order to prove injury from loss of support, one must show: (1) the sale or gift of the liquor by the defendant, (2) intoxication resulting from its use, (3) the resulting loss or curtailment in the means of support to the plaintiff in consequence of such intoxication.[25] The action itself must be brought in the name of the person furnishing the support, or in the name of his personal representative if he is deceased.[26] Though the right to support is a legally enforceable one[27] some courts hold that the plaintiff has a cause of action even though the support was voluntary.[28]

In addition to a showing of injury one must show that he is a proper party plaintiff under the acts. That is, he must be included in one of the categories of "every wife, child, parent, guardian, employer, or other person."[29] One might be prompted to demonstrate the narrowness or strictness of the statute as to parties included in these classes by noting that it has been held not to provide a cause of action for the intoxicated person himself.[30] An injured employee cannot recover where workmen's compensation is available.[31] One claiming damages resulting from alleged unlawful sales under the Minnesota Beer Act in which 3.2% beer was defined as nonintoxicating has no cause of action.[32] Further, no action exists for a person, such as a wrongful death trustee, outside the list of beneficiaries.[33]

Similarly, one might attempt to demonstrate the liberality of these statutes by their clear availability to those named as beneficiaries; *i. e.*, the wife[34] or widow of the intoxicated person,[35] the minor child of the vendee,[36] the mother of an adult vendee,[37] the parent of an intoxicated minor,[38] the widow of an innocent third person,[39] the wife and minor children of a third

25. Jeffries v. Alexander, 266 Ill. 49, 107 N.E. 146 (1914); Iszler v. Jorde, 80 N.W.2d 665 (N.D. 1951) (Mere diminution of income does not of itself constitute an injury to means of support); Healy v. Cady, 104 Vt. 463, 161 Atl. 151 (1932).
26. Stellar v. Miles, 17 Ill. App. 2d 435, 150 N.E.2d 630, 635 (1958).
27. Donley v. Hibbard, 222 Ill. 88, 78 N.E. 39 (1906).
28. Clinton v. Laning, 61 Mich. 355, 28 N.E. 125 (1886) where a father voluntarily supporting his son can recover only to the extent to which he might have been liable for his son's maintenance.
29. See N.D. Cent. Code § 5-01-21 (1961).
30. Randall v. Village of Excelsior, 258 Minn. 81, 103 N.W.2d 131 (1960).
31. Fox v. Swartz, 228 Minn. 233, 36 N.W.2d 708 (1949).
32. Beck v. Groe, 245 Minn. 28, 70 N.W.2d 886 (1955).
33. Beck v. Groe, 245 Minn. 28, 70 N.W.2d 886 (1955).
34. Benes v. Campion, 186 Minn. 578, 244 N.W. 72 (1932).
35. Pete v. Lampi, 162 Minn. 497, 203 N.W. 447 (1925).
36. Adamson v. Dougherty, 248 Minn. 535, 81 N.W.2d 110 (1957).
37. Wunsewich v. Olson, 137 Minn. 98, 162 N.W. 1054 (1917).
38. Sworski v. Coleman, 204 Minn. 474, 283 N.W. 778 (1939).
39. Koski v. Pakkala, 121 Minn. 450, 141 N.W. 793 (1913).

person,[40] the adult daughter of a third person,[41] and the injured third person himself.[42] An analysis of these seems to indicate that the greatest number of suits under the act are for loss of support.

Applying the broad general statutory construction to the word "person", artificial as well as natural persons should be included within the classification.[43] Viewing the classification as a defendant-vendor, "other persons" should not include plaintiffs other than those specifically mentioned in the act.[44] The former view, as an extention of the statutory construction, would weight the action even more heavily against the defendant. It is submitted that further suppression of the mischief caused by intoxicating liquor will not occur under this extention, as the root of the problem lies within the drinking public.

An illustration of the problems arising under the interpretation of "other person" is whether an insurance company, because it has paid a claim upon its insured, becomes a proper party plaintiff under the act. In Illinois an insurance carrier which paid claims resulting from injuries caused by an intoxicated person was not within the class of persons for whose benefit the statute was enacted.[45] In the case it was alleged that in settling claims of its insured, the intoxicated tort-feasor, it sustained a property damage "in consequence" of intoxication. The court held that the payments made under the insurance policy were not proximately caused by the insured's intoxication, but instead by the operations of the insurance and, further, that the insurance carrier had no subrogated right because the intoxicated tort-feasor acquires no rights under the Dram Shop Act.

The strictness of the early Illinois cases may be largely due to the statutes' inclusion of the innocent as well as the guilty.[46] The present view is that an insurer of an innocent

40. Hartwig v. Loyal Order of Moose, 255 Minn. 347, 91 N.W.2d 794 (1958).
41. Miles v. National Surety Co., 149 Minn. 187, 182 N.W. 996 (1912).
42. Ritter v. Village of Appleton, 254 Minn. 30, 93 N.W.2d 638 (1958); Schmidt v. Driscoll Hotel, Inc., 249 Minn. 376, 82 N.W.2d 365 (1957); Strand v. Village of Watson, 245 Minn. 414, 72 N.W.2d 609 (1955).
43. N.D. Cent. Code § 5-01-21 (1961) "'Person' shall include any natural person, association, copartnership, and corporation, and any clerk, agent, and abettor thereof."
44. It is interesting to note in Howlett v. Dogelio, 402 Ill. 311, 83 N.E.2d 708 (1949), the court applied the usual and ordinary meaning to the word "person" rather than the legal meaning, stating that it would result in limiting the class to natural persons.
45. Economy Auto. Ins. Co. v. Brown, 334 Ill. App. 579, 79 N.E.2d 854 (1948).
46. See Ill. Stat. Ann. ch. 43, § 135 (Supp. 1960).

third person, while it still may not have a direct right under the statute, is not without remedy but may, through subrogation, seek and obtain relief for its losses.[47] This interpretation is also held by the Michigan courts.[48]

A recent Minnesota case[49] extended the Minnesota Civil Damage Act to include the liability insurer as a person. The intoxicated buyer's employer and the liability insurer of both the buyer and his employer recovered from the illegal seller of intoxicating liquor for pecuniary losses sustained by reason of the buyer's intoxication. Although the court recognized that it was possible for the insurer to take as an assignee of the employer, it apparently concluded in view of the liberal approach, that a remote vendor is liable under the act and that the illegal sale was the proximate cause of the insurance company's payment and a sufficient injury to property.

The buyer's employer, as qualified through the word "employer", is then held to be among the group intended by the Minnesota legislature to be beneficiaries of the Civil Damage Act. It is possible, however, that the "employer" contemplated by the statute is the employer of an innocent third person rather than the employer of an intoxicated vendee.[50] It seems that North Dakota may follow this Minnesota decision[51] unless it is argued by way of estoppel that since the carrier has voluntarily assumed the risk, it should therefore be estopped from claiming recovery under the very act it contracted to perform. The problem of the liability carrier often arises in the great number of automobile cases involving intoxicated drivers. Outside of these automobile cases, however, a substantial portion of the litigation involves the barroom brawl.

In a recent Michigan case[52] the plaintiff had just entered the defendant's tavern as one of the defendant's employees unlawfully served a drunken patron beer, contributing further to his intoxication. This "drunk" turned and struck the plaintiff, injuring him. Forgetting about his action against his assailant, the plaintiff brought action against the defendant bar owner. Great possibilities for collusion appear in

47. Dworak v. Tempel, 17 Ill. 2d 181, 161 N.E.2d 258 (1959); Standard Industries Inc. v. Thompson, 19 Ill. App. 2d 319, 152 N.E.2d 500 (1958).
48. McDaniel v. Carpo, 326 Mich. 555, 40 N.W.2d 724 (1950).
49. Village of Brooten v. Cudahy Packing Company, 291 F.2d 284 (8th Cir. 1961).
50. To date there appears to be no authority which takes so narrow an approach.
51. See N.D. Cent. Code § 5-01-01 (1961); Iszler v. Jorde, 80 N.W.2d 665 (N.D. 1951).
52. Davis v. Terrien, 110 N.W.2d 754 (Mich. 1961).

this type of situation. The remorseful—but insolvent—assailant is able to furnish assistance and repay his debt to his injured victim by means of the Act. It is only natural that the injured but satisfied victim should lose interest in filing complaint against his assailant. However, other abuses occur, as in the case in which the wife of the deceased shot her intoxicated husband in self-defense and then sued for loss of support,[53] and as in another case of a woman who had been sexually assaulted and claimed the assault stemmed from the intoxication of her companion.[54] Apparently, actions under the Acts are limited only by the imaginations of the people seeking relief.

Perhaps such abuses will be curtailed now that the general tone of the modern cases from North Dakota, Minnesota, Michigan, and Illinois has encouraged a more rational approach to the old Dram Shop Acts.

PARTIES DEFENDANT

The provisions of the Civil Damage Act place a great risk upon a liquor outlet, for whoever engages in liquor traffic is held responsible for injuries the intoxicants may cause.[55] The Illinois Dram Shop Act imposes this responsibility without exception,[56] while North Dakota requires that there must be an illegal sale before the defendant's liability will arise.[57] An illegal sale is one that is "contrary to the provisions of any statute."[58] A sale to a minor, an incompetant person, or one obviously intoxicated are examples of illegal sales.[59]

Where an illegal sale to an intoxicated person occurs, the seller is not required to subject a customer to any test to determine the extent of his intoxication other than the test of observation.[60] Unless it appears to the seller that the buyer is obviously intoxicated, or by the reasonable exercise of his powers of observation the seller infers that the buyer is intoxicated, the seller may lawfully continue to sell liquor to a

53. Kiriluck v. Cohn, 16 Ill. App. 2d 385, 148 N.E.2d 607 (1958).
54. American Surety Company v. Rodeck, 128 F. Supp. 250 (D. Conn. 1954); reversed, 229 F.2d 175 (2d Cir. 1956).
55. Klopp v. Benevolent Protective Order of Elks, 309 Ill. App. 145, 33 N.E.2d 161 (1941).
56. Lichter v. Scher, 11 Ill. App. 2d 441, 138 N.E.2d 66 (1956).
57. N.D. Cent. Code § 5-01-21 (1961).
58. **Ibid.**
59. N.D. Cent. Code § 5-05-09 (1961), "No person in this state shall sell or deliver alcoholic beverages to a person under the age of twenty-one years, an incompetent person, a habitual drunkard, or an intoxicated person. . . ."
60. Ritter v. Village of Appleton, 254 Minn. 30, 93 N.W.2d 683 (1958).

customer.[61] Apparently, the reasonably prudent man is to be the judge of the degree of a patron's sobriety.

One is intoxicated if the liquor has affected his reason or faculties or has rendered him incoherent and physically incoordinate.[62] Whether a patron was intoxicated before the defendant sold him liquor often becomes a difficult question for the jury.[63]

To discourage intoxication the Civil Damage Acts have been directed at those persons conducting the business for profit,[64] particularly retail liquor establishments. The profit motive, *a fortiori,* eliminates a person who gives his guest a drink as an innocent act of hospitality.[65] On the other hand, a non-profit corporation was held not to be a purely "charitable" organization; rather, it was liable for its torts, such as injury to a member by a "drunk" when the organization sold liquor to members under a Dram Shop license.[66] Additional defendants falling within this profit class are those who are liable jointly and severally[67] for all damages resulting to the plaintiff by unlawfully selling liquor which caused or contributed to the intoxication of the person.[68] The person causing the injury need not be a party to this suit.[69] Indirectly, the owner of the premises, knowing that they are to be used for the sale of intoxicating liquors, is liable personally for the damage caused by such sales.[70] His is a liability often without fault and without right to relitigate questions of liability.[71] Further extention of the parties liable under the Act is the inclusion of municipal, as well as private, corporations for torts committed by their servants in connection with proprietary functions under the Civil Damage Act.[72]

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61. **Ibid.**

62. Strand v. Village of Watson, 254 Minn. 414, 72 N.W.2d 609 (1955).

63. Matkins v. Fenorsky, 348 Ill. App. 125, 108 N.E.2d 373 (1952); Davis v. Terrien, 110 N.W.2d 754 (Mich. 1961).

64. Cruse v. Aden, 127 Ill. 231, 20 N.E. 73 (1889); see Hewitt v. People, 186 Ill. 336, 57 N.E. 1077 (1900) (a farmer selling liquor on his own premises is engaged in the liquor traffic.).

65. Cruse v. Aden, 127 Ill. 231, 20 N.E. 73 (1889).

66. Klopp v. Benevolent Protective Order of Elks, 309 Ill. App. 145, 33 N.E.2d 161 (1941). See 37 Chi.—Kent L. Rev. 123 (1960).

67. Whipple v. Rosenstock, 99 Neb. 153, 155 N.W. 898 (1915).

68. Wyatt v. Chosey, 330 Mich. 661, 48 N.W.2d (1951).

69. Howlett v. Doglio, 402 Ill. 311, 83 N.E.2d 708 (1949); Hyba v. C. A. Horneman, Inc., 302 Ill. App. 143, 23 N.E.2d 564 (1939).

70. Hedlund v. Geyer, 234 Ill. 589, 85 N.E. 203 (1908); Earp v. Lilly, 217 Ill. 582, 75 N.E. 552 (1905).

71. Gibbons v. Cannaven, 393 Ill. 376, 66 N.E.2d 370 (1946).

72. Hahn v. City of Ortonville, 238 Minn, 428, 57 N.W.2d 254 (1953); see Strand v. Village of Watson, 245 Minn. 414, 72 N.W.2d 609 (1955).

DEFENSES

Most of the defenses available under the Civil Damage Acts arise from an interpretation of the statutes themselves.[73] Ordinarily the doctrine of contributory negligence is not applicable,[74] but it does make an appearance under the terms "complicity" or "innocent suitor."[75] If contributory negligence were applicable under the statutes it would imply that the actions are predicated upon negligence;[76] yet negligence is not a factor in its application.[77]

It has been established that one suffering injuries as a result of his own intoxication cannot recover under the Acts.[78] Accordingly, a tavern patron, having become intoxicated, could not maintain a cause of action under the Act against a tavern owner for personal injuries received at the hands of the bartender as a direct result of such intoxication.[79] Thus, in order to recover the parties sustaining injuries must be innocent persons under the Act; that is, they must not have contributed to the intoxication of the person who caused the injury.[80] An innocent person is not a bartender who attempts to recover from the tavern owner for injuries inflicted by an intoxicated patron, since he personally served said patron, thereby assisting his intoxication.[81] Nor is a patron an "innocent suitor" when he was subsequently assaulted by the very men for whom he had purchased drinks earlier.[82]

Complicity among the parties will also relieve the defendant of liability. In a case where a minor who purchased alcoholic beverages made no statement to the dealer that he was making the purchase for others, and the facts were such that the dealer could not have known that part would go to other minors, he was not liable for damages caused by intoxication

73. Bistline v. Ney Bros., 134 Iowa 172, 111 N.W. 422 (1907); Whipple v. Rosenstock, 99 Neb. 153, 155 N.W. 898 (1915); Jones v. Gates, 26 Neb. 693, 42 N.W. 751 (1889); State v. Dubriel, 75 N.H. 369, 74 Atl. 1048 (1909). See generally, 58 U. Ill. L.F. 249 (1958).

74. Krotzer v. Drinka, 344 Ill. App. 256, 100 N.E.2d 518 (1951); Howlett v. Doglio, 402 Ill. 311, 83 N.E.2d 708 (1949); Hyba v. C. A. Horneman, Inc., 302 Ill. App. 113, 23 N.E.2d 564 (1934); Beck v. Groe, 254 Minn. 28, 70 N.W.2d 886 (1955).

75. Forsberg v. Around Town Club, Inc., 316 Ill. App. 661, 45 N.E.2d 513 (1942); Roseerants v. Shoemaker, 60 Mich. 4, 26 N.W. 794 (1886).

76. Howlett v. Doglio, 402 Ill. 311, 83 N.E.2d 708 (1949).

77. Douglas v. Athens Market Corp., 320 Ill. App. 40, 49 N.E.2d 834 (1943); Bistline v. Ney Bros., 134 Iowa 172, 111 N.W. 422 (1907); Hahn v. City of Ortonville, 238 Minn. 428, 57 N.W.2d 254 (1953).

78. Kreps v. D'Agostine, 329 Ill. App. 190, 67 N.E.2d 417 (1946); Scatorchie v. Caputo, 32 N.Y.S.2d 532 (1942).

79. Holmes v. Rolando, 320 Ill. App. 475, 51 N.E.2d 786 (1943).

80. James v. Wicker, 309 Ill. App. 397, 33 N.E.2d 169 (1941).

81. Krotzer v. Drinka, 344 Ill. App. 256, 100 N.E.2d 518 (1951).

82. Forsberg v. Around Town Club, 316 Ill. App. 661, 45 N.E.2d 513 (1942).

of a minor who received a part of said liquor from the purchaser.[83] Similarly, a minor could not recover damages where the tavern keeper had served intoxicating liquor to the plaintiff and his companion after they were already intoxicated, for they had in turn furnished each other with intoxicants.[84]

The rule precluding recovery under the Civil Damage or Dram Shop Acts by one assisting or contributing to intoxication is not a rule of contributory negligence. It is founded on the principle that no one can profit by his own wrongdoing nor recover for an injury from a source put into motion by his own wrongful act.[85]

Besides the "innocent suitor" or "complicity" limitations, the actions under the acts are further limited by the rule that only one satisfaction may be had for a single injury.[86] Satisfaction of the injured parties' claim against one defendant then bars recovery against another defendant where the parties have been held jointly.[87]

A concomitant rule is found where a release to one of several joint tort-feasors discharges the others;[88] on the other hand, a covenant not to sue the proprietor of one of two taverns which contributed to the intoxication of the defendant's minor son did not relieve the proprietors of the other taverns from liability.[89] However, a compromise and a settlement of claims under a Wrongful Death Act and releases discharging automobile drivers and their insurers, successors, assigns, heirs, and employers from any and all actions, causes of action, claims, or demands by reason of such deaths do not constitute a bar to actions under the Civil Damage Act.[90] The Wrongful Death Act and the Civil Damage Acts are separate and distinct. Even so, double recovery is not permitted for the same losses, but where it is established that the recovery in the first action did not constitute full compensation for the injury an action under the Civil Damage Act is not barred by a judgment and satisfaction in a common-law negligence action.[91]

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83. Fladeland v. Mayer, 102 N.W.2d 121, (N.D. 1960).
84. Kreps v. D'Agostine, 329 Ill. App. 190, 67 N.E.2d 417 (1946).
85. Hill v. Alexander, 321 Ill. App. 406, 53 N.E.2d 307 (1944).
86. McClure v. Lence, 345 Ill. App. 158, 102 N.E.2d 546 (1951); Philips v. Aretz, 215 Minn. 325, 10 N.W.2d 226 (1943); Hartigan v. Dickson, 81 Minn. 284, 83 N.W. 1091 (1900).
87. Benjnarowicz v. Bakos, 332 Ill. App. 151, 74 N.E.2d 614 (1947).
88. Manthei v. Heimerdinger, 332 Ill. App. 335, 75 N.E.2d 132 (1947).
89. Larabell v. Schuknecht, 308 Mich. 419, 14 N.W.2d 50 (1944).
90. Knierim v. Izzo, 22 Ill. 2d 73, 174 N.E.2d 152 (1961); Ritter v. Village of Appleton, 254 Minn. 30, 93 N.W.2d 683 (1958).
91. Lund v. Village of Watson, 109 N.W.2d 564 (Minn. 1961).

DAMAGES

The North Dakota statute creates a cause of action for all damages actually sustained as well as for exemplary damages. It has been held that cases arising under a Civil Damage Act are *sui generis* and that the only condition necessary for the award of exemplary damages under such acts is that a right to actual damages be shown.[92] The construction generally adopted in states which have statutes similar to North Dakota's is that damages must be limited to an award for one or more of the specific injuries which, under the statute, give rise to the cause of action.[93] It is thought that only this construction gives effect to the legislative intent.[94]

CONCLUSION

There is a possibility that sound public policy should dictate that a liquor seller be burdened with liability. The common law did not think so, nor do the great majority of jurisdictions. North Dakota, however, has created liability in a class of cases not covered by the common-law. An objection registered against such liability is that the penalty has no confines and that it is "circumscribed by no boundaries." It is also said that "The seller is open to unlimited liability, although his delict has nothing to do with the subsequent injury to another person."[95] Theoretically, much of the inequality and distortion occurring in those states where there is no limitation imposed upon the vendor's liability has been removed under North Dakota's statute. It was the intent of the North Dakota legislature to fix liability on the maker of an illegal sale where such sale causes the intoxication of the person doing the damage. Such a purpose is well within the realm of reason. Actually a vendor can alleviate some hardship by insuring himself against losses under the Acts. Such losses are then passed to the drinking public in the form of increased liquor prices which enable the vendor to pay the cost of premiums. Thus the Acts do not necessarily further the goal of reducing the evils resulting from the unwise sale of intoxicating liquors.

JAY MYSTER

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92. Iszler v. Jorde, 80 N.W.2d 665 (N.D. 1951).
93. **Ibid.**
94. **Ibid.**
95. Pierce v. Albanese, 144 Conn. 241, 129 A.2d 606, 619 (1957) (dissenting opinion).