WHAT IS DRAM SHOP LAW, AND HOW DOES IT WORK?

TEXAS DRAM SHOP LAW 2022

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I. INTRODUCTION

The first question an attorney or client that is unfamiliar with dram shop liability might be inclined to ask is "What is a dram shop?" A dram shop is any place where alcoholic beverages are sold to be drunk on the premises.[1] The term dram shop originated during the time in which drinking establishments served their patrons using the dram as a measure of the amount of alcohol to be used in a particular beverage.[2] A dram represented exactly one-eighth of a fluid ounce.[3]

Dram Shop laws are statutes that impose liability on those who sell and/or serve alcohol to intoxicated patrons. Since 1987, Texas has provided for a statutory cause of action under the Texas Alcoholic Beverage Code § 2.02, known as the Dram Shop Act. This paper's purpose is to examine the most recent developments of Texas' Dram Shop Liability case law and to analyze the scope and inherent limitations of the Dram Shop Act.

II. EARLY DRAM SHOP REGULATION

A. Texas' First Regulations

The first regulated dram shops began in Texas in 1895 following the passage of Texas' first Dram Shop act.[4] The Statute was revised and recodified in 1911[5] before being repealed entirely in 1919.

B. Common Law Dram Shop Liability

Generally speaking, no common law duty existed which required servers of alcohol to avoid serving an intoxicated patron. As such, a bar owner was not liable for damages sustained by third-parties resulting from a patron's intoxication.[6] A bar owner was not held liable for such damages because: (1) the consumption itself, and not the actual sale of alcohol, was considered to be the proximate cause of the patron's intoxication and later injury to the third-party; and (2) the injury to the third-party was considered to be an unforeseeable result of the patron's intoxication.[7]

C. Pre-Statutory Duties Imposed on Bar Owners Courtesy of *El Chico*

The first version of the current Texas Dram Shop act was prompted by the Texas Supreme Court's landmark decision reached in *El Chico Corporation v. Poole*, 732 S.W.2d 306 (Tex. 1987). The Court in *El Chico* re-established liability for a bar owner's negligent provision of alcohol and recognized that a common law duty on the part of dram shops did exist.[8]

The issue the Court dealt with in *El Chico* was whether a person injured by an intoxicated driver could recover from the alcoholic beverage licensee who allegedly sold intoxicants to an intoxicated driver in violation of the Texas Alcoholic Beverage Code.[9]

The Court held that "an alcoholic beverage licensee owes a duty to the general public not to serve alcoholic beverages to a person when the licensee knows or should know the patron is intoxicated."[10]

D. Effect of the Dram Shop Act on *El Chico*

Shortly after the *El Chico* decision was issued, the Legislature enacted the Dram Shop Act

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[1] *Black's Law Dictionary Free* 2nd ed. and *The Law Dictionary*.
[2] Jon J. Bailey, Dram Shops Beware, Tex. Young Lawyers Ass'n, State Bar of Tex. (Jan. 1, 2005), http://www.tyla.org/newsitem_detail.cfm?NewsItemID=194.
[3] *Id.*
[4] TEX. REC. CIV. STAT. Art. 3380 (1895).
[5] *Id.* at 7452 (1911).
[6] *El Chico Corporation v. Poole*, 732 S.W.2d 306, 309 (Tex. 1987).
[7] *Id.*
[8] *Id.*
[9] *Id.* at 309.
[10] *Id.* at 314.

to address the problem of providers' excessive provision of alcohol to patrons. The Dram Shop Act altered a dram shop's potential liability from *El Chico*, as discussed in further detail below.

III. TODAY'S TEXAS DRAM SHOP ACT

The Texas Dram Shop Act can be found in Section 2.02 of the Texas Alcoholic Beverage Code and took effect on June 11, 1987.

A. Purpose of the Dram Shop Act

The stated legislative purpose of the Dram Shop Act is to protect "the welfare, health, peace, temperance, and safety of people of the State."[11] The Texas Supreme Court has interpreted the purpose behind the Dram Shop Act to be to discourage providers of alcoholic beverages from serving alcoholic beverages to obviously intoxicated individuals, who may inflict serious injury upon themselves or others.[12]

B. The Texas Dram Shop Act

The Texas Alcoholic Beverage Code § 2.02 (b) provides that a provider of alcoholic beverages may be liable for providing, selling, or serving an alcoholic beverage upon proof that:

> (1) at the time the provision occurred it was apparent to the providers that the individual being sold, served, or provided with an alcoholic beverage was obviously intoxicated to the extent that he presented a clear danger to himself and others; and
>
> (2) the intoxication of the recipient of the alcoholic beverage was a proximate cause of the damages suffered.[13]

IV. ELEMENTS OF A DRAM SHOP CAUSE OF ACTION

In order to prevail on a claim under the Texas Dram Shop Act, a plaintiff must show that: (1) the defendant was a provider of alcoholic beverages; (2) when the defendant provided the alcoholic beverage to the recipient, it was apparent to the defendant that the recipient was obviously intoxicated; and (3) the recipient's intoxication proximately caused the plaintiff's injury.[14]

A. Defendant Must be a Provider

In order to prevail on a claim under the Dram Shop Act, the plaintiff must prove that the defendant is a "provider" of alcoholic beverages.

Section 2.01 of the Texas Alcoholic Beverage Code defines a provider as a:

> "person who sells or serves an alcoholic beverage under authority of a license or permit issued under the terms of this code or who otherwise sells an alcoholic beverage to an individual."[15]

The term provision includes, but is not limited to, the sale or service of an alcoholic beverage.[16]

A defendant can be a licensed or unlicensed provider. If the defendant holds a license or permit under the terms of the Alcoholic Beverage Code, it is a provider when it sells or serves an alcoholic beverage.[17] Licensed

[11] *Id.* at § 1.03.
[12] *F.F.P. Oper. Partners v. Dueñez*, 237 S.W.3d 680, 783 (Tex.2007).
[13] TEX.ALCO.BEV.CODE §2.02.
[14] *20801, Inc. v. Parker*, 249 S.W.3d 392, 395 n. 4 (Tex. 2008).
[15] TEX.ALCO.BEV.CODE §2.01(1).
[16] *Id.* at §2.01(2).
[17] *Id.* at §2.01.

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