

Table of Contents

Chapter 1 - A Primer on South Carolina Dram Shop Law.....	1
I. Introduction.....	1
II. History of Dram Shop Liability in South Carolina.....	3
III. Commercial Provider of Beverage Alcohol as Defendant.....	9
A. The “Dram Shop” Statutes.....	10
1. § 61-4-580. Prohibited acts.....	10
2. § 61-6-2220. Sales to intoxicated persons.....	12
3. § 61-4-50. Sales to underage persons.....	12
4. § 61-4-90. Transfer of beer or wine for underage person’s consumption.....	12
5. § 61-6-4070. Transfer to person under the age of twenty-one years.....	14
B. First Party vs. Third Party.....	16
C. The Statutory Violation.....	18
D. The Statutory Violation as Proximate Cause of Damages.....	23
IV. Non-Commercial Provider of Beverage Alcohol as Defendant: Social Host Liability.....	26
Chapter 2 - Litigating the Dram Shop Case.....	29
I. Introduction.....	29
A. Rule Number 1.....	29
II. Practical Application.....	31
A. Dram Shop Claims: “Should I Stay or Should I Go”.....	31

Table of Contents

B.	The Initial Call.....	33
C.	Initial Investigation.....	33
D.	The Preservation Letter: Damned If You Do and Damned If You Don't.....	37
E.	Contacting the Defendant: Dancing With the Devil.....	41
F.	Dealing With the Liability Insurer: A <i>Tyger</i> by the Tail..	42
G.	The Full Tender: Property Damage Haggle.....	45
H.	Avoiding the Set-Off: What Exactly Was Tendered?.....	47
I.	Collection of UIM Coverage.....	47
J.	Negotiate Medical Liens.....	47
III.	The Dram Shop Claim: What Works for Me.....	48
A.	Framing the Case for Punitive Considerations: “Two Bites at the Apple”.....	48
B.	The Intoxicated Defendant.....	49
C.	The Overserving Codefendant (Bar).....	49
D.	The Opening Salvo.....	50
E.	Drafting the Complaint: A Picture Is Worth a Thousand Words.....	51
F.	Discovery Requests: Interrogatories.....	56
G.	Discovery Requests: Requests to Produce.....	58
H.	Plaintiff’s Forensic Toxicologist: MY BFF.....	59
I.	Preparing for Depositions: Back to Basics.....	66
J.	Duty - Standard of Care.....	66
K.	Breach.....	67
L.	The Industry Standards: What You Must Know.....	70
1.	Alcohol Content.....	71

Table of Contents

2.	Alcohol Ingestion and Metabolism.....	72
3.	Alcohol Service Charts.....	73
4.	Indicators of Intoxication.....	76
5.	Communication Between Bartenders.....	76
6.	Never Stack Drinks.....	76
7.	Guest Evaluation: SIR Method.....	77
8.	Counting Drinks.....	79
9.	Supervision of Trained Bartenders.....	80
M.	Intoxicated Driver Deposition.....	81
N.	Witness Depositions.....	84
O.	SCRCP 30(b)(6) Bar Designee Depositions.....	84
P.	Bartender and Bar Manager Depositions.....	91
Q.	Mediation.....	93
IV.	Conclusion.....	98
Chapter 3 - Defending the Dram Shop Case: Bartender and Restaurant Liability.....		99
I.	Pre-Litigation Management: What to Expect, When You're Expecting.....	99
II.	Practical Application.....	101
A.	First-Party Dram Shop Claims: <i>A Sword and a Shield</i>	105
B.	Defense Strategy Options: <i>Pleadings and Discovery</i>	106
Chapter 4 - The Toxicology of Ethanol.....		113
I.	Introduction.....	113
A.	Pharmacology.....	113

Table of Contents

B.	The Fate of Ethanol in the Body.....	116
1.	Absorption.....	116
2.	Distribution.....	118
3.	Metabolism.....	118
4.	Elimination.....	119
C.	BAC Curve.....	120
D.	Widmark Equation.....	121
E.	Retrograde Extrapolation.....	122
F.	Standard Drink.....	123
G.	Clinical versus Forensic Analysis.....	123
H.	Tolerance.....	124
Chapter 5 - The Alcohol Beverage Industry Standards and Training.....		129
I.	Introduction.....	129
A.	Background/History: How Standards Were Set and Why.....	129
1.	The Genesis of Alcohol Server/Seller Responsible Service Training.....	130
II.	Industry Standards and Basic Server Training.....	132
A.	Excerpts From the Different Alcohol Server Programs Teaching Tools.....	132
1.	TIPS Manual: Regarding Service to Minors.....	132
2.	ServSafe Alcohol Manual: Recognizing and Preventing Intoxication.....	133
3.	SMART Programs Manual: Behavioral Changes.....	133
a.	Observing Behavioral Changes.....	133

Table of Contents

b.	The Four Behavioral Changes.....	134
4.	CARE Trainer Manual: As A Manager.....	136
B.	Standardization of Drinks.....	136
C.	Basic Information Regarding the Safe Service of Alcohol.....	138
III.	Conclusion.....	140
Appendices.....		141
A.	Sample Complaint.....	143
B.	Sample Answer.....	151
C.	Sample Interrogatories - Plaintiff.....	159
D.	Sample Requests for Production - Plaintiff.....	171
E.	Sample Incident Form/Witness Statement.....	181
F.	Sample Interrogatories - Defendant.....	183
G.	Sample Requests for Production - Defendant.....	191
H.	Sample Deposition Questions to Injured Plaintiff.....	195
I.	Sample Expert Report - Toxicologist.....	197
J.	Sample Expert Report - Alcohol Service and Training.....	203