

"DRAM SHOP"--LIABILITY--COMMON LAW¹--SALE OR FURNISHING TO
INTOXICATED PERSON.

Note Well: For statutory dram shop cases under G.S.
18B-121, see N.C.P.I.--Civil 102.70.

The (state number) issue reads:

"Was the plaintiff [injured] [damaged] by the negligence of
the defendant?"

On this issue the burden of proof is on the plaintiff. This
means that the plaintiff must prove, by the greater weight of the
evidence, that the defendant was negligent and that such
negligence was a proximate cause of the plaintiff's [injury]
[damage].

"Negligence" refers to a person's failure to follow a duty
of conduct imposed by law. Every person is under a duty to
follow standards of conduct enacted as laws for the safety of the
public. A standard of conduct set forth in a safety statute is

¹Hutchens v. Hankins, 63 N.C. App. 1, 16-17, 303 S.E.2d 584, 593-94,
disc. rev. denied, 309 N.C. 191, 305 S.E.2d 734 (1983), held that a violation
of G.S. § 18B-305 (then codified at G.S. § 18A-34) constitutes negligence per
se. G.S. § 18B-305 prohibits a permittee to knowingly sell an alcoholic
beverage to an intoxicated person. The court also authorized a common law
claim for relief against the seller, by a person injured by the negligent
driving of the intoxicated person following his consumption of the unlawfully
sold beverage. Proximate cause--including the issue of whether or not the
conduct of the intoxicated driver is an insulating cause--is a jury issue.
This charge is taken largely from that decision.

It should be noted that the court in Hutchens specifically declined to
discuss whether, under similar circumstances, "(1) a noncommercial furnisher
of alcoholic beverages may be subject to civil liability; (2) whether a person
who is served alcoholic beverages may recover for injuries suffered as a
result of such sale or furnishing; or (3) whether off-premises retailers may
be held civilly liable for sale or furnishing of alcohol to intoxicated
customers." For common law liability for providing alcohol to person expected
to drive, see N.C.P.I.--Civil 102.83.

"DRAM SHOP"--LIABILITY--COMMON LAW--SALE OR FURNISHING TO
INTOXICATED PERSON. (Continued.)

absolute and must be followed. A person's failure to do so is negligence in and of itself.

The plaintiff not only has the burden of proving negligence, but also that such negligence was a proximate cause of the [injury] [damage].

Proximate cause is a cause which in a natural and continuous sequence produces a person's [injury] [damage], and one which a reasonable and prudent person could have foreseen would probably produce such [injury] [damage] or some similar injurious result.

There may be more than one proximate cause of [an injury] [damage]. Therefore, the plaintiff need not prove that the defendant's negligence was the sole proximate cause of the [injury] [damage]. The plaintiff must prove, by the greater weight of the evidence, only that the defendant's negligence was a proximate cause.

In this case, the plaintiff contends, and the defendant denies, that the defendant was negligent in that he [sold] [gave] (*specify beverage*) to a person he knew or, in the exercise of ordinary care, should have known was intoxicated.

The plaintiff further contends, and the defendant denies, that the defendant's negligence was a proximate cause of the plaintiff's [injury] [damage].

I instruct you that negligence is not to be presumed from the mere fact of [injury] [damage].

A law enacted for the safety of the public provides that it

"DRAM SHOP"--LIABILITY--COMMON LAW--SALE OR FURNISHING TO
INTOXICATED PERSON. (Continued.)

is unlawful for a [person] [corporation] who is licensed to sell
(*specify beverage*) to knowingly [sell] [give] alcoholic beverages
to any person who is intoxicated.²

A violation of this safety law is negligence in and of
itself.

A person violates this law when he [sells] [gives] (*specify
beverage*) to a person who he knows or, in the exercise of
ordinary care, should know is intoxicated.³ "Intoxicated" means
that a person's mental or physical functioning is substantially,
that is materially, impaired as a result of the use of alcohol.⁴

Finally as to this (*state number*) issue on which the
plaintiff has the burden of proof, if you find, by the greater
weight of the evidence, that the defendant was negligent (in any
one or more of the ways contended by the plaintiff) and that such
negligence was a proximate cause of the plaintiff's [injury]
[damage], then it would be your duty to answer this issue "Yes"
in favor of the plaintiff.

If, on the other hand, you fail to so find, then it would be
your duty to answer this issue "No" in favor of the defendant.

²G.S. § 18B-305. See Harshbarger v. Murphy, 90 N.C. App. 393, 368
S.E.2d 450 (1988); Brower v. Robert Chappell & Associates, 74 N.C. App. 317,
328 S.E.2d 45, disc. rev. denied, 314 N.C. 537, 335 S.E.2d 313 (1985).

³Hutchens, 63 N.C. App. at 17, 303 S.E.2d at 594.

⁴See G.S. § 14-443(2); State v. Painter, 261 N.C. 332, 335-37, 134
S.E.2d 638, 640-42 (1964).

