

Washington University Law Review

Volume 1973

Issue 3 *Symposium: A Model Act for the Protection of Rights of Prisoners*

January 1973

Application of Dram Shop Acts to Non-Commercial Suppliers of Liquor, *Ross v. Ross*, 200 N.W.2d 149 (1972)

Follow this and additional works at: https://openscholarship.wustl.edu/law_lawreview

Recommended Citation

Application of Dram Shop Acts to Non-Commercial Suppliers of Liquor, Ross v. Ross, 200 N.W.2d 149 (1972), 1973 WASH. U. L. Q. 708 (1973).

Available at: https://openscholarship.wustl.edu/law_lawreview/vol1973/iss3/11

This Case Comment is brought to you for free and open access by the Law School at Washington University Open Scholarship. It has been accepted for inclusion in Washington University Law Review by an authorized administrator of Washington University Open Scholarship. For more information, please contact digital@wumail.wustl.edu.

COMMENTS

APPLICATION OF DRAM SHOP ACTS TO NON-COMMERCIAL SUPPLIERS OF LIQUOR

Ross v. Ross, 294 Minn. 115, 200 N.W. 2d 149 (1972)

Defendant purchased liquor for his minor brother, who consumed the liquor and was killed in an automobile accident caused by his intoxication. Decedent's parents and decedent's son successfully sued under Minnesota's dram shop act, the Minnesota Civil Damage Act.¹ On appeal to the Minnesota Supreme Court, defendant contended that he was not a proper defendant under the Civil Damage Act because he was not a commercial seller of liquor. *Held*: Persons not in the business of selling intoxicating liquor are liable under the Minnesota Civil Damage Act for damages caused by their illegal² furnishing of

1. Minn. Stat. Ann. § 340.95 (1972):

Every husband, wife, child, parent, guardian, employer, or other person who is injured in person or property, or means of support, by any intoxicated person, or by the intoxication of any person, has a right of action, in his own name, against any person who, by illegally selling, bartering or giving intoxicating liquors, caused the intoxication of such person, for all damages sustained; and all damages recovered by a minor under this section shall be paid either to such minor or to his parent, guardian, or next friend, as the court directs; and all suits for damages under this section shall be by civil action in any court of this state having jurisdiction thereof.

2. The illegal transfers governed by *Ross v. Ross*, 294 Minn. 115, 200 N.W.2d 149 (1972), are specified in Minn. Stat. Ann. § 340.73 (1972):

Subdivision 1. It shall be unlawful for any person, except a licensed pharmacist to sell, give, barter, furnish, deliver, or dispose of, in any manner, either directly or indirectly, any spirituous, vinous, malt, or fermented liquors in any quantity, for any purpose, whatever, to any minor person, or to any intoxicated person, or to any public prostitute.

Subdivision 2. It shall be unlawful for any person except a licensed pharmacist to sell, give, barter, furnish or dispose of, in any manner, either directly or indirectly, any spirituous, vinous, malt or fermented liquors in any quantity, for any purpose, whatever, to any spendthrift, habitual drunkard, or improvident person, within one year after written notice by any peace officer, parent, guardian, master, employer, relative, or by any person annoyed or injured by the intoxication of such spendthrift, habitual drunkard, or improvident person, forbidding the sale of liquor to any such spendthrift, habitual drunkard, or improvident person.

Subdivision 3. Whoever shall in any way procure liquor for the use of any person named in this section shall be deemed to have sold it to such person. Any person violating any of the provisions of this section is guilty of a gross misdemeanor.

Minn. Stat. Ann. § 340.79 (1972) states:

Any person who shall give to, procure or purchase, intoxicating liquors for any minor person or other person to whom the sale of intoxicating liquors is by law

liquor.³

At common law, one who sold or furnished liquor to an able-bodied individual could not be held liable for damages resulting from the consumer's intoxication.⁴ Legislatures, responding to pressure from the temperance movement, created this liability by enacting dram shop laws.⁵ Most dram shop acts currently in force provide a potentially broad base for liability by permitting "any person" to recover for damages to his "person, property, or means of support."⁶ Moreover, the defendant's actions need not be the sole cause of the consumer's intoxication, but need only contribute to it.⁷ Liability usually is limited, however, by the requirement that the liquor be illegally given or sold,⁸ and a few states expressly limit liability to those who sell liquor.⁹

forbidden, is guilty of a gross misdemeanor and, upon conviction, shall be punished in accordance with the laws of the state.

Other illegal transfers of liquor are described in Minn. Stat. Ann. §§ 340.78, 340.83 (1972).

3. *Ross v. Ross*, 294 Minn. 115, 200 N.W.2d 149 (1972).

4. *E.g.*, *Collier v. Stamatis*, 63 Ariz. 285, 162 P.2d 125 (1945); *Carr v. Turner*, 238 Ark. 889, 385 S.W.2d 656 (1965); *Cole v. Rush*, 45 Cal. 2d 345, 289 P.2d 450 (1955); *Fleckner v. Dionne*, 94 Cal. App. 2d 246, 210 P.2d 530 (1949); *Hull v. Rund*, 150 Colo. 425, 374 P.2d 351 (1962); *Howlett v. Doglio*, 402 Ill. 211, 83 N.E.2d 708 (1949); *Cruse v. Aden*, 127 Ill. 231, 20 N.E. 73 (1889); *Cowman v. Hansen*, 250 Iowa 358, 92 N.W.2d 682 (1958); *Tarwater v. Atlantic Co.*, 176 Tenn. 510, 144 S.W.2d 746 (1940). *See also* 1971 WASH. U.L.Q. 645; Annot., 75 A.L.R.2d 833 (1961). *But see* *Colligan v. Cousar*, 38 Ill. App. 2d 392, 187 N.E.2d 292 (1963); *Rappaport v. Nichols*, 31 N.J. 188, 156 A.2d 1 (1959).

5. *See* D. COLVIN, PROHIBITION IN THE UNITED STATES 25-27 (1926); JACKSON-BABBITT, INC., THE NEW CRUSADE 4-27 (1932); Ogilvie, *History and Appraisal of the Illinois Dram Shop Act*, 1958 U. ILL. L.F. 175, 176-77.

6. *E.g.*, ALA. CODE tit. 7, § 121 (1958); ILL. ANN. STAT. ch. 43, § 135 (Smith-Hurd Supp. 1973); IOWA CODE ANN. § 123.93 (Supp. 1973); ME. REV. STAT. ANN. tit. 17, § 2002 (1964); MICH. STAT. ANN. § 18.993 (Supp. 1973); MINN. STAT. ANN. § 340.95 (1972); N.Y. GEN. OBLIG. LAW § 11-101 (McKinney 1964); OHIO REV. CODE ANN. § 4399.01 (Anderson 1965); R.I. GEN. LAWS ANN. § 3-11-1 (1956); VT. STAT. ANN. tit. 7, § 501 (1972).

7. ILL. ANN. STAT. ch. 43, § 135 (Smith-Hurd Supp. 1973); IOWA CODE ANN. § 123.93 (Supp. 1973); ME. REV. STAT. ANN. tit. 17, § 2002 (1964); MICH. STAT. ANN. § 18.993 (Supp. 1973); N.Y. GEN. OBLIG. LAW § 11-101 (McKinney 1964); OHIO REV. CODE ANN. § 4399.01 (Anderson 1965); VT. STAT. ANN. tit. 7, § 501 (1972).

8. ALA. CODE tit. 7, § 121 (1958); DEL. CODE ANN. tit. 4, § 716 (1953); ME. REV. STAT. ANN. tit. 17, § 2002 (1964); MICH. STAT. ANN. § 18.993 (Supp. 1973); MINN. STAT. ANN. § 340.95 (1972); N.Y. GEN. OBLIG. LAW § 11-101 (McKinney 1964); OHIO REV. CODE ANN. § 4399.01 (Anderson 1967); R.I. GEN. LAWS ANN. § 3-11-1 (1956); VT. STAT. ANN. tit. 7, § 501 (1972).

9. CONN. GEN. STAT. REV. § 30-102 (1962); DEL. CODE ANN. tit. 4, § 716 (1953); IOWA CODE ANN. § 123.93 (Supp. 1973).

Although the motivating force behind the enactment of dram shop laws was the public's desire to discourage the sale of liquor,¹⁰ courts have disagreed whether the purpose of the acts is to compensate the injured person¹¹ or to penalize the liquor supplier.¹² Many courts have tried to effectuate both purposes by construing the acts as attempts both to advance the remedy and suppress the mischief.¹³ Whatever the objective attributed to dram shop acts, courts have limited liability thereunder by allowing set-offs for damages recovered under another theory¹⁴ and by denying recovery of damages for pain

10. See note 5 *supra* and accompanying text.

11. See, e.g., *Pierce v. Albanese*, 144 Conn. 241, 129 A.2d 606 (1957); *Roberts v. Casey*, 4 Conn. Cir. 89, 225 A.2d 836 (1966); *Walker v. Service Liquor Store, Inc.*, 120 Ill. App. 2d 112, 255 N.E.2d 613 (1970); *Geocaris v. Bangs*, 91 Ill. App. 2d 81, 234 N.E.2d 17 (1968); *LeGault v. Klebba*, 7 Mich. App. 640, 152 N.W.2d 712 (1967); *Herbes v. Village of Holdingford*, 267 Minn. 75, 125 N.W.2d 426 (1963); *Schmidt v. Driscoll Hotel, Inc.*, 249 Minn. 376, 82 N.W.2d 365 (1957); *Adamson v. Dougherty*, 248 Minn. 535, 81 N.W.2d 110 (1957).

12. See, e.g., *Moran v. Katsinas*, 16 Ill. 2d 169, 157 N.E.2d 38 (1959); *Wessel v. Carmi Elks Home, Inc.*, 272 N.E.2d 416 (Ill. App. 1971); *Coffey v. ABC Liquor Stores, Inc.*, 13 Ill. App. 2d 510, 142 N.E.2d 705 (1957); *Lichter v. Scher*, 11 Ill. App. 2d 441, 138 N.E.2d 66 (1956); *Robertson v. White*, 11 Ill. App. 2d 177, 136 N.E.2d 550 (1956); *Hyba v. Horneman*, 302 Ill. App. 143, 23 N.E.2d 564 (1939); *Hartwig v. Moose Lodge 1246*, 253 Minn. 347, 91 N.W.2d 794 (1958); *Beck v. Groe*, 245 Minn. 28, 70 N.W.2d 886 (1955); *Playford v. Perich*, 2 Misc. 2d 170, 152 N.Y.S.2d 201 (Sup. Ct. 1956).

13. See, e.g., *Village of Brooten v. Cudahy Packing Co.*, 291 F.2d 284 (8th Cir. 1961); *Lester v. Bugni*, 316 Ill. App. 19, 44 N.E.2d 68 (1942); *Williams v. Klemesrud*, 197 N.W.2d 614 (Iowa 1972); *Wendelin v. Russell*, 259 Iowa 1152, 147 N.W.2d 188 (1966); *Hahn v. City of Ortonville*, 238 Minn. 428, 57 N.W.2d 254 (1953); *Iszler v. Jorda*, 80 N.W.2d 665 (N.D. 1957).

14. See, e.g., *Laznovsky v. Furdanowicz*, 22 Conn. Supp. 297, 170 A.2d 734 (Sup. Ct. 1961) (plaintiff's settlement of cause of action against intoxicated motorist was good defense for barkeeper in dram shop action); *Kurth v. Amee, Inc.*, 3 Ill. App. 3d 506, 278 N.E.2d 162 (1972) (proper procedure for assessing damages in action under dram shop act is to determine the total damages and then reduce them by amount received in return for covenant not to sue); *Shiflett v. Madison*, 105 Ill. App. 2d 382, 245 N.E.2d 567 (1969) (trial court erred in framing instructions to jury so that plaintiff might recover his lost income in an action in his name and in action brought by him for the benefit of his wife); *Larabell v. Schuknecht*, 308 Mich. 419, 14 N.W.2d 50 (1944) (defendant tavern keeper entitled to mitigate damages by amount paid plaintiff for covenant not to sue tavern proprietors who had also served person causing the injury); *Ritter v. Village of Appleton*, 254 Minn. 30, 93 N.W.2d 683 (1958) (compromise and settlement under wrongful death act and releases discharging automobile drivers did not bar actions under the Civil Damage Act, but defendant is entitled to diminish recovery against him by amounts otherwise received); *Hartwig v. Moose Lodge 1246*, 253 Minn. 347, 91 N.W.2d 794 (1958) (trial court committed reversible error in not allowing defendants to show prior recovery of damages in wrongful death act). *But see* *Playford v. Perich*, 2 Misc. 2d 170, 152 N.Y.S.2d 201 (Sup.

and suffering.¹⁵ Some courts have emphasized the penal aspects of dram shop acts by allowing recovery of exemplary damages¹⁶ and by denying defendants the opportunity to recover from the intoxicated person.¹⁷

The scope and impact of most dram shop acts has been limited by judicial decisions. Thus, courts have refused recovery when an intoxicated person has injured himself, even though dram shop acts do not expressly preclude such recovery.¹⁸ Recovery also has been denied when the plaintiff has participated in the drinking activities of the person whose act produced the injury,¹⁹ as well as when the

Ct. 1956) (recovery under wrongful death statute does not diminish liability under dram shop provision).

15. *Knierim v. Izzo*, 22 Ill. 2d 73, 174 N.E.2d 157 (1961); *Brantigam v. White*, 73 Ill. 561 (1874); *Robertson v. White*, 11 Ill. App. 2d 177, 136 N.E.2d 550 (1956); *Jackson v. Noble*, 54 Iowa 641, 7 N.W. 88 (1880); *Calloway v. Laydon*, 47 Iowa 456 (1877); *Barton v. Benedict*, 39 Mich. App. 517, 197 N.W.2d 898 (1972); *State Farm Mut. Ins. Co. v. Village of Isle*, 265 Minn. 360, 122 N.W.2d 36 (1963); *Mulford v. Clewell*, 21 Ohio St. 191 (1871); *Pennington v. Gillaspie*, 66 W. Va. 643, 66 S.E. 1009 (1910); *Duckworth v. Stalnaker*, 68 W. Va. 197, 69 S.E. 850 (1910) (dictum). *But cf.* *League v. Ehmke*, 120 Iowa 464, 94 N.W. 938 (1903).

16. *Hyba v. Horneman*, 302 Ill. App. 143, 23 N.E.2d 564 (1939); *Campbell v. Harmon*, 96 Me. 87, 51 A. 801 (1901); *Barton v. Benedict*, 39 Mich. App. 517, 197 N.W.2d 898 (1972); *Butler v. Kajfes*, 16 Mich. App. 190, 167 N.W.2d 796 (1969); *Marrone v. Di Castro*, 189 N.Y.S.2d 772 (1959); *Duckworth v. Stalnaker*, 68 W. Va. 197, 69 S.E. 850 (1910); *Pennington v. Gillaspie*, 66 W. Va. 643, 66 S.E. 1009 (1910).

17. The Illinois appellate courts are split over whether the defendant dram shop keeper should be able to plead or seek indemnification from the intoxicated person responsible for the injury. *Wessel v. Carmi Elks Home, Inc.*, 272 N.E.2d 416 (Ill. App. 1971), and *Coffey v. ABC Liquor Stores*, 13 Ill. App. 2d 510, 142 N.E.2d 705 (1957), emphasize that indemnification permits a possible evasion of penal liability. *Cf.* *Barton v. Benedict*, 39 Mich. App. 517, 197 N.W.2d 898 (1972). The courts in *Walker v. Service Liquor Store, Inc.*, 120 Ill. App. 2d 112, 255 N.E.2d 613 (1970), and *Geocaris v. Bangs*, 91 Ill. App. 2d 81, 234 N.E.2d 17 (1968), would permit indemnity since it does not diminish the remedy afforded by the statute; *cf.* *Farmers Ins. Exch. v. Village of Hewitt*, 274 Minn. 246, 143 N.W.2d 230 (1966).

18. *See, e.g.*, *Kreps v. D'Agostine*, 329 Ill. App. 190, 67 N.E.2d 416 (1946); *Holmes v. Rolando*, 320 Ill. App. 475, 51 N.E.2d 786 (1943); *Bennett v. Auditorium Building Corp.*, 299 Ill. App. 139, 19 N.E.2d 626 (1939); *Malone v. Lambrecht*, 305 Mich. 58, 8 N.W.2d 910 (1943); *Brooks v. Cook*, 44 Mich. 617, 7 N.W. 216 (1880); *Heveron v. Village of Belgrade*, 288 Minn. 395, 181 N.W.2d 692 (1970); *Empire Fire Ins. Co. v. Williams*, 265 Minn. 333, 121 N.W.2d 580 (1963) (dictum); *Randall v. Village of Excelsior*, 258 Minn. 81, 103 N.W.2d 131 (1960); *Bizzell v. N.E.F.S. Rest., Inc.*, 275 N.Y.S.2d 858 (Sup. Ct. 1966); *cf.* *Evans v. Kennedy*, 162 N.W.2d 182 (Iowa 1968). *But cf.* *Playford v. Perich*, 2 Misc. 2d 170, 152 N.Y.S.2d 201 (Sup. Ct. 1956).

19. *See, e.g.*, *Cookinham v. Sullivan*, 23 Conn. Supp. 193, 179 A.2d 840 (Sup. Ct. 1962); *Holcomb v. Hornback*, 51 Ill. App. 2d 84, 200 N.E.2d 745 (1964); *Guardado v. Navarro*, 47 Ill. App. 2d 92, 197 N.E.2d 469 (1964); *Baker v. Hannan*, 44 Ill.

liquor has been consumed off the supplier's premises by a person other than the purchaser.²⁰ At least one jurisdiction has refused recovery to plaintiffs who incurred damages outside the state in which the person causing the damages had purchased and consumed liquor.²¹ Moreover, courts in a few jurisdictions have limited liability to vendors of liquor, although the dram shop acts in these jurisdictions are not so limited.²²

App. 2d 157, 194 N.E.2d 563 (1963); *Osinger v. Christian*, 43 Ill. App. 2d 480, 193 N.E.2d 872 (1963); *Burnley v. Moore*, 41 Ill. App. 2d 156, 190 N.E.2d 141 (1963); *Tezak v. Cooper*, 24 Ill. App. 2d 356, 164 N.E.2d 493 (1960); *Meier v. Pocius*, 17 Ill. App. 2d 332, 150 N.E.2d 215 (1958); *Krotzer v. Drinka*, 344 Ill. App. 256, 100 N.E.2d 518 (1951); *James v. Wicker*, 309 Ill. App. 397, 33 N.E.2d 169 (1941); *Kangas v. Suchorski*, 372 Mich. 396, 126 N.W.2d 803 (1964); *Turk v. Long Branch Saloon, Inc.*, 280 Minn. 438, 159 N.W.2d 903 (1968); *cf. Busser v. Noble*, 22 Ill. App. 2d 433, 161 N.E.2d 150 (1959); *Taylor v. Hughes*, 17 Ill. App. 2d 138, 149 N.E.2d 393 (1958); *DeLong v. Whitehead*, 11 Ill. App. 2d 330, 137 N.E.2d 276 (1956). *But see Lester v. Bugni*, 316 Ill. App. 2d 19, 44 N.E.2d 68 (1942).

Courts differ as to the degree of participation in the drinking activities of the person who causes the harm that will preclude a plaintiff from recovering. *See Reget v. Bell*, 77 Ill. 593 (1875); *Holcomb v. Hornback*, 51 Ill. App. 2d 84, 200 N.E.2d 745 (1964); *Forsberg v. Around Town Club*, 316 Ill. App. 661, 45 N.E.2d 513 (1942); *James v. Wicker*, 309 Ill. App. 397, 33 N.E.2d 169 (1941); *Berge v. Harris*, 170 N.W.2d 621 (Iowa 1966); *Hempstead v. Minneapolis Sheraton Corp.*, 283 Minn. 1, 166 N.W.2d 95 (1969); *Mitchells v. The Shoals, Inc.*, 19 N.Y.2d 338, 227 N.E.2d 21 (1967).

20. *Anderson v. Dale*, 90 Ill. App. 2d 332, 232 N.E.2d 767 (1968); *Rittmeyer v. Anderson*, 49 Ill. App. 2d 71, 199 N.E.2d 463 (1964); *McCoy v. Spalding*, 41 Ill. App. 2d 292, 190 N.E.2d 483 (1963); *Stinson v. Edlen*, 27 Ill. App. 2d 425, 169 N.E.2d 682 (1960); *Blackwell v. Fernandez*, 324 Ill. App. 597, 59 N.E.2d 342 (1945); *Maldonado v. Claud's, Inc.*, 347 Mich. 395, 79 N.W.2d 847 (1956); *West v. Leiphart & Co.*, 169 Mich. 354, 135 N.W. 246 (1912); *Fladeland v. Mayer*, 102 N.W.2d 121 (N.D. 1960). *But see Bell v. Poindexter*, 336 Ill. App. 541, 84 N.E.2d 646 (1949); *Meyer v. State Line Super Mart*, 1 Mich. App. 562, 137 N.W.2d 299 (1965). In both cases a cause of action was granted under the dram shop act if the complaint alleged that the tavern keeper sold liquor with knowledge or reasonable grounds to believe that liquor would be consumed by minors.

21. *Graham v. V.F.W.* Post 2665, 97 Ill. App. 2d 139, 239 N.E.2d 856 (1968), *aff'd*, 43 Ill. 2d 1, 248 N.E.2d 657 (1969); *Butler v. Wittland*, 18 Ill. App. 2d 578, 153 N.E.2d 106 (1958); *Eldridge v. Don Beachcomber, Inc.*, 342 Ill. App. 151, 95 N.E.2d 512 (1950).

22. *Cruse v. Aden*, 127 Ill. 231, 20 N.E. 73 (1889); *Miller v. Owens-Illinois Glass Co.*, 48 Ill. App. 2d 412, 199 N.E.2d 300 (1964); *Harris v. Hardesty*, 111 Kan. 291, 207 P. 188 (1922); *Behnke v. Pierson*, 21 Mich. App. 219, 175 N.W.2d 303 (1970); *LeGault v. Klebba*, 7 Mich. App. 640, 152 N.W.2d 712 (1967). *But see Williams v. Klemesrud*, 197 N.W.2d 614 (Iowa 1972); *Currier v. McKee*, 99 Me. 364, 59 A. 442 (1904) (dictum). Cases similar to *Williams* will no longer arise because the present law, IOWA CODE ANN. § 123.9 (Supp. 1973), limits liability to "any licensees or permittees." In *Peterson v. Brackey*, 143 Iowa 75, 119 N.W. 967 (1909), a farm couple who furnished liquor to another couple while they were discussing a hog trade was

In contrast to the decisions in most states, Minnesota courts usually construe the state's dram shop act to permit recovery by the plaintiff.²³ Thus, Minnesota courts have allowed recovery when the liquor was purchased in Minnesota and the injury occurred outside the state;²⁴ when the vendor was a municipal corporation;²⁵ when

held liable for the death of one of the consumers under Law of March 20, 1862, ch. 47, § 2, [1862] Iowa Acts 50 (now IOWA CODE ANN. § 123.9 (Supp. 1973)). The statute provided for a right of action against "any person who shall, by selling intoxicating liquors cause the intoxication of such person . . ." The court did not consider, however, the question whether the defendants were proper defendants under the statute.

Dicta in Minnesota cases prior to *Ross* suggested that Minnesota courts might hold non-vendors of liquor liable under the Civil Damage Act. *Heveron v. Village of Belgrade*, 288 Minn. 395, 181 N.W.2d 692 (1970); *Dahlin v. Kron*, 232 Minn. 312, 45 N.W.2d 833 (1950).

The courts that have limited liability to vendors of liquor usually have based their decisions on the perceived intent of the legislature as evidenced by the statutory setting of the particular dram shop act in question. In *Harris v. Hardesty*, 111 Kan. 291, 207 P. 188 (1922), the court's interpretation of the act, Law of May 1, 1881, ch. 128, § 15, Kan. Laws (repealed 1949), depended upon the title of the original dram shop act, Law of March 3, 1868, ch. 35, Kan. Gen. Stat.: "An act to restrain dramshops and taverns, and to regulate the sale of intoxicating liquor." *Accord*, *Cruse v. Aden*, 127 Ill. 231, 20 N.E. 73 (1889); *State v. Barrett*, 27 Kan. 213 (1882).

In *Miller v. Owens-Illinois Glass Co.*, 48 Ill. App. 2d 412, 422-23, 199 N.E.2d 300, 306 (1964), the court reasoned that the legislature did not intend to include social suppliers of liquor because to do so "would open the floodgates of litigation as to almost every happening where someone was injured." Liability under the Illinois statute does not depend upon an illegal transfer.

The Michigan decisions purport to rely on the "general rule" that dram shop acts are not directed at non-vendors of liquor. *Behnke v. Pierson*, 21 Mich. App. 219, 175 N.W.2d 303 (1970); *LeGault v. Klebba*, 7 Mich. App. 640, 152 N.W.2d 712 (1967). The statutory scheme of the Michigan act suggests that this limitation on liability accords with the intent of the legislature. MICH. STAT. ANN. § 18.993 (Supp. 1973) is apparently directed at commercial vendors of liquor. It provides for the posting of a bond as a condition precedent to obtaining a license, prescribes the form for the bond, and contains a provision for civil liability similar to the Minnesota Civil Damage Act that includes principals and sureties on the bond as possible defendants.

Furthermore, the courts in *Harris*, *Cruse*, and *Miller* held that provisions that extend liability under the dram shop act to persons who "give" liquor are directed at vendors who attempt to avoid the consequences of the act by claiming they gave, not sold, liquor.

23. Note, *Liability Under the Minnesota Civil Damage Act*, 46 MINN. L. REV. 169, 174-75 (1962).

24. *Schmidt v. Driscoll Hotel, Inc.*, 249 Minn. 376, 82 N.W.2d 365 (1957).

25. *Hahn v. City of Ortonville*, 238 Minn. 428, 57 N.W.2d 254 (1953). Numerous suits have been brought against municipalities. E.g., *Cameron v. City of Fridley*, 293 Minn. 110, 197 N.W.2d 233 (1972); *Heveron v. Village of Belgrade*, 288 Minn. 395, 181 N.W.2d 692 (1970); *Trail v. Village of Elk River*, 286 Minn. 380, 175 N.W.2d 916 (1970).

the person who sold or served the liquor failed to take affirmative steps to ascertain whether the consumer was intoxicated before serving him;²⁶ and when the person who purchased the liquor transferred it to another who caused the harm.²⁷ Furthermore, Minnesota courts, apparently unconcerned with penalizing the supplier of liquor, have given the supplier the right of indemnification against the intoxicated person.²⁸

Although the Minnesota Supreme Court in *Ross* ostensibly based its holding on a legislative intent to impose liability on persons who merely furnish liquor and who are not engaged in its sale, the decision probably represents an extension of the court's own policy of compensating an individual injured because of the intoxication of another. The Civil Damage Act, in its statutory context, gives little indication whether the legislature intended to impose liability on non-commercial suppliers of liquor. Furthermore, if section 340.951 of the Minnesota Statutes,²⁹ which describes the notice requirements for actions

26. See *Cameron v. City of Fridley*, 293 Minn. 110, 197 N.W.2d 233 (1972); *Kluger v. Gallett*, 288 Minn. 11, 178 N.W.2d 900 (1970); *Mjos v. Village of Howard Lake*, 287 Minn. 427, 178 N.W.2d 862 (1970).

In 1969 the legislature amended Law of April 25, 1949, ch. 654, § 3, [1949] Minn. Laws 1167, by deleting a clause that made liquor sales to minors, habitual drunkards, or obviously intoxicated persons illegal. MINN. STAT. ANN. § 340.73 (1972), which made sales to an intoxicated person, rather than an "obviously" intoxicated person, illegal, was in effect at that time. In 1971 the legislature added a new provision to Law of April 25, 1949, ch. 654, § 3, [1949] Minn. Laws 1167:

Persons denied access. No intoxicating liquor shall be sold, furnished, or delivered for any purpose to any minor or to any person obviously intoxicated or to any of the persons to whom sale is prohibited by statute.

MINN. STAT. ANN. § 340.14(1)(a) (1972).

This provision in essence reflects both standards of intoxication. While the provision expressly adopts the "obviously intoxicated" standard that had been deleted in 1969, the reference in the last phrase—"prohibited by statute"—to MINN. STAT. ANN. § 340.73 (1972), necessarily incorporates the simple "intoxicated" standard of that statute.

27. See *Trail v. Village of Elk River*, 286 Minn. 380, 175 N.W.2d 916 (1970); *Kvanli v. Village of Watson*, 272 Minn. 481, 139 N.W.2d 275 (1965); *Murphy v. Hennen*, 264 Minn. 457, 119 N.W.2d 489 (1963); accord, *Judge v. Jordan*, 81 Iowa 519, 46 N.W. 1077 (1890).

28. *Skaja v. Andrews Hotel Co.*, 281 Minn. 417, 161 N.W.2d 658 (1968); *Farmers Ins. Exch. v. Village of Hewitt*, 274 Minn. 246, 143 N.W.2d 230 (1966). The courts thus have recognized that indemnification does not affect the injured person's compensation.

29. MINN. STAT. ANN. § 340.951 (1972):

From and after July 1, 1969, every person who claims damages from any municipality owning and operating a municipal liquor store or from the licensee of any licensed liquor establishment for or on account of any injury within the scope of Minnesota Statutes, Section 340.95, shall give a written notice to the

brought under the Civil Damage Act, were intended to be coextensive with the Civil Damage Act, then the *Ross* decision is contrary to legislative intent because section 340.951 applies only to municipal and licensed private liquor establishments.

The court in *Ross* chose to maximize the possibility of recovery in situations where injury is caused by the illegal supplying of liquor.³⁰ Although the application of the Civil Damage Act to *Ross*-type situations may fall short of its compensatory goal because of the financial inadequacy of the social supplier of liquor,³¹ the injured person, nevertheless, is at least assured of a cause of action.

Since the statutory requirement that liquor be illegally transferred now is satisfied merely by *servicing* liquor to an intoxicated person or a minor, *Ross* suggests the possibility of recovery under the dram shop act every time liquor is served and injury results.³² Whether *Ross* actually will deter persons from serving liquor to minors and intoxicated persons will depend upon whether social suppliers of liquor are aware of their possible liability and whether they would be willing to risk such liability.³³

governing body of the municipality or the licensee of the liquor establishment, as the case may be

30. Absent a statute, or in addition to a statute, a court might recognize a common law duty not to serve liquor when it would be unreasonable to do so. *Wiener v. Gamma Phi Chapter of Alpha Tau Omega Fraternity*, 258 Ore. 632, 485 P.2d 18 (1971). *But see Garcia v. Hargrove*, 46 Wis. 2d 724, 176 N.W.2d 566 (1970).

31. Although the burden on the supplier may be passed on through indemnification, *see note 28 supra* and accompanying text, this still may not adequately satisfy the compensatory objective of the *Ross* decision.

Arguably, liability should be restricted to the liquor industry, which not only profits from the sale of liquor, but can bear the burden more easily than a private individual. *Ross v. Ross*, 294 Minn. 115, 125, 200 N.W.2d 149, 155 (1972) (Rogosheske, J., concurring specially); Note, *Liability Under the Minnesota Civil Damage Act*, 46 MINN. L. REV. 169, 185 (1961).

32. The court in *Ross* distinguished *Miller v. Owens-Illinois Glass Co.*, 48 Ill. App. 2d 412, 199 N.E.2d 300 (1964), and the Illinois statute, because under the Illinois statute liability does not require an illegal transfer. 294 Minn. at 120, 200 N.W.2d at 152. But as long as an illegal transfer includes giving liquor to an intoxicated person, and since one is required to take affirmative steps to ascertain whether an individual is intoxicated, *see note 26 supra* and accompanying text, the scope of the Minnesota statute will in effect be almost as broad as the Illinois statute.

33. The deterrent effect of dram shop acts on the liquor industry, as opposed to social suppliers of liquor, probably is slight because most vendors carry insurance. Note, *Liability Under the Minnesota Civil Damage Act*, 46 MINN. L. REV. 169, 176-77 (1961).