AN OVERVIEW OF DRAM SHOP LAW AND ITS VALIDITY
WITH AN EMPHASIS ON CALIFORNIA:
A CASE FOR IMPOSING CIVIL LIABILITY ON COMMERCIAL DRINKING
ESTABLISHMENTS

A Project
Presented to the
Faculty of
California State Polytechnic University, Pomona

In Partial Fulfillment
Of the Requirements for the Degree
Master of Science
In
Hospitality Management

By
He (Vivian) Li
2016
SIGNATURE PAGE

PROJECT: AN OVERVIEW OF DRAM SHOP LAW AND ITS VALIDITY WITH AN EMPHASIS ON CALIFORNIA: A CASE FOR IMPOSING CIVIL LIABILITY ON COMMERCIAL DRINKING ESTABLISHMENTS

AUTHOR: He (Vivian) Li

DATE SUBMITTED: Fall 2016

Hospitality Management Department

Edward A. Merritt, PhD
Project Committee Chair
Hospitality Management

Neha Singh, PhD
Hospitality Management
ACKNOWLEDGEMENTS

Researching and writing a project is no mean feat. The most difficult part that I had encountered in composing my project lay in the topic itself. Because this topic pertains to in-depth deliberation on legal issues, which are inherently intertwining and abstruse, I was once extremely overwhelmed and frustrated. However, my Chair Dr. Edward Merritt never gave up on me. He guided me through the journey with his insightful inspirations and great patience. More importantly, he always generously offered his praises to me for any small improvements I had achieved.

Therefore, the first person I’d like to express my sincere appreciation to is my Chair Dr. Edward Merritt. This work would not have been possible without his systematic instructions and valuable comments. I would also like to thank him for his strictness, otherwise I would not have pushed myself to my extreme and have gained this much solid knowledge and experience from which I believe I will benefit in my future career path.

Second, I would like to express deepest gratitude to my committee members Dr. Neha Singh who not only offered me her unparalleled knowledge on project constructs but also her warmest encouragement along the way.

Third, my heartfelt thanks go to the Business and Computer Science Librarian Julie Shen. My search of academic dissertations and scholarly articles would have been one of prolonged anguish if not for the incisive and prompt help of the amazing Julie Shen.

Last, I am very grateful to all my professors and fellow graduate students at the Collins College of Hospitality Management who have ever lend a helping hand with the
completion of this work. I’d also like to extend an extraordinary thank you to my family and my friends for their mentoring and support throughout my life.
ABSTRACT

As drunk-driving remains a tremendous threat to public safety and costs tax-payer billions of dollars yearly in economic losses, many states have begun to hold licensed liquor establishments as well as the offending individuals themselves liable for personal injuries and property damage caused by intoxication. There is support of imposing civil liability for alcohol vendors backed up by public concerns over the consequences of alcohol-impaired driving and urges to enact more effective laws to curb drunk driving. Alternatively, there are common law and legislative oppositions due to inherent difficulties in lawmaking and intentional protections of the business interest of the hospitality industry. This monograph presents competing attitudes toward imposing civil liability for serving alcoholic beverages through examining court reasoning, legislative intent, and public policies on Dram Shop Liability. This work serves as an informative tool for those involved in the hospitality industry to comprehensively understand the history, development and rationale of Dram Shop laws; to better appraise their current liability exposure; and more importantly to urge the California legislature to lift ban on civil actions against commercial drinking establishments that irresponsibly distribute alcoholic beverages.

Keywords: Dram Shop Liability, Civil Liability, Alcohol Serving, Drunk-driving.
# TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>SIGNATURE PAGE</td>
<td>ii</td>
</tr>
<tr>
<td>ACKNOWLEDGEMENTS</td>
<td>iii</td>
</tr>
<tr>
<td>ABSTRACT</td>
<td>v</td>
</tr>
<tr>
<td>Chapter 1 Introduction</td>
<td>1</td>
</tr>
<tr>
<td>Chapter 2 Literature Review</td>
<td>3</td>
</tr>
<tr>
<td>Chapter 3 Methodology</td>
<td>16</td>
</tr>
<tr>
<td>Chapter 4 Analysis</td>
<td>17</td>
</tr>
<tr>
<td>Chapter 5 Discussion and Implications</td>
<td>33</td>
</tr>
<tr>
<td>Chapter 6 Conclusions</td>
<td>37</td>
</tr>
<tr>
<td>References</td>
<td>40</td>
</tr>
</tbody>
</table>
Chapter 1 Introduction

Every day in the United States, 28 persons die as victims of alcohol-impaired driving crashes. Drunk driving accounts for an estimated total economic loss of 242 billion dollars yearly (Blincoe et al., 2015). In all 50 states and the District of Columbia, Driving Under Influence (DUI) or Driving While Intoxicated (DWI) is a crime, which is taken very seriously and punished accordingly. In California for instance, first offense of DUI results in up to 6 months of imprisonment, up to 1000-dollar penalty, and up to 10-month license suspension. The legal limit of blood alcohol content (BAC, 0,08%) is consistent across the United States, and a person with a BAC higher than 0.08% is legally considered impaired and is strictly banned from driving in all 50 states. Nonetheless, according to a survey carried out in 2012, an astonishing 4.2 million adults self-reported at least one alcohol-impaired driving episode in the preceding 30 days, amounting to an estimated 121 million episodes (Jewett et al., 2015). In the same year, the Federal Bureau of Investigation (FBI) reported 1,282,957 DUI arrests (FBI, 2012), which indicated that only about 1% of the time DUI offenders were spotted and arrested by the law enforcement. Public concerns over alcohol-impaired driving have been continuously growing and there is an urge to implement more effective laws that can prevent and reduce drunk driving and its resulting injuries.

Aside from strengthening punitive sanctions on the person driving drunk, both the legislatures and courts began to take into consideration the culprit of a licensee that makes profit out of selling or furnishing alcoholic beverages to the drinkers. In this
context, dram shop laws were introduced to hold businesses that profit from the sale of alcohol liable in civil torts for their customers’ own actions as a result of their intoxication. However, not all states have accepted and adopted dram shop law, and in those jurisdictions that do, the provisions of dram shop law vary drastically. California, in particular, had long been following the common law rule of non-liability until the early 1970s when it was overturned by a string of dram shop claims in which the courts found the common law rule flawed and the license civilly liable for injuries caused by intoxication of its customer. However, the common law imposed vendor liabilities were soon removed by newly added amendments to California Business & Profession Code 25602 and its subdivisions in late 1970s which, in explicit language, abolished the court rulings in the series of dram shop claims filed during the fleeting dram shop liability era. This legislative transformation resulted in the extremely limited dram shop laws which now exist and left California one of the 8 recalcitrant states with little to none dram shop liability as of this paper is written. Therefore, this work scrutinizes and analyzes the validity of imposing little to none liability on commercial drinking establishments under both common law rule and legislative intent and has come to a conclusion that California legislature should begin to allow injured third parties the right to bring civil actions against establishments that have served or furnished alcoholic beverages to the person causing such injuries.
Chapter 2 Literature Review

2.1 Concept of Dram Shop Liability

Dram Shop Liability refers to a body of law governing commercial drinking establishments selling or furnishing alcoholic beverages to the public in the United States. Under such laws, commercial drinking establishments are held both civilly and criminally liable for over-serving alcohol to visibly intoxicated patrons, whom subsequently cause injuries to innocent third parties as a result of car crashes or batteries due to the patron’s intoxication (Alexander, 2013). It is worth noting that not all illegal sales or furnishings of alcohol give rise to dram shop liability. Some of these illegal acts taking place at a dram shop such as after-hour sales, absence of ID-check are governed by general liquor licensing law. Dram shop law mainly deals with bodily or property injuries caused by intoxication and exposes alcohol suppliers to civil liability on top of criminal charges imposed by existing liquor licensing law. In addition, Dram shop law is different from social host liability in so far as social host liability governs individuals hosting a social event, oftentimes on the individual’s own premise where alcoholic beverages are served to intoxicants whom later get involved in alcohol-related car crashes or batteries. Notwithstanding, these two legal concepts are very similar and both aim at preventing drunk driving and reducing alcohol related injuries.

2.1.1 First-Party Dram Shop Case

A first-party dram shop case exists where the plaintiff per se is the person consuming alcohol and causing injuries to a third party. This type of claim is usually only
valid where the plaintiff is a minor (person underaged 21 years old) and is intoxicated as a result of being served alcohol at a bar or tavern.

2.1.2 Third-Party Dram Shop Case

A third-party dram shop case exists where the plaintiff is an innocent third party that sustains injuries caused by the drunk patron who is over-served alcohol at a bar or tavern. Under the protection of dram shop acts, any individual injured by a intoxicated person (or the designated person) can sue the owner of the drinking establishment where that person becomes intoxicated for both personal injuries, property damages and loss of family support means.

2.2 History and Development of Dram Shop Laws

It is interesting that back during Colonial times, dram shops and taverns could actually be fined for not allowing their customers to drink as much as they wished. The concept of dram shop liability made its first debut during the mid-19th century temperance movement as alcohol, or specifically drunkenness was considered a safety threat to society (Myers, 1993). As early as 1829, Maine adopted a local option statue that entitled its electorate political rights to restrict the sale of alcoholic beverages (Ogilvie, 1958). Some other states followed the trend and began to pass similar statues prohibiting the sale of alcohol. January 29, 1919 witnessed the nationwide success of the alcohol prohibition campaign as the Eighteenth Amendment (Amendment XVIII) was incorporated to the United States Constitution. The Eighteenth Amendment established the prohibition of alcoholic beverages in the United States by declaring manufacture,
transportation, and distribution (not the consumption) of alcohol illegal. The Eighteenth Amendment, however, did not clearly define “intoxicating liquors” or provide penalties.

Later on October 28, 1919, the separate National Prohibition Act, also informally known as the Volstead Act, was enacted to effectively enforce the Eighteenth Amendment. The Volstead Act defined any beverage containing 0.5% alcohol and above as intoxicating alcohol and that only authorized person or unit can produce, transport, or sell intoxicating alcohol. The act also defined intoxicating liquors used for medical or religious purposes were excluded from the prohibition (Blocker, 1989; Hamm, 1995). However, under such strict prohibition, the underground production and distribution of alcohol, also known as “bootlegging,” started to spring up on a large scale across the states. Public opposition to the Volstead Act started to ferment as the illegal “bootlegging” business had resulted in tremendous gang crimes (Hallwas, 1999).

In 1933, both the 18th Amendment and the Prohibition Act were repealed in the 21st Amendment to the United States Constitution, once again leaving the common law rule of non-liability in force. Not until the late 1960s, Courts and legislatures re-embraced dram shop liability as the issue of intoxicated motorists driving drunk became prominent. The modern Dram Shop Act dealt mainly with bars, taverns, or restaurants that over-serve alcohol recklessly and negligently. By 1987, about 28 states had reestablished tort liability of a certain form for the sale of alcoholic beverages (Julia, 1987). At present, all states have some form of dram shop law in force except for Delaware, Maryland, Nebraska, Nevada, South Dakota and Virginia. Current California dram shop laws are extremely limited that bars and liquor stores are not held civilly liable for serving alcohol
to visibly intoxicated customers except for severe situations where minors are involved (Cal. Bus. & Prof. Code §25602).

2.3 California Dram Shop Common Law and Statutory Law

Traditionally, the notion of imposing civil liability on vendors of alcoholic beverages was absent in the state of California. The courts never allowed recoveries by either the intoxicated patrons or innocent third parties from suppliers of alcoholic beverages (Lammers v. Pacific Electric Ry. Co, 1921; Hitson v. Dwyer, 1943; Fleckner v. Dionne, 1949; Cole v. Rush, 1954; Kingen v. Weyant, 1957).

*Lammers v. Pacific Electric Ry. Co* (1921) was the first case filed in the state of California that touched on the causation of intoxication and injuries sustained thereafter. In Lammers, the plaintiff was struck to death by a train after being expelled from another defendant’s train. The plaintiff was alleged to have mental deficiency and was under the influence of alcohol at the time of ejection that he was not able to find the train fare when asked for. The judgement entered in favor of the plaintiff was reversed by the supreme court reasoning “The only connection between the ejection and the injury would be the fact that if there had been no ejection there would have been no injury. The sale of the whisky to the plaintiff would come nearer being a proximate cause of the injury than the ejection from the railway train. The peril arising from the ejection ceased the moment the passenger left the position where he could be struck by defendant's trains, while the peril arising from the use of the intoxicating liquor continued in operation up to the time of the injury and contributed thereto, and yet it has been uniformly held in the absence of statute to the contrary that the sale of intoxicating liquor is not the proximate cause of injuries.
subsequently received by the purchaser because of his intoxication (Cruse v. Aden, 1889).

Even though the Lammers case did not deal directly with taverns serving alcohol and patrons being served alcohol to, the doctrine applied in this case that the sale or furnishing of alcohol is not the proximate cause of injuries sustained as a result of intoxication was relied upon by subsequent dram shop claims filed in California.

In Hitson v. Dwyer (1943), where the plaintiff brought a negligence action against the defendant tavern where he was allegedly to have been over served alcohol while intoxicated and thus injured himself thereafter. The court denied the complaint and stated that "the proximate cause [of injury resulting from intoxication] is not the wrongful sale of the liquor but the drinking of the liquor so purchased" (p. 809).

Thereafter in Fleckner v. Dionne (1949), the plaintiff was injured in an automobile crash caused by a minor who had obtained alcohol from the defendant’s tavern. In the complaint, the defendant tavern keeper was allegedly to be well aware of that the purchaser was a minor, and that he was already intoxicated, and that he had a vehicle he was going to drive after the purchase of alcohol. The court once again entered a judgement for the defendant ground on the dictum in Lammers and Hitson.

Finally in Cole v. Rush (1954), the plaintiffs were the wife and children of a deceased customer who died in a physical fight at defendant’s tavern as a result of intoxication. The complaint alleged that the defendant served the decedent of excessive alcohol knowing that he was a habitual drunkard and that he could become aggressive and vicious after consuming alcohol. In ruling that the complaint failed to maintain a wrongful death action against the tavern keepers, the court concluded that "as to a competent person it is the voluntary consumption, not the sale or gift, of intoxicating
liquor which is the proximate cause of injury from its use" (*Cole v. Rush*, 1954). The court’s articulation on tort liability arising out of the sale of intoxicating beverages is that “The common law gives no remedy for injury or death following the mere sale of liquor to the ordinary man, either on the theory that it is a direct wrong or on the ground that it is negligence, which imposes a legal liability on the seller for damages resulting from the intoxication.”

Another dram shop case worth noting is *Kingen v. Weyant* (1957). In this case, the plaintiff who was the patron at defendant’s inn was injured by another patron of the same inn, who had been drinking at the bar and hit the plaintiff as a result of intoxication. The plaintiff alleged negligence on the part of the defendant bartender for continuously serving alcohol to the visibly intoxicated defendant patron and for failing to control the patron’s conduct when having the ability to do so. The appellate court applied a foreseeability analysis in determining whether the bartender’s alleged negligent conduct was a proximate cause of the injuries sustained by the patron, and concluded that the bartender took prompt and effective action in “breaking up” the quarrel between the defendant patron and the plaintiff before the battery and thus there was no reason to require the bartender to foresee the defendant’s act thereafter.

Since *Cole v. Rush* (1954), many other jurisdictions began to reconsider the common law rule of non-liability for vendors of alcoholic beverages especially where the patron’s intoxication caused injuries to an innocent third party. As a result, some courts in other jurisdictions started to enact vendor liability in cases where an injured third party was involved (*Cowman v. Hansen*, 1958; *Waynick v. Chicago's Last Department Store*, 1959; *Hull v. Rund*, 1962; *Davis v. Shiappacossee*, 1963; *Mitchell v. Ketner*, 1964;
In the state of California, the court first allowed a third party to recover from a commercial drinking establishment for personal injuries caused by its intoxicated patron in *Vesely v. Sager* (1971). In Vesely, Defendant Sager was the owner and operator of a roadside lodge selling alcoholic beverages. It was alleged in the complaint that Defendant Sager knew that O’Connell had an automobile on premise and that he was going to drive his own vehicle as leaving the lodge, and the only exit route was a narrow, steep mountain road. However, Defendant Sager continued to served alcohol to O’Connell while already intoxicated until around 5 a.m., which past the normal closing time of 2 a.m.. As a result, O’Connell’s car crashed into the plaintiff’s and thus causing personal injuries to the plaintiff. The court, in determining the proximate cause in this case, rejected the common law doctrine of consumption of alcohol instead of furnishing of alcohol being the proximate cause of injuries resulting from intoxication, and decided that “furnishing of an alcoholic beverage to an intoxicated person may be a proximate cause of injuries inflicted by that individual upon a third person. If such furnishing is a proximate cause, it is so because the consumption, resulting intoxication, and injury-producing conduct are foreseeable intervening causes, or at least the injury-producing conduct is one of the hazards which makes such furnishing negligent” (p.164). The court then shifted the focus of proximate cause to that of a duty of care owed to plaintiff and subsequently relied its final judgement upon Business and Professions Code section 25602 providing that "Every person who sells, furnishes, gives, or causes to be sold,

furnished, or given away, any alcoholic beverage to any habitual or common drunkard or to any obviously intoxicated person is guilty of a misdemeanor" (Cal. Bus. & Prof. Code §25602).

Later the dictum in Vesely was relied upon by the supreme court of California that once again held the drinking establishments civilly liable for injuries inflicted upon innocent third parties by the intoxicated patrons in Bernhard v. Harrah’s Club (1976) and Coulter v. Superior Court (1978). However, in the same year that Coulter was decided, the legislature amended Business and Professions Code section 25602 which expressly abrogated holdings in Vesely, Bernhard, and Coulter, and thus brought California back to the pre-Vesely era of non vendor liability for the sale and furnishing of alcoholic beverages. The Business and Professions Code section 25602 has never been revised and has been in use ever since. The code states the following:

“(a) Every person who sells, furnishes, gives, or causes to be sold, furnished, or given away, any alcoholic beverage to any habitual or common drunkard or to any obviously intoxicated person is guilty of a misdemeanor.

(b) No person who sells, furnishes, gives, or causes to be sold, furnished, or given away, any alcoholic beverage pursuant to subdivision (a) of this section shall be civilly liable to any injured person or the estate of such person for injuries inflicted on that person as a result of intoxication by the consumer of such alcoholic beverage.

(c) The Legislature hereby declares that this section shall be interpreted so that the holdings in cases such as Vesely v. Sager (5 Cal. 3d 153), Bernhard v. Harrah’s Club (16 Cal. 3d 313) and Coulter v. Superior Court (____ Cal. 3d ____ ) be abrogated in favor of prior judicial interpretation finding the consumption of alcoholic beverages rather than
the serving of alcoholic beverages as the proximate cause of injuries inflicted upon another by an intoxicated person” (Cal. Bus. & Prof. Code §25602).

2.4 Effectiveness of Dram Shop Laws

2.4.1 Impacts of Tightened Dramshop Liability on Perceptions and Behaviors of Alcohol Suppliers

Despite of severe punitive sanctions against impaired-driving individuals, there is a growing trend of public urge for assigning accountabilities to drinking establishments that serve the alcohol to those individuals whom later get involved in impaired driving. Why should drinking establishments be held liable for drunk driving? According to O’Donnell (1985), bars and restaurants were the preferred drinking place for 40 to 63 percent of DUI drivers. The point of bars and restaurants being the primary alcohol source was later supported by Wieczorek et al. (1989) who conducted a survey on drunk drivers that attended DUI school in Buffalo, NY. 74 percent of the survey respondents self reported to have drank at bars and restaurants prior to their arrest whereas only 10 percent reported drinking at home and 5 percent drinking at someone else’s home.

Another similar survey carried out by Christy (1989) found that 59 percent of drivers convicted of DUI in California self claimed to have drank at licensed establishments before their arrest for drunk driving. Once again, Mosher (1996)’s study discovered that about 50% of drunk drivers start their alcohol-impaired journey from a licensed establishment. The most recent study on this topic observed that 54.3% of alcohol-impaired driving were attributable to binge drinkers drinking in bars, clubs and
restaurants where they consumed an average of 8.1 drinks. Therein, 25.7% of them consumed more 10 drinks and above (Naimi et al., 2009).

Moreover, bars and restaurants were historically viewed as underperforming in terms of exercising due diligence or due care to alcohol consumers. (Crowe and Bailey, 1995; Giesbrecht and Greefield 1999; Hilton and Kaskutas, 1991; Schmid et al., 1990; Wagenaar et al., 2000). Findings in these surveys consistently hold that commercial suppliers of alcoholic beverages, as perceived by the public consumers, are too lax in preventing illegal sales as a result of the lack of a systematic and regulatory server-training program. While sales and service of alcohol to people who are visible intoxicated is prohibited in almost all states, studies show that 79 percent of establishments that serve alcoholic beverages will continue serving alcohol to already intoxicated patrons (Toomey et al., 2004). However, the reason is not surprising. A large portion of a bartender’s salary and tips is attributable to the amount of drinks he can sell. Liang et al. (2004) analyzed the impacts of various liability rules on employee’s serving practices based on a comprehensive interview of 862 bar employees across the United States. The study found that employees were better compensated in the form of salary or tips when they engaged in service practices potentially leading to customer’s impaired driving. Furthermore, employees engaged in precautionary service practices (e.g. cutting off obviously intoxicated customers, referring obviously intoxicated customers to the manager or another employee) were less financially rewarded than those who did not).

Most importantly, numerous studies have shown obvious positive linear correlation between the strictness of Dram Shop Liability and the awareness of regulated furnishing of alcoholic beverages on the part of servers. Laxuthai’s (1994) research on
alcohol related policies and laws found that presence of Dram Shop Liability “does reduce low-price promotion and increase refusals of service to intoxicated patrons” (p.165). Sloan, Stout, Liang and Whetten-Goldstein (2000) concluded in their comprehensive survey on bar owners’ perceptions towards dram shop statues that the higher the risk of potential tort liability as perceived by the management, the higher the level of precaution in serving minors and intoxicated patrons. Same deterring effects were found on regular bar employees in Liang et al. (2004)’s study that when perceived risk of a potential law suit was high, the management was likely to take certain precautions, which would have an indirect impact on its employees’s service behaviors.

Another notable yet discouraging conclusion drawn from this study was that even though “tort encourages bartenders and other servers to be more careful about some aspects of their jobs is the good news… administrative and criminal law (i.e. local police, ABC, ALE) most frequently appear to be ineffective deterrents, as least as far as bar personnel behavior is concerned” (p.68). Room et al (2005) held that “ it is more easier and more efficient for the state to influence licensed occupational behaviors than it is to influence the behavior of private customers (p.527).

2.4.2 Impacts of Tightened Dram Shop Liability on Alcohol-related crashes

The presumption of increased awareness of vendor liability leading to decreased impaired-driving rate is statistically proven in studies that compared the regional alcohol-related automobile crashes before and after a major change in dram shop statues or case laws took place. Chaplouka (1991) examined the effects of multiple alcohol control policies including dram shop act on motor vehicle fatality rates and found that dram shop
law reduced the total motor vehicle fatality rates by about 6 percent. The other policies examined in this study that were also found to have significant impacts on reduction of motor vehicle fatality rates were beer taxes, administrative licensing actions, minimal legal drinking age, preliminary breath test, large mandatory fines, no plea bargaining provisions, and administrative licensing sanctions upon conviction. On the other hand, little to none deterrent effects of mandatory jail sentences, community service options, illegal per se laws, and open container laws were found on reducing alcohol-impaired driving.

In Holder et al.’s (1990) research, the authors selected North Carolina and Texas as the research objects in an effort to determine whether an adoption of intoxicating laws could result in declined alcohol involved traffic crashes following it. Before 1980s, Commercial drinking establishments in Carolina and Texas were exempt from civil liabilities for deaths or injuries caused by the establishments’ sale of alcohol to intoxicated patrons. They both experienced a sudden change in liability exposure following major lawsuits entered for vendor liability during the time period of 1980 and 1984. While the author failed to testify the presumed association between the two variables as the other concurring factors were hard to isolate in the North Carolina case, the author did observe a significant decrease of 6.5% in the number of alcohol involved traffic crashes after the enactment of a dram shop statute in Texas.

2.4.3 Criminal Sanctions V.S. Civil Liabilities

Wachtler (2011) examined the strictness of social host liability laws in New York and concluded that New York’s method of enacting only social host civil liability is,
statistically, the most effective and efficient way to accomplish the goals of social host liability laws. In his study, Wachtler compared alcohol-impaired driving fatalities among Massachusetts, state that impose both criminal and civil liabilities, Maryland and Kansas - states imposing only criminal liabilities and New York placing only civil liabilities on the part of social hosts. Results showed that Maryland and Kansas have a similarly high rate of drunk driving fatalities than New York and Massachusetts, in which New York’s rate is slightly lower than Massachusetts’s. While recognizing the difficulty to prove criminal charges against social hosts due to a higher standard of proof, this study further suggested the New York State legislature to not rule out imposing criminal sanctions against social hosts in the future as any sort of law imposing liability should be enacted in order to better serve the goal of encouraging hosts to be more conscious of who is consuming alcohol at their events.
Chapter 3 Methodology

In support of the hypothesized theory that Dram Shop Liability is in compliance with the general negligence law rule, under which the injured parties are entitled civil litigations rights, secondary data including statutes and case law as well as law review articles and law encyclopedias were retrieved and scrutinized through standard online legal research tools - Lexis-Nexis and Westlaw.

First of all, validity of furnishing of alcohol being the proximate cause is examined in jurisdictions embracing Dram Shop law. Secondly, fault apportioning in general negligence claims under California state law is analyzed. Thirdly, legislative intent behind the Dram Shop Act is discussed.
4.1 Dram Shop Liability in Common Law

4.1.1 Proximate Cause

In the law, a proximate cause is an event sufficiently related to a legally recognizable injury to be held to be the cause of that injury (Dobbs, 2001). "The rule was based on the obvious fact that one could not become intoxicated by reason of liquor furnished him if he did not drink it" (Nolan v. Morelli, 1967, p. 437). As to a competent person it is the voluntary consumption, rather than the sale or gift, of intoxicating liquor which is the proximate cause of injury from its use (Cole v. Rush, 1954). Nevertheless, since Cole, a substantial number of courts, if not majority, began to reevaluate the common law rule of non liability for vendors of alcoholic beverages and have decided that the sale or furnishing of alcohol might be the proximate cause of injuries resulting from the use of alcohol and that the vendors might be held civilly reliable for the injuries sustained by a third party. (Cowman v. Hansen, 1958; Waynick v. Chicago's Last Department Store, 1959; Hull v. Rund, 1962; Davis v. Shiappacossee, 1963; Mitchell v. Ketner, 1964; Ramsey v. Anctil, 1965; Hall v. Budagher, 1966; Nolan v. Morelli, 1967; Deeds v. United States, 1969; Hamm v. Carson City Nugget, Inc., 1969; Garcia v. Hargrove, 1971; Jardine v. Upper Darby Lodge, 1973). In these cases, the most commonly used test of proximate cause centered around foreseeability, i.e. whether the injuries resulting from an act could reasonably have been predicted. Under such principals, the sale or furnishing of alcohol to an intoxicated person may become a proximate cause of that individual’s post-intoxication conduct because “the consumption, resulting intoxication, and injury-producing conduct are foreseeable intervening causes,
or at least the injury-producing conduct is one of the hazards which makes such furnishing negligent” (*Vesely v. Sager*, 1971, p. 164).

Compared to the owner of a liquor store, who is not able to watch or track how a sober customer will consume the alcohol so purchased once the customer leaves the premise, a tavern keeper or a bartender is considered in a better position to monitor the liquor consumption and to predict the consequences that flow naturally from drinking. (*Julia*, 1987). Therefore, if a customer is served alcohol at a tavern or a bar and gets intoxicated on the premise, the risk of harm to that customer is evident and foreseeable. (*Tiger v. American Legion Post*, 1973). In this sense, selling or furnishing of alcoholic beverages, if not the sole cause, concur with the consumption of alcoholic beverages by the drinker himself to result in the injury, and the tavern or the bar should thus be held liable for the consequences of the sale.

In *Jardine v. Upper Darby Lodge* (1964), the Supreme Court of Pennsylvania reasoned "The person who would put into the hands of an obviously demented individual a firearm with which he shot an innocent third person would be amenable in damages to that third person for unlawful negligence. An intoxicated person behind the wheel of an automobile can be as dangerous as an insane person with a firearm. He is as much a hazard to the safety of the community as a stick of dynamite that must be de-fused in order to be rendered harmless. To serve an intoxicated person more liquor is to light the fuse" (p.631-632). This court also held that “the first prime requisite to deintoxicate one who has, because of alcohol, lost control over his reflexes, judgement, and sense of responsibility to other, is to stop pouring drinks into him” (p.631). This reasoning was echoed in *Buchanan v. Merger Enterprises, Inc.* (1985) where the court stated that the
first step to detoxify someone who has lost his control over his reflexes, judgement, and sense of responsibility to others resulted from consumption of alcohol, is to stop furnishing him more. Therefore, the act of selling and furnishing of alcohol rather than the “self-willingness” to drink it becomes the proximate cause in so far as the bartenders and servers intentionally manipulate patrons’ alcohol-impaired minds towards making them to drink more.

Legislative-wise, the provisions set forth in the California Business & Profession Code 25602 draw an extinct line between intoxicated minors and the other types of patrons. The pertinent statues, while expressly abrogating the holdings in favor of imposing tort liabilities in serving visibly intoxicated patrons, are open to hold licensed establishments liable for furnishing alcohol to intoxicated minors because “the furnishing, sale or giving of that beverage to the minor is the proximate cause of the personal injury or death sustained by that person” (CA Bus & Prof Code § 25602.1). A cause of action against purveyors of alcohol can only be created if the minor is proved to be already intoxicated at the time the sale or furnishing of alcohol are made to him. Based on such interpretations of the legislator’s intention, the California Supreme Court ruled in Strang v. Cabrol (1984) that no liability existed in a case where the minor was not visibly intoxicated when being furnished of alcohol.

A series of cases involving furnishings of alcohol to minors were filed under California Business & Profession Code 25602 after Strang. Neither of those cases including Strang provided supplementing arguments in support of the rationale of proximate cause in interpreting the code, but only scrutinized whether the two key
elements in provisions were met to constitute a valid claim —-(1) If defendant is a licensee; (2) if the minor being furnished of alcohol is visibly intoxicated at the time.

In terms of proximate cause, the provisions can be interpreted arguably in the way that the furnishing rather than consumption of alcohol is a proximate cause only when the furnishing is made to an intoxicated minor. It is so because an intoxicated minor is not considered a competent person while both intoxicated adults and non-intoxicated minors are. The underlying assumption is that alcohol only impair people under 21 years of age and exert no visible impacts on people over 21 years of age, yet no relevant evidence has been discovered to support such a whimsical anomaly.

4.1.2 Pure Contributory Negligence V.S. Comparative Negligence

Any business owes a duty to provide a certain standard of “reasonable care” to protect its customers during regular business operation. Especially for a customer-focused industry like hospitality where customers expect a certain level of pampering, the duty on the part of business operators to provide due care becomes even more crucial. Such duty to provide care covers a lot of ground such as providing a safe premise, safeguarding customer’s privacy and personal information, hiring and properly training service staff, serving food fit for consumption, and serving alcoholic beverage responsibly. Whether reasonable care is used will be brought into question when a customer suffers financial losses or personal injuries during or after the service. Failures to fulfill such fiduciary duties might constitute negligent acts in which the negligent party is held legally responsible for the resulting damage and losses under the law rule of general negligence.
Even if assuming furnishing of alcohol is not the proximate cause of the subsequent drunk driving as some non Dram Shop jurisdictions hold, the fact that servicing alcohol to visibly intoxicated patrons is expressly banned in California Business Profession Code 25602, which also can be found in pertinent criminal statues in many other states, indicates that such act is at least somewhat dangerous, and might cause injuries to a class of people the statue is designed to protect. Therefore, it is out of question that continuously serving alcohol to already visibly intoxicated patron is a negligent act on the part of the drinking establishment as it breaches a explicit criminal statue.

In a negligence claim, the party whose negligence caused the accident typically pays for the resulting damage. If more than one party caused the damage, then negligence is distributed between the parties based on state apportionment laws. Based on the evidence submitted, the judge or jury will then allocate the percentage that each party was negligent. Throughout the U.S., there are generally two systems used in assigning fault - pure contributory negligence and comparative negligence. Currently, only five states, including the District of Columbia, adopt the pure contributory negligence rule. Under such principle, plaintiff’s recovery is completely barred if the plaintiff is find at even a slightly bit of fault (Haerdter v. Johnson, 1949; Summers v. Burdick, 1961; Ala. Power Co. v. Schotz, 1968; Wingfield v. People’s Drug Store, 1977; John R. Cowley & Bros., Inc. v. Brown, 1990; Joines v. Moffitt, 2013). California is among the rest 45 states that follow the doctrine of comparative negligence (Best & Donohue, 2012). In Li v. Yellow Cab Co. (1975), the California Supreme Court first introduced this doctrine which “assign responsibility and liability for damage in direct proportion to the amount of
negligence of each of the parties”. More specifically, California is one of the thirteen states that follow a pure comparative negligence rule in which a person found to be 99% at fault can still recover from the party(s) the rest 1% fault is apportioned to. Stated in other words, the fact that the plaintiff’s negligence contributes to his subsequent injuries does not immunize the defendant from being held liable for defendant’s proportionate share of fault in the accident. In light of pure comparative negligence rule, a licensed alcohol establishment should still be held reliable even without the presence of a proximate causal relationship between furnishing of alcohol and the injuries resulted therefrom. And it is so because the furnishing of alcohol, if not proximately, contributes to the patron’s intoxication and the alcohol establishment should fairly bear responsibilities commensurate with the extent of its contribution to the patron’s intoxication.

4.1.3 Burden of Proof in Dram Shop Actions

In most states, Dram Shop Liability is premised on the reckless and negligent furnishing of alcoholic beverage to a “visibly intoxicated” customer. This standard of proof differs largely from a DUI case, where the mere establishment of a certain blood alcohol level (BAC of 0.08% or higher) adequately proves guilt. In other words, the determinative factor is the physical appearances of the intoxicated person in the view of the server, rather than medical or expert speculations about the person’s actual intoxication (Romano v. Stanley, 1997; Fort Mitchell Country Club v. LaMarre, 2012).

In some Dram Shop cases, a toxicologist would be involved to present his inference of how an average person would have appeared or acted at the time of being
served alcohol from the results of a blood alcohol test taken after the accident. However, the reliability of such speculations remains rebuttable since alcohol tolerance and social behaviors vary from person to person. These variances lessen the outward manifestations of intoxication, which significantly interfere with observers’ ability to make an accurate judgment. According to an experimental study on the ability to detect visible alcohol-impairments, social drinkers, bartenders, and police officers were asked to identify the target's level of intoxication and to determine whether the target drinker could be served another drink and whether they could drive home. The experiment results showed a 75% misjudgment rate. Moreover, the 25% of time when the raters correctly identified target drinkers who were too alcohol-impaired to drive safely happened mostly when the targets’ BACs were well above the legal limit (Brick & Carpenter, 2001; Brick & Erickson, 2009).

Another way of proving a person’s visible intoxication stems from eyewitnesses who are present while this person is being served alcohol. Unfortunately, this type of testimony is no more credible than forensic speculation. The other patrons present at the time were also there drinking, relaxing and not supposed to monitor their surroundings. Their then mental states can also affect the accuracy of their memories about what was happening throughout the time. As the proof of burden, more often than not resides with the plaintiff, it makes proving “visible intoxication” very intractable for the plaintiff absent a set of universal standards. While this burden might seem unfair, the servers would otherwise be hard pressed to make accurate judgments on a person’s actual intoxication before continuing to serve that person with alcohol.
Even in the presumably ideal situation where intoxicated patrons can be correctly identified, Aside from that, the server’s act of cutting off intoxicated patrons might give rise to additional unexpected liabilities. For example, people suffering speech disorders may sound slurred, which can be confounded with a typical sign of intoxication. Improperly refusing to serve such patron might violate anti-discrimination laws and Americans with Disabilities Act (ADA). Various health problems may offer some other signs of intoxication, servers should take extreme caution when refusing to serve alcohol, otherwise they might create additional liabilities through actions, if well-intentioned, to address problematic drinkers (Gursoy et. al., 2011).

In the presumably ideal situation where intoxicated patrons are correctly identified by the servers, the patrons might be self-denial of their own intoxication and become irritated and aggressive being refused of service. In this case, servers and restaurant operators typically have to remove or evict them as they endanger themselves and the other patrons present. Under Dram Shop laws, the risk associated with eviction can be substantial.

In *Kramer v. Continental Cas. Co*, (1994), a group of high school students were evicted by the motel after being complained about making loud notice while drinking and partying in their room. All the students then rode in a car driven by an intoxicated student who had a BAC of 0.15 at the time of the car crash. The court found the motel’s actions of throwing out inebriated teenagers onto the motoring public was the worst possible option exercised and apportioned the fault 35% to the motel.

The aforementioned cases dealt with hurdles for a licensee to overcome in accurately identifying intoxication and tactfully refusing service. In those cases,
somewhat of negligent actions on the part of the licensee can be established especially in Kramer v. Continental Cas. Co where the motel knowingly allowed underage patrons to remain on premise binging on alcoholic beverages. Where a licensee seems to have exhausted all possible well-intentioned means to serve responsibly – neither serving alcohol to underage patrons nor over-serving alcohol to visibly intoxicated patrons, the risk of bearing liability still lurk.

In *Bauer v. Nesbitt* (2009), a group of five with four over the age of 21 and Nesbitt then age 19 walked in the defendant inn after having consumed some alcohol elsewhere. The group was served food and alcoholic beverages, but no one claimed to have seen Nesbitt was served alcohol or allowed to drink alcohol brought to the table. Indeed, Nesbitt claimed that the inn’s servers who knew he was a minor, were closely watching him the whole night. He also confessed that he wasn’t served alcohol by any of the employees but one friend out of the four - Hamby did slip some rum into his coke under the table. Throughout the two hours stay at the inn, no witness observed obvious signs of intoxication for Hamby and Nesbitt. The two later rode in the same car Nesbitt was driving after departing from the establishment and got involved in a fatal car crash leaving Hamby dead and Nesbitt severely injured. The decedent’s estate brought a two-count wrongful death action against the inn under both common-law negligence and Dram Shop Act. The trial court first dismissed the action alleging no fault on the defendant inn because it did not serve alcohol directly to the underage friend who crashed the vehicle both were riding in. The estate appealed to a higher court, which reversed the trial court’s decision and held the inn in breach of its owe duty of arranging transportation for the decedent and of protecting the alcohol-impaired friend from
injuring both himself and others. The court further argues that a licensee’s liability should extend to anyone who walks in appearing to be intoxicated even though the intoxication is resulted from other causes. Notwithstanding the New Jersey Supreme Court ultimately re-affirmed the trial court’s rulings in favor of the establishment, the great repercussions this case had provoked loomed large in many other analogous cases decided thereafter in terms of to what extent a licensee should exercise reasonable care to its patrons. With a different group of judges, the New Jersey Supreme Court could have entered a different final order, which could have been exposing countless establishments within the hospitality industry to seemingly limitless liabilities.

4.1.4 Responsible Beverage Service Practices (RBS) as an Affirmative Defense

Because of the murky nature of visible intoxication at the time of service, some jurisdictions began to recognize what is called Responsible Beverage Service Practices Defense in a Dram Shop claim. For example, Texas’s relevant liquor liability laws grant exemptions to a licensee if it can successfully establish that (1) it requires its employees to attend a certified RBS training program; (2) it ensures its employees has actually attended such a program and the certificate is current at the time of service; (3) it has not encouraged its employees, directly or indirectly, to violate a such law (TEX. ALCO. BEV.CODE § 106.14(a)).

The first two prongs reflect the legislative intent to induce a licensee to mandate the completion of an approved RBS training program on the part of its employees, and to equip alcohol servers with more knowledge of how to recognize an intoxicated patron
and how to serve responsibly. The third prong demonstrates the legislative concern that after its employees acquire training certification, the employer might turn its back on the actual actions of its employees or direct their actions solely to achieve profit maximization. All in all, these languages aim to provide a shelter from civil liability for licensee that has actively taken all possible preventative measures to reduce the harms incurred from intoxication.

The courts, in attempt to interpret and execute the legislative intent, have generalized a set of evidence that constitute encouragement of “violation of a such law”, which include but not limited to failure to secure on-premise safety, failure to provide clear and consistent written guidelines on responsible serving, failure to address reported employee misconduct in serving alcohol, engaging in proactive promotional sales (e.g. frequent free drinks), setting excessively high minimum sales quota. It is worth noting that it is not required to prove enforcement or adherence to RBS practices on the night in question (*Pena v. Neal, Inc.*, 1995; *I-Gotcha, Inc. v. Mc linnis*, 1995; *Gonzalez v. South Dallas Club*, 1997; *Perseus, Inc. v. Canody*, 1999; *Cianci v. M. Till*, 2000; 20801, *Inc. v. Parker*, 2008).

### 4.2 Legislative Intent Behind Dram Shop Law

#### 4.2.1 Compensatory Approach for the Injured

It is recognized in the majority of states embracing dram shop laws that the imposition of liability upon alcohol distributors serves two distinct purposes. First of all, a statute holding surveyors of alcohol liable may reflect the legislature’s intent to oversee and regulate alcohol distribution by punishing distributors who furnish alcohol
indiscriminately. Secondly, some states, such as Illinois that enacts strict dram shop liability, may solely look to the Act to compensate innocent victims for their injuries and losses. In this case, the Act’s punitive purpose occurs as an incidental result of imposing liability to provide for remedies (Diamond, 1986).

The Illinois Dram Shop Act is one example on the far end of high liability which imposes liability without fault (235 ILCS 5/6-21 new). No provisions can be found in the code that require knowledge of the patron’s intoxication on the part of the establishment. In nearly all other states that enact dram shop laws, the business at least being aware or should have been aware that the patron is visibly intoxicated is requisite to constitute a valid claim.

The defendant’s ability to bear the cost of the injury, rather than the defendant’s wrongful act is at the center of the legislature’s concern. On the other hand, the Act also limits the damages recoverable from an alcohol supplier within a reasonable range to justly allocate the social cost of injuries caused by alcohol-impaired driving.

Imposition of liability without fault applies to activities that are generally perceived by the society as unusually dangerous. For instance, industries using explosives as necessary under special circumstances may still inevitably incur harm regardless of extreme care exercised throughout the process to prevent such harm from happening. The legislatures presume that the industry, often gaining monetary benefit from doing so, can bear the cost of insuring against the risk of potential harm resulted therefrom. This rationale supports imposing strict liability on dram shops in so far as dram shops inevitably expose the general public to the risk of sustaining injuries in alcohol-related car crashes, which is a foreseeable outcome that naturally flows after one’s intoxication.
The injured third party is in no better position to anticipate the harm an intoxicated person may cause than the dram shop owner that has direct control over the alcoholic beverages being dispensed and furnished during face-to-face service encounter. Thus, dram shops are better able to bear the cost of injuries than innocent victims who may not insure against the risk that an inebriate will injure them.

On the other hand, the financial burden imposed on the industry not only can be insured but even ultimately be shifted to the consumer of alcoholic beverages, the risk of loss associated with intoxication is inevitably spread among the group of people most likely to be liable for such injuries (Denning, 2011). Once again, the intent of imposing liability upon drinking establishments in the sense of compensatory purpose, even provided that the dram shop owners and operators have taken necessary precautions to avoid the occurrence of their customers’ intoxication, is to not leave injured victims uncompensated by shifting the tremendous yet unavoidable loss to the party that can better afford it, as the monetary cost of injuries often exceeds an individual’s capability of fully recovery.

### 4.2.2 Protection of Commercial Drinking Establishments

It is not surprising that the most stubborn resistance received on imposition of dram shop liability comes from what the liability is intended for—hotels, restaurants, bars with booze inherently a part and parcel of the experience. Dram shop law is thus resented by the hospitality industry for providing deterring effects and remediable measures. Among all states, the most telling example is Nevada with hospitality industry being the largest contributor to its economy. Approximately one third of the overall
workforce in Nevada is directly employed in the hospitality industry which additionally supports another one third of indirect employment across all industries in Nevada (Bybee & Aguero, 2012). In 2014 alone, Nevada hotel casinos generated over $2 billion in tax and fees which amounts to approximately 45 percent of State General Fund revenues – more than any other industry (Nevada Resort Association, 2014).

It is not surprising that such prominence has made the hotel and tourism industry inevitably involved in sales and furnishing of alcoholic beverages economically, politically and legally powerful. Any laws or regulations that ask the servers to think twice before adding another drink to the bill would touch the industry’s nerve. Nevada has been consistently reluctant to recognize vendor liability for alcohol dispensers. State statutory laws regulating alcohol distribution expressly immunizes commercial hosts from bearing civil liabilities for injuries resulting from customer’s intoxication (NEV. REV. STAT. § 202.055). Meanwhile, the Nevada Supreme Court has been firmly upholding the legislative intent of shielding alcohol licensees and has never made an attempt to allow recovery for victims injured by intoxicated patrons from reckless servers that over-served the patrons (Hamm v. Carson City Nugget, 1969; Hinegardner v. Marcor Resorts, 1992; Snyder v. Viani, 1994; Rodriguez v. Primadonna Company, LLC, 2009).

The stance of turning a blind eye to alcohol vendor liability that both the Nevada legislation and courts take does not stem from a lack of recognition of the severity of harm likely to incur after one’s intoxication or of the desirable deterring effects of imposing liabilities on alcohol suppliers. It is not so because Nevada, albeit grants civil immunity to licensees, does hold non-commercial or social hosts liable for furnishing
alcoholic beverages to whom later inflict injuries upon an innocent third party. Such, a social host can be sued for over-serving alcoholic beverages to an invited guest out of courtesy while a commercial host can keep downing alcoholic drinks on already intoxicated customers out of economic gains without worrying about the consequence.

The reason why both the legislation and the court are being lenient on commercial drinking establishments lies in their intentional protection, if not undue, of the industry from which the state economically benefits the greatest. Thus, the question becomes one of should business profit maximization outweigh potential harm the business poses on the general public? In terms of constitutionality, possessing a liquor license is more of a personal privilege, rather than a fundamental right that cannot be revoked. Put in other words, the licensee’s right to conduct business takes back seat to the people’s right to safety (*Klopp v. Benevolent Protective Order of Elks*, 1992).

Nebraska and Delaware are another two of the handful states with no Dram Shop Liability. The strongest opposition of more state legislation also comes from groups and organizations representing restaurants, supermarkets and other outlets that derive sizable profits from alcohol sales. As stated in Nebraska Restaurant Association’s 2015 Executive Director’s Report, the credit of maintaining Nebraska a “non-dram shop” state is owned to the association’s consistent and successful efforts in lobbying against legislative attempts to introduce dram shop clauses (*Nebraska Restaurant Association*, 2015). Delaware Restaurant Associations expressly delivered their advocacy for no liability as otherwise Dram Shop laws are likely to breed frivolous lawsuits. The skyrocketing cost for defending a Dram Shop claim might also prohibit and devastate a small business. Lastly, the effects of Dram Shop laws on reducing drunk driving are
undermined by the fact that 4 out of 5 states with the highest drunk driving fatality rates impose dram shop liabilities (Delaware Restaurant Association, unknown).

Maryland is also a “non-Dram Shop Law” state whose statutory law has remained unchanged for over 30 years. Warr v. JMGM Group (2013) - first case in 30 years- began to reevaluate the rationale of imposing civil liability on a commercial drinking establishment for reckless service of alcohol. In this case, the bar had allegedly served a patron 17 beers and 4 hard liquor drinks before the drunken patron drove off and hit another car causing one dead and three severely injured. Even though the court entered the ultimate judgment in favor of the bar as there were no legal grounds for the court to hold a licensee civilly liable for the car crash. However, the court recognized the bar’s reckless service of alcohol to a visibly intoxicated patron as a proximate cause to the injuries sustained in the car accident. The court stated that “It is not our place to continue to preserve special protections for tavern owners, when applying our well-established common law principles of negligence would hold them liable” (p. 396), and eagerly expressed its wishes for the state legislature to create Dram Shop liability provisions on its current blank page.
Chapter 5 Discussion and Implications

From the analysis, the rationale of Dram Shop liability bears scrutiny under the general negligence rule in so far as the following elements are established 1. The defendant breached an owed duty to its invitees (to either commit an act or refrain from committing an act); 2. The defendant's breach of duty is a direct or contributory cause of the plaintiff's injuries; 3. The plaintiff suffered actual damages (such as the cost of rehab, lost wages, pain and suffering, etc.). Knowingly over-serving alcohol to a visibly intoxicated patron who causes the injury under the influence of alcohol constitutes negligent tort and automatically entitles the party that suffers losses to civilly sue the tortfeasor, which in this case is the drinking establishment that continuously furnished alcohol to the intoxicated patron. The intent of California state legislature shielding drinking establishments against potential liabilities is to better protect the economic interest of the restaurant industry, which generates tremendous tax revenues annually. According to National Restaurant Association (2015), the 2016 projected sales in restaurants in California is 75.1 billion dollars, the projected number of direct jobs the industry provides is 1,698,200, accounting for 11% of employment in the state. The prevailing wrestle here then becomes one between economic interest and public good.

It is not fair to conclude that California state legislature completely turns its back on public security and individual wellbeing of its citizens. In fact, April 12, 2016 just witnessed the passage of Responsible Interventions for Beverage Server Training Act of 2016. Legislation on this area had been left untouched for nearly three decades. It is the first attempt since the 1978 amendment to strengthen regulation of distributions of alcoholic beverages at commercial establishments. Under the Act, starting July 1, 2020,
an alcohol server is required to successfully complete an approved RIBS (Responsible Interventions for Beverage Servers) program within three months of employment and every three years thereafter. An approved RIBS training program should incorporate into its courses the following basic elements: physical and social impact of alcohol; state laws and regulations pertinent to driving under influence; intervention techniques to prevent serving underage persons or over-serving intoxicated patrons (Responsible Beverage Service Training Program Act of 2016).

Surprisingly enough, this Bill received a sweeping 18 Ayes versus. Noes 0 vote, representing a uniform public urge to address the drunk driving issue and related harm. The bill author states "While law enforcement does its best with checkpoints and other enforcement, these approaches only help after someone has already made the choice to get behind the wheel when they should not. Bottom line, this is not good enough. By establishing a uniform, standard education requirement for all servers, California can improve the likelihood that a server will intervene upfront before a patron become a danger or commit a crime. And that saves lives."

While it seems California State legislature is finally taking initiatives on strengthening current Dram Shop laws on the criminal level, the Civil Justice Association of California (CJAC) instantly expressed its concerns over potential frivolous lawsuits against servers, bartenders, and restaurant and bar owners. CJAC opposes this Bill in so far as it is likely to lead to constitution of dram shop liability. If server and bartenders are legally required to become RIBS certified, then the RIBS training materials may become the defacto template for the duty owed to restaurant patrons and the general public they might inflict injuries upon, which in turn lay the grounds for a dram shop claim where a
duty owed to prevent injuries as a result of intoxication is failed to be carried out. CJAC suggests new provisions shielding servers from dram shop liability to be added to Business & Profession Code Section 25681 (c) to read as the following: “No person required to complete an approved RIBS training course or ensure completion by another person pursuant to (a) or (b) of this section shall be civilly liable to any injured person or the estate of such person for injuries inflicted on that person as a result of intoxication by the consumer of an alcoholic beverage.” By far, new provisions have not been added insofar as whether noncompliance with the Beverage Training Act gives rise to civil liability and whether RBS affirmative defense are recognized.

It is worth noting that Dram Shop liability does not decrease personal responsibility. Creating a cause of action against a drinking establishment engaging in over-service of alcohol does not mean that the drunk-driving individual is not also held responsible. On the other hand, the restaurant industry need not act so alerting to Dram Shop laws. Having the law in place does not mean restaurant or bar owners will be held civilly liable whenever a customer leaves the premise drunk and causes a car accident. Evidence submitted shall be carefully examined with regards to whether the service employees acted in a responsible manner at the event in question. Percentage of liabilities shall hence be determined commensurately with the amount of fault assigned based on a series of concrete law rules to be carefully and rigidly designed by the legislature.

Admittedly, this area of hospitality law is obviously far from perfect, the Dram Shop Act is rife with vague clauses and legal loopholes. California is significantly lagging behind the majority states by still being reluctant to even recognize civil liabilities commercial hosts should bear as a result of reckless over-service of alcoholic beverages to the public.
As CJAC’s concern remains unattended by the state legislature as of this paper is written, it seems to be the furthest step the state is willing to take in addressing the growing public concern over drunk driving at this point. It is very unlikely the state will extend the RIBS mandatory code to civil liability against commercial hosts within the near future.
Chapter 6 Conclusions

From the research, the majority of states in the US adopt some form of Dram Shop laws to hold licensees civilly liable for injuries resulted from their reckless and negligence service of alcoholic beverages. The national trend of holding a licensee civilly liable is not much likely to be halted as growing public concern calls for more tightened and effective laws to curb drunk driving. The fact that almost every state subjects over service of alcohol to criminal charge indicates that the hazard of such act is universally recognized. The reluctance of subjecting those conducting such hazardous act to civil liability on the part of the handful of states absent Dram Shop laws stems mainly from legislative protections for the business interest of hospitality industry.

Furnishing of alcohol to visibly intoxicated patrons being the proximate cause of injuries resulted thereafter, as upheld by majority jurisdictions, is tested to be valid using the principle of foreseeability. The assertion explicitly expressed in pertinent part of California Dram Shop clauses that furnishing of alcohol proximately causes injuries only when the person being furnished is under 21 years old and is proved to be already intoxicated at the time being furnished is far from convincing as the theory inferred therefrom is arguably that alcohol would only adversely affect an underage drinker’s physical mobility and mental judgment when such person is already intoxicated. Any person over 21 years of age in the state of intoxication or under 21 years of age yet not reaching state of intoxication are deemed as capable of making the right decisions and exercising proper acts over and after the course of drinking, and hence are solely responsible for injuries they might cause to others followed by their intoxication.
The underlying principles of Dram Shop Liability are also tested to be rational under comparative negligence rule, which have long been applied in negligence claims filed in California courts. According to prevailing California state law, any party found at fault, even if 1% at fault, is held reliable for its 1% share of the fault and hence is subject to compensation for damages in commensuration of its fault. That is to say, even if assuming furnishing of alcohol to already intoxicated patrons does not fully meet the higher standards of negligence per se, which requires solid establishment of proximate cause, it nevertheless meets the lower standards of general negligence in that furnishing of alcohol to intoxicated person is undisputedly somewhat negligent given that such act is subject to a criminal charge of misdemeanor, as stipulated in the pertinent part of California Business & Profession Code 25602.

On the other hand, while the rationales for Dram Shop Liability being examined are theoretically valid and tenable under most circumstances, problem lies in the vague evidentiary requirements. The biggest gap to fill in relevant lawmaking is one between “visibly intoxicated” and legally intoxicated (with a BAC of 0.8 and above). As servers are tested to be only capable of detecting excessively intoxicated patrons for the most of the time, holding those liable for injuries inflicted by patrons hovering between excessively drunk and mildly drunk yet exceeding the legal BAC limit is far from convincing.

Even though RBS training programs are well intended to regulate service employee’s service behaviors, having RBS defense provisions devolves to provide safe harbor to establishments that do not consistently adhere to the RBS standards after becoming certified. Where RBS defense applies, additional provisions should be created
or added such as RBS practices need to be proved to present at the time of the service in question. Alternatively, public policy makers may consider offering discounts on mandatory liquor liability insurance for establishments that have received RBS training.

Lastly, the scope of duty owed by the licensee is yet clearly defined. Current Dram Shop provisions mainly concern whether the licensee continues to serve alcohol to already intoxicated patrons, indicating the best way for the licensee to reduce liabilities is to stop serving alcohol after discovering the patron is intoxicated. However, in some jurisdictions, liabilities might still rise after the licensee cuts off an intoxicated patron. A licensee can still be held liable if it evicts an intoxicated patron or fails to arrange transportation for the patron. It is left with the legislature to draw the line for where the duty of exercising reasonable care ends, past mere refusal of service.

In conclusion, California State legislature, instead of shunning these tricky problems by staying silent, should begin to expose commercial drinking establishments to civil liabilities and to work on drafting more explicit provisions and practical guidelines, which not only provides safeguard for public security but also protections for commercial hosts against frivolous lawsuits.
References

20801, INC. v. Parker, 249 S.W.3d 392 (Tex. 2008).


Alexander, R. J. (2013). Alcoholic beverage law and hospitality law: Merry times and
safe travels. *GPSolo, 30*(6), 16-19.


Benson, B. L., Rasmussen, D. W., & Mast, B. D. (1999). Deterring drunk driving
fatalities: An economics of crime perspective. *International Review of Law and
Economics, 19*(2), 205-225.

Best, E. K., & Donohue III, J. J. (2012). Jury Nullification in Modified Comparative

economic and societal impact of motor vehicle crashes, 2010. (Revised)* (Report
Administration.

Twayne Publishers.


Brick, J., & Erickson, C. K. (2009). Intoxication is not always visible: an unrecognized
prevention challenge. *Alcoholism: Clinical and Experimental Research, 33*(9),
1489-1507.


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

Davis v. Shiappacossee, 155 So. 2d 365 (Fla. 1963).


Fort Mitchell Country Club v. LaMarre, 394 S.W.3d 897 (Ky. 2012).

Garcia v. Hargrove, 190 N.W.2d 181, 52 Wis. 2d 289 (1971).


Largo Corp. v. Crespin, 727 P.2d 1098 (Colo. 1986).


Lance v. Senior, 224 N.E.2d 231, 36 Ill. 2d 516, 36 Il. 2d 516 (1967).


Waynick v. Chicago's Last Department Store, 269 F.2d 322 (7th Cir. 1959).

