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COMMON LAW REMEDY for NEGLIGENT ACTS of the DRUNK

TORTS — INCREASING RECOGNITION OF A COMMON LAW REMEDY FOR NEGLIGENT ACTS OF THE DRUNK: PLAINTIFF V. LIQUOR VENDOR AND OTHERS

Woe unto him that giveth his neighbor drink, that puttest thy bottle to him, and make him drunken also, that thou mayest look on their nakedness![1]

The Old Testament warning bespeaks both the law and the personal liability: He who furnishes intoxicating drink must also answer for the subsequent conduct of the drunk. On January 5, 1968, the Massachusetts Supreme Judicial Court ruled in *Adamian v. Three Sons, Inc.*[2] that a tavern owner soliciting the motoring public was legally responsible for highway death and other injuries caused by a drunken driver who shortly before the accident was a patron of the bar and was served while intoxicated. The decision marked almost a decade of change.

At common law there was no recognized cause of action against tavern owners or others for injuries caused by "intoxicated persons".[3] The rationale behind the no-liability rule

[1] Habakkuk 2:15 (King James).

[2] 233 N.E.2d 18 (Mass. 1968).

[3] Authorities generally agree the indicia of an "intoxicated person" are subject to common knowledge and observation. For example, in People v. Williams, 28 Misc. 2d 691, 215 N.Y.S.2d 841 (Binghamton City Ct. 1961) public intoxication meant the impairment of a man's capacity to think and act correctly due to the injestion of alcohol which caused a loss of physical and mental control; in State v. Katz, 122 Conn. Supp. 439, 189 A. 606 (Ct. Err. 1937) a person who staggered

stemmed from two theories: (1) Voluntary drinking, not the sale or serving of liquor, was the proximate cause of intoxication and of any resultant injuries;[4] and (2) Injuries to patrons or third persons were too remote to be a foreseeable consequence of furnishing someone alcoholic beverage.[5] The inebriate was directly responsible for his own intoxication and for those negligent acts which injured himself or other persons regardless of how he came to be drunk. Some jurisdictions still follow this rule.[6]

in walking or running before and after entering store was an 'intoxicated person' within a statute imposing penalty for sale to intoxicated person. FUNK & WAGNALLS STANDARD COLLEGE DICTIONARY 406 (1963) defines "drunk" as being affected with alcoholic drink to the extent of having lost normal control over body and mental faculties. *See also* Sapp v. State, 116 Ga. 182, 42 S.E. 410 (1902) which upheld jury instruction on 'intoxication': A man must be so far under the influence of intoxicating liquors that his acts, words or conduct would be visibly and noticeably affected when seen by the general public.

[4] Comment, *The Common Law Liability of Minnesota Liquor Vendors for Injuries Arising from Negligent Sales,* 49 MINN. L. REV. 1154, at 56 (1965).

[5] Comment, *Common Law Liability of the Liquor Vendor,* 18 W. RES. L. REV. 251, at 52 (1966).

[6] *See, e.g.,* Carr v. Turner, 283 Ark. 889, 385 S.W.2d 656 (1965). Strict reliance on the no-liability common law rule even in the face of state laws prohibiting sales by anyone to an intoxicated person; Fleckner v. Dionne, 94 Cal. App. 2d 246, 210 P.2d 530 (1949). An unlawful sale of liquor to minor not the proximate cause of injuries resulting from defendant's negligent driving; Stringer v. Calmes, 167 Kan. 278, 205 P.2d 921 (1949). Adopted the no-recovery rule; State *ex. rel.* Joyce v. Hatfield, 197 Md. 249, 78 A.2d 754 (1951). Only a statute can create a cause of action against liquor vendor for sales to persons whose subsequent negligence or willful wrong caused third party injuries; Seibel v. Leach, 233 Wis. 66, 288 N.W. 774 (1939). Sale of liquor too remote to be proximate cause of injury caused by intoxicated motorist.

The hiatus widened between the no-recovery concept and the concurrent body of law on tort liability for negligence holding the original actor responsible for the ultimate consequences of his negligence so long as the chain of causation was not broken by unforeseen criminal acts or intentional torts. Conduct embodying a foreseeable risk to persons within the chain of events set into motion would remain the proximate cause of the resulting injury. For instance, one who entrusts a dangerous instrumentality to another, like an automobile to a known bad driver or a firearm to a child, sets into motion a chain of circumstances involving foreseeable risk to third persons. An analogy was soon drawn between automobile and gun entrusting cases and cases where there was a dangerous combination of an intoxicated driver and an automobile through an illegal sale of liquor.[7] The concept began to take root that a cause of action at common law should lie against a liquor vendor based on duty, foreseeability of harm, and proximate cause.[8]

[7] Note, *Torts — Liability of Tavern Keepers for Injurious Consequences of Illegal Sales of Intoxicating Liquors,* 20 LA. L. REV. 800, at 804-05 (1960).

[8] *See generally* Connelly v. Jennings, 207 Okla. 554, 252 P.2d 133 (1953), *cert. denied,* 345 U.S. 921 (1953). Elements of negligence necessary for recovery: A duty on the part of the defendant to protect plaintiff from injury, failure to perform that duty, and injury to plaintiff proximately resulting therefrom.

Violation of a statute may constitute actionable negligence if injury was the proximate result thereof and the injured person was a member of the class intended to be protected by the statute. *See* Sinclair Prairie Oil Co. v. Stell, 190 Okla. 344, 124 P.2d 255 (1942).

Violation of a duty prescribed by statute is negligence per se. *See* Owen-Osage Oil & Gas Co. v. Long, 104 Okla. 242, 231 P. 296 (1925); Whitehead Coal Mining Co. v. Pinkston, 71 Okla. 124, 175 P. 364 (1918); McAlester-Edwards Coal Co. v. Hoaffar, 66 Okla. 36, 166 P. 740 (1917); Chicago, R.I. & P. Ry. v. Pitchford, 44 Okla. 197, 143 P. 1146 (1914).

Proximate cause is never presumed but is plaintiff's

In the interim, however, the legislatures of many states enacted statutes called Civil Damage or Dram Shop Acts in order to provide relief where there was none at common law. The Dram Shop Acts expressly imposed strict civil liability upon tavern keepers for the injurious consequences of illegal or prohibited liquor sales,[9] *e.g.*, sales to minors and intoxicated persons.[10] Some of the statutes even allowed a cause of ac-

burden of proof. *See* Buxton v. Hicks, 191 Okla. 573, 131 P.2d 1015 (1943); Armstrong v. City of Tulsa, 102 Okla. 49, 226 P. 560 (1924).

Question of proximate cause is ordinarily one for the jury unless all reasonable men would draw the same conclusion making it a question of law for the court. *See* Chicago, R.I. & P. Ry. v. McCleary, 175 Okla. 347, 53 P.2d 555 (1936).

[9] Comment, *supra* note 7, at 802. *But see* Cowman v. Hansen, 250 Iowa 358, 92 N.W.2d 682 (1958). Dram Shop civil damage act not applicable to sellers of less than 4% alcohol for drinker's negligent driving of automobile and resultant tort. *See also* Beck v. Groe, 245 Minn. 28, 70 N.W.2d 886 (1955). No recovery allowed in action by husband against seller of 3.2 beer for wrongful death of wife in automobile accident caused by intoxicated driver since statute defined 3.2 beer as nonintoxicating and court did not recognize common-law remedy.

[10] Law of March 24, 1908, ch. 69, § 21, [1907-08] Okla. Laws 610 (repealed 1959), *formerly codified as* OKLA. STAT. tit. 37, § 121 (1951). The Dram Shop Civil Liabilities section imposed damages on the party supplying the inebriate with liquor:

> Every wife, child, parent, guardian, employer or other person who shall be injured in person or property, or means of support by any intoxicated person or in consequence of intoxication of any person, shall have a right of action for all damages actually sustained, in his or her, own name against any person, individual or corporate, who shall by selling, bartering, giving away, or otherwise furnishing intoxicating liquors, contrary to the provisions of this chapter, have caused the intoxication of such person. On the

tion by dependent relatives for loss of support.[11] Under the Dram Shop Acts, it was unnecessary to prove foreseeability or to make an absolute showing of proximate cause. The injured party only needed to establish the unlawful sale. Recovery was allowed if the liquor contributed even slightly to the intoxication and the intoxication figured either directly or remotely in the injury. Since a defendant was chargeable under the statutes if he contributed in the slightest degree to the intoxication, several tavern owners could be jointly liable if the patron went from bar to bar prior to the negligent act.[12] Legislative intent in making it illegal to serve an intoxicated person more alcohol was purposeful: Protect the general public. The liquor vendor, as the original actor, was deemed responsible for the ultimate injury because the liquor not only put events into motion but disabled the inebriate from either exercising caution or otherwise controlling his behavior.[13] Dram Shop Acts did not abrogate the law of common-law negligence and it remained a latent source of re-

> trial of any such suit, proof that the defendant, or defendants, sold, bartered, gave away, or furnished any such liquor to such intoxicated person on the day, or about the time (and prior thereto) of such injury, shall be prima facie evidence that the liquor so sold, bartered, given away, or otherwise furnished, caused such intoxication. In any action by a married woman, or other person legally entitled to recover damages for loss of support, caused by such intoxication, it shall only be necessary to prove that defendant, or defendants, has or have given, bartered, sold or otherwise furnished intoxicating liquor of any kind to such person, during the period when such cause of action shall have accrued.

[11] Berkeley v. Park, 47 Misc. 2d 381, 262 N.Y.S.2d 290 (Sup. Ct. 1965).

[12] Comment, *Liability of Tavern Owners Under the New York State Dram Shop Act*, 30 ALBANY L. REV. 271, at 278-79 (1966).

[13] Comment, *supra* note 4, at 1162-63.

covery against the liquor vendor for the acts of the intoxicated vendee after leaving the premises.

The court in *Adamian* said the waste in human life caused by the negligence of drunken drivers on the highway could not be left outside the scope of foreseeable risk created by the sale of liquor to an already intoxicated person.[14] The statutory prohibition against sales to an intoxicated person[15] was enacted to safeguard not only the intoxicated person but members of the general public as well. This legislative policy would not be rendered ineffectual simply because at the end of the prohibition era the Dram Shop Act was repealed. Three Sons, Inc. knew or should have known that its patrons arrived by automobile and upon leaving the premises would drive upon the public highways.[16] Accordingly, the court held as error the sustaining of a demurrer by the lower court on the ground that the plaintiff failed to state a cause of action upon which relief could be granted.

Recognition of a common law negligence action by an injured third party against a liquor vendor, sounded on the theory that every person owed a general duty to every other person not to set into operation an agency which would culminate in harm, did not develop until the late 1950's. Even the inebriate was precluded from suing to recover damages for his own personal injuries unless at the time of the sale

[14] Adamian v. Three Sons, Inc., 233 N.E.2d 20 (Mass. 1968).
[15] *Id.*, at 19. MASS. GEN. LAWS ch. 138, § 69 (1932):

> No alcoholic beverage shall be sold or delivered on any premises licensed under this chapter to a person who is known to be a drunkard, to an intoxicated person, or to a person who is known to have been intoxicated within six months last preceding .... (Section 62 of the statute makes a violation of § 69 a criminal offense).

Under Massachusetts case law, a violation of a criminal statute is some evidence of the defendant's negligence as to all consequences the statute was intended to prevent.
[16] Adamian v. Three Sons, Inc., 233 N.E.2d 19 (Mass. 1968).

he was so helpless as to be considered past the state of voluntary consent to the inebriation.[17] But *Waynick v. Chicago's Last Dep't Store*[18] engendered new perspective. A Michigan citizen sought damages at common law and under Dram Shop Acts for injuries sustained as a result of an automobile collision with a drunk who shortly before crossing over from Illinois into Michigan was served by a drive-in tavern in violation of an Illinois statute forbidding sale of liquor to intoxicated persons. After deciding that neither Dram Shop Act applied extra-territorially, the *Waynick* court said a common law negligence action would lie on the tort principles of duty and proximate cause since the serving of the liquor set off a foreseeable chain of events for which the innkeeper was ultimately responsible.[19]

Not long after *Waynick,* the New Jersey Supreme Court rendered its landmark decision in *Rappaport v. Nichols.*[20] Here, the court allowed recovery solely on the common law theory of negligence, New Jersey having repealed its Dram Shop Act in 1934. The court held that a sale of liquor violative of statutory standards, under circumstances where the tavern keeper knew or should have known the customer to be intoxicated or a minor, created a recognizable and foreseeable risk of harm to the vendee and to the general public thereby rendering the vendor liable as a tort-feasor to third persons subsequently injured by the vendee. Several jurisdictions have followed the *Rappaport* doctrine,[21] though others

[17] Comment, *supra* note 5, at 255-56.

[18] 269 F.2d 322 (7th Cir. 1959), *cert. denied,* 362 U.S. 903 (1960).

[19] *Id.,* at 326.

[20] 31 N.J. 188, 156 A.2d 1 (1959).

[21] *See, e.g.,* Colligan v. Cousar, 38 Ill. App. 2d 392, 187 N.E.2d 292 (1963). Tavern operator's sale of liquor to intoxicated patron whose later negligence caused personal injuries to another was actionable under common-law negligence rules even had there been no Dram Shop Act in existence; Lee v. Peerless Ins. Co., 248 La. 982, 183 So. 2d 328 (1966) (dis-

have rejected it.[22]

The commonplace use of automobiles prompted the *Rappaport* court to enunciate a standard of care incumbent upon sellers of alcoholic beverages: Vendors must exercise reasonable diligence and care to observe that they do not make sales to patrons who are *visibly intoxicated* or to patrons who

senting opinion). Criticized theory that sale of liquor was not a proximate cause of injury since the unlawful conduct of sale was the cause-in-fact or the substantial factor which produced the harm. Essence of "proximate cause" in statutory violations was whether the risk and harm encountered fall within the scope of the statute. Where a statute was intended to prevent harm to an intoxicated person and to others, induced post-intoxication consumption falls within the protection of the statute; Jardine v. Upper Darby Lodge No. 1973, 413 Pa. 626, 198 A.2d 550 (1964). Unlawful sale of liquor by tavern to visibly intoxicated motorist was the proximate cause of subsequent injuries to pedestrian; Smith v. Clark, 411 Pa. 142, 190 A.2d 441 (1963). Serving of intoxicants to minors or to visibly intoxicated persons in violation of statute constituted negligence and if jury found unlawful act was the proximate cause of injury, then violator liable; Corcoran v. McNeal, 400 Pa. 14, 161 A.2d 367 (1960). Tavern proprietor liable for injuries sustained by patron who was victim of assault by another patron previously served while intoxicated.

[22] *See, e.g.*, Lee v. Peerless Ins. Co., 248 La. 982, 183 So. 2d 328 (1966). Denied recovery to a patron who was served while intoxicated and then was ejected from night club whereupon personal injuries were sustained when he wandered onto adjacent highway. Statute making it unlawful to sell or serve alcoholic beverages to an intoxicated person did not abrogate common-law rule of no-liability. Besides, patron's act of drinking was contributory negligence and would bar liability of night club owner. *See also* Carr v. Turner, 238 Ark. 889, 385 S.W.2d 656 (1965). Rejected *Rappaport* doctrine by saying party injured in a collision with car driven by drunk driver had no cause of action against tavern keeper whose unlawful sale of liquor caused intoxication. Statutes delineating sales to certain prohibited classes of persons did not change the common-law rule of no-liability.

are *minors*. Otherwise, the vendee's injurious acts to third parties can be found by a jury to be a normal incident of risk created by the vendor's unlawful sale. The court also observed that one who negligently created a dangerous condition cannot escape liability for the natural and probable consequences thereof by saying the act of a third person contributed to the final result inasmuch as there may be two or more concurrent efficient proximate causes of an injury.[23] On the other hand, the defendant may assert as a defense that he did not know or have reason to believe the patron was intoxicated when served and that he acted as a reasonable and prudent tavern operator under the circumstances.[24] Most courts, however, would probably agree with opinions reached in Dram Shop Act cases that the serving of one drink in violation of the statute was enough to make the vendor liable.[25]

In 1961, the Oklahoma Court of Criminal Appeals in *Kyle v. State*[26] upheld the conviction and $250 fine of a Holdenville liquor store dealer for the sale of alcoholic beverages to an intoxicated person in violation of the Oklahoma constitution[27] and of the Oklahoma Alcoholic Beverage Control Act[28]

[23] Rappaport v. Nichols, 31 N.J. 188, 156 A.2d 8 (1959).

[24] *Id.*

[25] Comment, *supra* note 5, at 270. *See, e.g.*, Tresch v. Nielsen, 57 Ill. App. 2d 469, 207 N.E.2d 109 (1965); *cf.* Pierce v. Albanese, 144 Conn. Supp. 241, 129 A.2d 606 (Ct. Err. 1957), *appeal dismissed*, 355 U.S. 15 (1957). *But see* Majors v. Brodhead Hotel, Inc., 416 Pa. 235, 205 A.2d 873 (1965). Innkeeper may avoid liability by proving customer was already so inebriated when he arrived that the sale and consumption of drink did nothing to worsen his already hopeless condition.

[26] 366 P.2d 961 (Okla. Crim. 1961).

[27] OKLA. CONST. art. 27, § 5. It shall be unlawful for any licensee to sell or furnish any alcoholic beverage to:

* * * *

* * * *

A person who is intoxicated.

* * * *

* * * *

with respect to Section 537[29] and the penalty Section 538.[30] Sheriff Abernathy of Holdenville arrested defendant Kyle after Abernathy observed a "waddling and staggering" customer enter the liquor store and soon afterwards leave with a pint of Arriba wine. The customer was also arrested and later pleaded guilty to a charge of public drunkenness.[31]

The court in *Kyle* said liquor dealers are subject to more

> Sales to . . . intoxicated persons shall be deemed a felony.
> * * * *

[28] OKLA. STAT. tit. 37, §§ 501-70 (1961).

[29] OKLA. STAT. tit. 37, § 537(a) (2) (1961). Under enumerated prohibited acts, the statute provides, in part: "[N]o person shall sell, deliver, or knowingly furnish alcoholic beverages to an intoxicated person . . . ."

An increasing number of jurisdictions are recognizing that violation of prohibitory statutes is a factor to be considered in imposing liability based upon common-law principles. *See, e.g.*, Davis v. Shiappacossee, 155 So. 2d 365 (Fla. 1963). Sale of alcoholic beverage to minor in violation of statute constituted negligence per se and automobile accident occurring thereafter was reasonably foreseeable and the proximate result of vendor's negligence; Majors v. Brodhead Hotel, Inc., 416 Pa. 235, 205 A.2d 873 (1965). Violation of statute making it unlawful for licensee to sell liquor to one visibly intoxicated was negligence per se and if jury found violation was proximate cause of injury to intoxicated person or to another, licensee liable. *But cf.* Smith v. Clark, 411 Pa. 142, 190 A.2d 441 (1963). Guest sued hotel for injuries received when he fell from ledge onto roof of hotel kitchen after having been served by hotel bar while visibly intoxicated. Inference that illegal serving substantially caused injury could be rebutted by hotel in showing guest was so intoxicated when illegally served that accident would have occurred anyway.

[30] OKLA. STAT. tit. 37, § 538(g) (1961). Proscribes felony penalty for violation of § 537(a) (2) as a fine of not more than $1,000 or imprisonment in the State Penitentiary for not more than 1 year, or both such fine and imprisonment.

[31] Kyle v. State, 366 P.2d 964 (Okla. Crim. 1961).

than an ordinary degree of responsibility; in fact, it was incumbent upon vendors of liquor to *observe* customers and not to close eyes and ears to the commonly known, plain and easily seen outward manifestations of intoxication. Liquor dealers are not required, however, to subject customers to tests which would disclose symptoms not readily apparent to normal observation.[32] In fashioning the legal requirements which must be met to justify conviction under the statute, Brett, J. held that the person to whom the sale was made must be so far under the influence of intoxicants that his conduct and demeanor are not up to standard and are reasonably discernible to a person of ordinary experience.[33]

Kyle set the parameters in Oklahoma. No reported case to date goes beyond its reach, that is, from conviction under the statute to a common law action to recover for third party personal injury or property damage flowing as the natural consequence of a negligent and unlawful sale of liquor. The Oklahoma Legislature did not confine to just liquor store dealers the prohibitory language of Title 37 § 537 (a) (2), which plainly reads: "[N]o person shall sell, deliver, or knowingly furnish alcoholic beverages to an intoxicated person . . ."[34] Whether legislative intent can be found to encompass, as a matter of law, classes of persons both public and private is open to question[35] and awaits determination by the Oklahoma courts.

[32] *Id.*, at 964-65.
[33] *Id.*, at 962.
[34] OKLA. STAT. tit. 37, § 537(a) (2) (1961).
[35] *See, e.g.*, Altenburg v. Commonwealth, 126 Pa. 602, 17 A. 799, at 801 (1889). Construed a statute making it unlawful for any person with or without a license to furnish by sale, gift or otherwise liquor to persons visibly affected by drink and held it applicable to individuals socially entertaining such persons as well as to liquor vendors. The court said the law does not restrain a man's private indulgence in drink but it does take notice of public drunkenness so if a person has already passed the line of sober self-control, all men must take

The law in this area appears to be in metamorphosis, slowly changing from the common law no-liability rule to the newer concept of recovery under recognized principles of Tort law. Though there is still a split among the jurisdictions, those following recovery under the *Rappaport* doctrine recognized its application against liquor vendors who have violated state laws regulating alcoholic beverages. The doctrine as yet has not been extended into the private social drink sector under state laws prohibiting "any person" from selling or furnishing alcoholic beverages to an inebriate. One day, a court will have to decide whether the danger and harm

notice of it and regulate their conduct according to the law. A person may have liquor on his table . . . that is his personal privilege. However, when he allows to assemble in his barn men who are visibly intoxicated and sells or gives them liquor while in that condition, the unlawful conduct affects not only himself and his family but his neighbors and the public as well. Thus, private indulgence can become the public's harm and this the law is designed to prevent.

But see Carr v. Turner, 238 Ark. 889, 385 S.W.2d 656 (1965). Construed a statute making it unlawful for 'any person to sell or give away intoxicating liquor to a minor or to an inebriate' and held it applicable only to liquor dealers and not to a host who served cocktails in his own home. The common-law theory of no-liability remained unchanged by the statute; *i.e.*, the proximate cause of third party injuries was the individual drinker's consumption, not the vendor's sale. Judicial interpretation of 'any person' was limited to the public liquor trade and there was no finding that the statute embraced the private sector as well. *See also* People v. Bird, 138 Mich. 31, 100 N.W. 1003 (1904). Liquor laws are aimed at the suppression of illicit or injurious traffic in intoxicants. No liability attached for furnishing liquor to a friend or guest at a private residence as an act of kindness or hospitality; Austin v. State, 22 Ind. App. 221, 53 N.E. 481 (1889). Although the home or private apartment cannot shield a person from the penal code, appellant was not a liquor dealer but furnished liquor to an adult friend as a guest in private apartment and therefore was not subject to the purview of the liquor control laws.

to the general public caused by the "intoxicated" drunk is any less compensatory when, contrary to state law, the drunk is furnished more alcohol by private persons acting as hosts or drinking partners than when the drunk is sold more alcohol by a public liquor store.

The following is a synopsis of the law and arguments an attorney in Oklahoma could use to support a client's action against a third party for personal injuries caused by an inebriate who was sold or served intoxicants while drunk.

I. PUBLIC SECTOR

A. APPLICABLE STATUTES (violation may be negligence per se)

1. OKLA. CONST. art. 27, § 5. Felony to sell or furnish alcoholic beverage to an intoxicated person.
2. OKLA. STAT. tit. 37, §§ 537 (a) (2) and 538 (g) (1961). Alcoholic Beverage Control Act makes it a felony (maximum penalty of $1,000 fine and/or one year imprisonment) for *any person* to sell, driver, or knowingly furnish alcoholic beverages to an intoxicated person.

B. CASE LAW

1. *Kyle v. State* in which the Oklahoma Court of Criminal Appeals upheld the conviction and fine of a liquor store dealer for violations of 1. and 2., above. The court laid down this test: Vendors must *observe* a customer and must not make a sale when it is apparent from normal observation and experience that the patron is intoxicated or drunk.
2. *Rappaport* doctrine and the *Adamian* decision hold the liquor vendor liable under the common-law tort theory of negligence; *i.e.*, the unlawful sale to visibly intoxicated patrons is the proximate cause of foreseeable injury to others if the inebriate drives on the roads.

II. PRIVATE SECTOR

A. Apply the *Kyle* test and argue the express language of § 537 (a) (2) which prohibits *any person* (not just

liquor vendors) from knowingly furnishing alcoholic beverages to an intoxicated person.

B. Show that the aim of the present Alcoholic Beverage Control Act is but a continuation of the same long standing public policy of the legislature to protect the general public as evidenced by the earlier codification of absolute liability in Oklahoma's former Dram Shop Act.

C. Support the rationale with the *Rappaport* doctrine, *Adamian* and other similar decisions, and the case of *Altenburg v. Commonwealth.*

III. OBVIATE THESE DEFENSES

A. Old common-law theory of no-liability: Proximate cause of injury is due to the individual drinker's voluntary consumption, not the sale or giving of alcohol by another person.

B. Statutory prohibition aimed at the public sale of liquor, not at its private use.

C. Defendant did not know or have reason to believe the person was intoxicated and therefore acted reasonable under the circumstances.

D. Drunk already so inebriated that the sale or serving of drink did nothing to worsen his already hopeless condition.

Michael C. McClintock