Legal Matters®

Consumer Safety
fall 2013

Businesses may be liable for injuries even if someone was drinking

People who choose to drink should always drink responsibly. On the other hand, the law is very clear that the mere fact that someone has had a few drinks doesn't relieve businesses of their legal responsibility to protect their customers and others.

In fact, sometimes a business has *more* responsibility to protect people when someone has been drinking – especially if it was the one that supplied the booze.

As a result, the fact that someone was drinking before they were injured doesn't necessarily mean they can't be fairly compensated for the harm.

And if a person is injured by someone else who had been drinking, that doesn't mean that there aren't other people or businesses that might also be legally responsible.

If you or someone you know has been injured, only a lawyer can thoroughly investigate the facts and determine who might be responsible for compensation.

Here's a look at a number of cases where a business could be responsible for harm that happened as a result of intoxication:

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▶ An Iowa man went to a local tavern for a few beers after work. When he got into a heated argument with an acquaintance, he was asked to leave the premises. The acquaintance followed the man into the parking lot and assaulted him, causing serious injuries.

The acquaintance was clearly at fault, but what about the tavern?

According to the Iowa Supreme Court, the tavern could also be accountable for the harm and have to pay damages.

Why? Because the tavern had served alcohol to the men and could clearly see that a dangerous situation was developing. Simply ordering one of the men outside only made the problem worse. The tavern had a hand in creating the situation, and it could have taken steps to prevent any harm, such as separating the men or calling the police.

▶ A Denver woman planned to go partying at nightclubs, and because she knew she'd be in no condition to drive home, she reserved a room at the local Westin Hotel. At 3:00 a.m., though, the hotel kicked her out, after receiving complaints of loud, rowdy behavior and too many people in the room. She accepted a ride home with a drunk friend, and the friend caused an accident, injuring the woman.

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Health club is sued for injury, despite waiver

When you join a health club, you often have to sign a "waiver" form that says you can't sue the club for injuries you might suffer on the premises. But in a recent case, the Wisconsin Court of Appeals said a health club's waiver was so extreme that it had to be thrown out entirely, allowing a member to seek compensation.

Ron Brooten claimed he was hurt when a weight bench collapsed while he was performing a bench press. He sued the club, claiming that its employees had carelessly assembled the bench.

The health club said it couldn't be sued because of the waiver.

But the court looked closely at the fine print of the waiver form, and said it was so outrageous that it had to be tossed out. That's because the form said that Brooten could never sue *anyone* for *any* harm at the gym, even if someone deliberately injured him. It also said that if someone else sued the health club or its employees for any harm arising from Brooten's participation in an activity, then Brooten automatically had to pay for everyone's legal defense as well as any court award or settlement.

That's going too far, the court said. It threw out the waiver form and allowed Brooten to sue.

Truck maker responsible for inadequate windshield

A truck manufacturer can be held accountable for designing a windshield that wasn't strong enough to withstand a piece of concrete falling from a highway overpass, the California Court of Appeal recently decided.

The truck driver suffered severe brain injuries when a 2.5-pound piece of concrete dropped by a 15-year-old smashed through his windshield and struck him in the head.

The truck manufacturer, Navistar, argued that it wasn't responsible because the teenager had deliberately thrown the concrete and caused the injury.

But the court said the manufacturer may have had a duty to design a windshield capable of withstanding such an impact, and it didn't matter whether the falling object was thrown deliberately or fell by accident.

Children could sue for stepparent's injury

When Carl Blaschka married Audrey Blessing back in 1964, he already had three children by a previous marriage. Carl died 30 years later, in 1994. Some thirteen years after that, in 2007, Audrey was killed in an auto accident with a truck driver.

So … can Carl's children by his first marriage sue the truck driver for the harm to Audrey?

Yes, according to the highest court in the state of Washington.

Under Washington law, stepchildren can sue for the death of a stepparent. And even though the children's own father had died many years before, they still counted as "stepchildren," the court said.

Feds propose tougher rules for day care safety

Hundreds of thousands of child day care providers rely on federal funding to make their services more affordable. Under proposed new rules from the U.S. Department of Health and Human Services, this funding is going to come with more strings attached.

The rules would require day care providers to undergo health and safety training; prove that they're complying with fire, health and building codes; and have all workers submit to background checks.

The rules would also allow parents to be notified of their provider's health, safety and licensing information via the Internet.

State rules for safety and licensing of child day care vary widely. The Department says its goal is to create uniform standards nationwide.

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Both the woman and her friend were drunk, but the Colorado Court of Appeals said the hotel could also be to blame.

While the woman shouldn't have been loudly partying in a hotel at 3:00 a.m., the hotel didn't have to simply evict her, knowing that she and her friends were in no condition to drive anywhere, the court said. The hotel could have taken any number of other steps to solve the noise problem that wouldn't have endangered anyone's life.

▶ A New Jersey family was seriously injured when their pickup truck was rear-ended by a driver with a blood alcohol level of .278, more than three times the legal limit. The driver had left a T.G.I. Friday's about 20 to 30 minutes before the crash.

The driver was clearly at fault, but the family also sued T.G.I. Friday's for violating a law against serving alcohol to people who are visibly intoxicated.

T.G.I. Friday's argued that the case should be thrown out because there were no witnesses who could testify that they saw the man being served while he was clearly drunk.

But a New Jersey appeals court allowed the family to sue. It said that even though there weren't any witnesses, a jury could still determine that the man was visibly drunk based on his blood-alcohol level at the time.

▶ In Indiana, the family of a fraternity pledge who died from alcohol poisoning was allowed to seek compensation from the fraternity's national organization. According to the Indiana Court of Appeals, the organization had a duty protect its pledges, based on the fact that it had issued alcohol guidelines and enforcement mechanisms for the local chapter.

▶ Insurance companies also have to live up to their obligations. For instance, a North Carolina man was killed in a car crash. The man had an insurance policy through his employer that paid benefits for accidental death or injury.

When it was discovered that the man's blood alcohol level was well over the legal limit at the time of the crash, the insurance company refused to pay, saying that the man had driven drunk and that the crash wasn't an "accident."

But a federal appeals court disagreed. It said the crash was still accidental, and if the insurance policy wasn't intended to cover drunk driving, it should have said so specifically.

▶ In a Pennsylvania case, a man shot and injured a houseguest he had drunkenly mistaken for a burglar. The houseguest sued him, hoping to collect from his State Farm homeowner's insurance policy.

State Farm argued that the policy didn't cover "intentional acts," and the shooting was intentional. But the Pennsylvania Superior Court disagreed and said that a drunken mistake wasn't necessarily "intentional."

▶ One last example comes from California. A truck driver caused a crash and injured several people, apparently due to the fact that (1) he had smoked marijuana, and (2) his cargo had been improperly and dangerously loaded onto the truck by a supplier. The California Court of Appeal ruled that the fact that the driver had smoked pot didn't mean that the supplier couldn't also be responsible for compensating the accident victims, if it had in fact been careless and contributed to the harm.

The law is very clear that the mere fact that someone has had a few drinks doesn't relieve businesses of their legal responsibility to protect their customers and others.

Driver who crashed into cow can recover damages

Karen Hastings was driving on a country road in rural upstate New York when she crashed into a cow that had escaped from a farm.

She sued the cow's owners and the farm, claiming they had been careless in allowing the cow to wander. Specifically, she claimed the fence separating the pasture from the road was in bad repair.

The owners defended themselves by pointing to a New York law that said the owner of a domestic animal isn't liable for injuries unless the owner knew that the animal had "vicious propensities" – which presumably wasn't true of the cow here.

The case went all the way to New York's highest court, which sided with Karen. It said the law about "vicious propensities" might make sense in the case of an attack by a pit bull, but it wasn't applicable to farm animals escaping from a field.

According to the court, farmers have a legal duty to keep livestock enclosed, and to be careful that they don't escape and cause a danger on the highway.

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Three medical products accused of causing harm

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Here's a look at three medical products that are currently under fire for allegedly causing serious medical problems themselves:

• ***Gadolinium*** is a dye that's injected into patients in order to enhance MRI images, making them easier to read. Several years ago, the Food and Drug Administration issued a warning that the dye could be harmful to people who have kidney problems. Since then, almost 400 lawsuits have been filed by patients claiming that gadolinium caused them to suffer Nephrogenic Systemic Fibrosis, a debilitating, incurable disease that causes scarring to the skin and internal organs while weakening muscles, stiffening joints and causing itchy, burning, swelling skin.

Now, a jury in a federal court in Ohio has held GE Healthcare, a gadolinium producer, accountable for the causing the disease in a kidney dialysis patient who received a dye injection. Many more cases are expected to go to trial.

• ***Mirena***, an IUD used for birth control, can migrate after insertion, according to dozens of lawsuits recently filed against the manufacturer. The lawsuits claim that this can result in punctured organs, necessitating surgical removal and causing infection.

The serious medical claims follow complaints by the U.S. Department of Health and Human Services that the company made inflated assertions in its advertising about the product's ability to improve intimacy, romance and libido.

• ***DePuy ASR XL***, a metal-on-metal hip replacement device manufactured by Johnson & Johnson, has been accused of causing blood poisoning, necessitating surgery to remove the device.

More than 10,000 people have made such allegations. The first lawsuit recently went to trial, resulting in a significant jury award against the manufacturer.