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Civil Liability for Injury Resulting From the Unlawful Sale of Intoxicating Beverages

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CIVIL LIABILITY FOR INJURY RESULTING FROM THE UNLAWFUL SALE OF INTOXICATING BEVERAGES

The Maryland Court of Appeals decided an interesting case recently, *State for Use of Joyce et al.* v. *Hatfield et al.*[1] The plaintiff, a widow, brought action against the defendant, a tavern keeper for damages resulting from the death of her husband, Joyce. The plaintiff's declaration alleges that the defendant operated a tavern remote from any settlement and accessible only to persons who had automobiles. The defendant, it is further alleged, knowingly sold intoxicating liquor to one Love, a minor, in violation of a Maryland statute prohibiting such sale and knowingly continued to sell to him in further violation of the statute after Love had become drunk, or after the defendant should have known he was becoming helplessly drunk and would be unable to operate his automobile in a proper manner. Love left the tavern with other members of his party, whose state of inebriation or ability to drive is not stated. Love drove his car on the left of the center of the highway at an excessive speed and collided with the car driven by Joyce, who was exercising due care. As a result of the collision, Joyce died.

The defendant demurred and judgment for the defendant was entered on the ground that the proximate cause of the collision was not the unlawful sale of liquor but the negligence of Love. The court said:

> "Apart from statute, the common law knows no right of action against a seller of intoxicating liquors, as such, for 'causing' intoxication of the person whose negligent or wilful wrong has caused injury. The law . . . recognized no relation of proximate cause between a sale of liquor and a tort committed by a buyer who has drunk the liquor. . . . The common law rule holds that the man who drank the liquor is liable and considers the act of selling it as too remote to be a proximate cause of the injury caused by the negligent act of the purchaser of the drink."

The court said that many states have enacted civil damage statutes "creating rights of action for injuries against those who, by selling intoxicating liquors, 'caused' the intoxication of the person through whom the injuries were done," but Maryland has no such statute, and therefore no liability could be imposed on the defendant by judicial legislation.

In Pennsylvania there are numerous enactments regulating the sale and consumption of liquor. The Act of May 8, 1854, P. L. 663, § 1, 47 P. S. 601 reads as follows:

> "Wilfully furnishing intoxicating drinks by sale, gift or otherwise, to any person of known intemperate habits, to a minor, or to an insane person, for use as a beverage, shall be held and deemed a misdemeanor and,

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[1] ——— Md. ———, 78 A.2d 754 (1951).

> upon conviction thereof, the offender shall be fined not less than ten nor more than fifty dollars, and undergo an imprisonment of not less than ten nor more than sixty days; and the wilful furnishing of intoxicating drinks as a beverage to any person, when drunk or intoxicated, shall be deemed a misdemeanor, punishable as aforesaid."

The Act of November 29, 1933 Special Session, P. L. 15, Art. VI, § 602, 47 P. S. 744, subsection 602 (5) says:

> "It shall be unlawful for any licensee, or the board, or any employee, servant or agent of such licensee or of the board, to sell, furnish, or give any liquor or malt or brewed beverages, or to permit any liquor or malt or brewed beverages to be sold, furnished or given to any person visibly intoxicated, or to any insane person, or to any minor, or to habitual drunkards or persons of known intemperate habits."

There are many other prohibitions not noted here.

Section 3 of the Act of May 8, 1854, P. L. 663 creates civil liability for the breach of any of the liquor regulations. It says:

> "Any person furnishing intoxicating drinks to any other person in violation of any existing law, or of the provisions of this act, shall be held civilly responsible for any injury to person or property in consequence of such furishing, and any one aggrieved may recover full damages against such person so furnishing, by action on the case, instituted in any court having jurisdiction of such form of action in this commonwealth."

Were it necessary for the Pennsylvania courts to determine the liability of a seller of intoxicating liquor under a similar fact situation, would the Act of May 8, 1854, Sec. 3, supra, operate to effect an opposite decision?

In determining whether the defendant's conduct is actionable, we are faced with three problems under the traditional approach of proximate cause. The first is that of negligence. Secondly, we must find causation in fact and finally we must decide the limits of liability through proximate cause which is restricted to foreseeability under the natural and probable view. For obvious reasons negligence of the defendant is an indispensable element in plaintiff's cause of action in the usual tort case. Under the fact situation in the instant case, this problem would present no difficulty because the Pennsylvania courts with the *Restatement of Torts,* have held unequivocally that a violation of a statute is "negligence per se." In *Pennsylvania Annotations* to the *Restatement of Torts,* § 285, it states: "The Pennsylvania cases recognize that a legislative enactment may establish a standard 'which is fixed and conclusive.' Where such a statute is violated, there is a breach of duty (not merely evidence of a breach), and no jury may properly be permitted to find otherwise." It cites the case of *Fink* v. *Garman,*[2] and *Littel* v. *Young,*[3] where the court says:

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[2] 40 Pa. 95 (1861).
[3] 5 Pa. Super. 205 (1897).

> "An act done in violation of a criminal statute is of itself an act of negligence, and makes the party doing it responsible for the proximate consequences of the act."

Section 286 of the *Restatement of Torts* says the violation of a legislative enactment by doing a prohibited act, makes the actor liable if, "(a) the intent of the enactment is exclusively or in part to protect an interest of the other as an individual."

In *Jinks et al.* v. *Currie,*[4] the court said, after quoting with approval § 286 of the *Restatement of Torts*:

> "The majority rule is that violation of a statute is negligence per se: 45 C. J. 720; 20 R. C. L. 38, In *Stehle* v. *Jaeger Auto Machine Co.,* 225 Pa. 348, 74 A. 215, we held that the violation of a provision of the factory act regulating the employment of children was negligence per se; and in *Johnson* v. *Endura Mfg. Co.* 282 Pa. 322, 127 A. 635, 636, we pointed out that the violation of a penal statute may constitute negligence per se."

Our second problem is that of causation in fact, for we can not have "negligence in the air" so to speak. The negligent conduct of defendant must bear a causal relationship to the injury for which plaintiff seeks recovery. In the absence of such actual causation, any allegation of negligence regardless of its wanton and reckless character is immaterial for purposes of imposing civil liability. The defendant's wrongful conduct will be deemed a material cause of the injury only if it was a substantial factor to bring it about.

Section 432 (1) of the *Restatement of Torts* states the proposition that an actor's negligent conduct is not a substantial factor in bringing about harm to another if it would have been sustained even if the actor had not been negligent. The actor's wrongful conduct must at least be a "causa sine qua non" as to the harm complained of. Pennsylvania cases are in accord.[5]

Section 433 of the *Restatement* sets out the considerations which are important in determining whether the negligence is a substantial factor. Subsection (a) states: "the number of other factors which contribute in producing the harm and the extent of the effect which they have in producing it." In the instant case the unlawful act of the defendant in serving liquor to an intoxicated minor started the chain of events. Love's subsequent negligent act and the collision merely acted upon it. The facts here constitute a continuous succession of events so linked together, that they become a natural whole.

Only when the court has satisfied itself as to the presence of the preliminary requirements of negligence and actual causation will it proceed to determine the limits of liability under proximate cause. In the usual negligence case the plaintiff must prove not only actual causation but he must also prove that the negligent conduct was the proximate cause of the injury.

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[4] 324 Pa. 532, 188 A. 573 (1936).
[5] Carlson v. A. & P. Corrugated Box Corp., 364 Pa. 216, 72 A.2d 290 (1950).

In *Wallace* v. *Keystone Automobile Co.*,[6] the court said:

> "The proximate cause of an accident imposing liability is the dominent and efficient cause which acts directly or necessarily sets in motion other causes not created by an independent agency and which naturally and reasonably results in injury which is a consequence of the primary act, under the circumstances, might and ought to have been anticipated in the nature of things by a man of ordinary intelligence and prudence . . ."

In the final analysis, the determination of proximate cause simply redounds to the question of whether it is reasonable to hold the defendant liable. This would depend on the question of foreseeability. In the case under consideration the Maryland court held, in effect, that the proximate cause of the plaintiff's injury was the negligent driving of the drunken Love, in that it was a new and independent force operating to break the causal connection, thus itself becoming the direct and immediate cause of the injury. This does not follow unless the defendant could show that Love operated his car in the same manner when he was sober. If Love was a licensed driver it must be assumed that he would not drive his car on the wrong side of the highway if he were sober. Now, it cannot be denied that if the negligence of the defendant only furnishes a condition and that condition causes an injury by the subsequent independent act of a third person, the creation of the condition is not the proximate cause of the injury. Unfortunately however, the Maryland court lost sight of the fact that the *rule* is that the subsequent independent act in order to break the causal connection must be one, the intervention of which was not probable or foreseeable by the first wrongdoer.[7] The defendant, knowing that the only means of ingress and egress was by automobile must have known that Love was driving. Is it unforeseeable to a reasonable man that Love in his drunken state would do just what he did do? Rather would it be extraordinary had Love driven the car carefully.

The Maryland court explained its decision on the ground that since at common law the act of serving liquor in any amount to any person was not wrongful, courts, in the absence of statute creating civil liability, must follow the common law rule and find that the sale of liquor was not the proximate cause of the injury. Although it is true that under the common law, the court would decide the case as the Maryland court did, it would do so not because of the remoteness of cause, but because the act of serving liquor was not *wrongful* or *negligent*. Maryland, however, does have a statute which makes the sale of liquor to a minor or to an intoxicated person unlawful and negligent and therefore, that court could have decided the case differently on the theory of proximate cause.

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[6] 239 Pa. 110, 86 A. 699 (1913).
[7] See note 5.

The issue in the principal case could be more logically decided on the negligence or risk theory rather than on the basis of proximate cause in Pennsylvania, because, in addition to the statutes making this type of sale unlawful, we have the civil damages act noted above which was passed to protect any aggrieved person who has received an injury to his person or property in consequences of the unlawful sale.

Such an injury may be sustained in either of two ways—an injury to the purchaser to whom there has been an illegal sale and an injury to a third person by the intoxicated purchaser to whom there has been an unlawful sale. An aggrieved person may be any one who has sustained either of these two types of injuries. See *Veon* v. *Creaton*,[8] where the court said that the medical expenses of a man who sustained injury as a result of being served intoxicating liquor unlawfully might have been recovered in an action by the man himself. See also *Tyson et ux* v. *Plymouth Country Club*,[9] where the court held that a third person who was injured by the affirmative act of an intoxicated minor who had been served liquor unlawfully could recover from the seller.

An aggrieved person may be one who receives a property loss caused by the injury or death of either of the two types of persons mentioned above. See *Fink* v. *Garman*,[10] where the plaintiff suffered the same kind of property loss as did the plaintiff in the Maryland case and where the court permitted the wife to recover damages for the wrongful death of her husband caused by the defendant's violation of the Act of April 26, 1855, in serving liquor to a man of known intemperate habits. The court said:

> ". . . Counsel suggests that the only civil action to which the statutes subject the offender is such as may be brought by a party whom the inebriate injures. Not so, . . . Now, that a widow is a person aggrieved by the injury or death of her husband is a conclusion of law which rests, not upon the sudden sundering of the most interesting relation of human life, but upon the pecuniary advantages which she loses thereby."[11]

In cases where the intoxicated person, who has been furnished liquor illegally by the defendant, has sustained injury to himself by other than his own affirmative act, the courts have held that the intoxication must be the proximate cause of the injury. In *Fink* v. *Garman*,[12] the defendant, a licensed inn-keeper furnished the plaintiff's decedent intoxicating liquor after the decedent had become drunk and while in this inebriated condition, he fell from his horse under the wheels of his wagon and was killed. The court permitted recovery saying that the intoxication was the proximate cause of the death. In *Davies* v. *McKnight*,[13]

8 138 Pa. 48, 20 A. 865 (1890).
9 41 D. & C. 116 (Pa. 1941).
10 See note 2.
11 Lang v. Casey, 326 Pa. 193, 191 A. 586 (1937); Davies v. McKnight, 146 Pa. 610, 23 A. 320 (1892).
12 See note 2.
13 See note 11.

the plaintiff's decedent left the defendant's saloon very much intoxicated, in part, at least, the result of the defendant's unlawful sale and on his way home he fell into the gutter and was saturated with mud and water. As a result of exposure he developed pneumonia and died. The court held that the unlawful sale of intoxicants was the proximate cause of his death and permitted recovery. In *Roach* v. *Kelly*,[14] the defendant sold liquor to the plaintiff's decedent in violation of § 1 of the Act of May 8, 1854. The drunken man revived an old quarrel with two men at the bar. They left and went some distance away where the decendent fought with one man and after defeating him started to fight with the other. During his second performance the police arrived and the three men fled. The decedent slipped on a bank and fell into an open sewer and was killed. The court held that his death was not the result of the illegal sale of liquor because it was too remote and denied recovery.

There are no Pennsylvania cases where the intoxicated person has been injured or killed by his own affirmative act, after an illegal sale of liquor. Suicide or its attempt would be an example of such an act. Whether the courts would require that proximate causation be proved in such a case is purely a matter of conjecture.

In cases where the plaintiff has been injured by an intoxicated person who has been sold or furnished liquor unlawfully by the defendant there is no need to show proximate causation. See *Tyson* v. *Plymouth Country Club*[15] where the plaintiffs brought suit to recover for damage sustained as a result of the wife plaintiff's dress having caught fire in consequence of the negligent lighting of a cigarette by a minor, a person of known intemperate habits who had been visibly intoxicated when the defendant corporation sold liquor to him. The court held that under the Act of May 8, 1854, § 3, it was not necessary to aver negligence since liability of the defendant is based on the unlawful sale of liquor not on negligence, nor was it necessary to aver expressly that the minor's negligent act resulted from the illegal sale of liquor to him by the defendant. This case is in line with the cases in other jurisdictions.

In actions to recover for injuries to the person or property caused by the affirmative act of the intoxicated person, it has been held by the overwhelming weight of authority that whether or not the intoxication which is a result of an unlawful sale was the proximate cause of the injury is of no consequence, it being sufficient that the injury was inflicted by the intoxicated person.[16] In *Martin* v. *Blackburn*,[17] the court in permitting plaintiff's recovery said, "It is immaterial that the result was not due to intoxication; the only questions were whether Black-

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14 194 Pa. 24, 44 A. 1090 (1899).
15 See note 9.
16 Homire v. Hoffman, 156 Ind. 470, 60 N. E. 154 (1901); McCarty v. State, 162 Ind. 218, 70 N. E. 131 (1904); McNary v. Blackburn, 180 Mass. 141, 61 N. E. 885 (1901); Steele v. Thompson, 42 Mich. 594, 4 N. W. 536 (1880); King v. Haley, 86 Ill. 106, 29 Am. Rep. 14 (1877); Kennedy v. Whittaker, 81 Ill. App. 605 (1898).
17 312 Ill. App. 549, 38 N. E. 2d 39 (1942).

burn was intoxicated and whether the intoxication resulted from serving liquor by defendant."

In cases where the resultant injury is not occasioned by an affirmative act, the plaintiff's right to recover is based upon proof that the unlawful sale of the intoxicant was the proximate cause of the injury.[18]

In construing any statute the courts must take into consideration the intent of the legislature in enacting the law. In the statute we are presently discussing, the intent of the legislature must be interpreted in the light of the evils sought to be prevented. The purpose of the liquor control acts is set forth in *Commonwealth* v. *Speer*.[19] The court said:

> "The liquor business is unlawful, and its conduct is only lawful to the extent and in the manner permitted by statute. *Com.* v. *Bienkowski*, 137 Pa. Super. Ct. 474, 9 A.2d 169. The purpose of the Act of Nov. 29, 1933, P. L. 15 Sp. Sess., the enactment of which was the exercise of the police power of the Commonwealth, was, except as otherwise provided, to prohibit transactions in liquor which take place in this Commonwealth."

The evils in abuse of liquor are manifest to all of us. Aside from broken homes and moral dissipation, we all know of numerous cases where innocent persons have been permanently injured or killed by the uninhibited driving of persons who are intoxicated. In *Fink* v. *Garman*,[20] the court said:

> "Not only public policy, but statute law forbids that intoxicating drinks be furnished to him who is visibly intoxicated . . . There is no excuse for ignorance or mistake when the law is so plainly written. If men disregard it they must accept the consequences. Judicial tribunals do not make the law, they have no power to lessen its exactions, and looking to the humane purposes of the legislation, they have no disposition to thwart it by glosses and refinements."

The Pennsylvania legislature realizes that hazards caused to innocent persons by drunken driving, so it has made it a criminal offense to drive while intoxicated. See Act of May 1, 1929, P. L. 905 Art. 6, § 620 as amended which provides that it shall be an offense to operate a motor vehicle while under the influence of intoxicating liquor.

It is obvious that the plaintiff in our case is among the particular class of persons intended by the legislature to be protected and thus we have specific negligence as to this plaintiff. Moreover with this set of facts we not only have negligence qua the plaintiff under Cardoza's theory, but we also have negligence qua the hazard under the *Restatement* view § 281. We think that in any case the defendant should be held liable.

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18 Shugert v. Egan, 83 Ill. 56, 25 Am. Rep. 359 (1876); Schmidt v. Mitchell, 84 Ill. 195, 25 Am. Rep. 446 (1876.)
19 157 Pa. Super. 197, 42 A.2d 94 (1945).
20 See note 2.