Legal Matters®

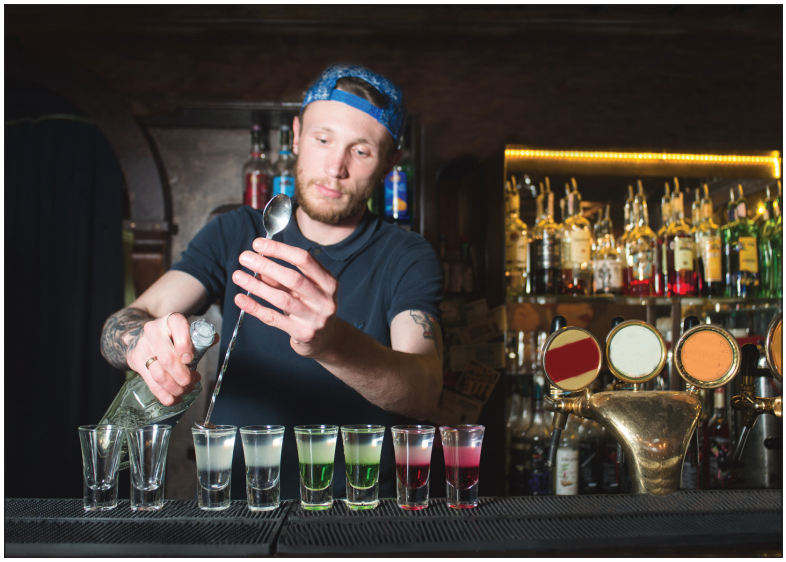
Consumer Safety
summer 2018

Bars and restaurants can be held responsible for customer violence

Many states have "dram shop" laws that hold bars, clubs or restaurants responsible for harm that occurs when they over-serve alcohol to customers. People tend to associate these cases with a bartender serving too many drinks to someone who then drives away drunk and hurts someone else. The injured party can hold the driver accountable, but the reality is that the driver often doesn't have enough insurance to pay for all the harm, so dram shop laws let the victim hold the establishment accountable too.

What you may not be aware of is that dram shop laws can also cover situations where customers are over-served and engage in drunken, violent attacks on other patrons, employees or even random bystanders.

This happened recently in Michigan. A woman went out partying in downtown Grand Rapids and started the night at a now-closed bar called McFadden's. She apparently downed five strong alcoholic drinks within 90 minutes. She then left for another bar before returning to McFadden's. After using the restroom, she stepped outside and sucker-punched a woman who she mistakenly believed had been dancing and flirting with her husband. The victim broke her nose and suffered a brain injury when her head hit the pavement.



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The victim sued the attacker, but also sued McFadden's and the second bar where the attacker had been drinking. The second bar settled, but McFadden's fought the case, arguing that the situation wasn't its fault because it wasn't the last place to serve the woman (there's a "rebuttable presumption" under Michigan law that an establishment isn't responsible if it wasn't the last place to serve the wrongdoer).

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Liability waiver unenforceable against Spanish speaker

If you've ever visited an indoor family entertainment center, like a trampoline park, indoor rock-climbing facility or bounce house, you've probably signed a liability waiver agreeing that you can't hold the facility accountable for any injuries you or your family may suffer. Alternatively, you may have agreed to take your claim to "arbitration" — a private proceeding where a "neutral" third party hired by the facility will resolve the dispute with no right of appeal. But these waivers aren't enforceable in every case, so if a family member has been hurt at one of these facilities, you should still contact an attorney to see what kinds of rights you might have.

A recent example comes from Massachusetts. Elmer Cruz took his 15-and 8-year old sons and his 13-year-old niece to Sky Zone, an indoor trampoline park north of Boston. Cruz, an immigrant from El Salvador, apparently couldn't read or write in English, so his 15-year-old son executed Sky Zone's liability waiver, which consisted of typing information into a computer and hitting a button. The boy didn't attempt to explain to his father what he was doing, nor is it clear that he understood the legal significance, because he apparently just told his father that they needed to "go to the computer" before they could enter the facility.

Once inside the park, Cruz broke his ankle, necessitating several surgeries and leaving him unable to work for two years. He and his wife sought to hold Sky Zone responsible.

Sky Zone tried to get the case dismissed, citing the waiver and arguing that even if Cruz had a claim, he agreed in the waiver that any dispute would be decided by a private arbitrator.

But a trial judge ruled that the case could go to trial. According to the judge, Sky Zone presented no evidence that Cruz understood the waiver, gave his son the authority to execute it on his behalf or agreed to the terms on his own by entering the facility after his son put their information into the computer. As a result, Cruz will get his day in court.

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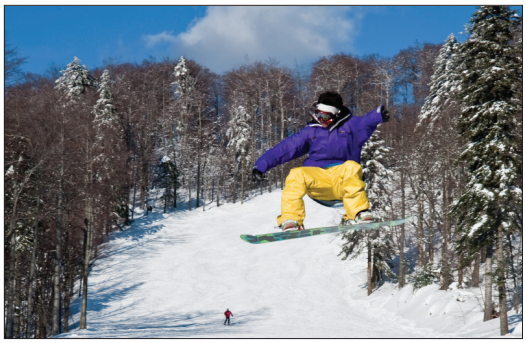
Out-of-control snowboarder at fault for ski instructor's injuries

We all know skiing and snowboarding can be dangerous. Whether you're a novice heading down a trail beyond your abilities, a daredevil trying a freestyle move because you think you're the next Shaun White, or a cautious skier who catches an edge or hits an unseen icy spot, you're always a mishap away from injury. There's also the risk that someone will crash into you, causing injury.



Roberta F. from Wikimedia Commons

In most cases, you're out of luck, because danger is part of the pastime and when you buy your lift ticket, you're generally assuming these risks. But in some cases a court might give you some relief if your harm is truly someone else's fault.

This happened recently in Minnesota. Snowboarder Lucas Anderson was approaching a small hill at the end of the trail he was on, picking up speed for an aerial stunt he called his "signature move." His landing zone, however, was right where Anderson's trail converged with another trail that was designated a "slow skiing area" for beginners. That's exactly where Julie Soderberg, a 40-year-old ski instructor, was giving a lesson to a 5-year-old. Anderson couldn't see anything beyond the hill as he headed into his jump. He smashed into Soderberg's back, causing a torn ACL, a herniated spinal disk and a torn artery that had to be surgically repaired.

Soderberg took Anderson to court for her injuries. A local judge threw out her case, finding that she knew skiing was risky and assumed all normal risks associated with the sport.

But the Minnesota Court of Appeals said Anderson's conduct appeared "reckless or inept" enough that Soderberg, who in 30 years of skiing had never seen a high-speed collision on a slow-skiing trail, especially one where a skier is crushed from above, couldn't have anticipated this particular harm. Now she'll be able to try and convince a jury that Anderson should have to compensate her.

If you've been hurt skiing or snowboarding and you think someone else may be at fault, talk to an attorney instead of just assuming you can't recover.

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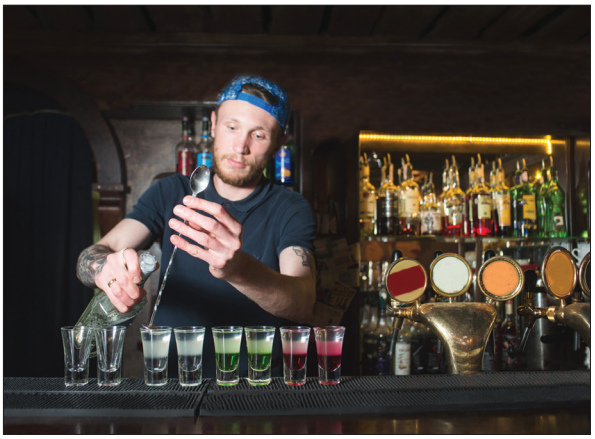
But McFadden's had very little testimony to counter evidence that the attacker was already visibly intoxicated when they were still serving her, and a jury found the bar at fault, awarding substantial damages to the victim.

Another example comes from Minnesota. In that case, two who had apparently already been drinking beforehand met up at a bar in Minneapolis. While the bartender on duty that night claims the two men each only had a beer or two, surveillance video showed them drinking shots after they'd already been there for a couple of hours and were getting surly and unruly. The two men ultimately caused a major disturbance, with one of them, Nicholas Anderson, throwing a punch at the manager, jumping on his back and putting him in a headlock.

Food-runner Maxwell Henson came to the manager's aid. As he and the manager tried to escort Anderson out, one of them tripped, sending all three to the ground. Henson struck his head on the pavement and suffered a fatal injury. When his family sought to hold the bar accountable under the state dram shop law, a trial judge dismissed the case, saying Anderson's intoxication didn't directly cause Henson's death. But a state appeals court reversed, finding that the bar's overserving of Anderson "amplified the risk" that Henson assumed by coming to his manager's aid. Now Henson's family can bring their case in front of a jury.

A third case from Rhode Island arose when staff at the Omni Providence Hotel kicked out a large group of youths who'd been partying loudly in a guest's room, disturbing others. The group left the premises but later returned to the hotel driveway with beer, engaging in rowdy behavior as the valet looked on. First the group harassed a passerby, threatening and shouting racial epithets at him. Then they rushed into the lobby and attacked a random guest, punching, shoving and kicking him, breaking his arm.



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When the guest sued the hotel, a federal district judge dismissed the case, ruling that this spontaneous attack by third parties was "unforeseeable" and thus not the hotel's fault. But the appellate court reversed, deciding that while the hotel couldn't have foreseen the attack at the time it ejected the eventual attackers, it could have foreseen the attack when they returned. Thus, the court ruled, the victim's case could proceed to trial on the issue of whether the hotel should have done a better job protecting him.

If you've been injured by a violent attacker who may have been over-served by an establishment selling or providing alcohol, talk to a lawyer where you live to find out what rights you might have.

'Recreational immunity' doesn't protect contractor from lawsuit

In many states, landowners and their "agents" can't be sued for deaths or injuries on property they've opened up to the public for recreational activities like swimming, hiking, fishing, camping or horseback riding. This is what's known as "recreational immunity" and it only applies if the landowners open up the property free of charge.

The definition of an "agent" is often pretty unclear, but a recent Wisconsin case gives a little bit of guidance.

In that case, a landowner hired a contractor to trim trees along a lakefront path it had opened to the public. A member of the tree-trimming crew cut a large branch from a tree that landed on Jane Westmas, who was walking on the path with her son. She was fatally injured. Her husband, who was also her estate administrator, sued the tree company, claiming its carelessness caused her death and caused emotional distress to their son, who saw his mother die.

The contractor argued in court that because it was an "agent" of the property owner, the Wisconsin recreational immunity law protected it from responsibility. A lower court judge agreed and dismissed the case.

But the Wisconsin Supreme Court reversed, finding that because the property owner didn't directly control the contractor's means and methods, the contractor didn't count as an "agent" who was protected by recreational immunity.

Of course, these laws work differently from state to state. If you want to learn more, talk to an attorney where you live.

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‘Governmental immunity’ doesn’t shield ‘gross negligence’

A homeowner in Michigan could hold a utility worker accountable for “gross negligence” that resulted in her home burning down, a Michigan appeals court recently decided.

The worker, who was an employee of the Board of Water and Light, a city-owned utility company in Lansing, was working on a house next door to the home of Cora Lee Hobbs-Jackson and needed water. The worker tried to get water from an outside water spigot on Hobbs-Jackson’s house, but the spigot was frozen. She then used a gas blowtorch to thaw it out, but the blowtorch’s flames set Hobbs-Jackson’s house on fire, destroying the building and all the possessions in it. Hobbs-Jackson was not home at the time.

Hobbs-Jackson took the worker and the Board of Water and Light to court, seeking compensation for her losses.

Both defendants claimed they were shielded from responsibility by “governmental immunity,” a legal doctrine under which state, city and town entities can’t be held responsible for harm caused by negligence (lack of reasonable care) in carrying out their duties. A trial judge agreed and dismissed the case.

But the Michigan Court of Appeals decided the worker could be held responsible. That’s because the use of the blowtorch was considered “gross negligence” — in other words conduct so reckless that it showed an absolute lack of concern for the possibility of harm — and governmental immunity didn’t apply.

The court did rule that the Board was still immune from suit because it was serving a public function, rejecting Hobbs-Jackson’s argument that the Board was making enough money to generate an actual profit rather than just sustaining itself. Of course, the law may differ from state to state, so talk to a lawyer near you.