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## Torts—Extraterritorial Effect of Dram Shop Acts

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## Recent Decisions

### TORTS — EXTRATERRITORIAL EFFECT OF DRAM SHOP ACTS

Defendants in this suit were Illinois tavern owners who, according to plaintiffs' allegations, made certain sales of liquor in Illinois, and thereby proximately caused plaintiffs' injuries in Michigan. The causal connection between these geographically remote incidents was an Illinois citizen who became intoxicated in defendants' tavern and, thereafter, drove into Michigan, where he negligently collided with plaintiffs' car. Plaintiffs brought suit in a federal district court in Illinois under the diversity of citizenship rule. Defendants moved for judgment on the pleadings, on the ground that plaintiffs had failed to state a cause of action. The trial court sustained the defendants' motion, and from this adverse judgment plaintiffs appealed, claiming, in the alternative, a violation of (a) the Michigan Liquor Control Act,<sup>1</sup> (b) the Illinois Dram Shop Act,<sup>2</sup> or (c) the common law. On appeal, the plaintiffs obtained a reversal of the lower court's judgment; the defendants' motion was overruled, and the case was remanded.<sup>3</sup>

Two issues confronted the court on appeal: (1) whether liability could be predicated upon either the Illinois or Michigan Dram Shop Act, and (2) if no statutory liability existed, whether the common law afforded any redress to plaintiffs.

Inasmuch as the acts of defendants, of which plaintiffs complained, occurred in Illinois, whereas plaintiffs' injuries occurred in Michigan, it was necessary for the appellate court to determine which state's substantive law should govern. Applying the rule of *lex loci delicti*, which dictates that the law to be applied is that of the state where the "last event necessary to make an actor liable for an alleged tort occurs,"<sup>4</sup> the court stated that the plaintiffs' substantive rights would be determined under the law of Michigan, the situs of the injury.

The court briefly discussed the issue of statutory liability. Under both the Illinois Dram Shop Act and the Michigan Act, a person who sustains injuries resulting from the drunkenness of another person may recover for his injuries from any person who contributed to that drunkenness through the sale of intoxicating beverages. The court first rejected the Illinois Dram Shop Act because, under Illinois case

1. MICH. STAT. ANN. tit. 13, §§ 18.993, .1000 (1957).

2. ILL. REV. STAT. ch. 43, § 135 (1957).

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

4. GOODRICH, CONFLICT OF LAWS §§ 90-94 (3d ed. 1942); RESTATEMENT, CONFLICT OF LAWS §§ 377-78 (1934).

law,<sup>5</sup> the Illinois statute may not be applied extraterritorially.<sup>6</sup> The Michigan statute also was held to be inapplicable because, under Michigan court interpretations, the statute's effect cannot exceed Michigan's territorial boundaries. Although bound by the states' interpretations of their own statutes<sup>7</sup> to conclude that no statutory liability existed in this case, the court intimated that the ineffectiveness of the statutes in a case such as this was indeed unsatisfactory. In the words of the court:

It would seem to follow that the practical consequence of denying extraterritorial effect to such acts is to leave a vacuum in the law. . . . [N]ature abhors a vacuum; so does the law. . . .<sup>8</sup>

The court proceeded to consider defendants' liability under the common law of Michigan. The appellate tribunal began by quoting from a Michigan decision:

A general principal of the common law [is] that whenever the law gives a right, or prohibits an injury, it also gives a remedy by action. . . .<sup>9</sup>

Using this broad, general statement as a major premise, the court, in almost syllogistic fashion, went on to conclude that there was a common-law liability in this case. Briefly, the court reasoned as follows: The Illinois Dram Shop Act provides that the sale of liquor to an intoxicated person is unlawful and punishable by a fine or imprisonment;<sup>10</sup> the purpose of this statute is to protect any member of the public who might be injured as a result of the intoxication to which the particular sale of liquor contributes. The court concluded that since the law prohibited defendants' acts and these acts led to plaintiffs' injuries, then under the principle previously announced, that whenever the law prohibits an injury it provides a remedy, the plaintiffs were entitled to redress.

The court buttressed this somewhat tenuous reasoning with a quotation from an annotation in American Law Reports to the effect that, although ordinarily at common law a vendor of intoxicating liquors is not answerable to a third person for injuries sustained as a result of that intoxication, there are some exceptions.<sup>11</sup> The authority for this statement consists of two cases,<sup>12</sup> both of which involved a

5. *Eldridge v. Don Beachcomber, Inc.*, 342 Ill. App. 151, 95 N.E.2d 512 (1950).

6. This seems to be primarily a reiteration of the rule of *lex loci delicti*. It would seem that the court need not have considered the extraterritorial effect of the Illinois statute, in view of the court's statement that Michigan law governed the case.

7. *Erie Ry. v. Thompkins*, 304 U.S. 64 (1938); *Green v. Lessee of Neal*, 31 U.S. (6 Pet.) 291 (1832).

8. *Waynick v. Chicago's Last Department Store*, 269 F.2d 322, 324 (7th Cir. 1959).

9. *Stout v. Keyes*, 2 Doug. 184, 186 (Mich. 1845).

10. ILL. REV. STAT. ch. 43, § 131 (1957).

11. Annot., 130 A.L.R. 357 (1941).

12. *Pratt v. Daly*, 55 Ariz. 535, 104 P.2d 147 (1940); *Swanson v. Ball*, 67 S.D. 161, 290 N.W. 482 (1940).

wife suing a tavern owner for loss of consortium. In both of these cases, liability was founded upon an analogy to the modern common-law right of recovery for loss of consortium against one who administers habit forming drugs to the plaintiff's spouse.<sup>13</sup> It would seem that this analogy is inapplicable in the instant case.

The court's reasoning is further weakened by the fact that there was no discussion of the issue of proximate cause, the lack of which is the basis for the refusal of most courts to find a common-law liability.<sup>14</sup> The court's decision was also somewhat contradictory. On the one hand, the court refused to grant extraterritorial effect to the "civil-liability" portion of the Illinois Dram Shop Act. On the other hand, however, the court, in essence, gave extraterritorial recognition to the penal portion of the Illinois statute by using the defendant's violation of this section of the statute as the basis for finding a liability under Michigan common law.

The court undoubtedly achieved a just result in the instant case, although the result was reached by a circuitous path. The basic problem, however, remains unresolved. The legal vacuity which is created by the denial of extraterritorial effect to the "Dram Shop" statutes is undesirable.<sup>15</sup> This is especially true when both the state in which the injury occurred, and the state in which the defendant's sale occurred, have "Dram Shop" Acts and liability is denied upon what is no more than a mere technicality. Fortunately, the question of extraterritorial effect is still an open one, in that very few jurisdictions have decided this issue. Of the four jurisdictions which directly considered the question, two denied extraterritorial effect,<sup>16</sup> whereas the other two jurisdictions reached the opposite result.<sup>17</sup>

Perhaps the courts in the future will be willing to extend the scope of the "Dram Shop" statutes to meet this problem. But in the absence of statute, it is difficult to see how any liability exists on the part of the tavern owner. The suitability of the negligence theory in this case is doubtful, because of the lack of proximate cause. Although it may be socially desirable to hold tavern owners responsible under the circumstances in this present case, it is not desirable that courts should achieve this result through judicial legislation.

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13. Hoard v. Peck, 56 Barb. 202 (N.Y. 1866); Holleman v. Harward, 119 N.C. 150, 25 S.E. 972 (1896); Flandermeyer v. Cooper, 85 Ohio St. 327, 98 N.E. 102 (1912).

14. Weller v. Collinsworth, 144 Ky. 3, 137 S.W. 766 (1911); Seibel v. Leach, 233 Wis. 66, 288 N.W. 774 (1939). See Belding v. Johnson, 86 Ga. 177, 12 S.E. 304 (1890).

15. For a discussion of the extraterritorial effect of "Dram Shop" Acts, see 1958 U. ILL. L.F. 287.

16. Eldridge v. Don Beachcomber, Inc., 342 Ill. App. 151, 95 N.E.2d 512 (1950); Goodwin v. Young, 34 Hun. 252 (N.Y. Sup. Ct. 1884).

17. Osborn v. Borchetta, 20 Conn. Supp. 163, 129 A.2d 238 (1956); Schmidt v. Driscoll Hotel, Inc., 249 Minn. 376, 82 N.W.2d 365 (1957).