

# Liquor Liability for Elks



- C. Mark Vazzana
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# Keep the Lawyer Out!





# Liquor Liability

- What is Liquor Liability?
  - What can we do to prevent liability?
  - How can we defend these claims?
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# Dram Shop Statute

Florida Statute 768.125

“A person who sells or furnishes alcoholic beverages to a person of lawful drinking age **shall not** thereby become liable for injury or damage caused by or resulting from the intoxication of such person, **except** that a person who willfully and unlawfully sells or furnishes alcoholic beverages to a person who is not of lawful drinking age or who **knowingly serves a person habitually addicted** to the use of any or all alcoholic beverages **may become liable** for injury or damage caused by or resulting from the intoxication of such minor or person.

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# And now in English...

- If a lodge **knows** someone is a habitual drunkard or an alcoholic...and serves that person alcohol; AND
- That person **becomes intoxicated**; and
- That person's actions then cause **injury or damage**...

**THE LODGE CAN BE HELD RESPONSIBLE!**

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# What is a "Habitual" Drunk?

“Serving an individual multiple drinks on one occasion would not be sufficient to prove the lodge knew someone was a habitual drunk.”

“Habitual but moderate use of liquor does NOT meet the test.”

*-Sabo v. Shamrock Communications, Inc., 556 So. 2d 267 (Fla. 5<sup>th</sup> DCA 1990)*

So...

Member has a bender one night?

NOT Habitual Drunk

Regular has one beer every night?

NOT Habitual Drunk

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# What is a “habitual” drunk??

## BUT...

Serving an individual a **substantial number of drinks** on **multiple occasions** would be circumstantial evidence to be considered by the jury in determining whether the lodge knew that the person was a habitual drunkard.

*-Ellis v. N.G.N. of Tampa, Inc., 586 So. 2d 1042 (Fla. 1992).*

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# Intoxication

In order to establish liability under 768.125, the habitually addicted person served at the lodge must be “intoxicated.”

“Intoxication” = “**any degree** of impairment of normal faculties”

If any of the following are impaired, you can qualify as “intoxicated” under the statute:

1. Ability to see
  2. Ability to hear
  3. Ability to walk
  4. Ability to judge distance
  5. Ability to drive automobile
  6. Ability to make judgments
  7. Ability to normally perform the mental and physical acts of daily life.
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# Side Note- Criminal Liability

If you receive written notice from a wife, husband, father, mother, sister, brother, child, or nearest relative of someone habitually addicted to alcohol, and they warn you/lodge of that person's problem and how serving alcohol causes that person an injury...

**It is a criminal offense** (2<sup>nd</sup> degree misdemeanor) to serve that person alcohol.

*-Florida Statute 562.50*

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# The "Joe" Scenario





# The "Joe" Scenario







Could Lodge be Liable?

**ABSOLUTELY**

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# Why is Lodge on hook?

- Was Joe a habitual drunk?
  - Did the Lodge know?
  - Was he served alcohol by the Lodge?
  - Was he “intoxicated”??
  - Did he suffer injuries and/or damages?
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# Some Potential Damages

- Property Damage
  - Medical Bills (Past and Future)
  - Wages (Past and Future)
  - Pain and Suffering
  - Loss of Consortium
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# MILLIONS





# The "Joe" Scenario- Part 2





# The "Joe" Scenario- Part 2







**ABSOLUTELY**

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# Some Potential Damages

- All of Joe's Damages
  - Mother's funeral expenses
  - Father/Daughter's **past and future** medical bills
  - Pain and Suffering for Father and Daughter
  - Loss of Companionship for Father and Daughter
  - Loss of Guidance for Daughter
  - Father's Lost Wages while in hospital
  - Loss of Net Accumulations (what mother would have earned)
  - Loss of Support and Services that Mother provided
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# Millions and Millions





# \$11 Million Verdict





# How can we prevent claims?

Lets Analyze:

If Lodge knows someone is habitual drunk/alcoholic and serves them alcohol anyway...the Lodge can be held liable for accident.

## Solution:

If Lodge doesn't allow people to get drunk in the first place...you CAN'T have habitual drunks at the lodge!

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# Prevention of Claims

- Make sure bartenders are properly trained in service of alcohol.
  - Make sure bartenders are properly trained on identifying intoxicated patrons (volume, slurring, glassy/red eyes, unsteadiness, exaggerated motions).
  - Measure drinks; all drinks will be uniform/ no free pouring.
  - More training the better (TIPS, continual training).
  - Have bartenders sign acknowledgment of policies.
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# Prevention of Claims

- Offer ice water or non-alcoholic beverage.
  - Offer a menu or some food.
  - Slow down service.
  - Refuse service.
  - Establish a specific person to train/monitor bartenders.
  - Document and track incidents.
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# Avoiding an Accident

- Post signs at bar for cab; offer to call cab
- Offer/Arrange a ride home
- Take keys
- Uber!





# First Defense

- Contact leadership
  - Create incident report
  - Take and Secure photos/videos
  - Have bartenders write statement of recollection
  - Determine all witnesses, and have them provide statement
  - If receipts are available, save the receipts from that night
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# Take care of our family



[www.aa.org](http://www.aa.org)

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# Contact Me

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The logo for The Chartwell Law Offices, LLP. It features a dark blue rectangular background. On the left side, there is a large, stylized, light blue script letter 'C' that loops around the text. The text 'THE CHARTWELL' is written in a white, serif, all-caps font across the middle. Below it, 'LAW OFFICES, LLP' is written in a smaller, white, serif, all-caps font.

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