



**ASOS Research Request:** If alcohol is served on a company aircraft, who would be liable if a passenger is in an auto accident after the flight and is alcohol related- the passenger - the company - the Pilot in Command?

## ASOS Research Brief

There are many potential outcomes that may result from an alcohol related accident. The outcome will depend on various circumstances such as the amount of damage and the number of deaths involved in the accident. There are two different types of courts that could become involved in this instance: criminal and civil. The liability of the parties involved will be determined in court. This brief is designed to provide background information regarding this request; however, we are not experts in the legal field and may only make suggestions.

### **Company Liability (Deputy Sheriff Source)**

#### Criminal Court

It is very unlikely a company will be criminally liable. It is rare for a law enforcement officer/court to pursue a business, or in this case an operator, as a result of an accident unless the party involved was underage. The individual at fault is always criminally liable.

#### Civil Court

In some cases an establishment may be liable civilly; however, it is also rare for an officer or court to pursue the company civilly. The court would have to *prove* the party involved was not stopped from drinking, and could have been stopped from driving by the company. As long as the company makes a "reasonable effort" to stop the intoxicated party from driving, they are usually not liable. What a company cannot do is physically detain a person from driving if they refuse to *not* drive. The company may for example, notify the police with the type of car and license plate number so they can handle the matter if the person decides to drive. The company could potentially be liable if it is proven they could have stopped them from driving or did not stop them from drinking (See Dram Shop Act explanation in the following pages). This is where determining the indications of an intoxicated person factors in. It is, ultimately, up to a jury for every situation, but from our research, it's fairly rare a company is pursued civilly in this matter.

### **Alcohol Affects**

Alcohol affects everyone differently. Some may have a higher tolerance than others, or exhibit different behavior. Therefore it may be difficult to determine if someone is intoxi-

cated in some instances. Past court cases, however, have proven a civilian is able to determine most of the time if a person is intoxicated just by body language and behavior. An officer must prove intoxication through physical evidence, such as a breathalyzer. There are several factors that contribute to intoxication:

- How many drinks served?
- Are they on medication?
- How much have they had to eat?
- Are they dehydrated?

The strength of the alcohol, the person's body fat, and their rate of absorption are all factors in the level of intoxication. The laws regarding what blood alcohol content is legal may differ from state to state and also by country.

### **According to the FAR's**

#### **Sec. 135.121**

Alcoholic beverages.

(a) No person may drink any alcoholic beverage aboard an aircraft unless the certificate holder operating the aircraft has served that beverage.

(b) No certificate holder may serve any alcoholic beverage to any person aboard its aircraft if that person appears to be intoxicated.

(c) No certificate holder may allow any person to board any of its aircraft if that person appears to be intoxicated.

#### **Sec. 91.17**

Alcohol or drugs.

(b) Except in an emergency, no pilot of a civil aircraft may allow a person who appears to be intoxicated or who demonstrates by manner or physical indications that the individual is under the influence of drugs (except a medical patient under proper care) to be carried in that aircraft.

**The following information was derived from various sources, including lawyers and state laws.**

What is the "Dram Shop Act" ?

Pennsylvania's "Dram Shop Act" can hold bars responsible for any injury that results from serving alcohol to visibly intoxicated persons. Under the Dram Shop Act, you may

be able to file a legal claim against a drinking establishment if:

- You were served alcohol while visibly intoxicated and later cause injury to yourself.
- The drinking establishment served a visibly intoxicated patron and that patron later injures you.

### **Liability of Third Parties ( Lawyer Source)**

If you are injured in an accident involving drunk driving, your legal rights may not be limited only to a recovery from the driver who was at fault. In some limited instances, and depending on where you live, the provider of alcohol to the driver (often a bar or restaurant) can be found liable for your injuries. For example, where an intoxicated underage drinker was provided with alcohol and later caused a car accident, the person or business that negligently provided the alcohol may be legally liable for the injuries resulting from the accident.

These cases against third parties are more complicated and difficult to prove than those against the driver. In most states, your attorney will need to establish the following:

- The driver was provided with alcohol by the third party (bar, store, or restaurant);
- The alcohol caused the driver to become intoxicated;
- The driver was visibly intoxicated, or in the case of minors, clearly underage;
- The third party provider knew or should have known of the driver's intoxication, or the fact that the driver was underage;
- The driver's intoxication was a cause of the automobile accident that resulted in injury

This third party liability has a very limited application to individual hosts in social situations (i.e., where a person hosts a party at which a drunk driver becomes intoxicated), and can sometimes be used where the drunk driver was acting on behalf of his employer. Because attorneys are aware of the many laws governing legal responsibility, an attorney can help you identify who might be held responsible for your injuries, including people or businesses you might not have considered.

The law in most states requires that you bring a lawsuit for personal injury from a drunk driving accident within one year from the date of the accident, so meeting with an attorney sooner rather than later is definitely a good idea.

### **Proving Intoxication (Lawyer Source)**

In establishing that another driver's intoxication meaningfully impaired his or her judgment and ability to operate a vehicle, and caused your injuries in an automobile accident, your attorney will look at a number of issues.

*Police Reports* : If the police came to the scene of your accident, they probably made a written accident report, and may have observed and recorded the fact that the other driver was intoxicated. Sometimes a police report plainly states an officer's opinion that

someone violated a specific traffic law (or drunk driving law) and that the violation caused the accident. In accidents involving drunk driving, the police report may even state that the officer made an arrest and/or issued a citation. Other times, the police report merely mentions negligent behavior, without plainly stating that the violation caused the accident.

*Witnesses* : Testimony and accounts from witnesses as to the number or amount of drinks, drugs, or medication consumed by the driver; the way the driver was acting (stumbling); and the way the driver was speaking (slurred speech) *Expert Opinion* : Testimony and opinion by medical or law enforcement experts as to the number or amount of drinks, drugs, or medication consumed by the driver; the effect of such consumption on a person's ability to safely operate a vehicle; and blood-alcohol or chemical evidence (such as field sobriety tests or blood tests in a hospital).

### **Bartender Liability (N.J.S.A. 13:2-23.1) New Jersey**

If a bartender either serves a minor or a visibly intoxicated customer, the bartender can be held liable for that customer's injuries as well as injuries to a third party due to the negligent driving on the part of the customer.

### **Connecticut– online source**

When you ask our drunk driver accident attorneys to investigate a wrongful death or personal injury accident, we will look for any and all liable parties – the driver and those who provided alcohol to the driver. Third-party liability or dram shop violations include:

- A **party host** who served a great deal of alcohol and did nothing to prevent that guest from driving drunk
- Parents who allow alcohol to be served to teenage or **underage drinkers** in their home
- Any person who sold or provided alcohol to teenage or **underage drinkers**
- A **bar or restaurant** that served an excessive amount of drinks to a clearly inebriated customer
- A **package liquor store** that sold alcohol to a minor or to a clearly drunk person

### **Recommendations**

Our suggestion is to simply provide a sign where the alcohol is stored. A message may be displayed, warning the passengers they are responsible for their actions, the company is not liable, and it is up to them to consume the alcohol responsibly. The alcohol is provided as an amenity for the passengers, and the main function of the operator is not to provide alcohol, but to provide transportation. We also suggest instilling policy to not provide extra alcohol at customer requests. Again, your primary function is not providing alcohol. In the interest of safety, upon arrival perhaps ensure the pilots take notice of the conditions of the passengers as they depart the aircraft. If the crew notices a passenger is visibly intoxicated, have them take steps to approach the passenger. They may ask a few non-confrontational questions such as how they plan on arriving

to their ultimate destination. The crew may then suggest calling a taxi or a friend if the passenger states they will be operating a vehicle. Calling a taxi or a friend of a passenger would most likely be considered a “reasonable effort” in court. We recommend consulting with an attorney to verify what you may and may not do with regards to infringing on the rights of the passengers.