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# Legal Matters®

Personal Injury  
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## Customer brawls are major source of ‘dram shop’ liability for bar and restaurant owners

Even if you’re not familiar with the phrase “dram shop case,” you’re likely familiar with the concept, which involves a person who has been injured by an intoxicated bar or restaurant patron and who seeks to hold the establishment accountable.

You typically hear about these cases in the context of a customer who drives drunk after leaving a bar and is involved in a crash that results in serious injury or death. But dram shop cases can also include situations in which an intoxicated customer engages in violent actions that hurt other patrons.

That’s because drinking establishments have a duty not only to cut off visibly intoxicated customers but to handle potential confrontations between groups of drunk patrons. That means if you or someone close to you has been injured in a violent confrontation involving overserved customers, you may be able to seek compensation from the bar, restaurant or entertainment venue that did not take reasonable steps to defuse the situation.

Consider, for example, a recent case from South Carolina. The plaintiff, Samantha Antley, was out celebrating her birthday and arrived with 11 friends at the Shelter Bar + Kitchen just after midnight on a September evening.

Shortly after the group arrived, a man named Preston Yelverton — who was part of a bachelor party — approached Antley’s group, made inappropriate advances and remarks, and physically assaulted Antley and a companion.



Without making any attempt to separate the two groups, and disregarding Antley’s safety concerns, security forced both groups to leave at the same time.

When Antley and a male friend got into a car, Yelverton and others started pounding on the windows. They got out of the car to ask Yelverton to stop, at which point a member of Yelverton’s group hit Antley’s friend and knocked him down. As Antley bent down to assist him, Yelverton grabbed her by the collar and punched her nine times in the face, knocking her unconscious and fracturing her septum.

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## Hurt by a drunk driver? Others may be accountable, too



If you or a loved one gets hurt in a car accident caused by a drunk driver who may not have sufficient insurance or assets to cover your harm, it's important to talk to an attorney who can investigate further.

Depending on the facts of your case, you may be able to hold others responsible for your harm as well. This is what is known as "third party liability," and it's quite common in drunk-driving cases.

For example, state or local authorities potentially could have played a part in the accident by maintaining unreasonably dangerous road conditions or by designing intersections in an unreasonably dangerous manner. Similarly, the actions of road maintenance crews can sometimes contribute to an accident, as can construction contractors and crews.

And if the at-fault driver was using an employer's vehicle and/or was driving in the scope of his or her duties, it's possible that the employer can also be held responsible.

Additionally, if the at-fault driver consumed alcohol at a bar or restaurant before getting behind the wheel, and the establishment overserved the driver when it knew or should have known he or she was intoxicated, you may have a claim against the establishment, too. That's known as a "dram shop" case.

Meanwhile, if the driver borrowed the car from a friend or family member who had reason to suspect the driver might get behind the wheel while intoxicated, that person can be held liable for "negligent entrustment."

A recent case out of New Mexico further suggests that, in certain situations, you may even be able to hold responsible the gas station where the drunk driver stopped for fuel.

In that case, motorist Andy Denny was drunk when he ran out of gas sometime after midnight. He walked to a service station where the clerk initially refused to sell him gas because he appeared intoxicated, but then decided to sell him a gallon's worth. After Denny and a friend brought the gas back to his car, they returned and purchased another nine gallons.

Denny then dropped off his passenger, got on the highway, crossed the median, and caused a fatal head-on collision.

The victim's family sued the gas station, arguing that selling Denny gas amounted to negligent entrustment, just the same as if it had loaned him a vehicle.

The New Mexico Supreme Court agreed, ruling that the lawsuit should be able to proceed.

Of course, the workings of third-party liability can differ from state to state, so if you want to learn more, call an attorney where you live.

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## Woman, infant hold contractor responsible for fall through hole

Home renovations are stressful enough without having to worry about getting hurt. But accidents can happen, and sometimes people can get injured as a result.

If this happens to you, talk to an attorney, because you may be entitled to compensation from the company that created the hazard.

Consider a recent case from the Upper Peninsula of Michigan. A woman and her husband hired a local builder to put on an addition to their home featuring an attached garage and new master bedroom with a walk-in closet on top, accessible from the old master bedroom. The builder, in turn, hired another local company to do the drywall work.

When it came time to install the drywall, the builder's workers cut a hole in the floor of the new bedroom big enough to lift the drywall sheets through from below. But the builder failed to ensure that the hole would be covered at the end of each day with the flooring cutouts, as he had promised.

And the drywall company's workers failed to cover the hole securely with the cutout flooring,

placing a 2-inch foam board over the hole instead, completely hiding and obscuring the hole.

One night, the couple went upstairs to check on the progress of their new walk-in closet. Not realizing there was an unsecured hole under the foam board, the wife — carrying their infant son — stepped on the spot, fell through the foam board, and plummeted through the hole to the cement surface 10 feet below.

The wife did not brace herself for contact with the cement and as a result was able to protect the baby from serious injury. She, however, took the brunt of the impact and suffered severe knee, leg and ankle injuries, and had to undergo multiple surgeries.

The couple sought to hold the contractor and drywall company responsible for the wife's injuries. Though the companies initially put up a fight, they agreed to settle the case months before trial.

If you have been injured as the result of what you believe is the negligence — or carelessness — of a contractor, contact a local attorney to find out what rights you might have.

# Machine maker pays for its role in workplace accident

Worker's compensation is one of the most important protections an employee can have.

In a nutshell, worker's comp is a kind of insurance that provides benefits to workers who get hurt or sick on the job, and it helps pay for medical care and lost wages.

However, the amount you receive is generally determined by a formula in your state's worker's comp regulations — often much less than you would get for comparable harm caused by someone other than your employer — and in most circumstances, you can't take your employer to court. Worker's comp is your exclusive remedy.

But if you're hurt on the job, it's still important to talk to an attorney because there may be factors at play that enable you to seek more than worker's comp.

This happened recently in South Carolina. Cephus Glenn, a worker at a factory that makes wood paneling, was washing debris from the area around an ash-handling machine when a large mass of debris suddenly fell from a furnace into the machine's water tank.

The fallen debris displaced scalding hot water that splashed all over Glenn. He suffered third-degree burns over 90 percent of his body and needed



extensive medical treatment, including two days in a medically induced coma. He was left with severe, permanent injuries.

Though worker's comp apparently covered Glenn's medical bills, state worker's comp law barred him from suing his employer for pain and suffering damages. But further investigation suggested that the accident could have been prevented had the ash-handling machine's manufacturer put a protective cover on the tank. After the incident, in fact, the manufacturer offered Glenn's employer instructions on how to make such a lid.

Accordingly, Glenn sought to hold the manufacturer responsible. The manufacturer then agreed to settle the case for a significant sum, possibly because it feared an even bigger penalty in court.

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## *Customer brawls are major source of 'dram shop' liability for bar and restaurant owners*

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Antley sought to hold Shelter Bar responsible and recently obtained a substantial award in court with the help of Shelter's security consultant, who testified that the bar didn't engage in proper protocol for confrontations between intoxicated customers.

The judge even awarded additional "punitive" damages to send a strong message that the bar acted egregiously in doing nothing to prevent or deescalate the violent situation and for continuing to over-serve the individuals involved.

A similar case from Texas highlights that bar owners, in taking precautions to minimize the risk of violent incidents, have a duty to take extra steps when the inherent risk of bar fights is greater based on the clientele or location. This is true even when the injured party is part of the fight.

In that case, a brawl started between members of a fraternity reunion and a wedding party at a resort in Lake Conroe. The two groups were hurling threats and insults for nearly an hour before the fight broke



out. During the fracas, one of the participants was thrown into a wall, suffering a fractured skull.

In holding the resort responsible for the man's injuries, the court found that the bar knew a fight was likely to occur but didn't call in security or stop serving drinks. It also didn't matter that the injured man was one of the people involved in the fight. Because he had not been involved in the verbal threats, the court found he was still in a position to collect.

If you're interested in learning more, talk to a personal injury lawyer where you live.



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## Fitbit devices may pose burn hazard



Fitbit devices — wristwatches that track your steps and the distances you walk or run in a given time, as well as your heart rate and sleep patterns — are popular among health and fitness enthusiasts.

But if you have a Fitbit or you're thinking of getting one, you should be aware that they may pose burn risks.

Specifically, the company has been receiving complaints in recent months that their Fitbits are suddenly overheating and causing burns severe enough to cause their wearers to miss work and undergo expensive medical treatments.

And while the vast majority of Fitbits are presumably safe, there's no way to determine if a particular unit is prone to overheating.

The company responded to complaints last year with a voluntary recall, but it only included a model that is no longer being manufactured, despite the fact that consumers have claimed other models also may overheat. As a result of the recall, Fitbit has agreed to refund the purchase price for consumers who bought that particular model, but it has not agreed to cover medical expenses.

Still, if you're a Fitbit user who has been injured by your device, it's important to contact a lawyer. You may be entitled to compensation for harm caused by a defective product. Call a lawyer to learn more.