

102.81 "DRAM SHOP" - LIABILITY - COMMON LAW¹ - SALE OR
FURNISHING TO INTOXICATED PERSON.

*NOTE WELL: For statutory dram shop cases under N.C.
Gen. Stat. § 18B-121, see N.C.P.I.-Civil 102.70.*

The (*state number*) issue reads:

"Was the plaintiff [injured] [damaged] by the negligence of the
defendant?"

On this issue the burden of proof is on the plaintiff. This means
that the plaintiff must prove, by the greater weight of the evidence, that
the defendant was negligent and that such negligence was a proximate
cause of the plaintiff's [injury] [damage].

"Negligence" refers to a person's failure to follow a duty of conduct
imposed by law. Every person is under a duty to follow standards of
conduct enacted as laws for the safety of the public. A standard of
conduct set forth in a safety statute is absolute and must be followed. A
person's failure to do so is negligence in and of itself.

The plaintiff not only has the burden of proving negligence, but also
that such negligence was a proximate cause of the [injury] [damage].

Proximate cause is a cause which in a natural and continuous
sequence produces a person's [injury] [damage], and one which a
reasonable and prudent person could have foreseen would probably
produce such [injury] [damage] or some similar injurious result.

There may be more than one proximate cause of [an injury]
[damage]. Therefore, the plaintiff need not prove that the defendant's
negligence was the sole proximate cause of the [injury] [damage]. The

plaintiff must prove, by the greater weight of the evidence, only that the defendant's negligence was a proximate cause.

In this case, the plaintiff contends, and the defendant denies, that the defendant was negligent in that *he* [sold] [gave] (*specify beverage*) to a person *he* knew or, in the exercise of ordinary care, should have known was intoxicated.

The plaintiff further contends, and the defendant denies, that the defendant's negligence was a proximate cause of the plaintiff's [injury] [damage].

I instruct you that negligence is not to be presumed from the mere fact of [injury] [damage].

A law enacted for the safety of the public provides that it is unlawful for a [person] [corporation] who is licensed to sell (*specify beverage*) to knowingly [sell] [give] alcoholic beverages to any person who is intoxicated.²

A violation of this safety law is negligence in and of itself.

A person violates this law when *he* [sells] [gives] (*specify beverage*) to a person who *he* knows or, in the exercise of ordinary care, should know is intoxicated.³ "Intoxicated" means that a person's mental or physical functioning is substantially, that is materially, impaired as a result of the use of alcohol.⁴

Finally as to this (*state number*) issue on which the plaintiff has the burden of proof, if you find, by the greater weight of the evidence, that the defendant was negligent (in any one or more of the ways contended by the plaintiff) and that such negligence was a proximate

cause of the plaintiff's [injury] [damage], then it would be your duty to answer this issue "Yes" in favor of the plaintiff.

If, on the other hand, you fail to so find, then it would be your duty to answer this issue "No" in favor of the defendant.

1. *Hutchens v. Hankins*, 63 N.C. App. 1, 16-17, 303 S.E.2d 584, 593-94, *disc. rev. denied*, 309 N.C. 191, 305 S.E.2d 734 (1983), held that a violation of N.C. Gen. Stat. § 18B-305 (then codified at N.C. Gen. Stat. § 18A-34) constitutes negligence *per se*. N.C. Gen. Stat. § 18B-305 prohibits a permittee to knowingly sell an alcoholic beverage to an intoxicated person. The court also authorized a common law claim for relief against the seller, by a person injured by the negligent driving of the intoxicated person following his consumption of the unlawfully sold beverage. Proximate cause- including the issue of whether or not the conduct of the intoxicated driver is an insulating cause- is a jury issue. This charge is taken largely from that decision.

It should be noted that the court in *Hutchens* specifically declined to discuss whether, under similar circumstances, "(1) a noncommercial furnisher of alcoholic beverages may be subject to civil liability; (2) whether a person who is served alcoholic beverages may recover for injuries suffered as a result of such sale or furnishing; or (3) whether off-premises retailers may be held civilly liable for sale or furnishing of alcohol to intoxicated customers." For common law liability for providing alcohol to person expected to drive, see N.C.P.I.-Civil 102.83.

2. N.C. Gen. Stat. § 18B-305. See *Harshbarger v. Murphy*, 90 N.C. App. 393, 368 S.E.2d 450 (1988); *Brower v. Robert Chappell & Associates*, 74 N.C. App. 317, 328 S.E.2d 45, *disc. rev. denied*, 314 N.C. 537, 335 S.E.2d 313 (1985).

3. *Hutchens*, 63 N.C. App. at 17, 303 S.E.2d at 594.

4. See N.C. Gen. Stat. § 14-443(2); *State v. Painter*, 261 N.C. 332, 335-37, 134 S.E.2d 638, 640-42 (1964).