

A socialite attended a cocktail party where the host provided large amounts of alcohol to the guests. The host noticed that the socialite had become visibly intoxicated during the party but did not prevent her from consuming more alcohol. After the party ended, the socialite drove to a bar, where the bartender initially refused to serve her because she was exhibiting outward signs of intoxication. However, the socialite eventually persuaded the bartender to serve her one last alcoholic drink. After consuming her drink, the socialite left the bar and drove home. On her way home, the socialite accidentally struck and seriously injured a pedestrian.

The pedestrian sued the host of the cocktail party for all of his injuries. The jurisdiction has enacted a dram-shop law that imposes negligence liability on sellers of intoxicating beverages, but otherwise the jurisdiction follows the common law.

Is the pedestrian likely to prevail in his action?

- A. No, because the bar's subsequent tortious conduct was a superseding cause that cut off the host's liability.
- B. No, because the host of the cocktail party is not liable for serving alcohol to the socialite, despite the socialite's visible intoxication.
- C. Yes, because as a social host, the host of the cocktail party is liable under the jurisdiction's dram-shop law.
- D. Yes, because the pedestrian's injuries were proximately caused by the socialite's state of intoxication.

Explanation:

Vicarious liability

(liability for tortious acts of another)

Respondeat superior	Employee's conduct occurred within scope of employment—ie, under employer's control or while performing assigned work
Nondelegable duty	Independent contractor's work involved abnormally or inherently dangerous activity, condition on land open to general public, or activity regulated by law
Parent	Child committed tort while acting as parent's agent
Business partner	Business partner's conduct occurred within scope of business
Automobile owner	Family member drove car with permission (family-car doctrine) <i>or</i> any person drove car with permission under owner-liability statute
Dram shop* & social host	Alcohol sold (dram shop) <i>or</i> served at noncommercial setting (social liability) to visibly intoxicated person or minor

*Only applies when question provides dram-shop statute.

Many jurisdictions have enacted **dram-shop laws**, which allow a plaintiff injured as a result of another's intoxication to sue the business (eg, bar, restaurant) that provided the alcohol to the intoxicated person.* To sustain a cause of action under a dram-shop law, the plaintiff generally must prove the following:

The **business sold alcohol** to a minor or **someone who was visibly intoxicated** at the **time of the sale**.

The **plaintiff's injuries** were a **proximate result** (foreseeable consequence) of that person's **intoxication**.

Several jurisdictions have also extended liability to *social* hosts who serve alcohol to visibly intoxicated guests. But **social-host liability** is **not recognized by the common law**, which considers the plaintiff's consumption—not the host's provision—of alcohol to be the proximate cause of the plaintiff's injury.

Here, the host of the cocktail party continued to serve the socialite alcohol despite her visible intoxication. But the host is not liable for the pedestrian's injuries because (1) the host is not a commercial seller subject to the jurisdiction's dram-shop law and (2) the jurisdiction otherwise follows the common law, which does not recognize social-host liability (**Choice C**). Therefore, the pedestrian is *not* likely to prevail in his action against the host.

*Dram-shop laws exist to circumvent the common-law rule that sellers of alcohol are not liable for injuries resulting from a buyer's intoxication.

(Choice A) Had the host been liable for the socialite's conduct, the bar's subsequent tortious conduct—serving the socialite despite her visible intoxication—likely would not have been a superseding cause. That is because subsequent tortious conduct (other than intentional tortious conduct) is considered foreseeable.

(Choice D) The pedestrian's injuries likely were proximately caused by (ie, were a foreseeable consequence of) the socialite's intoxication, and the pedestrian could likely prevail in an action against the socialite. But since this jurisdiction does not recognize social-host liability, the pedestrian cannot prevail in his action against the host.

Educational objective:

In a dram-shop action, the plaintiff generally must prove that (1) a business sold alcohol to a minor or someone who was visibly intoxicated at the time and (2) the plaintiff's injuries were a proximate result of that person's intoxication. Some jurisdictions—but not the common law—extend liability to social hosts who serve visibly intoxicated guests.

References

45 Am. Jur. 2d Intoxicating Liquors § 443 (2020) (common law on providing alcohol to social guests).

45 Am. Jur. 2d Intoxicating Liquors § 455 (2020) (elements of dram-shop action).

45 Am. Jur. 2d Intoxicating Liquors § 468 (2020) (proximate cause in dram-shop action).