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Too Drunk to Gamble? Dram Shop Liability for Gaming Debts.

Jeffery Benson

University of Nevada, Las Vegas

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TOO DRUNK TO GAMBLE?
DRAM SHOP LIABILITY FOR GAMING DEBTS

by

Jeffery Harold Benson
Bachelors of Arts in Communications
Marist College
2002

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of the requirements for the
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William F. Harrah College of Hotel Administration

Graduate College
Chairman William Werner, Esquire
University of Nevada, Las Vegas
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Abstract

The service of alcohol to high-end gamblers may hinder your ability to collect unpaid debt. Gamblers have opted to use the legal theory of Dram Shop, to reduce, if not eliminate unpaid debt. Their position is that they were too drunk to gamble and therefore not responsible for their debts. Gamblers have been largely unsuccessfully using Dram Shop laws; however the casino executives should make themselves familiar with the legal precedent to ensure total liability protection.

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Part 1

Introduction

Successful gaming operations are almost always reflective of well-run, productive high-limit rooms. A well-managed high-limit salon will yield unmatched revenue streams. Front-line staffers and supervisors empowered to make on-the-spot decisions require special training and education. A simple error in judgment can cripple operational success.

The extension of credit is a tool that both player and house rely on heavily to ensure an orderly profitable operation. Credit allows players access to financial resources that may not otherwise be an option. The house issues credit as a favor to high-end players while keeping the player in action, at stakes higher than usual.

Just as routine as the extension of credit are complimentary services, issued as a tool to retain a player's business. Complimentary services can range from lodging, transportation to a simple alcoholic beverage. Complimentary drinks are perhaps the lowest form of comps items, but also the riskiest. The service of drinks can put executives in tough spots like no other complimentary item.

As a player continues to drink, their ability to render decisions that put them in the best position to win is impaired. As the drinking continues, the decisions become worse. As the decisions get worse, the house wins more, a factor not ignored by executives. It's not uncommon for high-limit players under extreme influence to lose all of their money, access more credit and lose it all again before night's end.

A player may no longer be intoxicated, but credit issued remains and regrettable to the players. The casino is now forced to go down the long, exhaustive, expensive process of debt

collection. Success in the courtroom may open the floodgates for litigation of this type, making the process even more expensive. The process becomes even further complicated when players attempt to use the legal system to stall, delay or stop casino debt collection. Players use the legal theory of Dram Shop to curtail debt collection attempts. In laymen terms, the player is claiming he was too intoxicated to play and the casino was required to stop his play. There is little merit in claims of this nature, but complete dismissal could turn the tables on the casino. High-limit rooms with staffers educated in their legal footing when this issue arises, are better positioned to make difficult decisions. Understanding this narrow nuance of the law can separate you from your competitors, make your operation the standard bearer of the industry and ultimately reduce losses.

Problem Statement

The extension of credit is only a profitable transaction if the debt can be collected, without hassle and expense to the issuer. Hassle and expense occur when a casino must use the legal system to collect outstanding markers, a process that can eliminate a majority of your profit, if not entirely. Markers collection hindered by Dram Shop litigation cost the casino time and money.

Justification

The legal process is the preferred venue for settling disputes regarding the collection of outstanding marker debt. The resolution of the dispute can hinge on action of the casino, and in particular casino personnel. Absent language in casino policy and procedures addressing this specific issue the resolution is at the mercy of the court.

Limitation

The limit of the paper is that it will not address each individual case on the subject in every jurisdiction. Accordingly this paper cannot be read as a way to predict legal outcomes. Furthermore, the law is constantly evolving and subject to change without notice.

PART II
Literature Review
Introduction

Competition for high-end clientele in the gaming industry is intense. Casinos fight tooth-and-nail for high-end clientele, as a single client in a single session can make your year-end bottom line. Adding to the competition has been the geographical expansion of the industry. Traditional markets like Las Vegas and Atlantic City now face stiff competition throughout the US, as 48 states now offer live gambling.

Complimentary service has always been a marketing tactic to recruit high stakes gamblers. The service of complimentary alcoholic beverages is common to not only high rollers, but also any level clientele. Ideally, the service of alcohol will lower their inhibitions and encourage longer and more substantial play than otherwise intended. In exchange, the player will experience a greater sense of fun, excitement and enjoyment over the course of playing. In high limit rooms, the alcohol is served at any rate requested, as the higher wagers justify the expense.

The extension of credit is another additional complimentary service for high stakes gamblers. The patron isn't burdened by large sums of cash on his person, while the casino's extension of credit allows the player to play higher stakes and for longer periods of time.

The combination of credit and alcohol can serve as a recipe for disaster. Even the most seasoned gamblers will wager or access credit that they normally wouldn't if not for the alcohol served by the casino. The result is usually a high limit player, upon regaining sobriety, who is shocked at the debt owed to the casino. Some disgruntled gamblers now turn to the law to seek relief from their outstanding debts.

Gamblers seeking relief in the courts will have an uphill, complex road ahead. To begin, relief from gambling debts is governed by statutory legislation, which varies state-by-state. State legislative bodies have yet to specifically address the issue of gamblers seeking relief from losses sustained while intoxicated. The lack of on-point law furthers the complications of the issue. However, casinos must not totally ignore the issue. Gamblers with that type of access to cash will have equally as adequate recourses to fight for their money back. Given the amount of money at hand, lawyer creativity will be limitless in an attempt to recoup their client's money. A common legal theory that has been used in seeking relief is Dram Shop laws.

The first Dram Shop law was enacted 1849 in Wisconsin, requiring tavern owners to post a bond to pay for any damages that result from alcohol they served. Today, thirty states have Dram Shop laws on the books, although few are identical in language and protection. However, the common theme among all Dram Shop statutes is holding the tavern owner responsible for the actions. An innocent third party, injured as a result of its intoxicated customers can seek relief from not only the tortious offender, but also from the tavern that served the alcohol leading to the intoxication. Under common law, the injured could seek relief only from the intoxicated person. The intent of the law was to curtail the social plague of drunk driving, hoping tavern owners would monitor service more closely knowing that they shared liability. (Krentzman, J. 1996)

Gamblers have asked the courts for Dram Shop laws to extend to the issue at hand. Should the casino share the same liability as the local bartender? Is there a difference between a physical injury and a financial injury a gambler may suffer? Given the unlimited resources, shouldn't a casino have a duty to protect people from harming themselves? This paper addresses the issue of whether Dram Shop should be expanded to gamblers and what casino personnel need to know about their potential legal obligations.

Expansion of Dram Shop Liability

Dram Shop laws have yet to expand to cover gambling debts, but the laws has evolved significantly since their inception. Dram Shop came to light in New Jersey in 1959; in the case *Rappaport v. Nichols* (Rappaport v. Nichols, 1959) dealt with service of minors. A tavern, despite their knowledge that he was minor, served Nichols. Upon exiting the bar, he killed Art Rappaport in a car accident. The Supreme Court of New Jersey said the original sale was unlawful; as a result, his service was negligent and therefore should be responsible for his actions.

Who can recover damages?

A few years later The New Jersey Supreme Court expanded the law again, this time allowing the intoxicated tort offender to recover damages. (*Soronen v. Olde Milford Inn*, 1966) Soronen, after two hours of drinking at the Olde Milford Inn, stood up and fell over, fracturing his skull and causing his death. The court found that the tavern knew, or should have known, he was intoxicated and by serving him contributed to his death. Therefore, Soronmen's estate was entitled to damages. This ruling was reaffirmed in 1971. (*Aliulis v. Tunnel Hill*, 1971). Aliulis was a passenger in the car of a drunk driver served at Tunnel Hill. Tunnel Hill attempted to raise the defense of contributory negligence. The court held the tavern could not use contributory negligence as a defense, citing public policy. The appellate court noted that driver and passengers were from outside of town and intended to return home that night. At 3:00 A.M. in this remote location, the passengers had no other choice than to ride with the intoxicated drivers to return home. Accordingly, the tavern owner was not allowed to use contributory negligence, since plaintiffs had really no other options at the time.

Expansion beyond Tavern Owners

In 1976, the court again expanded the law to include not just tavern owners, but also social hosts “It makes little sense to give immunity to a social host who may be guilty of the same wrongful conduct merely because they are unlicensed.” (Linn vs. Rand, 1976, pg. 18). In *Linn vs. Rand*, Glenn Linn was injured when a car hit him, driven by Rand, a minor, who had been served drinks at a social gathering inside someone’s home. The court took the next step, this time making the social host liable, even if the offender wasn’t a minor. In *Kelly v. Gwinnell* (Kelly vs. Gwinnell, 1984) the court held that a party host was liable for the injuries caused by an adult.

Foreseeability

A critical issue behind the public policy of Dram Shop laws is the foreseeability of a tavern to know that over serving can cause a drunk driving accident. In *Griesenbeck v. Walker* (Griesenbeck v. Walker, 1985) the court found that liability extended only to foreseeable torts, following the intent of the original law. Caryl Griesenbeck attended a social gathering in which she consumed drinks. After leaving the party, she went home and slept. That night, a fire broke out, killing Caryl and her family in her home. The fire started as result of a cigarette, still lit, on the sofa. The family wanted the courts to hold the social host responsible. Their belief was that if not for the intoxication, Caryl would have properly put out the cigarette, thus avoiding the fire. The court disagreed; citing public interest does not make it necessary to extend a host’s liability for serving liquor to an intoxicated guest to harmful acts of the guest not related to the operation of a vehicle and otherwise unforeseeable. (Griesenbeck v. Walker, 1985)

Comparative Negligence

Comparative negligence is a legal theory that allows the jury to attach weighted averages of guilt to the parties in a lawsuit. The court addressed the issue of comparative negligence in *Lee v. Kiku Restaurants* (*Lee v. Kiku Restaurants*, 1992). After a day's work, three employees dined at the Kiku Restaurant, where they become extremely intoxicated. The car driven by one of the intoxicated patrons hit a truck, seriously injuring all of the passengers. One of the passengers filed suit against the restaurant based on Dram Shop laws. The court found that comparative negligence is a jury question and applicable defense, a reverse from previous rulings.

Duty Owed

The issue of duty owed was also instrumental in the passage of Dram Shop laws. Clearly, the courts have determined a tavern owner has a duty to prevent drunken driving accidents. The courts later added the same duty existed to social hosts serving alcohol. The question of duty owed again arose in *Lombardo v. Hoag* (*Lombardo v. Hoag*, 1993). Hoag, was one of several passengers in a car who were intoxicated. Upon stopping the car, Hoag took possession of the keys and although visibly drunk, began to drive. A car accident ensued and all the passengers were injured. Lombardo brought legal action, claiming the other passengers owed a duty to prevent Hoag from driving. The court disagreed, holding that the other passengers owed a duty would be too broad of a standard. The court reasoned that if that were true, everyone on the planet who witnessed Hoag's intoxication would be liable, like a tollbooth operator. Therefore, the court must narrowly apply Dram Shop laws to those who owe a duty to prevent drunk driving in society.

Dram Shop laws have been narrowed and expanded since the first Wisconsin law in 1849. The courts have used elements of duty owed, foreseeability and public policy to shape the

applications of the laws. Is the court's next step expanding the law to casino debts resulting from intoxication? Is it foreseeable? Is there a duty owed? Does public policy support the use of the law here? Can a casino assert the same defense as a tavern owner?

Dram Shop extending to Casino Law

Dram Shop States

The extension of credit has become routine in American business. The auto industry and real estate rely heavily on credit to keep their industry afloat. However, few businesses extend credit at the level and rate as seen in the casino industry. Small fortunes can be won or lost in a matter of a few rolls of the dice or spins of the wheel. A person whose judgment is only temporarily or slightly impaired from alcohol can spend a lifetime digging out of debt that was accumulated in a matter of minutes. Absent any tangible goods, like a car or house that can be sold, these debts leave the gambler empty handed. Down six-figures or greater, gamblers will spare no expense to recoup their debts using the courts. The events leading to Dram Shop laws closely parallel the events of an intoxicated gambler served by the casino that suffered injuries. In both cases alcohol is served, a tortious act is committed by the over served and injuries of some sort are suffered.

One of the first attempts to extend Dram Shop laws to gambling debts was in 1989, when the U.S. District Court of New Jersey heard GNOC Corporation t/a Golden Nugget v. Shmuel Aboud.

Shumel Aboud deposited \$10,000 into the safe at the Golden Nugget to take advantage of an offer by the hotel for complimentary lodging food and beverage. Mr. Aboud, in direct contact with casino executives was extended a credit line in addition to the complimentary services, all of which were with the understanding Mr. Aboud would gamble throughout his stay. While

gambling, according to Mr. Aboud, he was continuously given drinks, even if he had not ordered them. At one point, he complained of chest pain and received treatment from Golden Nugget doctors. The doctors gave him Percodan, a powerful narcotic drug that impaired his judgment. Several months later, the Golden Nugget sued for the unpaid markers he had been issued that night, totaling over \$29,000, which the court awarded the casino in a summary judgment. Aboud counterclaimed, suing for negligence, stating that the casino plied him with alcohol and drugs, to the point he was unable to be aware of his actions. Aboud's contention was that the casino owed him a duty to let him know that he was intoxicated and should have foreseen extensive gambling losses. The Golden Nugget sought summary judgment of Aboud's case.

The court denied the motion, holding, "A casino has a duty, to refrain from knowingly permitting an invitee to gamble where that patron is obviously and visibly intoxicated and/or under the influence of a narcotic substance" (*GNOG Corporation t/a Golden Nugget v. Aboud*, 1989, pg. 655). The court's rationale was the state's Dram Shop liability laws, holding the casino should have reasonably foreseen the damages, just as a tavern owner over serving a guest should.

The U.S. Court of Appeals Third Circuit heard a similar case in 1993. (*Tose v. Greate Bay Hotel and Casino*, 1993) The court however drew an important distinction between the two cases.

Leonard Tose, a successful businessman and alcoholic, lost millions of dollars over a course of several trips to the Greate Bay Hotel and Casino. Upon failing to make an installment payment on his \$1.3 million dollar debt, the casino's parent company, Sands Corporation, sued Mr. Tose (Topol, M. 1993). Tose filed a counterclaim, stating the casino served him drinks while he was clearly intoxicated. The casino sought the jury instruction of contributory negligence,

claiming Mr. Tose contributed to his own losses. The court ruled against Mr. Tose, drawing distinctions from the Aboud case they had decided on.

The question before the court was whether the Aboud analogy applied to the case at bar. In Aboud, the gambler was given high-level narcotics and alcohol with a requirement to gamble to receive his complimentary services. Mr. Tose voluntarily consumed the beverages and was playing for leisure, unlike Mr. Aboud. The court listed several major differences between the two cases.

Dram Shop was enacted largely due to public policy. Drunken driving accidents are a plague on society. The investigation and prosecution of drunken driving offenses requires significant state resources; additionally, innocent people often suffer harm. Accidents also result in destruction of both state and private property. The court failed to see the same concerns in preventing drunken gamblers. They actually went, as far to point out that the state encourages gambling and intoxication, there is no such encouragement for drinking and driving.

The court examined the harm being redressed in drawing the distinctions. In Dram Shop drunk driving cases, the harm is usually substantial physical and property damage. The harm in a casino intoxication case comes in the form of financial injury. While there is little doubt that the harm can be substantial, when engaging in gambling some financial risk is reasonable. There is no “reasonable” property or personal injury damage associated with drinking and driving. Thus, public policy does not support expanding Dram Shop to intoxicated gamblers.

Dram Shop attaches to those who caused their own intoxication, so why the difference from gamblers who voluntarily become intoxicated? Someone who causes his or her own intoxication still can be a menace to society. His actions can be far reaching, hurting innocent third parties and causing property destruction. For the most part, the harm caused by intoxicated

gamblers is only caused on themselves. Generally, no other parties suffer. Accordingly, the court held that Mr. Tose's Dram Shop analogy was not applicable.

In *Hakimoglu v. Trump* (Hakimoglu v. Trump, 1994) the plaintiff attempted to state a claim under Dram Shop laws. Ayhan Hakimoglu gambled while intoxicated at the Trump Taj Mahal and lost \$700,000 after drawing on his marker account while intoxicated. Similar to the previous two cases, the casino continued to supply Hakimoglu with drinks beyond the point where he was visibly intoxicated. The U.S. District Court of New Jersey noted the history of Dram Shop laws and how the courts have generally narrowed the law, not expanded it. The court again laid out its rationale on why Dram Shop didn't apply to gaming table transactions.

Stepping into the casino with the intent to gamble clearly shows the plaintiff had no reservations or inhibitions about gambling. Alcohol may reduce his inhibitions, but the alcohol is overcoming inhibitions he never had.

The court also found lack of strength in the foreseeability analogy. A patron in a tavern doesn't seek to have an accident, sober or intoxicated. Meanwhile, a patron certainly chooses to engage in gambling, knowing its rules and risks.

The court also draws a distinction between the effect alcohol plays in each situation. A driver who has been drinking clearly impairs his judgment and driving skills. The same thing can't be said for intoxicated gamblers. A large portion of gambling is luck. Games like baccarat and roulette feature no skill and a patron will have equal chance of success intoxicated or not.

The court also addressed the issue of evidence, or lack thereof potentially applying Dram Shop laws to casino losses. The court stated that in driving related accidents, there is tangible evidence to prove Dram Shop is applicable. For example, a blood alcohol test will absolutely dictate if the driver was intoxicated or not. There is no such test for intoxicated gamblers. The

court addressed the issue of time in relation to evidence. A car accident two years ago may be fresh in ones memory as it's an unusual, life-altering event. Gathering evidence from casino personnel two years after the fact, after serving thousands of patrons in between, will be difficult and unreliable.

The court also relied on the language, or lack of it, in the Casino Control Act. The act is extensive and exhaustive in its coverage of New Jersey gambling. However, the court failed to find language-providing relief for intoxicated patrons. The court suggests that if it intended to do so, it would have supported it with language speaking to the issue. Accordingly, the court found that Ayhan Hakimoglu failed to state a claim under the Dram Shop law.

Still, the dissenting opinion hinted that the issue isn't as clear-cut as it has seemed in the past. The dissenting judge spells out why he thinks the Dram Shop doctrine should apply to these set of facts. First, the judge draws the analogy between the tavern/patron and casino/gambler relationship. "Casinos, perhaps the ultimate for-profit institution, make their money from patrons' losses. Gambling losses are the casino's business. The casino and the gambler, therefore, are linked in an immediate business relationship much like that from which dram shop liability sprang -- the tavern and the patron. Like the tavern owner, the casino's control over the environment into which the patron places himself, and its ability to open or close the alcohol spigot, imposes on the casino some concomitant responsibility toward that patron. Just as the tavern owner must make sure that drinking does not cause her patron to hurt himself or others, the casino should ensure that its alcohol service does lead its patron to hurt himself through excessive gambling." (Hakimoglu vs. Trump, 1995, pg. 14)

Non- Dram Shop States

Since the inception of the Dram Shop laws, courts have expanded the law. However, in the area of gambling losses and intoxication, the courts have been reluctant to expand, if not narrow the law.

Courts without Dram Shop doctrine legislation for guidance continue to find no duty owed by the casino. William Logan began gambling at the Ameristar Casino Iowa in 1995. In 1998, Logan was an admitted compulsive gambler and alcoholic. His friends begged the casino bosses not to serve him any more alcohol and ban him from the casino. The casinos ignored the request and even had employees encourage him to drink. Logan, similar to both Mr. Tose and Mr. Aboud, sought relief under common law negligence. Again, the issue of duty arose, this time facing the Iowa Supreme court: “This court refuses to stretch Iowa common law negligence in the manner requested without the slightest indication from Iowa courts suggesting that it would allow such a claim.” (Logan v. Ameristar Casino, 2002, pg. 9)

Toshi Van Blitter was an established gambler with Harrah’s Tahoe and Reno properties. She had a strong record of paying off debts and received complimentary services in exchange for her play. Following a divorce, the gambling got the best of her as she began drinking heavily and eventually ran up debts over \$250,000. In its cause of action, Van Blitter indicated that Harrah’s knew about her drinking problem, yet continued to serve her alcohol, enticing her to gamble. Nevada has no Dram Shop doctrine on the books. Before ruling on motion for summary judgment against Van Blitter, the court wanted to examine the evidence (Harrah’s v. Van Blitter, 1990).

Following three years of discovery, Van Blitter produced no evidence supporting any of her defenses against Harrah’s summary judgment. The U.S. District Court for the District of Nevada still gave Van Blitter additional time, emphasizing the importance of evidence or lack

thereof. Again, Van Blitter failed to produce any evidence, even after the extra allocation of time by the court. The court granted Harrah's Club motion for summary judgment. Although Van Blitter lost her motion, the court clearly was ready to hear evidence to potentially rule against Harrah's motion. Had Van Blitter had documentation or eyewitness testimony supporting her claims, she may have received a favorable ruling from the court. Other supporting evidence could be an audio recording or staff depositions that support her claim that they knew of her addictions and played on them to keep her gambling. The ruling could open the door for future gamblers with stronger evidence to have the motion for summary judgment dismissed and proceed to the evidence portion of the trial.

Conclusion

Patrons attempting to recoup financial losses will have a difficult time using the Dram Shop laws as an avenue for relief. Courts have shown extreme reluctance to apply the laws due to both public policies and substantial differences between the two types of cases. Still, casinos should not blindly ignore over intoxicated gamblers. Can a court citing similar public policy find against the casino? Is it too far of a stretch to think a court will consider the findings of *GNOC Corporation t/a Golden Nugget v. Shmuel Aboud* (*GNOC Corporation t/a Golden Nugget v. Aboud*, 1989), the court found a duty owed, largely because of the idea that the patron's intoxication wasn't voluntary. Is it too far of a stretch to think this will be extended to voluntary intoxication also? In *Van Blitter (Harrah's v. Van Blitter*, 1990) the court gave ample opportunity for the defense to produce evidence of being over served. What if Van Blitter was able to produce such documents? The dissent in *Hakimoglu v. Trump* (*Hakimogul v. Trump*, 1994) also indicates a court is not far off from allowing a Dram Shop law to apply. Casinos

exercising proactive management styles should begin enacting policies and procedures that address the issue, while limiting their own liability.

Part III

Introduction

Intoxicated high-limit gamblers put casino executives in difficult positions. On one hand, the more intoxicated a guest may be, the lower their inhibitions will be. Generally, this is associated with players playing longer and beyond their means, which almost always increases house profitability. Still, executives must not ignore the difficulties associated with debt collection and potentially harming their relationship with high-end clientele. The right cause of action is debatable, yet not relevant in this paper. The paper intent is to educate casino executives what the law says in relation to the situation at hand.

The review of the literature points in the direction favorable to the casino. Gamblers have used different approaches in the court systems, all based on Dram Shop laws and almost always unsuccessfully. Absent law review material or pressing public pressure, courts will give credence to precedent. The literature supports the purpose of the paper: to give casino executives a clear-cut idea of their legal standing.

Summary of Literature Review

A variety of factors put pressure on the casino executive for on-the-spot decisions. Legal implications are a factor that can't be ignored, given the burdensome cost associated with the legal system. A review of the literature will aid any executive in their legal standing.

The spirit and shape of Dram Shop laws are rooted in beliefs that are absent in gambler seeking recovery of losses. The first hurdle, and perhaps the biggest, is that drinking and driving is illegal in any jurisdiction. The same is not true for gambling. In fact, gambling is legal in almost every jurisdiction in the U.S. Accordingly, there is not as much compelling public interest

for governmental monitoring of the issue. There have been restrictions in all other areas of the casino environment. Restrictions have been placed on the number of ATM machines a casino can have, rates they charge and total cash one can access. No such restrictions have been placed on alcohol consumption. Foreseeability, or lack of, is the second hurdle. Tavern owners over serving a driver can easily foresee serious trouble ahead. The foreseeability and severity aren't nearly the same for an intoxicated gambler. Without foreseeability, the argument for a duty owed also falls short.

The protection the casino enjoys in court is close to absolute, although not complete. Shmuel Aboud pierced the court's nearly unbreakable protection. Others have followed Aboud's footsteps, yet not with the same success. Courts look at Shmuel Aboud night at the Golden Nugget as the narrowest of narrow circumstances where Dram Shop is applicable. The moment the Golden Nugget forced Shmuel Aboud to take high-grade narcotics combined with the requirement to play, they stepped over the line, and Dram Shop came into play.

The viewpoint of being safe absent the issuing of high-level narcotics would be naïve to say the least. Rather, executives looking to safe guard themselves need to be aware of red flags that could make themselves vulnerable. The door to vulnerability opens and doesn't close if your intent is centered on deception. Deception can come in many forms, as long as the intent is to diminish the capacity of the player to think rationally, it is equally damaging. At that point, the player becomes the victim, a class the courts always aim to protect. The moment Shmuel Aboud was administered powerful narcotics, his judgment became impaired resulting from the actions of the Golden Nugget. Shmuel became a victim, protected by the courts under Dram Shop laws.

The Golden Nugget's deception was clear for even the most conservative court. Executives should always err on the side of caution, as deceptive acts can be subtle, but equally

damaging as Golden Nugget's actions. Deceptive acts to impair judgment are not unusual in the industry. Deceptive acts combined with alcohol or narcotics may not be unusual, but may also be illegal.

To keep the door shut on Dram Shop claims, the casino can't interfere or deceive a player regarding their service of alcohol. The second a casino acts on its own volition, to deceive a player with alcohol, the door to Dram Shop swings wide open. Had Shmuel About taken powerful narcotic on his own will, he would have joined Mr. Tose and others in their unsuccessful attempts to recoup losing under Dram Shop. Had Mr. Tose's order non-alcoholic drink and the casino took it upon themselves to add the alcohol; he also may had joined Shmuel About as those to pierce the seemingly unbreakable casino protection from the courts.

The court cases to date have been extreme examples that the court can easily justify their findings. Sometimes the case facts are much more subtle. A drink order of single shot of 80 proof rum, poured as a double shot of 151 proof rum at the request of management. Staffing two cocktail servers to a single player, resulting in their drinks coming at double the rate. Replacing older diluted drinks with newer, stronger drink in the player's absence. The courts have yet to face facts of this nature, although the fundamental elements exist for the application of Dram Shop. Accordingly, executives should always err on the side of caution, and in no way interfere with the alcohol service to a player.

Implications/Applications

The case law is on the books and the literature, cited in this paper, is well established. However, neither resource was written with the primary objective of giving casino executives an insight on legal ramifications of high-limit intoxicated gamblers.

The paper can also serve as a reference for new jurisdictions. The paper can aid in the creation of gaming laws, or in a more practical sense, an aid to front-line workers lacking knowledge on the subject.

The first step of a casino executive looking to protect company assets is becoming familiar with state statutory law. Familiarity with local laws will often immediately quash any concerns right out of the gate. If your casino is located in a state that has no Dram Shop laws, like Nevada, your liability is very limited. Courts are unpredictable and litigation can be brought under different legal theory, but Dram Shop will not be a threat.

If your casino is in New Jersey, that has Dram Shop laws, successful litigation is still a long shot, however you still need to be made aware no matter how remote the possibility. Executives should exercise slightly more care when dealing with intoxicated gamblers in comparison to executives in non-Dram Shop states. What approach to take depends on further examination of your state statute?

Dram Shop laws share a common theme of protecting the public from drunk drivers. Laws differ state-to-state, especially concerning who can seek recovery. Some states allow the tort offender to recover for damages, despite being the cause of the course of action. Other states bar recovery by the very person who caused the damages. In a casino setting, the tort offender is the intoxicated player. Executives in states barring recovery enjoy strong protection, despite the presence of Dram Shop. Liability could still extend to an innocent third party, yet the possibility is remote.

Executives in states that allow recovery, despite being the tort offender need to exercise the most caution and care of any casino executive. Not only are Dram Shop laws on the book,

but also they allow for the player to seek recovery despite their own actions. To truly understand your liability, the method a player becomes intoxicated is called into question.

In examining the method of intoxication, the question is if the intoxication was voluntary or involuntary. Voluntarily intoxicated gamblers will get no relief through the court systems. Gamblers intoxicated, not on their own accord, may be the few that can successfully recoup damages under Dram Shop laws. It is the narrowest of all Dram Shop claims. Successful lawsuits hinge on evidence of forced intoxication. In *GNOC v. Aboud*, Aboud offered evidence that he was awoken to play at 4:00 A.M. to the tune of pulling his comps. After seeking medical attention, casino doctors gave him high-dosage narcotics and again required play. In *Harrah's v. Van Blitter*, the court sought evidence of Van Blitter's claims of forced intoxication, possibly applying this exception in the law. Accordingly, executives in Dram Shop states, that allow tort offenders to recover and that can produce evidence of intentional forced intoxication may have a case against a casino for recovery of gaming losses. Executives who fit the first two criteria of this gap in the law should actively monitor gamblers to ensure their intoxication is on their own accord, and not forced in any way.

Limitations

Limitations exist in the suggested application and supporting research. Furthermore, the law is constantly evolving, and a single legal decision can completely quash anything found in this paper. As a result of the current state of the law, there are few challenges. Decisions and their rationale in the early 1990's may become irrelevant or misguided in years to come. In the future, as the gaming industry expands, newer jurisdictions may not give as much weight to the findings of a New Jersey court two decades ago. States facing new challenges will need to wait years for the legal system to produce a remedy, leaving the opinion of the New Jersey courts binding. This

paper also failed to account for the lawsuits that have been settled out of court, due to confidential settlements. Hospitality leaders should be knowledgeable of the law, yet continue education and adjust policies and procedures according to changes in the law.

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