

Passenger Vessel Operators' Liability for Crew and Passenger Alcohol Consumption

By Lee Seham, Esq., American Maritime Safety, Inc.

The provision of alcoholic beverages has historically been a core element of the services provided by many passenger vessels. Understandably, vessel operators see alcohol service as an indispensable component of the hospitality they offer their customers. Alcohol sales are frequently a critical factor in obtaining a profitable bottom line.

Nevertheless, alcohol is a drug that substantially impairs judgment and motor skills even at low levels. Passenger vessels have been held vicariously liable under maritime tort law for the negligent service of alcohol to passengers and for the knowing tolerance of alcohol misuse by crew members. Exposure to such liability can be reduced by implementing clear alcohol consumption/service policies and training alcohol servers in responsible service practices.

The following are a few examples of actual court decisions imposing vicarious liability on passenger vessels based on the negligent service of alcohol:

- A passenger vessel that had served a patron free drinks throughout the night was found liable when the patron, upon leaving the casino boat in his car, collided with and killed another motorist. The court found that it had admiralty jurisdiction because despite the fact that the accident had occurred on land, the "tort occurred on navigable waters." The extension of admiralty jurisdiction was particularly unfortunate for the defendant



vessel owners because, had the same tort occurred on land, there would have been no liability under the state's dram shop law.

- A federal court held that where a passenger vessel's employees continue to serve liquor to a patron who they "knew or should have known was intoxicated and posed a danger to himself and others," the vessel's owners would face trial for the deaths of three individuals killed by the patron while driving home drunk after departing the ship on the grounds that they had provided alcohol "without adequate supervision."

- A foreign-flagged passenger vessel was found to be vicariously liable when, after serving a passenger past the point of intoxication, the passenger staggered from a lounge and fell down two flights of open stairways. While the lower court had dismissed the suit, an appellate court found that there was indeed a maritime cause of action against the carrier for breach of its duty to exercise reasonable care for the safety of its passengers by over-serving the plaintiff.

- A small fishing boat was connected to a car-motorcycle collision by a drunken driver who left the boat highly intoxicated. The court found that the boat activities fell within its maritime jurisdiction despite the fact that boat had not been operating as a business, but rather was simply being used for a "social occasion." The court required the defendant vessel operator to face trial for the injuries suffered by the plaintiff on the grounds that the operator had "allowed a 'party atmosphere' to prevail during the entire fishing trip."

- A seaman on a foreign-flagged cruise ship, who was hurt when he fell down a flight of stairs while intoxicated, was able to recover "maintenance and cure" from

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a passenger vessel on the grounds that the crew was permitted to drink on board, even to the point of visible intoxication. The vessel's captain admitted that he knew he had intoxicated crewmembers on board, but that a seaman's frequent drunkenness would be tolerated "if he was not causing any problems and if he was doing his job." The court held

that a ship owner cannot accept a seaman's drunkenness as a tolerable condition and then seek to limit its liability in failing to ensure his safety.

In order to prevent alcohol-related vicarious liability, those who serve alcohol should be certified as having undergone a responsible alcohol service training program. Such a program should including the

following elements:

- Legal responsibilities of alcohol servers, including appropriate techniques for checking identification and document incidents;
- Techniques for assessing patrons to determine whether they are dangerously intoxicated;
- The physiological impacts of excessive alcohol consumption and how they may vary from patron to patron; and
- Non-confrontational means of terminating service to visibly intoxicated patrons.

Optimally, such training will prevent alcohol-related accidents from ever occurring. Nevertheless, even when such accidents occur, a vessel operator's maintenance of proper service policies and training protocols are an important bulwark to defend against vicarious liability. ■



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