

Flambeau v. Jake's Bar & Grille, Inc.

Master File

Pleadings and Motion

Complaint.....	001
Answer	006
Notice of Motion and Motion for Summary Judgment	010

Deposition Excerpts

William Flambeau (plaintiff)	011
Ella Clark (bartender)	014
Jane Waggoner (friend of the alleged assailant Chris Walker).....	018
Alex Ruffian (bar patron).....	020

Expert Affidavits

Leslie Patrone (Plaintiff's Expert on Toxicology).....	022
Elizabeth Casden (Plaintiff's Expert on Dramshop Best Practices).....	025
Chase Reams (Defendant's Expert on Toxicology).....	027

Legal Authority

Alholm v. Wilt, 394 N.W.2d 488 (Minn. 1986)	029
Devine v. McLain, 306 N.W.2d 827 (1981)	032
Civil Damages Act Handout	037

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA**

WILLIAM FLAMBEAU, an individual,	)	
	)	
Plaintiff,	)	COMPLAINT AND DEMAND
	)	FOR JURY TRIAL
vs.	)	
	)	File No: XX-945-DXB
_____	)	
JAKES'S BAR & GRILLE, INC.,	)	
a Minnesota corporation,	)	
	)	
Defendant.	)	

The Plaintiff, William Flambeau, for his Complaint and causes of action against the above-named Defendant, states and alleges as follows:

INTRODUCTION

1. These are claims brought pursuant to the laws of the State of Minnesota, including the Civil Damages Act (Dram Shop Liability) and Negligence (Innkeeper's Liability), for damages sustained by Plaintiff, a customer of Defendant Jake's Bar & Grille, as a result of catastrophic injuries inflicted upon him when he was attacked by Chris Walker, another customer of the bar, who had illegally and unreasonably been served alcohol in Duluth, Minnesota.

PARTIES, JURISDICTION AND VENUE

2. Plaintiff William Flambeau is a citizen of the State of Wisconsin.

3. At all relevant times Defendant Jake's Bar & Grille, was a for-profit corporation organized under the laws of the State of Minnesota with a principal place of business in Duluth, Minnesota. At all relevant times, said Defendant operated, among other things, a bar and restaurant known as Jake's Bar & Grille, located at 367 Merle Street, Duluth, Minnesota.

4. Jurisdiction is proper in the United States District Court on the basis of diversity of citizenship, 28 U.S.C. § 1332 (a), in that Plaintiff and Defendant are citizens of different states, and the matter in controversy exceeds the sum of \$75,000, exclusive of interest and costs.

5. Venue is proper in the United States District Court for the District of Minnesota in that the incident giving rise to the causes of action asserted herein occurred in St. Louis County, Minnesota.

FACTUAL ALLEGATIONS

6. On October 8, 2025, Plaintiff William Flambeau was conducting himself in a lawful manner while a customer of Defendant Jake's Bar & Grille.

7. During the course of the evening, beginning at approximately 9:00p.m., Plaintiff William Flambeau had several interactions with Chris Walker and her friend Jane Waggoner.

8. At approximately 9:00 p.m., Plaintiff politely asked both Walker and Waggoner to dance. Both declined his invitations and Flambeau returned to his seat at the bar.

9. Approximately an hour later, Flambeau returned to the table where Walker and Waggoner were sitting and again politely asked them to dance. They again declined, but this time Walker stood up, obviously intoxicated and unable to stand without supporting herself on her chair. Walker yelled loudly at Flambeau to leave them alone. Her speech was slurred.

10. The bartender, Ella Clark, witnessed Walker's outburst but did not intervene.

11. Flambeau returned to his bar stool, where he watched television. When Waggoner later approached the bar to pick up drinks prepared by Clark, Flambeau grabbed Waggoner's hand and again asked her to dance.

12. Walker staggered over to the bar, picked up a full beer bottle sitting on the bar in front of a patron next to Flambeau and hit Flambeau in the face with the bottle, breaking his nose

and shattering his cheekbone.

13. As a direct and proximate result of the attack by Walker, Flambeau has sustained and will continue to sustain damages including, but not limited to, the following:

(a) past and future medical and hospital expenses for emergency treatment and multiple reconstructive surgeries (for which Plaintiff has no insurance);

(b) past and future wage loss and loss of future earning capacity;

(c) past and future pain and suffering.

COUNT ONE: CIVIL DAMAGES ACT (DRAM SHOP LIABILITY)

14. Plaintiff realleges all preceding paragraphs.

15. At all relevant times, Defendant Jake's Bar & Grille held a liquor license permitting on-sale service of liquor at its restaurant.

16. At all relevant times, Defendant Jake's Bar & Grille engaged in the provision of intoxicating liquors to the public.

17. At all relevant times, Defendant Jake's Bar & Grille was subject to the provisions of the Minnesota Civil Damages Act, Chapter 340A, et seq. of the Minnesota Statutes pertaining to the provision of intoxicating liquors to the public.

18. During the evening of October 8, 2025, agents or employees of Defendant Jake's Bar & Grille provided intoxicating liquor to Chris Walker when she was obviously intoxicated in violation of Minn. Stat. § 340A, et seq. and other pertinent statutes and law.

19. The consumption of alcohol illegally provided to Chris Walker by agents or employees of Defendant Jake's Bar & Grille was a direct and proximate cause of the attack by Chris Walker on Plaintiff and the Plaintiff's damages, as said damages have been described herein.

20. As a direct and proximate result of the acts and omissions of Defendant Jake's Bar & Grille, the Plaintiff William Flambeau has suffered damages in excess of Seventy-Five Thousand Dollars (\$75,000.00).

COUNT TWO: NEGLIGENCE (INNKEEPER'S LIABILITY)

21. Plaintiff realleges all preceding paragraphs.

22. At all times relevant herein, Defendant Jake's Bar & Grille, as a tavern operator, had a duty to see to it that a patron, such as Plaintiff William Flambeau, was not injured by vicious or drunken individuals whom Defendant Jake's Bar & Grille, permitted to frequent its establishment.

23. On October 8, 2025, a special relationship existed between Defendant Jake's Bar & Grille and Plaintiff William Flambeau, whereby Plaintiff William Flambeau entrusted his safety to Defendant Jake's Bar & Grille, pursuant to its licensing conditions.

24. On October 8, 2025, Defendant Jake's Bar & Grille failed to maintain order and to keep Plaintiff William Flambeau safe from dangerous and violent individuals known by Defendant Jake's Bar & Grille to be dangerous and violent.

25. As a direct and proximate result of Defendant Jake's Bar & Grille and its agents and employees' negligence in breaching its duty to protect Plaintiff William Flambeau, Plaintiff has suffered and will continue to suffer both economic and non-economic loss.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff William Flambeau prays for the following judgment against the Defendant:

A. Awarding Plaintiff damages in a sum in excess of Seventy-Five thousand dollars (\$75,000);

- B. Awarding Plaintiff all applicable pre-judgment and post-judgment interest; and
- C. Awarding such other relief as the Court deems just and equitable.

DEMAND FOR JURY TRIAL

Pursuant to FRCP 38, the Plaintiff William Flambeau hereby demands a jury on all issues so triable.

Dated: October 10, 2025

Respectfully Submitted,

[signature block omitted]

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA**

WILLIAM FLAMBEAU, an individual,	)	
	)	
Plaintiff,	)	ANSWER AND DEMAND
	)	FOR JURY TRIAL
vs.	)	
	)	File No: XX-945-DXB
JAKES'S BAR & GRILLE, INC.,	)	
a Minnesota corporation,	)	
	)	
Defendant.	)	

The Defendant answers and otherwise responds to Plaintiffs' Complaint. Except as specifically admitted or explained herein, Defendant denies each and every matter and allegation contained in the Complaint:

INFORMATIONAL AND JURISDICTIONAL ALLEGATIONS

1. The allegations in paragraph 1 about the nature of plaintiff's claims are legal allegations as opposed to factual allegations, and do not require a response. If a response is required, Defendant denies the allegations.
2. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 2.
3. Defendant admits the allegations in paragraph 3.
4. The allegations in paragraph 4 are jurisdictional, contain legal allegations as opposed to factual allegations, and do not require a response. If a response is required, Defendant denies the allegations.
5. Defendant admits the allegations of paragraph 5.

FACTUAL ALLEGATIONS

6. Defendant denies the allegation of paragraph 6.

7. Defendant admit the allegations of paragraph 7.

8. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 8.

9. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 9.

10. Defendant admits that bartender Ella Clark witnessed Walker yell at a bar patron, but defendant denies all the remaining allegations in paragraph 10.

11. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 11.

12. Defendant admits that Walker hit Flambeau in the face with a bottle, but lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 12.

13. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 13.

COUNT ONE: CIVIL DAMAGES ACT (DRAM SHOP LIABILITY)

14. Paragraph 14 does not require a response. Defendant repeats and realleges its responses to paragraphs 1 through 13 with the same force and effect as if fully restated herein at length.

15. Defendant admits the allegations in paragraph 15.

16. Defendant admits the allegations of paragraph 16.

17. Defendant admits the allegations of paragraph 17.

18. Defendant denies the allegations of paragraph 18.

19. Defendant denies the allegations of paragraph 19.

20. Defendant denies the allegations of paragraph 20.

COUNT TWO: NEGLIGENCE (INNKEEPER'S LIABILITY)

21. Paragraph 21 does not require a response. Defendant repeats and realleges its responses to paragraphs 1 through 20 with the same force and effect as if fully restated herein at length.

22. Defendant denies the allegations of paragraph 22.

23. Defendant denies the allegations of paragraph 23.

24. Defendant denies the allegations of paragraph 24.

25. Defendant denies the allegations of paragraph 25.

26. Defendant denies the entirety of Plaintiff's prayer for relief.

FIRST AFFIRMATIVE DEFENSE

The complaint, and each and every allegation contained therein, fails to state facts sufficient to constitute a cause of action against the defendant.

SECOND AFFIRMATIVE DEFENSE

Plaintiff has not and cannot allege any cognizable injury suffered by him as a result of defendant's allegedly unlawful conduct.

THIRD AFFIRMATIVE DEFENSE

Plaintiff's action is barred by his failure to comply with the requirements of Minn. Stat. § 340A.802.

FOURTH AFFIRMATIVE DEFENSE

Plaintiff is barred from recovery due to his own contributory negligence.

FIFTH AFFIRMATIVE DEFENSE

Plaintiff is barred from recovery due to his assumption of risk that by provoking a bar patron and entering into a fight, he would become injured.

SIXTH AFFIRMATIVE DEFENSE

If plaintiff sustained any injuries or damages, then the same is the result of the acts or omissions of others over whom the defendant had no control or as a result of circumstances or conditions over which the defendant had no control.

WHEREFORE, Defendants request that:

1. Plaintiff's complaint be dismissed in its entirety;
2. Plaintiff be responsible for all costs of this action; and
3. Defendant be granted such other and further relief to which it is entitled.

DEMAND FOR JURY TRIAL

Pursuant to Fed. R. Civ. Proc. 38, the defendant demands a jury on all issues so triable.

Dated: October 30, 2025

Respectfully Submitted,

[Signature block omitted]

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA**

WILLIAM FLAMBEAU, an individual,)
)
 Plaintiff,)
)
 vs.)
)
 JAKES’S BAR & GRILLE, INC.,)
 a Minnesota corporation,)
)
 Defendant.)

**NOTICE OF MOTION AND
MOTION FOR SUMMARY
JUDGMENT**

File No: XX-945-DXB

TO: Plaintiff above-named, and [name and address of attorney inserted].

PLEASE TAKE NOTICE that at 10:00am on Friday, November 9, 2026, or as soon thereafter as counsel can be heard, in Room 323 of the Mitchell Hamline School of Law, 875 Summit Avenue, Saint Paul, MN, defendant will move the Court pursuant to Rule 56 of the Federal Rules of Civil Procedure for summary judgment in favor of defendant and against plaintiff.

This motion is made on the grounds that there is no genuine issue as to any material fact and that defendant is entitled to judgment as a matter of law.

This motion is based on this Notice of Motion and Motion, the concurrently-filed Memorandum in Support of Motion, the Proposed Order, the affidavit of Chase Reams, pleadings and papers on file in this action, and on such other and further evidence as may be presented prior to, and at, the hearing on this motion.

Dated: September 1, 2026

[attorney signature block omitted]

Excerpts from William Flambeau Deposition (Plaintiff)

Q: Please state your full name for the record.

A: William Foster Flambeau

Q: Do you live in Duluth?

A: Yes.

Q: How long have you lived there?

A: All my life. I was born there and went to school there.

Q: Did you go to college?

A: Yes. UMD.

Q: They have pretty good hockey teams, don't they?

A: Outstanding teams, especially the women's team.

Q: When did you graduate?

A: 2000.

Q: What do you do for a living, Mr. Flambeau?

A: I have a landscaping business.

Q: You are the plaintiff in a lawsuit against Jake's Bar and Grill, is that right?

A: Yes.

Q: What is the basis for your suit?

A: I got blasted in the face with a beer bottle that Chris Walker hit me with. It knocked me out and broke my nose. It broke my cheek bone.

Q: You say that Chris Walker hit you in the face with a beer bottle. If she did, why did she do that?

A: I don't know. I didn't do anything to her.

Q: So, Chris Walker just all of a sudden hit you with a beer bottle?

A: Yes.

Q: So one moment you're standing and the next moment you're on the ground?

A: Uh-huh.

Q: Yes?

A. Yes.

Q: Was Chris Walker with anyone at the time?

A: There was another woman there. I don't know her name. She came up to the bar for drinks and I asked her to dance.

Q. She said no and the next thing you know, boom, I'm on the floor all busted up.

Q. Had you had any interaction with Walker and her friend prior to being hit in the face at the bar?

A. Oh yea.

Q. What was the interaction?

A. I asked them to dance.

Q. That's it?

A. Yea. But they refused. First time it was cool. Second time, man, Walker just went totally apeshit crazy. Yelled so loud, everyone in the bar noticed, including Ella.

Q. Ella?

A. The bartender. Ella Clark.

Q. How would you describe Walker's demeanor at this time?

A: That she crossed the line between becoming tipsy and just plain ole intoxicated. She was loud, center of attention type stuff, just kind of overfriendly with people.

Q: Okay. When you say he was becoming very loud, describe that to me.

A: Well, we were in a small place, Jake's isn't very big, and Walker was, to me, the loudest person, and was becoming very loud.

Q. But you asked her to dance anyway?

A. Yea.

Q. Was she intoxicated.

A: Oh yea.

Q: What makes you say that?

A: That she was very intoxicated?

Q: Yes, and how did you come to that conclusion?

A: Well, she was so drunk she wouldn't dance, couldn't dance.

Q. Anything else?

A. Her eyes were bleary. And when she stood up to yell at me she had to hold her chair to keep herself steady. And she couldn't even say "fuck you" without slurring her words.

Q. Anything else?

A. No sober person picks up a beer bottle and smacks somebody in the face who is just sitting at a bar minding their own business.

Excerpts from Ella Clark Deposition (Bartender at Jake's)

Q. Had you served Walker and Waggoner prior to October 8?

A. Sure, they were regulars.

Q. How would you describe their drinking history?

A. Waggoner is a Merlot only kind of gal. Walker drinks spirits...mostly vodka. It was a running joke with us.

Q. What do you mean?

A. I mean, Waggoner or Walker would approach the bar and I'd pour a Merlot and a vodka and tonic for them. Sometimes, I'd let Waggoner do the pour ... she can do this hysterical spot on Tom Cruise imitation, you know from that movie Cocktail.

Q. Did Waggoner and Walker ever drink to the point of obvious intoxication?

A. Not that I ever noticed. They are both pretty small but they seem to be able to pack it away pretty good. They always drank water all night long and spread the drinks pretty good too.

Q. How about October 8?

A. What about it?

Q. Were they drinking heavily?

ATTORNEY: Objection, leading.

Q. Were they drinking?

A. I don't recollect exactly how many drinks they had, but it certainly wasn't anything unusual for them.

Q. If I showed you their bar tab receipt, would you be able to tell me how many drinks they ordered?

A. Yes. Looks like 5 cocktails and 1 glass of wine.

Q. What about Flambeau? Served him before October 8?

A. Sure, he's a regular too. A real creep.

Q. What do you mean "a real creep"?

A. I mean, he treated the bar like his personal tinder app. Really gross. Offensive guy.

Q. Offensive?

A. Just really pushy. Wouldn't take no for an answer, especially after he'd been at the bar for a while.

Q. What did you notice that caused you to realize something was going on at one of the tables?

A. Flambeau was sitting at the bar and he went over to a table where Walker and Waggoner were drinking, and you know, had started an altercation, a physical altercation.

Q. So what you noticed, the first thing you noticed was Flambeau going over to Walker and Waggoner and starting an altercation.

A. Yes. Well, I guess it's that I heard there was an altercation and then saw one.

Q. What do you mean?

A. I heard Walker yell "get the fuck away from our table." I looked up and saw Flambeau put his hands out like "no problem, calm down," and he came back to the bar with his pretty typical dejected puppy dog, tail-between-the-legs kind of look.

Q. Any idea what time that was?

A. Not really. Probably an hour or so before Walker smacked him with the bottle.

Q. 10:00 p.m. or so?

A. Maybe. Hard to know for sure.

Q. Had there been any other altercations between Flambeau and Walker and Waggoner?

A. No idea. I mean Flambeau kind of cruises the place, so it wouldn't surprise me in the least if he had approached them before, maybe even numerous times. That's what he does.

Q. What happened next?

A. Flambeau sat back on his stool at the bar, continued drinking and watching the ball game.

Q. Did he say anything to you?

A. He mumbled something.

Q. Do you recall what he said?

A. Not exactly. He just cussed them out.

Q. Them who?

A. Walker and Waggoner.

Q. What happened next?

A. So like I said, about an hour later Waggoner comes to the bar and gives me the pour sign.

Q. What do you mean?

A. Really? Come on. She held up two fingers ... and pointed to her throat. I poured out the Merlot and handed her the vodka bottle. She poured for Walker.

Q. Is it at that moment when it got physical?

A. Right there.

Q. That quick?

A. That quick 'cause Waggoner got pulled by Flambeau and Walker came running over to her defense.

Q. But leading up to that point in time, it was just normal bar stuff?

A. It was just girls and guys flirting, sometimes successfully, sometimes not.

Q. Never occurred to you it was ever going to become physical?

A. I didn't think so. You know how people are. After a while they'll just calm down.

Q. Just people complaining?

A. Yes.

Q. But you never had concerns that it was going to turn into a fight?

A. No. I didn't think that was going to turn into a fight at all. Then Flambeau grabbed Waggoner's arm and boom, Walker was up, grabbed the bottle and nailed him.

Q. Have you ever seen a fight before at Jake's?

A. Nothing like this, with someone's face getting smashed in.

Q. So this is the only fight you've ever seen develop in that bar in all —

A. Well, fight with injuries. And lots of blood. Yeah, I mean I've seen arguments and stuff, but I've never seen anything like that in there before.

Q. This is just completely out of the blue?

A. Uh-huh.

Q. Yes?

A. Yes.

Q. It came as a complete surprise for you to see a fight in Jake's like that took place that night?

A. Yes.

Q. Did anybody call the police?

A. Nah. I mean Flambeau got off the floor pretty quick and he was mostly embarrassed rather than pissed. Course he was pissed.

Q. What do you mean?

A. He wasn't feeling that much pain cause he'd been drinkin' all night.

Q. What did Walker do immediately after the incident?

A. She grabbed the vodka and tonic from Jane and walked back to her table.

Q. Did you or anyone else ask her to leave?

A. Nope.

Q. Why not?

A. I think most everyone there was thinking that Flambeau got exactly what he deserved.

EXCERPTS FROM JANE WAGGONER DEPOSITION
(Drinking Companion of Chris Walker)

Q: Did she have any problems at all with her speech that you can recall?

A: No.

Q: She wasn't tripping over words or anything?

A: Not that I remember.

Q: And she wasn't slurring her speech in any fashion?

A: Not that I recall.

Q: Did Walker do anything at all that would have caused you to conclude that she was intoxicated?

A: No.

Q: But anyway, as far as Walker's demeanor and how she was interacting at that time, was it appropriate to the occasion as far as her manner and mood?

A: Yes.

Q: Anything about her presentation to the bartender or her -her demeanor in any way that gave you cause for concern, anything that brought to your attention that she was acting or displaying anything that you would consider a sign of intoxication?

A: No. I mean I think it was clear that everybody had been drinking, but I mean – don't know like how intoxicated she was or whatever. Nothing stuck out to me. Nothing any different than any other night we'd been in the bar.

Q: But as you looked at Walker, did you observe her display any outward signs such as slurred speech, loudness, boisterousness, problems with his motor function, anything like that?

A: No. In fact, at one point we played pool.

Q. When was that?

A. It was right before I went to the bar for drinks and Walker slammed Flambeau for hitting on me again.

Q: And was there anything at all about how she played pool that evening that suggested to you that she wasn't on top of her game?

A: No, there was nothing to suggest that.

Q: Did she seem to handle the pool cue just fine when she was shooting pool?

A: Yes, she did.

Q: Was she at all sloppy, or you know, uncoordinated at all when she played pool?

A: I don't recall that, no.

Q: And from what you recall, she seemed to play pool quite skillfully.

A: Yes.

Q. You mentioned earlier that you had had repeated altercations with Flambeau in the weeks preceding October 8.

A. Yes.

Q. Can you describe those altercations.

A. The guy is a total creep. Hits on everyone. Doesn't take no for an answer. Gets worse as the night gets later, cause he drinks steady.

Q. Did anyone ever talk to, you know, other people at the bar about this problem?

A. Well, yea...all the women were talking about him. I hear than some even complained to management that they wouldn't be coming back to the bar unless he got kicked out. And then I had heard other people sitting there telling Craig...

Q. Craig?

A. Craig, the bar owner. Like my brother-in-law, Rich, he was in there and other people saying to Craig he needed bouncers in there, but he kept saying that he wasn't going to get any.

Excerpts from Deposition of Alex Ruffian (Bar Patron)

Q. Tell me about the incident in August, 2025.

A. It was around closing time. I was at the bar when I heard yelling. Turned around and saw Walker literally on my sister-in-law's back pulling her hair from behind. Everyone was screaming. I jumped up, pulled Walker off and separated them.

Q. Any idea what it was about?

A. No idea. Walker was pretty amped.

Q. Pretty amped?

A. I mean she had been drinking a lot and was really antagonistic.

Q. Then what happened?

A. Bartender asked all three of us to leave.

Q. Who was that?

A. No idea. Not a regular. Saw him only once or twice.

Q. Did anyone ever talk to, you know, other employees at the bar? Like to management.

A. Yea, my sister in law called next day and spoke to Craig...the owner. A whole bunch of us had been complaining for months that they needed bouncers at the place, especially on weekends.

Q. What did Craig say?

A. I don't know for sure. My sister-in-law was on the phone. I was in the car with her when she was talking to him because she told me to call Craig and tell him that, and I told Craig. She actually had me tell Craig that, and then I gave her the phone to talk to Craig, and I don't remember what was said.

Q. Okay. So you were the one that took - was it your cell phone or your sister-in-law's cell phone?

A: I don't remember.

Q: One of your phones was used to call Craig and you were the one that gave the message to Craig that your sister-in-law was not coming back to the bar anymore if Walker and some of the other hotheads were allowed back in without bouncers.

A: Yes.

Q: What did he say?

ATTORNEY: She doesn't know.

Q: I mean didn't he give a response to you before you gave the phone over?

A: I just remember him saying okay. That's it. He gave a response, but I don't remember what it was.

Q: Okay.

A: But later my sister-in-law played me a recorded message from Craig that they were not going to bar Walker or anyone else from the bar permanently because they were good customers.

would contain approximately the same amount of alcohol. We counted the amount of drinks each had. The general goal was to have the volunteers drink alcohol to obtain an alcohol concentration ("AC") in the range of 0.08 to 0.12, though some volunteers consumed alcohol to reach AC levels below and above this range. We tested for AC, with standardized breath testing equipment, halfway through and at the end of the consumption phase in order to monitor the volunteer's alcohol concentration.

6. The officers then would observe the volunteers and practice SFST. We would observe the group for signs of intoxication. After being observed, the volunteers had their AC tested again. During this process, we would generally correlate the AC results with what we had observed through general observation and SFST so that the officers could appreciate what the general signs of intoxication were at different levels of alcohol concentration.

7. In my near-ten years in this program, I do not recall seeing a person who did not show signs of obvious intoxication by an AC of 0.13. Although some persons showed a greater tolerance to the effects of alcohol than others, all persons at this level showed signs of intoxication that even someone not trained and experienced in sobriety field testing would likely be able to identify.

8. In addition to this experience, I have worked in conjunction with the International Association of Chiefs' of Police (IACP) and the National Highway Traffic Safety Administration (NHTSA) to support and coordinate all of the SFST and Drug Recognition Evaluator (DRE) programs in Minnesota. I also am a co-founder of CD Training Consultants, Inc., a company that delivers drug and alcohol impairment training to entities outside of law enforcement and in this role, I have delivered alcohol and drug impairment training to groups including alcohol servers. I have testified before the Minnesota legislature as the Minnesota State Patrol representative on impaired driving and in Minnesota courts as an expert in alcohol impairment.

9. Based on my training and experience, I can state with a reasonable degree of certainty that Ms. Walker would have shown the signs and symptoms of alcohol intoxication when she assaulted William Flambeau at Jake's Bar & Grille on October 8 at approximately 11:00 p.m. Witness reports indicate that she had four vodka and tonics prior to the assault and one immediately after. Her BAC at time of arrest at 11:45pm was 0.12.

10. It is impossible to know for certain what her BAC was at time of the assault but it is a reasonable assumption, having just consumed 4 vodka shots in the two hours immediately prior, that a woman weighing under 125 pounds would have a BAC in the range of 0.12 to 0.15. The general signs and symptoms of intoxication can begin with an AC of 0.03 and certainly would be evident with an AC in the range of 0.12 to 0.15.

11. Based on these facts, and on my training and experience, it is my opinion that anyone dealing with Ms. Walker at the time of last service at before her assault on Mr. Flambeau at Jake's bar & Grille should have been able to identify Ms. Walker's signs and symptoms of intoxication.

12. I reserve the right to modify or amend these opinions should further information be provided or the facts change.

FURTHER AFFIANT SAITH NOT.

[signature block, date and notary seal omitted]

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA**

WILLIAM FLAMBEAU, an individual,)

Plaintiff,)

**AFFIDAVIT OF ELIZABETH
CASDEN (Plaintiff's Expert on
Dram shop Best Practices)**

JAKES'S BAR & GRILLE, INC.,)
a Minnesota corporation,)

File No: XX-945-DXB

Defendant.)

ELIZABETH CASDEN, being first duly sworn upon oath deposes and states:

1) I am currently serving as an Associate Professor with the University of Minnesota Morris in the discipline of Hotel, Restaurant, and Institutional Management. I have worked in hotels, restaurants, resorts, bars and hospitals. Additionally, I consult for the hospitality industry. Over the last 25 years at the university. I have regularly taught courses in hospitality management including principles of safe alcohol service. My vita has been provided along with this report.

2) I have been provided exhibits relating to this case, a training manual used by Jake's Bar & Grille, as well as depositions taken from William Flambeau, Ella Clark, Alex Ruffian, and Jane Waggoner. I have formed the following opinions based on the information provided and my own knowledge and experience:

A) Inadequate service and monitoring in light of "red flags" for excess consumption.

While at Jake's Bar and Grille, it appears from testimony that the Walker/ Waggoner group had been drinking for an extended amount of time, that they had consumed far more than would be typical for a group of women visiting the bar, and that multiple alcoholic beverages had been consumed, including shots. Witnesses reported several physical altercations, including yelling and shoving before the incident that caused plaintiff's injuries. The combination of these events are atypical for the establishment and are also signs that would require greater monitoring by the staff including monitoring of the delivery and consumption of the alcoholic beverages for the safety of the guests and others. Serving this group multiple alcoholic beverages, including shots, and allowing the guests to disburse the beverages rather than the bar staff doing this service, makes it difficult or impossible to monitor who is consuming the various beverages and the state of the individuals being served. Guests will err on the side of denial when it comes to the amount they have consumed or the effects the alcohol is having on them and that the staff should have been monitoring the patrons very closely.

I concur with Jake Bar & Grille's general procedures that they teach as contained in the bar procedure manual, but the testimony indicates that those procedures were not followed. Patrons were allowed to order and pickup drinks themselves for their tables. Staff did not

monitor who was consuming the drinks. The amount of attention the staff should have given to this group should have increased but doesn't appear to have.

B. Free pouring usually results in over pouring.

Free-pouring is an inconsistent method of serving alcohol. Over pouring typically occurs. I have tested the practice of free-pouring with seasoned bartenders that do free-pour and that the average pour is greater than the desired amount.

FURTHER AFFIANT SAITH NOT. [signature block, date and notary seal omitted]

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA**

WILLIAM FLAMBEAU, an individual,)

Plaintiff,)

**AFFIDAVIT OF CHASE REAMS
(Defendant's Toxicology Expert)**

JAKES'S BAR & GRILLE, INC.,)

a Minnesota corporation,)

File No: XX-945-DXB

Defendant.)

CHASE REAMS, being first duly sworn upon oath deposes and states:

1. I am a twenty-year veteran of the Minnesota State Patrol, with a focus on identifying signs of intoxication in individuals impaired by alcohol and instructing officers and others to do the same. My background, education, and training are outlined in my curriculum vitae which is attached hereto and incorporated by reference.

2. I have reviewed the above referenced matter and provide you with my expert consultative opinion. The opinions I am rendering are held to a reasonable degree of scientific certainty and are based upon my knowledge, experience, training, review of the scientific and medical literature pertaining to ethanol and review of the following materials enclosed with your letters dated October 11, 14, and 17, 2025: a) plaintiff's complaint; defendant's answer; records of Duluth Regional Hospital; records of MeritFore Medical Center; records of Duluth Municipal Ambulance service; MeritFore laboratory results (blood alcohol report); bar tab and credit receipt of Jane Waggoner; excerpts of depositions from William Flambeau, Alex Ruffian, Jane Waggoner and Ella Clark.

3. Briefly, on the evening of October 8, 2025, Chris Walker and her friend Jane Waggoner were celebrating Waggoner's work promotion at Jake's Bar & Grille. They arrived at the bar at approximately 8:45 p.m. Ms. Walker, an experienced drinker by history, had five vodka tonics and two glasses of water between 8:45 p.m. and 11:45p.m. (one of the vodkas was consumed after the incident). Walker was arrested in the parking lot of Jake's Bar & Grille at approximately 11:45 p.m. and voluntarily blew in a breathalyzer administered by the police and had a BAC of .12 g/dl. She was released from jail after paying bond.

4. Based on Ms. Walker's weight at the time of the incident and assuming accepted ethanol pharmacokinetic assumptions regarding ethanol absorption, metabolism, and clearance, I conclude that Ms. Walker would have had an approximate BAC of 0.09 to 0.10 g/dL at the time of the last drink she finished before the alleged assault on Mr. Flambeau at approximately 11:00

p.m. I also conclude that Ms. Walker would not have been showing signs of obvious intoxication that would have been apparent to a bar server using reasonable powers of observation. In fact, depositions of several individuals with Ms. Walker throughout the evening while at Jake's Bar and Grille have stated that she was not intoxicated, that she did not exhibit signs of intoxication, that she was behaving in a normal manner while at Jake's Bar & Grille (including skillfully playing pool) and that her behavior at Jake's Bar & Grille in response to repeated and unwanted advances by William Flambeau was not inappropriate or out of control.

5. Only Plaintiff William Flambeau states that she was "drunk" and "very intoxicated". He describes her as being "very loud" and "aggressive" and appearing unsteady. However, these are behaviors not uncommon for a woman subjected to repeated, unwanted offensive advances by a man at a bar. Moreover, witness testimony suggests that Flambeau was likely "intoxicated" while at Jake's Bar & Grille. His BAC when evaluated two hours later at the emergency room was 0.13 g.dL, leading me to conclude he likely had a BAC at the time of the incident in the range of 0.16 g.dL to 0.20 g.dL.

6. It is very difficult, even for medically trained personnel, to judge the degree of alcohol intoxication by direct subject observation. Scientific published studies have shown that in subjects presenting to emergency departments with alcohol related complaints, that independent observational criteria by trained medical personnel, defined by an alcohol symptom checklist (ASC), was poorly correlated to a subject's BAC. The ASC of 11 symptoms and signs include odor of alcohol on breath, impairment of digital dexterity, difficulty in walking, slurred speech, change in speech volume, difficulty paying attention, sweating, slow breaking, drowsiness, pace of speech, and red eyes. BACs ranging from 0.10 g/dL to 0.43 g/dL have been shown to demonstrate an ASC ranging from 1 to 2 of the 11 items. Subjects can exhibit a remarkably low score for their high BACs. The low score is attributed to the fact that some individuals, especially experienced drinkers like Chris Walker, develop a tolerance to the visible effects of alcohol even at BACs greater than the accepted thresholds for driving under the influence.

FURTHER AFFIANT SAITH NOT. [signature block, date and notary seal omitted]

***Alholm v. Wilt*, 394 N.W.2d 488 (Minn. 1986)**

KELLEY, Justice.

Appellant Alholm sued respondent Wilt, d.b.a. Lakeside Bar, claiming that respondent was liable for personal injury damages sustained by Alholm as the result of an alleged assault upon him by an intoxicated patron of the bar. On appeal from a jury verdict in favor of the bar owner, appellant Alholm contends the trial court erred in its jury instructions and erroneously impaneled the trial jury. A panel of the court of appeals affirmed the trial court's jury instructions, but remanded the case for retrial based upon the error of law which occurred in the selection of the jury and the seating of an alternate juror.¹ We concur in the remand.

On August 15, 1980, appellant Alholm and his wife were patrons in the Lakeside Bar owned by Wilt. At the same time, Bill Miles was likewise a patron at the Lakeside. Appellant claims that as he was leaving the bar, Miles assaulted him without provocation. Miles had been drinking heavily throughout the day. He had been boisterous and loud in the bar. On prior occasions while at the bar, Miles engaged in arguments with other bar patrons resulting in "slapping matches" which, on at least two instances, spilled into an alley adjacent to the premises. On another earlier occasion, Miles engaged in a fight with Jim Compton, the bar's bouncer. Shortly before the alleged assault, the bartender on duty requested assistance from Compton when Miles and a companion had become obnoxious because she refused to serve him more liquor after "last call."

Appellant claims Miles assaulted him with a broken glass resulting in large and deep cuts in his right cheek and left upper arm, which required 71 stitches to close.

Alholm's claim against respondent Lakeside Bar was premised on innkeeper negligence liability.² At the conclusion of the evidence in the second trial, the trial court instructed the jury on innkeeper liability using the four elements identified by the panel of the court of appeals in *Alholm I*, 348 N.W.2d 106, 109 (Minn.App.1984).³ The jury returned a verdict absolving respondent from causal negligence.

Contending that the court's instruction regarding foreseeability of injury was insufficiently specific, appellant requested the trial court to instruct the jury that:

¹ *Alholm v. Wilt*, 380 N.W.2d 851 (Minn.App.1986) (hereinafter *Alholm II*).

² Following a prior trial of Alholm's claim against the bar, a panel of the court of appeals reversed the trial court's order directing a verdict in favor of Lakeside on the issue of its negligence. *Alholm v. Wilt*, 348 N.W.2d 106 (Minn.App.1984) (hereinafter *Alholm I*).

³ The court's charge on innkeeper liability read:

The defendant is required to use reasonable care in the operation of his business. The defendant-proprietor may be involved in what is called negligence. The elements necessary to prove an innkeeper's liability under negligence are as follows:

1st. The proprietor must be put on notice of the offending party's viscous [sic] or dangerous propensities by some act or threat.
 2nd. The proprietor must have an adequate opportunity to protect the injured patron.
 3rd. The proprietor must fail to take reasonable steps to protect the injured patron.
 4th. The injury must be foreseeable [sic].

The law recognizes drunken persons as a reasonably anticipated source of danger to others and therefore requires tavern keepers to exercise the highest degree of care to protect its patrons from harm at the hand of said drunken patrons.

In the alternative, he requested the court instruct:

Authorities recognize that drunken behavior is unpredictable, also that slight irritations, real or imaginary, may cause outbursts of anger and may lead to aggressive acts. The presence of an intoxicated person upon the premises immediately exposes the proprietor to the hazards of such person and when it appears that such intoxicated person might cause a disturbance or harm other patrons, the proprietor is obligated to do something more than request such a person to leave. There must be some affirmative action to maintain order on the premises by demanding that such person leave or by calling the authorities to enforce such demand.⁴

Alholm contends that because the proffered charge is specific and is supported by the facts of the case, the trial court should be compelled to utilize the instruction. In so doing, he relies on *Hagen v. Snow*, 244 Minn. 101, 69 N.W.2d 100 (1955) and *Nubbe v. Hardy Continental Hotel System of Minnesota*, 225 Minn. 496, 31 N.W.2d 332 (1948).

Trial courts are allowed “considerable latitude” in selection of language in the jury charge. *Cameron v. Evans*, 241 Minn. 200, 208, 62 N.W.2d 793, 798 (1954), *Barnes v. Northwest Airlines, Inc.*, 233 Minn. 410, 421, 47 N.W.2d 180, 187 (1951). They likewise possess broad latitude in determining the propriety of a specific instruction. *Sandhofer v. Abbott Northwestern Hospital*, 283 N.W.2d 362, 367 (Minn.1979). As we stated in *Barnes*:

All that is required in the way of instructions is that the charge as a whole convey to the jury a clear and correct understanding of the law of the case. The charge should not assume the existence of facts in controversy, or lay too much emphasis on particular facts or the testimony of particular witnesses.

233 Minn. at 421, 47 N.W.2d at 187. Appellant failed to demonstrate that the trial court abused its discretion in instructing as it did rather than using the proffered instructions. Even had the proffered instructions constituted a correct statement of the law, which they did not, provided the court’s instruction appropriately stated the law, reversal will not follow “simply because the litigant preferred to use other language.” *Moosbrugger v. McGraw-Edison Co.*, 284 Minn. 143, 158, 170 N.W.2d 72, 81 (1969).

Appellant’s first proffered instruction used the words “highest degree” of care. Tavern owners in Minnesota have the duty to exercise reasonable care under the circumstances to protect their patrons from injury. There exists no duty to use “the highest degree of care.” *Filas v. Doner*, 300 Minn. 137, 218 N.W.2d 467, 469 (1974), *Priewe v. Bartz*, 249 Minn. 488, 491, 83 N.W.2d

⁴ The second of the proffered instructions is a direct quote from *Priewe v. Bartz*, 249 Minn. 488, 492, 83 N.W.2d 116, 120 (1957) quoting from *Sylvester v. Northwestern Hospital of Minneapolis*, 236 Minn. 384, 389, 53 N.W.2d 17, 20 (1952), which is utilized in *Alholm I*, 348 N.W.2d at 109.

116, 119 (1957). Even in *Sylvester v. Northwestern Hospital of Minneapolis*, 236 Minn. 384, 386-88, 53 N.W.2d 17 (1952) (which was not an innkeeper liability case) relied upon by appellant, we restated that the appropriate standard was that of the use of reasonable care under the circumstances. 236 Minn. at 386, 387, 53 N.W.2d at 19, 20. Thus the trial court was clearly correct in its refusal to give appellant's first proffered instruction.

Moreover, the trial court correctly refused to give appellant's alternate proffered ***491** instruction. We have noted that it is neither appropriate nor good policy for trial courts to use texts of reported decisions of appellate courts because, when used out of context, such texts are sometimes misleading. *See, e.g., Hovey v. Wagoner*, 287 Minn. 546, 548-49, 177 N.W.2d 796, 798 (1970). We also have noted:

A court, through its instruction, is not authorized to give prominence to and emphasize particular facts disclosed by the evidence, thus singling out elements or views upon the controversy which were proper for argument and discussion by counsel, but which might very justly be declined to be thus noticed by the court.

Barnes, 233 Minn. at 420, 47 N.W.2d at 187. *See also Cameron v. Evans*, 241 Minn. 200, 208, 62 N.W.2d 793, 799 (1954).

Had the trial court given either of appellant's requested instructions, undue prominence would have been given to particular facts which might have misled the jury as to their importance. Emphasizing evidence is properly the function of counsel in closing argument, not by the court in its instructions. *See, e.g., Van Tassel v. Hillerns*, 311 Minn. 252, 257, 248 N.W.2d 313, 316 (1976).

The trial court properly rejected the proffered instructions, and gave a generally appropriate jury instruction on innkeeper liability.⁵

. . . .

Accordingly, we affirm the remand for a new trial. [The court reversed and remanded on other grounds.]

⁵ Although not raised on this appeal, we are troubled by the practice of placing foreseeability within the jury's domain. The foreseeability issue, as a threshold issue, is more properly decided by the court prior to submitting the case to the jury. If the trial court concludes that the innkeeper did not have notice of the person's dangerous propensities, then it must find that the injury would not have been foreseeable to a reasonable innkeeper and thus, no duty to protect arose.

Because foreseeability has nothing to do with proximate cause, we do not believe that the jury should be instructed on the issue. *See, e.g., Prosser & Keaton on Torts* § 43 at 280-81 (5th Ed.1984). To the extent our prior case law speaks of "foreseeability" as an element of the cause of action, we were only discussing foreseeability in the context of whether a legal duty arises, not as something on which the jury should be instructed.

***Devine v. McLain*, 306 N.W.2d 827 (1981)**

Todd, Justice.

Plaintiffs Dale Devine and Joyce Devine, husband and wife, brought this action against two defendants for personal injuries resulting from bullet wounds inflicted upon Dale Devine. Claims were made against Darlene McLain for assault and battery and against Howard Guckenberger, doing business as Al's Bar, for breach of a tavern operator's duty to maintain a safe and orderly place of business. Darlene McLain asserted a counterclaim against Dale Devine for assault and battery. The case was tried in Scott County District Court. Returning a special verdict, the jury found that Dale Devine did not assault Darlene McLain, that Darlene McLain did assault and batter Dale Devine, and that Al's Bar was negligent. The jury found Darlene McLain to be 60 percent at fault and Al's Bar to be 40 percent at fault for Dale Devine's injuries. Compensatory damages of \$1,700,000 were awarded to Dale Devine, and damages of \$500,000 were awarded to Joyce Devine for loss of support, services, and companionship.

By post-trial motion, Darlene McLain sought either a remittitur or a new trial on all issues. This motion was denied. Also by post-trial motion, Al's Bar sought to amend the jury's answers to interrogatories that found Al's Bar to be negligent and that found the bar's negligence to be a direct cause of Dale Devine's injuries. The trial court granted this motion and ordered judgment notwithstanding the verdict for Dale Devine to recover nothing from Al's Bar, for Dale Devine to recover \$1,700,000 from Darlene McLain, and for Joyce Devine to recover \$250,000 from Darlene McLain.¹

The Devines appealed the trial court's order granting the motion of Al's Bar for an amendment to the jury's answers contained in the special verdict. Darlene McLain sought review of both the judgment and the trial court's order that denied her motion for either a new trial or a remittitur. We affirm.

The principal issue in this case is whether Al's Bar breached a duty to protect its patrons.

The facts of this case are, for the most part, undisputed. On May 24, 1975, Dale Devine and his friend Bob Chard had five or six drinks at Krant's Bar in Belle Plaine. Later, at 12:30 that Saturday afternoon, they entered Al's Bar, also in Belle Plaine. Eventually they were joined by three other friends, Bob Trost, Bob Hillstrom, and Bob Shaughnessy. Dale Devine and Bob Chard may have had as many as 20 drinks that day.

Darlene McLain left work at 2:15 that afternoon, went home, and later met her husband Bob McLain for a drink at Eischen's Bar in Belle Plaine. The McLains then went to Al's Bar for another drink. The McLains had recently moved into the Belle Plaine community. They had never before been in Al's Bar. The McLains had consumed approximately one beer when the following events occurred.

Bob Chard approached Darlene McLain while she was in Al's Bar, put his arm around her waist, and made some unknown remark. After an exchange of words with the McLains, Bob Chard returned to his group of friends. Several members of the group then made jeering remarks to the effect that they could "whip" Mr. McLain.

¹ The trial court's order reduces the damages awarded to Joyce Devine from \$500,000 to \$250,000 without specifically ordering a remittitur or granting any motion to that effect. It is unclear whether this is a clerical error or the trial court intended to reduce the award.

Dale Devine went to the restroom. When he walked out, according to Dale Devine's testimony, Bob McLain unexpectedly kicked him in the groin. Because Bob McLain died before trial, no other testimony was presented concerning who initiated the altercation.

Dale Devine struck Bob McLain two or three times, apparently ending the fight. Darlene McLain observed that her husband was being beaten and went to his aid by grabbing a chair to hit Dale Devine.

The testimony diverges at this point. According to Darlene McLain, Dale Devine took the chair away from her so she attacked him with her fists. She testified that Dale Devine then struck her, knocked her to the floor, and was about to hit her with the chair when the barmaid, Evelyn Ahrens, said, "Dale, don't do it."

Dale Devine testified that he grabbed the chair away from Darlene McLain and was about to hit her with it when Evelyn Ahrens cautioned him to put the chair down. He further testified that Darlene McLain then attacked him with her fists, and at that time, he pushed her to the floor.

The McLains left immediately after this fight. From the time the scuffle began until the time they left, no more than five or six minutes had elapsed. As Darlene McLain was leaving the bar, she said, "I will be back." Dale Devine claims not to have heard this statement. At one point in the trial, Evelyn Ahrens testified that the word "back" was all that she had heard. Evelyn Ahrens had given other testimony, however, at an earlier criminal proceeding arising out of the same event. Referring to that testimony, counsel for appellants asked the following question, and Evelyn Ahrens gave the following answer:

By Mr. Gross:

Q I will read once again. Did you hear the defendant say anything as she was leaving the defendant was Mrs. McLain Either they will be back, or I'll be back, or we'll be back. I don't know which one it was, but I heard the "back".

A Yes.

Evelyn Ahrens was the only employee of Al's Bar who was working that afternoon. She did not call the police after the fight.

The McLains left the bar at about three o'clock in the afternoon. Approximately one-half hour later, Darlene McLain returned with a gun. She stood in the front doorway and shot Dale Devine three times.

Dale Devine was 36 years old at the time of the shooting. As a result of his wounds, he has become a partial quadriplegic, he has difficulty breathing with his chest muscles, and he no longer has bowel control. The injury required an operation on his prostate gland that resulted in loss of sexual function. After being hospitalized for eight months, Dale Devine finally was able to return home. He requires home care 24 hours a day, which is being given to him by his wife Joyce Devine.

Appellants argue the jury verdict should be reinstated because the facts in this case indicate that Al's Bar breached its duty to maintain order and safety. Minnesota law imposes upon a tavern operator "the duty to see to it that a patron is not injured by vicious or drunken individuals whom he permits to frequent his establishment." *Klingbeil v. Truesdell*, 256 Minn. 360, 363, 98 N.W.2d 134, 138 (1959); see Minn.Stat. s 340.14(2) (1980) ("Every (tavern owner) shall be responsible for the conduct of his place of business for conditions of sobriety and order therein.")

When reviewing a judgment notwithstanding the verdict, this court must take the view of the evidence most favorable to the verdict. See *Edgewater Motels, Inc. v. Gatzke*, 277 N.W.2d 11, 14-15 (Minn.1979). Under this standard of review, we find no evidence from which the jury could have found that Al's Bar breached the tavern operator's duty of care.

The elements of a tavern operator's duty were expressed in *Evanish v. V.F.W.* Post No. 2717, 269 Minn. 209, 130 N.W.2d 331 (1964):

The duty owed a patron by the proprietor of a bar has been clearly delineated in this state. A proprietor is not liable for an injury inflicted by one patron against another unless, by some overt act or threat, the proprietor is put on notice of the offending patron's vicious or violent propensities, and having had an adequate opportunity to protect the injured party, the proprietor fails to take reasonable steps to do so.

Id. at 211, 130 N.W.2d at 332-33 (footnote omitted.) Foreseeability of injury to the plaintiff is the fourth factor upon which the tavern operator's duty is predicated. See *Quinn v. Winkel's, Inc.*, 279 N.W.2d 65, 68 (Minn.1979).

The foreseeability of injury required for the imposition of liability on a bar is normally found in the bar's knowledge of the dangerous propensities of the person inflicting the injury. See *Quinn*, 279 N.W.2d at 68-69. The *Quinn* case is illustrative of the way in which this element may be satisfied. According to the court "(p)laintiffs produced reputation testimony about the violent nature of (the assailants) as well as evidence that (the bar owner) was aware of this but would not bar them from the premises. Also evidence of (one of the assailant's) fights on the premises was presented." 279 N.W.2d at 68. The court in *Quinn* indicated that this was sufficient evidence to support the jury's conclusion that violence was foreseeable when the assailants were in the bar. See 279 N.W.2d at 68.

In this case there was no evidence from which the jury could have concluded that the actions of defendant McLain were foreseeable by the bar. The McLains had recently moved into the Belle Plaine community. They had never been in Al's Bar prior to the day plaintiff was shot. In short, there was nothing, except the fight that broke out between the McLains and one of the plaintiffs, to put the bar on notice that defendant McLain had violent tendencies. The fight ended and the McLains left the bar. Although the bartender admitted hearing defendant Darlene McLain say something about returning to the bar as she left, this remark was not ***831** sufficient to put the bar on notice that she intended to cause harm upon her return. Even if the police had been called, there is nothing to indicate that the shooting would have been prevented.

If liability were imposed on the bar in this case, without requiring that the harm which plaintiff Dale Devine suffered be foreseeable, the result would be the imposition of strict liability. No other jurisdiction has gone this far. See *Slawinski v. Mocettini*, 217 Cal.App.2d 192, 31 Cal.Rptr. 613 (1963); *Schwartz v. Cohen*, 204 Misc. 142, 119 N.Y.S.2d 124 (1953); *Popovich v. Pechkurow*, 145 N.E.2d 550 (Ohio Ct.App.1956). This case is analogous to *Filas v. Daher*, 300 Minn. 137, 218 N.W.2d 467 (1974), in which we refused to impose liability on a bar because the evidence was insufficient to show that the bar had knowledge of the dangerous propensities of the person causing the harm. Reasonable minds could not differ as to the proper outcome in this case. See *Fisher v. Edberg*, 287 Minn. 105, 110, 176 N.W.2d 897, 900 (1970).

Because of our conclusion that the bar's liability was not established, we need not reach the other errors alleged by appellants. The errors alleged by respondent Darlene McLain are without merit. The trial court is affirmed, but instructed to enter a proper order remitting or upholding the damages awarded by the jury to Mrs. Devine.

Affirmed with instructions.

YETKA, Justice (dissenting).

I agree with the majority opinion that the principal issue in this case is whether Al's Bar breached a duty to protect its patrons; to put it even more specifically, whether the act was a foreseeable event in view of the specific acts which took place in Al's Bar that afternoon. The majority states that in this case there is no evidence from which a jury could have concluded that the actions of the defendant McLain were foreseeable by the bar. I dispute this statement for the following reasons:

1. The McLains were new residents of Belle Plaine. The bartender admitted in testimony that she was "leery" of the McLains when they entered the bar and feared there was a possibility of trouble.
2. As soon as the McLains had ordered drinks and paid for them, they complained they were shortchanged and the bartender corrected the matter.
3. Mrs. McLain was scantily and provocatively dressed.
4. The intense rage expressed on the part of Mrs. McLain when she swung a chair at the plaintiff indicated that she was totally out of control.
5. The majority opinion admits that the plaintiff and his friends could have had as many as 20 drinks that day. They were obviously intoxicated and should have been thrown out of the establishment. The owner himself indicated that, as the events had been described to him, he would have removed Mr. Devine and his friends from the bar if he had been present; yet, his bartender did nothing about it.
6. Mrs. McLain made a definite threat at the door when she and her husband were leaving.

Thus, what did occur was completely foreseeable under the circumstances. Is it unreasonable for a bartender, when that bartender has witnessed at least two assaults and possibly crimes being committed, to call the police and seek aid? I think not.

Further, appellant, in his brief, mentions seven specific steps that could or should have been taken, which I reiterate here:

1. Mrs. Ahrens could have ejected Chard and Devine and their friends before the fight between Devine and Mrs. McLain. There were threats being made by someone in that group.

2. Once the fight began she could have taken a more active part in breaking it up, letting the parties know that such conduct would not be tolerated.
3. She could have called the police even before the McLains left to determine who had been at fault and to be certain that all disorderly persons were removed and order restored.
4. Once she heard the threat that Darlene was “coming back” she could have called the police reporting the fight and the following threat or she could have warned Dale.
5. She could have ejected Dale and his friends after hearing the threat so there would have been no one for Mrs. McLain to come back to.
6. She could have locked up the bar and sent everyone home allowing minds to sober and tempers to cool.
7. She could have called Howard Guckenberger and sought his advice as to her next move.

Accordingly, I would reverse and remand for a new trial.

SCOTT, Justice (dissenting).

I agree with the dissent of Justice Yetka. The facts of this case are completely distinguishable from *Filas v. Daher*, 300 Minn. 137, 218 N.W.2d 467 (1974).

WAHL, Justice (dissenting).

I join in the dissent of Justice Yetka.

SHERAN, Chief Justice (dissenting).

I join in the dissent of Justice Yetka.

4 Minnesota Practice Series, Jury Instruction Guides—Civil (6th ed. 2014).

INTRODUCTORY NOTE

The Civil Damage Act

The Civil Damage Act, M.S.A. § 340A.801, reads as follows:

Subdivision 1. Right of action. A spouse, child, parent, guardian, employer, or other person injured in person, property, or means of support, or who incurs other pecuniary loss by an intoxicated person or by the intoxication of another person, has a right of action in the person's own name for all damages sustained against a person who caused the intoxication of that person by illegally selling alcoholic beverages. All damages recovered by a minor under this section must be paid either to the minor or to the minor's parent, guardian, or next friend as the court directs.

Subd. 2. Actions. All suits for damages under this section must be by civil action in a court of this state having jurisdiction.

Subd. 3. Comparative negligence. Actions under this section are governed by section 604.01.

Subd. 3a. Defense. The defense described in section 340A.503, subdivision 6, applies to actions under this section.

Subd. 4. Subrogation claims denied. There shall be no recovery by any insurance company against any liquor vendor under subrogation clauses of the uninsured, underinsured, collision, or other first party coverages of a motor vehicle insurance policy as a result of payments made by the company to persons who have claims that arise in whole or part under this section. The provisions of section 65B.53, subdivision 3, do not apply to actions under this section.

Subd. 6. Common law claims. Nothing in this chapter precludes common law tort claims against any person 21 years old or older who knowingly provides or furnishes alcoholic beverages to a person under the age of 21 years.

Subdivision 5 of the Act has been repealed.

The defense provided for in subdivision 3a, based on section 340A.503, subd. 6, reads as follows:

Subd. 6. (a) Proof of age for purchasing or consuming alcoholic beverages may be established only by one of the following:

(1) a valid driver's license or identification card issued by Minnesota, another state, or a province of Canada, and including the photograph and date of birth of the licensed person;

(2) a valid military identification card issued by the United States Department of Defense; or

(3) in the case of a foreign national, from a nation other than Canada, by a valid passport.

(b) In a prosecution under subdivision 2, clause (1), it is a defense for the defendant to prove by a preponderance of the evidence that the defendant reasonably and in good faith relied upon representations of proof of age authorized in paragraph (a) in selling, bartering, furnishing, or giving the alcoholic beverage.

Elements of a Civil Damage Act Claim

There are three basic elements in a Civil Damage Act claim:

1. That the defendant **illegally sold** an alcoholic beverage. See *Cady v. Coleman*, 315 N.W.2d 593, 596 (Minn.1982)... Note that the 1985 amendments deleted the word "barter" from the Act. See Act of June 5, 1985, ch. 305, art. 10, § 1, subd. 1, 1985 Minn. Laws 1499. Recovery under the Civil Damage Act is not dependent upon a finding of negligence. See *Hahn v. Ortonville*, 238 Minn. 428, 433, 57 N.W.2d 254, 259 (1953).

2. That the alcoholic beverage illegally sold or bartered by the defendant was either the sole, or the cooperating, concurring, or contributing **cause of the intoxicated person's intoxication**. See *Hollerich v. Good Thunder*, 340 N.W.2d 665, 668 (Minn.1983)... The sale need not have been the sole cause of intoxication. It is sufficient if the sale was a "proximately contributing cause." *Kryzer v. Champlin American Legion No. 600*, 494 N.W.2d 35, 36–37 (Minn.1992). There must be a "practical and substantial relationship" between the illegal sale and intoxication in order to establish the necessary causal relationship. *Hollerich v. Good Thunder*, 340 N.W.2d 665, 668 (Minn.1983)...

3. That the intoxication was a **direct (proximate) cause of the plaintiff's injuries**. See *Hollerich v. Good Thunder*, 340 N.W.2d 665, 668 (Minn.1983)...

Persons Subject to Liability

Only commercial vendors of alcohol are subject to liability under the Civil Damage Act, a conclusion the supreme court reached after an interesting interplay between the legislature and the court. As the court has created potential exceptions to that rule, the legislature has responded by eliminating the exceptions.

In *Ross v. Ross*, 294 Minn. 115, 200 N.W.2d 149 (1972), the supreme court held that the Civil Damage Act applied to social hosts. *Id.* at 121, 200 N.W.2d at 153. In 1977, however, the legislature deleted the word "giving" from the act, precluding social host liability. The supreme court subsequently held that the legislature's intent to restrict liability only to commercial vendors is sufficiently clear from the deletion of the word "giving" from the act. The words "Any person" who sells or barter liquor means "a person in the business of providing liquor, and not a social host who happens to receive some consideration from his guests in return for drinks he provides." *Cady v. Coleman*, 315 N.W.2d 593, 596 (Minn.1982).

In *Walker v. Kennedy*, 338 N.W.2d 254 (Minn.1983), the supreme court adhered to *Cady*, but left open the issue of whether a social host could be held liable when the guest is a minor. Subsequently, in *Holmquist v. Miller*, 367 N.W.2d 468 (Minn.1985), the court held that the Civil Damage Act preempts a cause of action against a social host for negligently serving alcohol, whether to a minor or adult. The court also held that the Civil Damage Act does not include liability against an employer for furnishing alcohol to an employee. See *Meany v. Newell*, 367 N.W.2d 472 (Minn.1985).

Prior to a 1982 amendment, the Civil Damage Act did not apply to sales of non-intoxicating malt liquor, although a common law negligence action was allowed in such cases. See *Jones v. Fisher*, 309 N.W.2d 726, 728 (Minn.1981)... The Civil Damage Act now covers non-intoxicating malt liquor, currently defined as "3.2 percent malt liquor," M.S.A. § 340A.101, subd. 19, which falls under the definition of alcoholic beverage in M.S.A. § 340A.101, subd. 2.

As it is currently interpreted, the Act permits actions only against commercial vendors or persons in the business of providing liquor, e.g., *Koehnen v. Dufuor*, 590 N.W.2d 107, 111–12 (Minn.1999)... The line between a commercial vendor and social host is not crossed simply because a social host provides alcohol for consideration.

Illegal Sale

The Act requires proof that a commercial vendor of alcohol illegally sold alcohol and that the sale caused the intoxication of another person. To determine what constitutes an "illegal sale" within the meaning of the Civil Damage Act, M.S.A. § 340A.801, must be read together with M.S.A. §§ 340A.502, 340A.503 and 340A.504. Sale of alcoholic beverages to a person who is "obviously intoxicated" is prohibited. See M.S.A. § 340A.502; *Johnson v. Moberg*, 334 N.W.2d 411, 414 (Minn.1983), appeal after remand, 354 N.W.2d 613 (1984); *Seeley v. Sobczak*, 281 N.W.2d 368, 370–371 (Minn.1979).

The term "sale" is not defined in the Act. In *Knese v. Heidgerken*, 358 N.W.2d 177, 179–80 (Minn.App. 1984), the court of appeals held that a sale of alcohol requires a bargained-for exchange – consideration, in order for liability to be imposed on a commercial vendor of alcohol, and that no sale occurred in a case where a minor entered a bar door that had been mistakenly left open when the bar was closed and took beer from the bar. The court noted that

even had the plaintiff left money to pay for the beer there would have been no chance to bargain or agree to the exchange. *Id.* at 180. The issue could raise a fact question for the trier of fact. See *Husbands v. City of Baudette*, 2003 WL 22952754, at *4 (Minn.App. Dec. 16, 2004) (intoxicated person may have received drinks in consideration for cleaning a bar).

Persons Entitled to Recover under the Civil Damage Act—Standing

The Act creates a cause of action for a "spouse, child, parent, guardian, employer, or other person injured in person, property, or means of support, or who incurs other pecuniary loss by an intoxicated person or by the intoxication of another person" caused by the illegal sale of alcoholic beverages. The Civil Damage Act does not create a cause of action in favor of one injured by his own intoxication. *Herrly v. Muzik*, 374 N.W.2d 275, 278 (Minn.1985); *Randall v. Excelsior*, 258 Minn. 81, 83, 103 N.W.2d 131, 133 (1960).

In *Lefto v. Hoggsbreath Enterprises, Inc.*, 581 N.W.2d 855, 857 (Minn.1998), the supreme court, citing *Herrly*, noted that that "[o]ur repeated view [is] that the [Act] was intended solely to protect 'innocent third persons' injured as a result of another's intoxication * * *," and that "consistent with our previous construction of the term 'other person,' we conclude that the term 'other person' refers to any other person injured by the intoxication of another and who played no role in causing the intoxication. 581 N.W.2d at 857 (footnotes omitted; emphasis added).

The court in *Lefto* specifically rejected the theory that "only people with a legal relationship with the intoxicated person are entitled to recover." *Id.* at 856. The plaintiff in the case brought suit on her own and on behalf of her and her daughter for loss of means of support due to serious injuries sustained by her fiancé who was seriously injured on their wedding day. The plaintiff and her daughter lived with and were economically dependent on him. The court held that they fit the definition of "other person" under the Act. *Id.* at 857. In *Skelly v. Mount*, 620 N.W.2d 566 (Minn.App. 2000), rev. denied (Minn. Feb. 21, 2001), the court of appeals, following *Lefto*, held that a woman whose ex-husband was killed in a one-car crash, and who was economically dependent on him, qualified as an "other person" under the Act.

In *K.R.v. Sanford*, 605 N.W.2d 387 (Minn.2000), the supreme court clarified the meaning of the term "innocent third party." The court first noted that the complicity issue was not presented in *Lefto*, before holding that its construction of the term "innocent third party" in that case was overbroad. The court then clarified the meaning of the term:

[T]he term "innocent third party," as used in our case law interpreting the complicity doctrine under the Damages Act, means a party not complicit in the specific illegal act. The term "innocent" as used in the term "innocent third party" does not refer to generic innocence in the sense of not providing alcohol to one who ultimately causes damage. Just as a liquor vendor is held responsible for those specific acts made illegal by the legislature, so also, a party is held responsible for complicity in specific illegal acts.

Id. at 393–94 (footnote omitted). Therefore, a person who participated in the intoxication of another person will not be barred from bringing an action under the Civil Damage Act. If a person is complicit in the intoxication of another person in the sense of knowingly and affirmatively participating in the illegal sale of alcohol to that person, the complicit person is covered under the holding of *K.R. v. Sanford*, which acknowledges that complicity is not a complete defense, but rather a type of fault subject to comparison under the Comparative Fault Act.

There are certain categories of persons who will **not** have standing to sue under the Civil Damage Act:

1. Voluntarily intoxicated persons. *Herrly v. Muzik*, 374 N.W.2d 275, 278 (Minn.1985); *Randall v. Excelsior*, 258 Minn. 81, 83, 103 N.W.2d 131, 133 (1960).

2. On-duty police officers. An on-duty police officer is not an "other person." *Hannah v. Jensen*, 298 N.W.2d 52, 54–55 (Minn.1980) (on-duty police officer does not qualify as "other person," due to application of Fireman's rule; fireman's rule abolished by M.S.A. § 604.06, which states that the rule may not operate to deny "recovery in any action at law or authorized by statute.").

3. Insurers making payments because of injury to a voluntarily intoxicated person. *Empire Fire & Marine Ins. Co. v. Williams*, 265 Minn. 333, 337, 121 N.W.2d 580, 583 (1963) (tortfeasor's insurance company does not qualify as "other person," due to application of subrogation principle); *Sather v. Woodland Liquors, Inc.*, 597 N.W.2d 295, 299 (Minn.App.1999) ("other person" does not include Minnesota Department of Human Services, which provided medical assistance to injured person to whom defendant illegally sold alcohol); *Line Construction Benefit Fund v. Skeates*, 563 N.W.2d 757 (Minn.App.1997) (health and medical benefits insurer that provided benefits for voluntarily intoxicated person is not an "other person" within meaning of Civil Damage Act).

Recoverable Damages

The Act provides that damages may be awarded to “[a] spouse, child, parent, guardian, employer, or other person injured in person, property, or means of support, or who incurs other pecuniary loss.” M.S.A. § 340A.801, subd. 1. "Means of support" refers to the standard of living to which a person is accustomed and the source through which that standard is maintained. M.S.A. § 340A.801, subd. 1 applies when there is a loss or reduction of the means of providing the accustomed support. See *Paine v. Water Works Supply Co.*, 269 N.W.2d 725, 731 (Minn.1978)... While the Act does not define “means of support,” the term incorporates a requirement that the person seeking recovery for loss of support be a dependent. *Britamco Underwriters, Inc. v. A & A Liquors of St. Cloud*, 649 N.W.2d 867,872 (Minn.App. 2002). A

person who is injured by an intoxicated person has a claim for bodily injury that includes the usual damages available in personal injury actions, but does not have a claim for loss of support separate and apart from the bodily injury claim. *Id.* Also, lost profits of a corporation may not be recovered by shareholders and their dependents as damages for loss of support under the Act. *Johnson v. Foundry, Inc.*, 702 N.W.2d 274, 277-78 (Minn.App. 2005).

In *Lefto v. Hoggsbreath Enterprises, Inc.*, 581 N.W.2d 855 (Minn.1998), the supreme court held that the term "other person" in the Act means "any other person injured by the intoxication of another and who played no role in causing the intoxication," 581 N.W.2d at 857. Responding to criticism by the dissenting opinion that damages would not be subject to containment, the court suggested that there are still limitations on the right to recover damages:

We do not believe the legislature intended to include every conceivable remote injury. In order to recover under the Act, a party seeking recovery must establish that they are "injured * * * by an intoxicated person or by the intoxication of another person * * *." While the statute has no counterpart in the common law, presumably, in order to recover, the party seeking recovery will have to establish that his or her injury was reasonably foreseeable and proximately caused by the intoxicated person.

581 N.W.2d at 857 n.9.

The Act also provides for the recovery of damages for pecuniary loss. In *Coolidge v. St. Paul Fire and Marine Ins. Co.*, 523 N.W.2d 5 (Minn.App.1994), rev. granted (Minn. Dec. 21, 1994), appeal dismissed (Minn. Jan. 6, 1995), held that the right to recover for pecuniary loss is not limited to death cases. The right to recover for pecuniary loss, however, is not limited to cases in which loss of consortium claims are permitted. The court of appeals in *Lefto v. Hoggsbreath Enterprises, Inc.*, 567 N.W.2d 746, 750 (Minn.App.1997), aff'd, 581 N.W.2d 855 (Minn.1998), noted the differences between loss of consortium and pecuniary loss claims:

The *Coolidge* court did not, however, define pecuniary loss as co-extensive with loss of consortium. Moreover, consortium is the "reciprocal rights inherent in the marital relationship of husband and wife, including such undefined elements as comfort, companionship, and commitment to the needs of each other." *Thill v. Modern Erecting Co.*, 284 Minn. 508, 510, 170 N.W.2d 865, 867-68 (1969) (emphasis added). Pecuniary loss, in contrast, is defined more broadly, and encompasses the loss of aid, advice, comfort, and protection that a person would have provided but for the person's injury regardless of whether a marital relationship exists. *Coolidge*, 523 N.W.2d 5, 6 (citing *Cummins v. Rachner*, 257 N.W.2d 808, 815 (Minn.1977)).

"Loss of consortium" thus applies, by definition, only to loss suffered by married persons. As a result, it cannot apply, as pecuniary loss may, to the loss of aid, advice, comfort, and protection suffered by a child when a man who has taken her into his home has sustained permanent brain damage. Nor does it apply to the loss of aid, advice, comfort, and protection suffered by a woman when her fiancé has suffered such injuries. Pecuniary loss is not "co-extensive" with loss for consortium, and the rule prohibiting recovery for loss of consortium by a non-spouse does not bar Lefto's and her daughter's recovery of pecuniary loss under the Act.

The right to recover for pecuniary loss, therefore, is not subject to the limitations the court has imposed on the right to recover for loss of consortium. See *Salin v. Kloempken*, 322 N.W.2d 736, 740 (Minn.1982) (children are not entitled to recover for loss of parental consortium). The court of appeals reaffirmed Coolidge in an unpublished opinion, *DeSanti v. Youngs*, 2003 WL 139393, at *7 (Minn.App. Jan. 21, 2003), reh. denied (Minn.App. April 15, 2003).

Comparative Fault and Complicity

Comparative fault principles apply to Civil Damage Act claims. M.S.A. § 340A.801, subd. 3. The fault of an intoxicated person is not imputed to family members seeking damages for loss of means of support, however. *Paulson v. Lapa*, 450 N.W.2d 374, (Minn.App. 1990), rev. denied (Minn. March 22, 1990). Comparative fault applies to the limited social host claims permitted by M.S.A. § 340A.801, subd. 6, even where the claim is brought by an injured person under the age of 21 who bring suit against the social host. *Van Wagner v. Mattison*, 533 N.W.2d 75, 80 (Minn.App. 1995), rev. denied (Minn. Sept. 19, 1999).

The defense of complicity, which previously was a complete defense to Civil Damage Act claims by an injured person, is now part of the definition of fault under M.S.A. § 604.01, subd. 1a, and, accordingly, subject to comparison under the Comparative Fault Act. In *K.R. v. Sanford*, 605 N.W.2d 387 (Minn.2000), the Minnesota Supreme Court held that a plaintiff's complicity in the illegal sale of alcohol is not a bar to recovery by the plaintiff for damages under the Civil Damage Act, but that it is a defense subject to comparison under the comparative fault act, M.S.A. § 604.01, subd. 1a. The court defined complicity as participating knowingly and affirmatively in the illegal sale that contributed to the intoxication. 605 N.W.2d at 391, citing *Turk v. Long Branch Saloon, Inc.*, 280 Minn. 438, 442, 159 N.W.2d 903, 906 (1968).

Social Host Liability

Social hosts are ordinarily not subject to liability under the Civil Damage Act, even if a social host's sale of alcohol contributes to the intoxication of a person. *Koehnen v. Dufuor*, 590 N.W.2d 107, 112–13 (Minn.1999). There is a limited exception in M.S.A. § 340A.801, subd. 6, which provides as follows:

Nothing in this chapter precludes common law tort claims against any person 21 years old or older who knowingly provides or furnishes alcoholic beverages to a person under the age of 21 years.

There are no Minnesota Supreme Court opinions construing this provision.

The legislature has also created a limited form of social host liability in M.S.A. § 340A.90 that parallels the social host liability permitted by M.S.A. § 340A.801, subd. 6, although there are important differences. Section 340A.90 reads as follows:

Subdivision 1. (a) A spouse, child, parent, guardian, employer, or other person injured in person, property, or means of support, or who incurs other pecuniary loss, by an intoxicated person under 21 years of age or by the intoxication of another person under 21 years of age, has for all damages sustained a right of action in the person's own name against a person who is 21 years or older who:

(1) had control over the premises and, being in a reasonable position to prevent the consumption of alcoholic beverages by that person, knowingly or recklessly permitted that consumption and the consumption caused the intoxication of that person; or

(2) sold, bartered, furnished or gave to, or purchased for a person under the age of 21 years alcoholic beverages that caused the intoxication of that person.

This paragraph does not apply to sales licensed under this chapter.

(b) All damages recovered by a minor under this section must be paid either to the minor or to the minor's parent, guardian, or next friend as the court directs.

(c) An intoxicated person under the age of 21 years who caused the injury has no right of action under this section.

Subd. 2. There shall be no recovery by any insurance company for any subrogation claim pursuant to any subrogation clause of the uninsured, underinsured, collision, or other first-party coverages of a motor vehicle insurance policy as a result of payments made by the company to persons who have claims that arise in whole or in part under this section.

Subd. 3. (a) There shall be no coverage for liability created under this section under homeowner's insurance as defined under section 65A.27, unless:

(1) specifically covered in a policy; or

(2) covered by a rider attached to a policy.

(b) This subdivision expires on December 31, 2001.

The relationship between the cause of action created by M.S.A. § 340A.90, and the social host action permitted by M.S.A. § 340A.801, subd. 6, is not entirely clear. M.S.A. § 340A.90 does not repeal M.S.A. § 340A.801, subd. 6, so both actions are presumably permitted. The major difference between the potential claims is that actions by the person under age 21 are permitted under M.S.A. § 340A.801, subd. 6, see *VanWagner v. Mattison*, 533 N.W.2d 75 (Minn.App.1995), rev. denied (Minn. Sept. 20, 1995), but apparently not under the new statute. M.S.A. § 340A.90, subd. 1(c), which specifically states that “[a]n intoxicated person under the age of 21 years who caused the injury has no right of action under this section.”

The following table illustrates the differences between statutory and common law social host liability.

	M.S.A. § 340A.90	M.S.A. § 340A.801, subd. 6
Persons entitled to recover	Spouse, child, parent, guardian, employer, or other person injured in person, property, or means of support, or who incurs other pecuniary loss. Subd. 1(a). Intoxicated person under 21 not entitled to recover. Subd. 1(c).	Third persons Persons under 21
Damages	Injury in person, property, or means of support, or who incurs other pecuniary loss. Subd. 1(a).	Personal injury - past and future medical expenses, wage loss, and pain and suffering
Comparative fault and contributory negligence	Statute is silent (compare § 340A.801, subd. 2). See <i>Paulson v. Lapa</i> , 450	§ 604.01 applies; contributory negligence of person under 21 is a

	N.W.2d 374, 380 (Minn.App. 1990), rev. denied (Minn. March 22, 1990).	defense: <i>Van Wagner v. Mattison</i> , 533 N.W.2d 75 (Minn.App.1995), rev. denied (Minn. Sept. 20, 1995).
Required proof	Person over 21 controlled premises, was in reasonable position to prevent intoxication, and knowingly or recklessly permitted consumption of alcohol by person under 21, or sold, bartered, furnished or gave to, or purchased alcohol for a person under the age of 21	Person over 21 knowingly provided or furnished alcoholic beverages to a person under 21, plus negligence (including negligence per se for violating § M.S.A. 340A.504, subd. 2 (1))