

NextGen Bar Exam — Integrated Question Set

Civil Procedure / Torts: Dram Shop and Innkeeper Liability

Integrated Question Set — Flambeau v. Jake's Bar & Grille, Inc.

You are a third-year associate at a small civil litigation firm in Duluth, Minnesota. Your supervising partner represents Jake's Bar & Grille, Inc. ("Jake's"), the defendant in a personal injury lawsuit. Your supervisor has asked you to help prepare for an upcoming summary judgment motion and a related mediation session.

The following is an excerpt from your supervisor's email assigning you the file:

Our client, Jake's Bar & Grille, has been sued by William Flambeau, a patron who was struck in the face with a beer bottle by another patron, Chris Walker, during an altercation at the bar on October 8, 2025. Flambeau has sued Jake's under Minnesota's Civil Damage Act and under a common-law negligence theory for innkeeper liability. I've attached the complaint, the relevant statute, deposition excerpts, and the parties' expert affidavits. I need your help thinking through our summary judgment arguments and, separately, our mediation strategy. [End of excerpt]

The following is an excerpt from the Complaint filed by Flambeau:

- On October 8, 2025, Flambeau was a patron at Jake's. After Flambeau twice asked Chris Walker and her friend Jane Waggoner to dance and was refused both times, Walker picked up a full beer bottle from the bar and struck Flambeau in the face, breaking his nose and fracturing his cheekbone.
- Flambeau alleges that Jake's illegally served alcohol to Walker while she was obviously intoxicated, in violation of the Minnesota Civil Damage Act, Minn. Stat. § 340A.801, and that this illegal service was a direct and proximate cause of his injuries.
- Flambeau separately alleges that Jake's breached a common-law duty to protect him from a foreseeably dangerous patron. *[End of excerpt]*

The following is an excerpt from Minnesota's Civil Damage Act:

Minn. Stat. § 340A.801

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.

*Subd. 3. Comparative negligence. Actions under this section are governed by section 604.01.
[End of excerpt]*

You recall that, to establish a Civil Damage Act claim, a plaintiff must prove: (1) the defendant illegally sold alcohol — that is, sold it to a person who was obviously intoxicated; (2) the sale was a cause of that person's intoxication; and (3) the intoxication was a direct, proximate cause of the plaintiff's injuries.

The following is an excerpt from the deposition of Ella Clark, the bartender on duty the night of the incident:

- Q: Were they [Walker and Waggoner] drinking heavily?
- A: I don't recollect exactly how many drinks they had, but it certainly wasn't anything unusual for them.
- Q: What did you notice that caused you to realize something was going on?
- 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...
- 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. He's really offensive. Pushy. Won't take no for an answer.
- 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. He wasn't feeling that much pain cause he'd been drinkin' all night. *[End of excerpt]*

The following is an excerpt from the deposition of Jane Waggoner, Walker's companion that evening:

- Q: Did Walker do anything at all that would have caused you to conclude that she was intoxicated?
- A: No.
- Q: Did she seem to handle the pool cue just fine when she was shooting pool?
- A: Yes, she did.

The following is an excerpt from the affidavit of Leslie Patrone, plaintiff's retained toxicology expert:

- 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. 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 following is an excerpt from the affidavit of Chase Reams, Jake's retained toxicology expert:

- Based on Ms. Walker's weight and accepted ethanol pharmacokinetic principles, I conclude that Ms. Walker would have had an approximate BAC of 0.09 to 0.10 g/dL at the time of her last drink before the alleged assault. 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.

End of excerpt

Component 1:

Given the facts now known, which of the following best describes the strength of Jake's position on the "obvious intoxication" element of Flambeau's Civil Damage Act claim?

Select one response option.

- A.** Jake's is entitled to summary judgment because Reams's affidavit conclusively establishes that Walker was not obviously intoxicated.
- B.** Jake's is entitled to summary judgment because Waggoner's testimony is more credible than Flambeau's as a matter of law.
- C.** Jake's is not entitled to summary judgment because Clark's testimony establishes obvious intoxication as a matter of law.
- D.** Jake's is not entitled to summary judgment because the lay testimony and expert opinions conflict, creating a genuine issue of material fact for the jury.

Component 1 Answer Explanation

Solution: The correct answer is D.

Answer D is correct. On summary judgment, the court must view the evidence in the light most favorable to the non-moving party (Flambeau) and may not resolve disputes of credibility or weigh competing expert opinions. Waggoner's testimony that Walker showed no signs of intoxication directly conflicts with other evidence in the file, and Reams's expert opinion conflicts with the opinion offered by Flambeau's retained expert. Because reasonable jurors could reach different conclusions on this element, it is not appropriate for resolution on summary judgment.

Answer A is incorrect. An expert affidavit favorable to the moving party does not conclusively resolve a disputed factual issue when the opposing party has offered conflicting expert testimony; the relative weight and credibility of competing experts is a question for the jury.

Answer B is incorrect. Credibility determinations between witnesses are reserved for the trier of fact and cannot be resolved by the court on a motion for summary judgment.

Answer C is incorrect. While Clark's testimony that she witnessed Walker yelling loudly is some evidence relevant to intoxication, it does not establish obvious intoxication as a matter of law, particularly given Clark's additional testimony that the group's drinking was not unusual and Waggoner's contrary testimony.

Content Scope Designation: Skill A.6, B.2; Subject Matter: Torts II.A: Negligence — General principles; Civil Procedure VII.A: Summary judgment

You turn to whether Jake's has a viable argument that, even if Walker was obviously intoxicated, Flambeau cannot establish proximate cause.

Component 2:

List two specific facts now known that would support an argument that Walker's intoxication, if any, was a proximate cause of Flambeau's injuries.

Provide one answer in each answer field. The length of each answer should be about one sentence.

Component 2 Representative Correct Answers

- Patrone affidavit opines that Walker would have shown the signs and symptoms of alcohol intoxication when she assaulted Flambeau.
- Reams’s affidavit establishes that Walker had a BAC of 0.09–0.10 g/dL attributable to alcohol consumed at Jake’s, which supports the inference that Jake’s service contributed to her level of intoxication at the time of the assault.
- The Complaint alleges that Walker struck Flambeau with a beer bottle taken from Jake’s bar, and nothing in the record identifies any source of alcohol other than Jake’s that could account for Walker’s intoxication.
- Nothing in the provided record suggests any intervening cause — such as alcohol consumed elsewhere or an independent medical or physical condition — that could break the causal chain between Jake’s service and Walker’s conduct.

Content Scope Designation: Skill B.10; Subject Matter: Torts II.B: Causation

You next turn to Flambeau’s common-law negligence claim. You review the following excerpt from *Devine v. McLain*, 306 N.W.2d 827 (Minn. 1981) (citing *Evanish v. V.F.W.* Post No. 2717, 269 Minn. 209, 130 N.W.2d 331 (1964)):

“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.” [End of excerpt]

You also review the following excerpt from the deposition of Alex Ruffian, a bar patron:

- A: It was around closing time [in August 2025]. I heard yelling. Turned around and saw Walker literally on my sister-in-law’s back pulling her hair from behind... I mean she had been drinking a lot and was really antagonistic.
- 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.
- A: [My sister-in-law] played me a recorded message from Craig [the bar owner] that they were not going to bar Walker or anyone else from the bar permanently because they were good customers.

End of excerpt

Component 3:

Which of the following facts provide the most support for the argument that Jake's had notice of Walker's dangerous propensities sufficient to defeat summary judgment on the negligence claim?

Select two response options.

- A.** Walker and Waggoner were regular customers at Jake's.
- B.** Walker was involved in a physical altercation with another patron at Jake's approximately two months before the incident involving Flambeau.
- C.** The bar owner was told that patrons wanted bouncers hired, in part because of incidents like the one involving Walker.
- D.** Flambeau had a history of making unwanted advances toward other patrons at the bar.
- E.** Walker ordered vodka tonics rather than beer.
- F.** Clark, the bartender, witnessed Walker yell loudly at Flambeau roughly an hour before the assault.

Component 3 Answer Explanation

Solution: The correct answers are **B** and **C**.

Answer B is correct. Ruffian's testimony regarding the August 2025 incident, in which Walker pulled another patron's hair during an altercation while "antagonistic" from drinking, is direct evidence that Jake's had prior, specific knowledge of Walker's propensity for violence while intoxicated on its premises — the type of overt act required under Devine.

Answer C is correct. Evidence that the bar owner was specifically told that patrons wanted bouncers due to incidents like Walker's, and chose not to hire any, supports an inference that the bar had general notice of recurring dangerous conduct on its premises and made a deliberate decision not to address it, which bears on foreseeability.

Answer A is incorrect. The fact that Walker was a regular customer, standing alone, says nothing about whether she had dangerous propensities of which the bar should have been aware.

Answer D is incorrect. Flambeau's own conduct toward other patrons is relevant to comparative fault but does not bear on whether Jake's had notice of Walker's dangerous propensities.

Answer E is incorrect. The type of alcohol a patron orders has no bearing on the bar's notice of that patron's dangerous propensities.

Answer F is incorrect. While Clark's observation of the outburst shortly before the assault is relevant to whether Jake's had an adequate opportunity to intervene once warning signs arose that evening, it does not by itself establish prior notice of Walker's dangerous propensities in the way that a documented history of violence does. (Note: this fact would be a strong answer to a question about adequate opportunity to act, but the question asks specifically about notice of dangerous propensities.)

Content Scope Designation: Skill A.6, B.2; Subject Matter: Torts I.B: Duty; Torts II.A: Negligence — General principles

Your supervisor asks you to consider Jake's affirmative defenses, including comparative fault under Minn. Stat. § 604.01, which applies to negligence claims and, pursuant to § 340A.801, subd. 3, also applies to Civil Damage Act claims.

Component 4:

List two specific facts now known that support a comparative fault defense against Flambeau.

Provide one answer in each answer field. The length of each answer should be about one sentence.

Component 4 Representative Correct Answers

- Flambeau repeatedly approached Walker and Waggoner and asked them to dance after being refused.
- Flambeau grabbed Waggoner's hand without her consent immediately before the assault.
- According to Clark, Flambeau had a pattern of making unwanted advances toward women at the bar, including possibly toward Walker and Waggoner on prior occasions.
- Witness testimony suggests Flambeau himself may have been intoxicated at the time of the incident.

Content Scope Designation: Skill B.10; Subject Matter: Torts II.D: Comparative fault, contributory negligence, and assumption of risk

The case proceeds to mediation before the summary judgment motion is decided. At the first mediation session, Flambeau's counsel proposes the following settlement terms:

- Jake's will pay Flambeau \$40,000.
- Jake's will adopt a written policy requiring staff, rather than patrons, to deliver all alcoholic beverages to tables.
- Flambeau will release all claims against Jake's arising from the October 8, 2025 incident.
- Jake's will not be required to admit liability.

You explain to your supervisor that accepting the proposal would avoid the expense and uncertainty of further litigation but would also foreclose any possibility of a complete defense verdict.

Component 5:

Without simply restating the terms of the settlement proposal, list two specific additional benefits to Jake's — other than the ones already identified — of accepting Flambeau's settlement proposal, taking into account Jake's known objectives, interests, and constraints.

Provide one answer in each answer field. The length of each answer should be about one sentence.

Component 5 Representative Correct Answers

- Jake's would avoid the risk of a jury verdict in excess of \$40,000 given the genuine factual disputes on both claims.
- Jake's would avoid the cost of continued expert discovery and trial preparation, including additional expert witness fees.
- Jake's would avoid negative publicity or reputational harm associated with a public trial concerning a patron's injury at the bar.
- Resolving the matter without an admission of liability could help Jake's avoid issues with its liquor license or insurance carrier.

Content Scope Designation: Skill B.11, B.13; Subject Matter: BA X: Negotiation and dispute resolution

After the first mediation session ends without a resolution, you receive an email from Flambeau's attorney indicating that Flambeau has stated he has two goals: (1) obtaining enough money to pay his outstanding medical bills, since he has no health insurance, and (2) making sure Jake's changes its alcohol service practices so that, in his words, "this doesn't happen to someone else." Your supervisor asks you to evaluate these goals before the next mediation session.

Component 6:

List two specific facts now known that may make it difficult for Flambeau to fully achieve his stated goal of obtaining enough money to pay his outstanding medical bills through this litigation.

Provide one answer in each answer field. The length of each answer should be about one sentence.

Component 6 Representative Correct Answers

- Flambeau’s recovery may be reduced under comparative fault principles because of his repeated unwanted advances toward Walker and Waggoner.
- There is conflicting evidence about whether Walker was obviously intoxicated, which creates a risk that a jury could find for Jake’s on the Civil Damage Act claim.
- There is conflicting evidence about whether Jake’s had adequate notice of Walker’s dangerous propensities, which creates a risk that a jury could find for Jake’s on the negligence claim.

Content Scope Designation: Skill B.13, B.14; Subject Matter: Torts II.D: Comparative fault; BA X: Client counseling and advising

You also consider Flambeau’s second stated goal — obtaining a change in Jake’s alcohol service practices.

Component 7:

Explain why Flambeau’s litigation against Jake’s may not be an effective way to achieve his goal of changing Jake’s alcohol service practices.

Component 7 Representative Correct Answer

A favorable judgment or settlement in Flambeau’s individual lawsuit would not, by itself, legally obligate Jake’s to change its service practices going forward; a money judgment compensates Flambeau for his injuries but does not include injunctive relief requiring specific changes to how Jake’s serves alcohol. Flambeau could achieve this particular goal only if Jake’s voluntarily agreed to make such changes as part of a negotiated settlement, since the Complaint, as pleaded, seeks only damages and does not request injunctive relief.

Content Scope Designation: Skill B.13, B.14; Subject Matter: BA X: Client counseling and advising

Before the second mediation session, your supervisor asks you to consider what terms Jake's might offer that could advance a resolution, given that Flambeau has expressed a goal of changing Jake's service practices in addition to recovering money damages.

Component 8:

List two specific, non-monetary terms that Jake's could propose as part of a settlement agreement that would be responsive to Flambeau's stated goal of changing Jake's alcohol service practices.

Provide one answer in each answer field. The length of each answer should be about one sentence.

Component 8 Representative Correct Answers

- Jake's could agree to require staff, rather than patrons, to deliver all alcoholic beverages to tables.
- Jake's could agree to require bartenders to use a jigger or other measuring tool rather than free-pouring.
- Jake's could agree to hire one or more bouncers for weekend or peak hours.
- Jake's could agree to implement additional staff training on identifying signs of obvious intoxication.

Content Scope Designation: Skill B.12; Subject Matter: BA X: Negotiation and dispute resolution

At the second mediation session, Jake's offers to settle for \$25,000 and to adopt a written policy requiring staff to deliver all alcoholic beverages to tables. Flambeau's attorney rejects the offer and makes a counteroffer of \$60,000 with no changes to service practices, stating that Flambeau has decided he no longer cares whether Jake's changes its practices and just wants to be compensated.

Component 9:

Identify two specific risks to Jake's of rejecting Flambeau's \$60,000 counteroffer and proceeding to trial.

Provide one answer in each answer field. The length of each answer should be about one sentence.

Component 9 Representative Correct Answers

- A jury could find Jake's liable on both the Civil Damage Act claim and the negligence claim, given the genuine factual disputes on both claims.
- A jury could award damages exceeding \$60,000 given the severity of Flambeau's injuries, including past and future medical expenses and reconstructive surgeries.
- Jake's would incur additional litigation costs, including expert witness fees and trial preparation costs, regardless of the outcome at trial.

Content Scope Designation: Skill B.10, B.11; Subject Matter: BA X: Negotiation and dispute resolution

The following is an excerpt from a voicemail message left by your supervisor:

I just got off the phone with Craig, the owner of Jake's. He's frustrated and wants to settle this case immediately, even if it costs more than we think the case is worth, because he's worried about how this is affecting the bar's reputation in town. I want you to draft a short, plain-language email to Craig explaining his options at this stage, but before you do that, just jot down for me what you think his real objectives are here, beyond just resolving the lawsuit.

End of excerpt

Component 10:

Identify two of Craig's objectives, interests, or constraints — other than resolving the lawsuit itself — that you should take into account before advising him on settlement options.

Provide one answer in each answer field. The length of each answer should be about one sentence.

Component 10 Representative Correct Answers

- Craig wants to protect Jake's reputation and standing in the local community.
- Craig may be concerned about the cost of the litigation and his ability to pay a settlement or judgment.
- Craig may be concerned about the effect of this litigation, or an admission of liability, on Jake's liquor license or insurance coverage.
- Craig may want to avoid creating a precedent that could encourage future lawsuits by other patrons.

Content Scope Designation: Skill B.14; Subject Matter: BA X: Client relationship and management

You are concerned that Craig’s instruction to settle “immediately, even if it costs more than we think the case is worth,” may not be fully informed, since Craig has not yet seen your evaluation of the strengths and weaknesses of Jake’s defenses.

Component 11:

Explain why you should communicate your case evaluation to Craig before proceeding to settle the case on his instructions, and identify one relevant rule of professional conduct that supports your approach.

Component 11 Representative Correct Answer

Under MRPC Rule 1.4 (Communications), a lawyer must keep a client reasonably informed about the status of a matter and must explain matters to the extent reasonably necessary to permit the client to make informed decisions regarding the representation. Although Craig, as the client’s representative, has authority to decide whether to settle, that decision should be an informed one. Because Craig has not yet been advised of the strengths and weaknesses of Jake’s’ position — including the genuine factual disputes that make summary judgment unlikely but that also do not guarantee an adverse verdict — you should communicate that evaluation to him so that his decision to settle, and on what terms, reflects an informed assessment of the risks and benefits of settling versus proceeding to trial, consistent with MRPC Rule 1.4.

Content Scope Designation: Skill B.14; Subject Matter: BA X: Client relationship and management; MRPC Rule 1.4: Communications

End of Integrated Question Set