

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

Teacher's Notes

Overview

The multi-phase exercise is designed as an end of first semester skills activity to reinforce key concepts for the NextGen Bar Exam. Using a complex master case file (including pleadings and discovery), students first make summary judgment oral arguments and then participate in a mediation of the same case. There is also a NextGen Bar Exam Integrated Question Set based on excerpts from the Master File. The set includes 4 doctrinal questions and 7 client counseling/negotiation and dispute resolution questions, all with sample answers).

Though originally designed to be used during a “capstone week” where students worked the problem in both their torts and civil procedure classes, each module can be used independently. In the combined class approach, we used the following schedule:

Tuesday (Nov. 7) in Torts:

Dram shop liability and problem overview/intro

Tuesday (Nov. 7) in Civil Procedure:

The law of summary judgment (as applied in Flambeau)

Thursday (Nov. 8) in Torts:

Argument and Judging Preparation (students work in teams—lawyers prep their arguments; judges prepare their questions)

Friday (Nov. 9) in Civil Procedure:

Flambeau summary judgment arguments

Tuesday (Nov. 13) in Civil Procedure:

Alternative dispute resolution options for settling the Flambeau case; Mediation advocacy (simulation)

I. Summary Judgment Exercise

If you elect to have all students participate (as opposed to several students demonstrating in “fishbowl”), it works well to give each plaintiff/defendant pair 10 minutes for oral argument (5 minutes per side). Defendant (as moving party) will go first. Defendant may reserve 2 minutes for rebuttal. Students assigned as Judges (we most frequently utilized 3-member panels) are instructed to be a “hot” bench; they will announce decisions at end of class during debriefing.

A complete bench memo is attached as Appendix One. Here is a summary of key legal arguments for each side:

Plaintiff's Strongest Legal Arguments:

On Count One (Civil Damage Act):

- The court must view the evidence in the light most favorable to Flambeau — and Flambeau's own testimony (slurred speech, loss of balance, bleary eyes) is direct evidence of obvious intoxication that, standing alone, creates a jury question.
- Plaintiff's expert Patrone and Defendant's expert Reams reach different BAC ranges from the *same* underlying facts — that disagreement between two similarly credentialed experts is itself proof that reasonable minds can differ, which is fatal to summary judgment.
- Clark's testimony isn't the clean win for the defense it looks like — she admits she personally witnessed Walker's loud, unsteady outburst about an hour before the assault. That's a bartender conceding that she saw a red flag.
- Credibility determinations (Flambeau v. Waggoner) are for the jury, not the court — the court cannot simply credit Waggoner's account over Flambeau's at this stage.

On Count Two (Negligence/Innkeeper Liability):

- This case is *Quinn/Alholm*, not *Devine*. Walker wasn't a stranger who walked in once — she was a known regular with a documented prior violent incident at this same bar.
- The owner had actual notice: patrons complained for months about needing bouncers, specifically referencing incidents like Walker's, and he made a conscious business decision to do nothing.
- Unlike *Devine*, where the warning and the harm were separated by time and place (a parting threat, then an off-premises shooting 30 minutes later), here the warning sign (Walker's outburst) and the injury happened on the same premises, within the same continuous visit, roughly an hour apart — ample opportunity to intervene.
- Casden's affidavit gives an independent, non-speculative basis (industry-standard monitoring practices) for what the bar should have done differently, separate from the obvious-intoxication fight.

Defendant's Strongest Legal Arguments

On Count One (Civil Damage Act):

- Flambeau is the only witness who claims obvious intoxication, and he's the plaintiff — an interested party. Every other witness (Waggoner, and even Clark to a real degree) contradicts him.
- Reams's BAC calculation is grounded in an itemized drink count and accepted pharmacokinetic methodology; Patrone's opinion concedes "it is impossible to know for certain" what Walker's BAC was at the time of the assault — that's a meaningful reliability gap the court can weigh even at summary judgment.
- Tolerance matters: Walker was an experienced drinker, and the literature Reams cites shows BAC doesn't reliably correlate with visible symptoms in habituated drinkers — undercutting the inference that "high BAC" must mean "obviously intoxicated."
- Even crediting Clark's account of the earlier outburst, an isolated loud moment in a crowded bar an hour before an unrelated, ostensibly provoked altercation is not the same as "obvious intoxication at last service."

On Count Two (Negligence/Innkeeper Liability):

- The August incident involved a different victim and reached the bar through a chain of secondhand phone calls the witnesses themselves can't fully reconstruct — thin, borderline-inadmissible evidence of notice as to *this* assailant.
- The owner's bouncer decision was a general staffing policy, not a response to a specific threat from Walker — courts require notice of *this* patron's dangerous propensities, not generalized rowdiness in a bar.
- Flambeau was the aggressor in the immediate sequence — he grabbed Waggoner's hand uninvited after being rebuffed twice; the attack followed instantaneously, leaving no realistic window for staff to intervene even if everything alleged is true.
- An hour of "normal bar stuff" (Clark's words) between the outburst and the attack defeats any claim that the bar should have anticipated an imminent physical assault — nothing in that hour re-triggered any duty to act.

Cross-cutting defense argument for both counts:

- Even if the court denies summary judgment outright, Flambeau's comparative fault — persistent, repeated unwanted advances after being twice rejected — should substantially reduce any eventual recovery, which is worth flagging to frame the stakes of letting this go to trial.

II. The Mediation Simulation

Key Learning Objectives

- Explore duty of care & foreseeability in a bar setting
- Practice interest-based negotiation vs. positional bargaining
- Work with non-monetary terms (policy change, safety measures)
- Manage face-saving / emotional dynamics (plaintiff embarrassment)

The simulation is designed to emphasize just how critical ADR is in the work of lawyers and to assist students in making the transition from a litigation-centric focus on legal issues to a much richer problem-solving focus based on client interests. This simulation draws directly from the doctrine reflected in the master file:

- A bar is liable only if it has notice of dangerous conduct and a reasonable opportunity to act
- Without foreseeability, imposing liability risks becoming strict liability

This creates a classic mediation tension:

- Plaintiff: "You should have prevented this."
- Bar: "We couldn't have known."

Additional tensions built into the simulation:

1. Liability vs. Practical Resolution

- Strong legal defense
- But real litigation risk

2. Money vs. Meaning

- Plaintiff wants more than money
- Bar prefers non-monetary concessions

3. Face-Saving

- Plaintiff: masculinity / embarrassment
- Bar: reputation / precedent

The confidential role play information is drafted so that each participant has:

- A credible internal story
- Emotional drivers (embarrassment, defensiveness, risk aversion)
- Negotiation space (security measures, monetary settlement, acknowledgment, etc.).

Each attorney has a detailed damages analysis sheet they will share with their clients. The damages assessment includes predicted jury verdict ranges, estimated winning probabilities, and litigation costs—information which the attorney/client teams can use as part of their mediation advocacy planning. There is an ample zone of possible agreement (ZOPA) on the monetary side, which should allow most student teams to succeed in reaching a mediated settlement, though terms will vary considerably. A realistic agreement might include:

- Moderate financial payment
- No admission of liability
- Bar agrees to:
 - Hire evening security (bouncer)
 - Staff training on conflict de-escalation
- Possibly:
 - Confidentiality clause

Given that the exercise is most likely to be used in a first year course, we assume most students are not yet trained as mediators. Accordingly, the mediator's information includes a number of "scripted" questions that will help first-timers provide value to the parties. In meeting with mediators before the exercise, you might emphasize the following strategic points:

Key Levers:

- Plaintiff: dignity, validation, future safety
- Defense: risk, cost, reputation

Key Risks to Highlight:

- Conflicting testimony
- Plaintiff intoxication
- Lack of security / prior complaints

Turning Points to Watch:

- When plaintiff shifts from anger → acknowledgment need
- When defense shifts from denial → risk management

Recommended Simulation Debriefing Questions:

1. What drove the negotiation more:
 - Legal strength, or practical risk?
2. How did non-monetary terms affect movement?
3. Did anyone address the Plaintiff's emotional needs?
4. What role did uncertainty of trial outcome play?

III. The NextGen Bar Exam Integrated Problem Set

As noted on the NextGen Bar Exam website,¹ integrated problem sets are

based on a common fact scenario and may include some legal resources (e.g., excerpts of statutes or judicial opinions) and/or supplemental documents (e.g., a police report or excerpt from a deposition) and include multiple-choice, medium-length, and/or short-answer questions. In addition to testing doctrinal law, some integrated question sets will be focused on drafting or editing a legal document; other sets will be focused on counseling and/or dispute resolution.

The problem set developed for this exercise includes excerpts from the Master File and tests doctrinal (4 questions), as well as counseling and dispute resolution (7 questions). Sample answers are provided for each question. The problem set could be used before or after the more comprehensive summary judgment and mediation exercises (or used without the more comprehensive exercises).

¹ <https://www.ncbex.org/exams/nextgen/sample-questions/integrated-question-sets> (last visited June 30, 2026).

Teacher's Notes, Appendix One

MEMORANDUM

TO: File
FROM: Associate Attorney
RE: Flambeau v. Jake's Bar & Grille, Inc., File No. XX-945-DXB — Likelihood of Success on Defendant's Motion for Summary Judgment
DATE: [Date]

Questions Presented

1. Under Minnesota's Civil Damage Act, Minn. Stat. § 340A.801, is Jake's Bar & Grille, Inc. ("Jake's") entitled to summary judgment on Plaintiff William Flambeau's dram-shop claim where the parties' lay witnesses and retained experts dispute whether patron Chris Walker was "obviously intoxicated" at the time alcohol was last served to her?
2. Under Minnesota common-law innkeeper liability, is Jake's entitled to summary judgment on Flambeau's negligence claim where there is conflicting evidence regarding whether Jake's had notice of Walker's dangerous propensities and an adequate opportunity to intervene before she struck Flambeau with a bottle?

Brief Answers

1. Likely no. Genuine issues of material fact exist as to whether Walker exhibited signs of obvious intoxication before the assault. The lay testimony is directly conflicting (Flambeau v. Waggoner and, to a lesser extent, Clark), and the parties' retained toxicology experts reach opposite conclusions on Walker's blood alcohol concentration ("BAC") and likely outward symptoms at the time of last service. Because a fact-finder could reasonably find for either party on this element, and the court must view the evidence in the light most favorable to Flambeau as the non-moving party, summary judgment on Count One is unlikely to be granted.
2. Likely no, though this count presents a closer and more case-specific question than Count One. Evidence of (a) Walker's loud, threatening outburst directed at Flambeau roughly an hour before

the assault, witnessed by the bartender, and (b) a prior violent incident involving Walker at the same bar, reported to the owner along with repeated patron requests for bouncers, creates a triable issue on notice and foreseeability under the Alholm/Quinn framework. This record is materially stronger for the plaintiff than the facts in *Devine v. McLain*, where the bar had no prior contact with the assailant. Summary judgment on Count Two is also unlikely to be granted, although the outcome is less one-sided than on Count One because Jake's has colorable arguments that the threat was not specific enough and that the time and opportunity to act were limited.

Statement of Facts

On October 8, 2025, William Flambeau was a patron at Jake's Bar & Grille in Duluth, Minnesota. Beginning around 9:00 p.m., Flambeau twice asked Chris Walker and her companion, Jane Waggoner, to dance; both declined. According to Flambeau, when he approached the second time, Walker stood up "obviously intoxicated and unable to stand without supporting herself on her chair," yelled loudly at him to leave them alone, and slurred her words. Bartender Ella Clark witnessed the outburst but did not intervene.

Approximately one hour later, Waggoner approached the bar to retrieve drinks (a vodka tonic for Walker and a glass of wine for herself, according to Clark's account, or possibly a round including shots, according to the testimony Plaintiff's expert relied upon). Flambeau grabbed Waggoner's hand and again asked her to dance. Walker then picked up a full beer bottle from the bar and struck Flambeau in the face, breaking his nose and fracturing his cheekbone. Walker was arrested in the parking lot shortly afterward; a breathalyzer administered at approximately 11:45 p.m. measured her BAC at 0.12 g/dL.

The witness accounts diverge sharply on Walker's apparent state of intoxication that evening:

- **Flambeau** testified that Walker "crossed the line between becoming tipsy and just plain ole intoxicated" — that she was loud, overfriendly, could not dance, had bleary eyes, had to hold her chair to stay steady, and slurred her words when she yelled at him.
- **Jane Waggoner**, Walker's companion, testified that Walker showed no signs of slurred speech, no loudness or boisterousness beyond normal, no motor-function problems, and in fact played pool "quite skillfully" shortly before the incident.

- **Ella Clark**, the bartender, testified that Walker and Waggoner were “regulars” who could “pack it away pretty good” without showing obvious intoxication, that their consumption that night (about five cocktails and one glass of wine, per the bar tab) was “nothing unusual for them,” and that, leading up to the assault, things were “just normal bar stuff” — flirting, not anything that signaled an impending fight.

Clark also testified that Flambeau himself was a repeat and unwelcome presence at the bar — a “real creep” who “treated the bar like his personal Tinder app” and would not take no for an answer, particularly as the night wore on. Multiple female patrons, according to Waggoner, had complained to bar management about Flambeau’s conduct and threatened not to return unless he was removed.

Separately, bar patron Alex Ruffian testified about an incident in August 2025 in which Walker pulled another patron’s (Ruffian’s sister-in-law’s) hair from behind during a confrontation Ruffian described Walker as having been drinking heavily and “pretty amped” / “antagonistic.” The bartender on duty that night asked all three involved patrons to leave. Ruffian’s sister-in-law called the bar owner, Craig, the next day, and Ruffian relayed to Craig that “a whole bunch” of patrons had been complaining for months that the bar needed bouncers, especially on weekends. Craig acknowledged the message but, according to a recorded message Ruffian’s sister-in-law later played for Ruffian, declined to permanently bar Walker or any other patron because they were “good customers,” and the bar never hired bouncers.

The parties retained competing toxicology experts on the obvious-intoxication and causation issues:

- **Leslie Patrone** (Plaintiff’s expert, a 20-year Minnesota State Patrol veteran in SFST/DRE training) opines, based on witness reports that Walker had “four vodka shots” in the two hours before the assault and a post-arrest BAC of 0.12, that Walker’s BAC at the time of the assault was likely in the range of 0.12–0.15 g/dL, and that signs of intoxication “certainly would be evident” at that level — such that bar staff should have identified her intoxication at the time of last service.
- **Chase Reams** (Defendant’s expert, a 20-year Minnesota State Patrol veteran) opines that, applying pharmacokinetic principles to Walker’s five vodka tonics consumed between 8:45 p.m. and 11:45 p.m. (one after the incident) and her body weight, Walker’s BAC at the time of her last pre-assault drink (~11:00 p.m.) was approximately 0.09–0.10 g/dL, that as an experienced drinker she would have developed tolerance reducing visible

symptoms, and that she would not have displayed signs of obvious intoxication apparent to a server using reasonable observation.

Plaintiff also offers the affidavit of Elizabeth Casden, an academic expert in hospitality management, who opines that Jake's service practices that night — allowing patrons to carry drinks themselves rather than having staff deliver and monitor them, and free-pouring rather than measuring — fell below industry best practices and increased the risk that Walker's consumption and intoxication would go undetected.

Jake's has moved for summary judgment under Fed. R. Civ. P. 56 on both counts of the Complaint: Count One (Civil Damage Act / dram shop liability) and Count Two (negligence / innkeeper liability).

Standard of Review

Summary judgment is appropriate only where “there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). The court must view the evidence, and draw all reasonable inferences from it, in the light most favorable to the non-moving party — here, Flambeau. A genuine issue of material fact exists if the evidence is such that a reasonable jury could return a verdict for the non-moving party. Where, as here, the record contains directly conflicting eyewitness testimony and competing, qualified expert opinions on a dispositive factual question, courts are generally reluctant to resolve that conflict on summary judgment; the credibility of witnesses and the weight to be given competing expert testimony are matters for the trier of fact, not the court on a Rule 56 motion.

Analysis

I. Count One — Civil Damage Act (Dram Shop Liability)

A Civil Damage Act claim requires proof of three elements: (1) the defendant illegally sold an alcoholic beverage — i.e., sold or served it to a person who was “obviously intoxicated”; (2) that illegal sale was the sole or a proximately contributing cause of the person's intoxication; and (3) the intoxication was a direct, proximate cause of the plaintiff's injuries. Minn. Stat. § 340A.801, subd. 1; Minn. Stat. § 340A.502; *Hollerich v. Good Thunder*, 340 N.W.2d 665, 668 (Minn. 1983); *Johnson v. Moberg*, 334 N.W.2d 411, 414 (Minn. 1983). Recovery under the Act does not require

proof of negligence — only proof of an illegal sale and the requisite causal chain. *Hahn v. Ortonville*, 238 Minn. 428, 433, 57 N.W.2d 254, 259 (1953).

A. “Obvious Intoxication” at the Time of Last Service Is Genuinely Disputed

The threshold and most heavily contested element here is whether Walker was “obviously intoxicated” when she was last served alcohol. This is quintessentially a fact question, and the record contains evidence that could support a finding either way:

- Flambeau’s testimony, if credited, would support a finding of obvious intoxication — he describes specific, classically recognized indicia (slurred speech, loss of balance requiring her to hold a chair, loud and overfriendly behavior, bleary eyes).
- Waggoner’s testimony directly contradicts this account on every material point, including the specific claim that Walker played pool skillfully and showed no motor impairment shortly before the incident.
- Clark’s testimony is more equivocal: it supports Jake’s position that nothing about that night’s service was unusual for these regulars, but it also concedes that Clark witnessed Walker’s loud, agitated outburst directed at Flambeau roughly an hour before the assault — a fact that cuts against a finding that nothing was amiss.
- The dueling expert reports (*Patrone v. Reams*) reach opposite conclusions about Walker’s probable BAC at the relevant time (0.12–0.15 versus 0.09–0.10) and about whether a BAC in that range would have produced visible symptoms in an experienced drinker. Both experts are credentialed in the same specialty and purport to apply accepted scientific methodology to the same underlying facts, yet reach materially different numbers and conclusions.

Because this conflict goes to a core element of the claim and cannot be resolved without weighing credibility and competing expert methodology, it is not a question a court can properly decide on summary judgment. A reasonable jury crediting Flambeau’s and *Patrone*’s accounts could find obvious intoxication; a reasonable jury crediting Waggoner’s and *Reams*’s accounts could find the opposite. That is the definition of a genuine issue of material fact.

Jake’s strongest counter-argument is that Flambeau is an interested party whose account is self-serving and uncorroborated by any disinterested witness — Waggoner contradicts him directly, and Clark’s testimony, while not fully consistent with *Reams*’s no-intoxication position, does not corroborate Flambeau’s specific claims of slurred speech or loss of balance either. Jake’s may also

argue that Reams’s pharmacokinetic calculation, grounded in a specific, itemized drink count and a recognized methodology, is more reliable than Patrone’s assumption-laden estimate (which itself acknowledges “it is impossible to know for certain” what Walker’s BAC was at the time of the assault). These are legitimate arguments about the relative weight of the evidence — but weight and credibility determinations are reserved for the jury, not the court on summary judgment, particularly where, as here, the non-movant’s version is not so contradicted by undisputed physical or documentary evidence that no reasonable jury could credit it.

B. Causation Elements Are Less Contested but Not Conceded

If a jury were to find obvious intoxication at the time of last service, the remaining causation elements (that the sale contributed to Walker’s intoxication and that her intoxication proximately caused the assault) would likely follow with relative ease on this record — Walker had been drinking at Jake’s continuously for over two hours immediately before the attack, and there is no competing causal account (e.g., outside intoxicants, an intervening event) in the record. Jake’s has not identified, and the record does not appear to contain, any independent basis to defeat causation if intoxication is established. Accordingly, Jake’s summary judgment argument on Count One will likely rise or fall on the obvious-intoxication element discussed above, and on this record that element presents a genuine, material, and triable dispute.

Conclusion as to Count One: Summary judgment is unlikely to be granted. The conflicting lay testimony and competing expert opinions on obvious intoxication present exactly the kind of credibility-and-weight dispute that Rule 56 reserves for the jury.

II. Count Two — Negligence (Innkeeper Liability)

Minnesota imposes on 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.” *Devine v. McLain*, 306 N.W.2d 827, 830 (Minn. 1981) (quoting *Klingbeil v. Truesdell*, 256 Minn. 360, 363, 98 N.W.2d 134, 138 (1959)). A proprietor is not liable for an injury inflicted by one patron on 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.” *Devine*, 306 N.W.2d at 830 (quoting *Evanish v. V.F.W. Post No. 2717*, 269 Minn. 209, 211, 130 N.W.2d 331, 332–33 (1964)). Foreseeability —

typically grounded in the bar's knowledge of the assailant's dangerous propensities — is the linchpin of the duty analysis. Devine, 306 N.W.2d at 830 (citing *Quinn v. Winkel's, Inc.*, 279 N.W.2d 65, 68–69 (Minn. 1979)). The applicable standard of care is ordinary reasonable care under the circumstances — not the “highest degree of care.” *Alholm v. Wilt*, 394 N.W.2d 488, 491 (Minn. 1986).

A. Notice: This Case Is Closer to Quinn Than to Devine

Devine illustrates the kind of record that supports summary judgment for a bar: the assailant and her husband were brand-new patrons who had “never before been in” the bar, there was no prior history of dangerous conduct, and the only “warning” was an ambiguous, isolated remark (“I’ll be back”) made as the assailant left the premises — not specific enough, the court held, to put the bar on notice that she intended to return and cause harm. 306 N.W.2d at 829–31.

By contrast, *Quinn v. Winkel's, Inc.* supports denying summary judgment where the plaintiff produces “reputation testimony about the violent nature” of the assailant along with evidence that the bar was aware of it but declined to bar the patron, plus evidence of the assailant's prior fights on the premises. 279 N.W.2d at 68; see also *Alholm*, 394 N.W.2d at 489 (assailant had a history of boisterous, loud behavior at the bar, prior “slapping matches” with other patrons spilling into the alley, and a prior fight with the bar's own bouncer).

The current record contains evidence on both sides of this line, but on balance looks considerably more like *Quinn/Alholm* than *Devine*:

- Walker was not a stranger to the premises; she and Waggoner were established “regulars.”
- There is evidence of a prior violent incident: Walker allegedly pulled another patron's hair in an August 2025 altercation at the same bar, serious enough that the bartender on duty ejected all three people involved.
- That incident was reported to the bar's owner, Craig, along with a broader pattern of patron complaints over “months” urging the bar to hire bouncers — evidence that, if credited, shows Jake's had actual knowledge of recurring volatility involving its patron base (and arguably Walker specifically) and made a deliberate decision not to add security.

- On the night in question, the bartender, Clark, personally witnessed Walker rise from her seat, become unsteady, and yell loudly at Flambeau roughly an hour before the bottle attack — an overt act directed specifically at the eventual victim, on the same night, on the same premises, much closer in time and specificity than the ambiguous parting remark in Devine.

Jake's principal counter-arguments are that (1) the August 2025 incident involved a different victim, was reported secondhand through a chain of phone calls the witnesses themselves could not fully reconstruct, and is therefore weak, hearsay-laden evidence of notice as to Walker specifically; (2) the owner's alleged refusal to add bouncers was a general business decision untethered to any specific threat from Walker; and (3) Flambeau himself provoked the only specific, contemporaneous warning sign (Walker's outburst) by repeatedly and persistently propositioning her and Waggoner after being rebuffed, which may cut against foreseeability of an unprovoked attack on a stranger and instead frame this as a foreseeable consequence of Flambeau's own conduct. These are substantial arguments that may carry weight with a jury or bear on comparative fault, but they go to the weight and ultimate persuasiveness of the notice evidence rather than eliminating the dispute altogether. A reasonable jury could conclude, from the cumulative pattern of the August incident, the unaddressed patron complaints, and Clark's contemporaneous observation of Walker's outburst, that Jake's had sufficient notice of a developing volatile situation.

B. Adequate Opportunity and Failure to Take Reasonable Steps

The roughly one-hour gap between Walker's loud outburst (witnessed by Clark) and the bottle attack is significant: unlike Devine, where the McLains left the bar and the shooting occurred off-premises a half hour later with no opportunity for the bar to act in the interim, here the warning sign and the assault occurred in the same continuous visit, on the same premises, with Walker remaining in the bar the entire time. That timeline gives rise to a triable question whether reasonable steps — increased monitoring, separating the parties, warning Flambeau, or declining further service — were available and would have prevented the injury. Plaintiff's hospitality expert, Casden, also offers an opinion that Jake's service and monitoring practices that night fell below industry standards, which, if credited, bears on whether reasonable steps were taken.

Jake's may respond that an hour of otherwise unremarkable "normal bar stuff" (per Clark) between the outburst and the attack undermines any inference that the bar should have anticipated an imminent physical assault, and that nothing about the intervening hour gave any further warning. This is a fair point that may reduce Flambeau's likelihood of success at trial, but it does not eliminate the factual dispute over whether the earlier outburst, combined with the bar's broader knowledge of Walker's history and the unaddressed bouncer complaints, was enough to trigger a duty to act.

Conclusion as to Count Two: Summary judgment is unlikely to be granted, though this count is closer than Count One. The combination of (i) the August 2025 incident and related complaints to ownership, and (ii) the bartender's contemporaneous observation of Walker's threatening outburst directed at Flambeau shortly before the attack, distinguishes this case from Devine and aligns it more closely with Quinn and Alholm, where notice-based liability survived for the jury. Jake's has credible arguments on the margins — particularly regarding the secondhand nature of some notice evidence and Flambeau's own provocative conduct — but these go to comparative fault and the ultimate weight of the evidence rather than to the existence of a genuine factual dispute.

III. Comparative Fault and Affirmative Defenses

Both counts are subject to comparative fault under Minn. Stat. § 604.01; Minn. Stat. § 340A.801, subd. 3. Jake's has pleaded contributory negligence and assumption of risk, premised on Flambeau's repeated, unwanted advances toward Walker and Waggoner after being rebuffed. This evidence — corroborated by Clark, Waggoner, and even Flambeau's own account of persistently approaching the pair — is likely to be significant at trial and could meaningfully reduce any damages award. However, comparative fault is an affirmative defense that allocates fault between the parties; under Minnesota law it does not by itself entitle a defendant to summary judgment unless the undisputed evidence shows the plaintiff to be more than 50% at fault as a matter of law, which is a high bar this record does not appear to satisfy given the genuine disputes discussed above about Walker's and Jake's own conduct. Complicity — i.e., evidence that Flambeau knowingly and affirmatively participated in procuring alcohol for Walker — is not implicated on this record, as there is no evidence Flambeau purchased or furnished drinks to Walker; this defense, recognized in *K.R. v. Sanford*, 605 N.W.2d 387, 391 (Minn. 2000), does not appear to apply here.

IV. Standing Under the Civil Damage Act

Standing is not a serious obstacle for Flambeau. The Act excludes recovery only by the voluntarily intoxicated person who caused his own injury, on-duty police officers, and certain subrogated insurers. *Herrly v. Muzik*, 374 N.W.2d 275, 278 (Minn. 1985); *Hannah v. Jensen*, 298 N.W.2d 52, 54–55 (Minn. 1980). Flambeau is an “innocent third person” injured by Walker’s intoxication and “played no role in causing the intoxication” within the meaning of *Lefto v. Hoggsbreath Enterprises, Inc.*, 581 N.W.2d 855, 857 (Minn. 1998), since there is no evidence he purchased, furnished, or otherwise contributed to Walker’s alcohol consumption. He therefore has standing to sue, regardless of how the obvious-intoxication and comparative-fault disputes are ultimately resolved.

Conclusion

Defendant Jake’s Bar & Grille, Inc. faces a low-to-moderate likelihood of success on its motion for summary judgment on either count, and a very low likelihood of full dismissal of the case.

- Count One (Civil Damage Act): Likely to survive summary judgment. The central element — obvious intoxication at the time of last service — is squarely disputed by conflicting eyewitness testimony and directly conflicting expert opinions on Walker’s BAC and likely symptoms. This is a textbook jury question.
- Count Two (Negligence/Innkeeper Liability): Likely to survive summary judgment, though Jake’s arguments here are somewhat stronger than on Count One. Evidence of a prior violent incident involving Walker, unaddressed patron complaints about the need for bouncers, and the bartender’s contemporaneous observation of Walker’s threatening outburst shortly before the attack distinguish this case from *Devine* and create a triable issue on notice and foreseeability, more closely resembling *Quinn* and *Alholm*.

Even if the court were inclined to grant summary judgment on one count, the overlapping factual disputes underlying both claims (Walker’s degree of intoxication, the bar’s knowledge of her propensities, and the sequence of events on the night in question) make it unlikely the court would resolve both counts on this record without a trial. We recommend evaluating these disputed-fact dynamics, and Flambeau’s comparative-fault exposure, in any mediation or settlement discussions, as flagged for the upcoming ADR session in this matter.